TERMS OF SERVICE

Effective April 18, 2024

Welcome to Clubessential!

These Terms of Service, together with your Services Agreement and other Addenda, form the legally-binding "**Agreement**" between you, our client ("**Client**," "**you**," or "**your**"), and Clubessential, LLC d/b/a Clubessential (together with our subsidiaries, successors and assigns, "**CE**," "**we**," "**us**" or "**our**"). Please read these Terms of Service carefully.

1. DEFINITIONS. The definitions below will help you better understand the Agreement. Bolded terms not defined below will have the meanings set forth elsewhere in the Agreement.

"Addendum" or **"Addenda**" mean(s) any document(s) which provide(s) new or supplemental terms to the Agreement, including any schedules, exhibits or amendments thereto.

"Affiliate" or "**Affiliates**" mean(s), for a party, any other entity that controls, is controlled by, or under common control with, the party. The term "control," as used in this definition, means the direct or indirect power to direct the affairs of the other entity through at least 50% of the shares, voting rights, participation, or economic interest in this entity.

"Agreement" means the Services Agreement, these Terms of Service, the Privacy Policy and any applicable Addenda.
"**Authorized User**" means the individual (either an employee or authorized third-party agent of Client) with rights to access Client's account associated with use of Services.

"**CE Partner**" means an entity that is appointed by CE to process orders, resell CE products and services, or provide technical equipment or hardware.

"CE Technology" means the technology owned by CE or licensed to CE by a third party (including reports, software tools, algorithms, software (in source and object forms), user interface designs, architecture, toolkits, plug-ins, objects and Documentation, network designs, processes, know-how, methodologies, trade secrets and any related Intellectual Property Rights throughout the world) and feedback made to CE that is incorporated into any of the foregoing (which are hereby irrevocably assigned to CE), as well as any of the modifications, or extensions of the above, whenever or wherever developed.

"Claim" or "**Claims**" mean(s) a claim, action, complaint, or legal regulatory body, administrative or judicial proceeding filed against a party.

"Confidential Information" means non-public or proprietary information about a disclosing party's business related to technical, commercial, financial, employee, or planning information that is disclosed by the disclosing party to the other party in connection with the Agreement, and (a) is identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (b) is not identified as confidential at the time of disclosure, but is by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential. All information provided by CE to Client with respect to the Services, and the terms and conditions of the Agreement (including pricing that CE has offered Client) will be considered Confidential Information of CE without any marking or further designation. Client Data will also be considered Confidential Information of Client without any marking or further designation. "Confidential Information" does not include information that (i) has become public knowledge through no fault of the receiving party; (ii) was known to the receiving party, free of any confidentiality obligations, before its disclosure by the disclosing party; (iii) becomes

known to the receiving party, free of any confidentiality obligations, from a source other than the disclosing party; or (iv) is independently developed by the receiving party without use of Confidential Information.

"Client" means the club, golf course, business entity, non-profit or municipality identified in the Services Agreement as the "Client," or is otherwise identified in the Agreement as CE's client.

"Client Content" means any material (such as audio, video, text or images) that is loaded or imported into the Site or Services by or on behalf of Client.

"Client Data" means any information that is loaded or imported by or on behalf of Client into the Site or Services from Client's internal data stores or other third-party data providers or is collected in connection with Client's use of the Site or Services. Client Data includes, without limitation, Client Content and End User Data.

"Documentation" means the applicable technical specification and usage documentation for CE's products and services as such materials may be made available through www.clubessential.com or another source. Documentation does not include any third-party content posted to www.clubessential.com, content published in user forums hosted or moderated by CE, content related to any future functionality, or communications exchanged between CE and Client, unless such communications are specifically incorporated by reference within the Services Agreement or an amendment thereto.

"**End User**" or "**End Users**" mean(s) the individual(s) who access(es) the Site and interact(s) with the Services. End Users typically include a Client's customers, members, patrons, viewers or guests.

"**End User Data**" means data and information about or relating to a particular End User. End User Data may include an End User's personal data and tokenized cardholder information.

"Fees" mean the fees associated with Services, in addition to all other costs, charges and other amounts permitted by the Agreement. Fees may be charged on a one-time or recurring basis. Specific Fees for Services are described in the Services Agreement.

"**Implementation Period**" means the period of time beginning on the Effective Date and ending on the Go Live Date.

"Initial Fees" are the fees associated with initial Site set-up or redesign, installation of Office Software, or implementation of other Systems at Client's approved business location.

"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.

"Sub-Merchant Agreement" means the Sub-Merchant Application and Agreement ("**SMAA**") and Payment Terms and Conditions which govern Payment Services provided by CE (as a payment facilitator) to Client (as a sub-merchant).

"Payment Services" mean the payment and billing-related services as CE makes reasonably available through various Systems.

"Professional Services" means consulting, training, marketing, custom development or technical support provided by CE or an authorized CE subcontractor as set forth in the Services Agreement or a separate

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Statement of Work. CE reserves the right to determine what it considers Professional Services, in its sole discretion.

"Sensitive Personal Data" means an individual's financial information, sexual preferences, medical or health information protected under any health data protection laws, biometric data (for purposes of uniquely identifying an individual), personal information of children protected under any child protection laws (such as the personal information defined under the US Children's Online Privacy Protection Act ("**COPPA**")) and any additional types of information included within this term or any similar term (such as "sensitive personal information" or "special categories of personal information") as used in applicable data protection or privacy laws.

"Services" mean the specific Systems, products and services provided by CE to Client, as described in the Services Agreement.

"Services Agreement" means the sales document describing the Services to be provided by CE and the Fees for Services to be paid by Client, and any other supplemental terms and conditions.

"**Site**" or "**Sites**" mean(s) the customized website(s) that CE designs, builds and licenses to Client for use in connection with the Services.

"System" or "Systems" mean(s) the specific modules, tools and functionalities comprising the Services, as may be integrated with the Site and licensed to Client for use at its approved business location(s).

"Team" includes all CE employees, officers, directors, owners, agents and representatives.

"**Term**" means the Implementation Period, the Initial Term and any Renewal Term(s), as further described in the Services Agreement.

2. PAYMENT OF FEES. This section applies only if your Services Agreement is directly with us. If your Services Agreement is with a CE Partner, then the payment terms will be as agreed between you and the applicable CE Partner.

2.1 Payments. You agree to pay all Fees described by the Agreement, including, without limitation, all Fees for Services. Unless a different due date is specified in the Services Agreement, all invoices will be due within 30 days from date of invoice. All invoices will be delivered electronically to the billing contact identified in the Services Agreement. We may charge you interest at a monthly rate equal to the lesser of 1.5% per month or the maximum rate permitted by applicable law on any overdue Fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full. In addition, we reserve the right to charge you a $100 late fee if payment is not made within 30 days from invoice receipt. Except as permitted by the Agreement, all Fees paid are non-refundable. Fees paid are based on Services provided, not actual usage. Any Fees that remain unpaid as of the date of termination or expiration of the Agreement will become immediately due and payable.

2.2 Failure to Pay. If you fail to pay any amount due under the Agreement (and you have not disputed the invoice as described in Section 2.3 below), then we will send you a notice reminding you that payment remains outstanding. If you fail to pay within 15 days following the date of this reminder notice, then we reserve the right to suspend or restrict your access to the Site(s) or use of Services until payment is made in full. If your failure to pay Fees continues for more than 30 days following your receipt of the reminder notice, then we shall have the right to declare you in default of the Agreement.

2.3 Payment Disputes. If you believe, in good faith, that we have incorrectly billed you for Services, then you must contact us in writing within 30 days of the invoice date with sufficient detail for us to

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identify the alleged error and be able to properly investigate it. Unless you notify us of a payment dispute, you will be responsible for paying our reasonable collection costs (including our reasonable attorneys' fees and court costs, as applicable). You will be required to pay the undisputed portion of any invoice when due.

2.4 Initial Fees. Initial Fees are due up front, prior to the commencement of any work to implement Systems at your approved business location(s). Initial Fees are non-refundable. We will estimate your Initial Fees based on the size and scope of a similar implementation. During implementation, we will use reasonable efforts to track the number of actual hours spent against our projection of estimated hours and will provide you a monthly time report at the end of each month. If, upon completion of all implementation work, we have underestimated the total number of hours needed to complete the engagement, then you will be responsible for paying any cost overages, which overage hours we will calculate at the same established hourly rate. Any additional overage costs will be considered part of your Initial Fees and must be paid immediately upon your receipt of a separate invoice describing the overage. We reserve the right to charge for Initial Fees as a flat rate, in our sole discretion.

2.5 Fee Increases. At the expiration of the Initial Term or any Renewal Term, upon at least 30 days' prior notice, Clubessential may increase fees by the greater of: (i) five percent (5.0%), or (ii) the maximum annual increase during the term in the Consumer Price Index, specifically the index for All Urban Consumers (or CPI-U), as reported in the annual inflation rate table on this site: https://www.usinflationcalculator.com/inflation/current-inflation-rates/ ("CPI").

2.6 Taxes. The Fees described in the Services Agreement are exclusive of all taxes, including national, state or provincial and local use, sales, value-added, property or similar taxes, if any. You agree to pay all such taxes (excluding U.S. taxes based on our net income). If you believe you are not subject to the payment of taxes, you must provide us with a tax-exemption certificate prior to entering into a Services Agreement. To the extent we provide you with Payment Services, we will be obligated to comply with valid tax liens or levies associated with your account. If we are required to pay any taxes on your behalf, then you agree to reimburse us for such amounts (including, without limitation, taxes, interest and penalties that may be issued) within 30 days from your receipt of a special tax-related invoice from us.

3. SERVICES

3.1 Implementation & Go Live Date. We will use reasonable efforts to make sure all Systems identified in the Services Agreement are activated and considered available to you and Authorized Users at the approved business location by a mutually decided "**Go Live Date**." Your official Go Live Date will be the date all Systems associated with the Agreement have been implemented at your approved business location(s). Your estimated Go Live Date will be the expected Go Live Date discussed with you by a member of our Team on your initial kick-off call. We may ask that you confirm the estimated Go Live Date in writing, although our failure to meet the estimated Go Live Date will not be considered a material breach of the Agreement.

3.2 Delivery. Each System will be considered delivered when it has been successfully implemented at your approved business location. Your obligation to begin paying Fees for Services will begin as each System is delivered and becomes available for use. If we are designing and building a Site on your behalf, then Site delivery will occur when you accept final Site design (or redesign) and we formally launch the Site on your behalf. If we are designing and building a mobile application on your behalf, then delivery will be considered complete when we have configured the mobile application and delivered it to you for next steps (which may involve making the mobile application available to End Users on the Apple or Google stores).

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3.3 Grant of Licensed Rights. Subject to the terms and conditions of the Agreement (including your payment of Fees), we grant you, during the Term, a limited term, non-exclusive, non-transferrable license to: (a) permit your Authorized Users and End Users to access the Site (as applicable) and use the Services through our approved interfaces and proprietary CE Technology; and (b) access the Site (as applicable) and use Services in the lawful operation of your business at the approved location. These licensed rights do not constitute a sale and do not convey to you or any third party any right of ownership in or to the Site (as applicable), Services, CE Technology, or any of the Intellectual Property Rights therein. All rights not specifically granted under the Agreement are expressly reserved to us.

3.4 License Restrictions. Except to the extent expressly permitted by the Agreement, you agree, as a condition of the license grant, that you are restricted from and must not:

(a) use the Site (as applicable), Systems or Services (i) in violation of applicable law or regulation (including, where applicable, the ADA, COPPA, CAN-SPAM, TCPA, or the Do-Not-Call Implementation Act), or in connection with such unlawful material (such as material that violates any obscenity, defamation, harassment, privacy, publicity or intellectual property laws); or (ii) in a manner that would cause a material risk to the security or operation of the Site, Systems, Services or CE Technology, or to any of our other customers;

(b) copy, distribute, republish, download, display, sell, rent, lease, host or sub-license the Site (as applicable), Systems or Services;

(c) intentionally try to bypass a security mechanism of the Site (as applicable), Systems or Services, or intentionally transmit material which contains viruses, Trojan horses, worms or some other harmful computer program;

(d) attempt to interact with the operating system, networks or software underlying the Site (as applicable), Systems or Services, or any CE Technology, or modify, create derivative works of, adapt, translate, reverse-engineer, decompile, or otherwise attempt to discover the underlying technology of the Site, Systems or Services, the source code, data representations, or underlying algorithms, processes and methods associated with any CE Technology;

(e) remove, obscure, or alter any proprietary notices associated with the Site (as applicable), Systems, Services or CE Technology;

(f) use any software components, modules, functionalities, features or other services that may be delivered with the Site (as applicable), Systems or Services, but which are not licensed to you and identified in the Services Agreement;

(g) send unsolicited advertising, marketing or promotional materials, whether by email or text, without the recipient's legally valid consent; or

(h) violate the Agreement.

We reserve the right to immediately suspend or discontinue your access to the Site (as applicable) or use of the Services if we have reason to believe you are, or may be, acting in violation of these license restrictions.

3.5 Site Design & Build (As Applicable). The following terms and conditions apply if we are designing and building a Site on your behalf:

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(a) You do not own the Site. You own the URL/domain name and the Client Content loaded or imported to the Site, but we own the Site itself, including without limitation, the Site's design elements. You and your Authorized Users and End Users have rights to access the Site subject to the terms of the Agreement.

(b) We will permit two (2) rounds of Site design changes included with your payment of Fees. After the second round of changes, we reserve the right to charge you a Site design fee of $250 for each additional design round.

(c) In order to effectively deliver the Site, you must actively participate in the Site's design. To these ends, you will be required to designate a primary point of contact for all Site-related matters.

(d) You will be responsible for responding to our requests for Site-related information (including, without limitation, requests for Client Content) within 24 hours. We will not be responsible for Site launch delays outside of our control, including, without limitation, delays caused by your failure to promptly communicate or provided requested information.

(e) You will be required to provide a written sign-off prior to Site launch. Subsequent Site design changes post-launch will be subject to our standard hourly rates, as may be revised from time to time.

(f) You must secure a URL/domain name prior to Site launch. Upon your written request (email is sufficient), we can secure a URL/domain name on your behalf but will charge you the cost of the URL/domain name registration plus a $35 administrative fee.

(g) You must obtain an SSL certificate for the Site through an approved provider. The SSL certificate must remain valid and in good standing at all times while the Site is active.

(h) You authorize us to post a "**CE Link**" on the Site describing the Site as being "powered by Clubessential™" (with a hyperlink to www.clubessential.com). We post the CE Link unobtrusively in the Site footer in the same general artistic style as the Site's design.

(i) Although CE will design, build and maintain the Site, you acknowledge that we are not a full-service website design or remediation shop. While we will use commercially reasonable efforts to meet thencurrent WCAG 2.0 AA standards for website accessibility by those with disabilities, we cannot and do not guarantee Site compliance with all federal or state laws and disclaim all liability related thereto. You may consult with an independent website design shop at your cost if you believe additional website accessibility changes may be needed to the Site.

3.6 Payment Services. If we are providing you with Payment Services, then you will be required to enter into a separate Sub-Merchant Agreement, which will become part of the Agreement. Any client receiving Payment Services must submit to risk underwriting and be approved prior to using Payment Services. If you are receiving Payment Services as part of the Agreement, then you expressly authorize us to complete risk underwriting on the Client through our normal processes.

3.7 Beta Services. We may, from time to time, offer services identified as beta, pilot, developer preview, evaluation or by a similar description ("**Beta Services**"). You are not required to use Beta Services; it will always be your choice. We may discontinue Beta Services at any time in our sole discretion and may never make Beta Services generally available.

3.8 Third-Party Services. We may, from time to time, make available certain tools, features or functionalities that allow you to integrate the Site (as applicable), Systems or Services with products

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or services provided by third parties (collectively, "**Third Party Services**"). It shall be your sole responsibility to obtain and comply with any applicable terms and conditions related to Third-Party Services, which will be considered separate from the terms and conditions as described in the Agreement.

3.9 Customer Support. We offer customer support through designated channels during "**Core Support Hours**," Monday to Friday, 8:30 am to 8:00 pm EST, and Saturday, 8:30 am to 5:30 pm EST. To reach a member of our customer support Team, please call (513) 533-5775, option 2, or email support@clubessential.com. For "**Emergency Support**" outside of Core Support Hours, please use our emergency hotline: (513) 533-5775, option 2. For more information about our Customer Support, please visit www.clubessential.com.

4. PROFESSIONAL SERVICES. Except as otherwise stated in the Services Agreement or Statement of Work:

4.1 License to Deliverables. Without limiting or modifying any license granted to you for the Site (as applicable) or Services, we grant you a non-exclusive, non-sublicensable and non-transferrable license to use the materials developed and provided in our performance of Professional Services ("**Deliverables**") solely in connection with your access to the Site and use of Services during the Term. We retain all rights, title and interest (including Intellectual Property Rights) in and to the Deliverables. To the extent you participate in the creation or modification of any Deliverables or CE Technology, you irrevocably assign to us all rights, title and interest (including Intellectual Property Rights) in such Deliverables or CE Technology.

4.2 Employment Taxes and Obligations. We are responsible for all taxes and any employment obligations arising from our employment of personnel and contractors in the performance of Professional Services.

4.3 Warranty. We warrant that Professional Services will be performed in a professional and workmanlike manner. You must notify us in writing of any breach of this warranty within 30 days of performance of the Professional Services. To the extent permitted by law, your sole and exclusive remedy for breach of this warranty and our sole liability under or in connection with this warranty will be re-performance of the relevant Professional Services.

4.4 Use of Subcontractors. You agree that we may use subcontractors in the performance of Professional Services. Where we subcontract any of our obligations concerning Professional Services, we will not be relieved of our obligations to you under the Agreement.

5. MODIFICATIONS

5.1 Changes to the Terms of Service. We shall have the right to modify these Terms of Service at any time to reflect changes in our policies, industry requirements or applicable law. We may post Minor Changes to www.clubessential.com without notifying you in advance. A "**Minor Change**" is any modification to the Terms of Service that does not reduce your legal rights under the Agreement. We will notify you at least 10 days in advance of any Material Change to the Terms of Service by emailing the primary contact listed in your Services Agreement. A "**Material Change**" is any modification in the Terms of Service that reduces your legal rights under the Agreement. If you object to a Material Change within 10 days of notification, then the Material Change will not apply to you and you will continue to be subject to the previous, unmodified version of the Terms of Service; provided, however, that the Material Change will automatically take effect at the start of your Renewal Term without further notice. Absent objection, your continued use of Services after the 10-day period will constitute your acceptance of a Material Change.

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5.2 Changes to the Services Agreement. You can add or remove Services during the Term provided that we agree to such changes in writing. We will document any changes to Services in an updated invoice which we will send to you for review. If you disagree with the addition or removal of Services (and any associated fees) as reflected in the updated invoice, you must notify us immediately. If you pay the updated invoice, accept the benefits of added Services, or fail to object to the updated invoice within 14 days after you receive it, then you will be considered to have accepted the changes, which will be considered a valid modification of the thencurrent version of the Services Agreement.

5.3 Changes Required by Law. We reserve the right to make immediate changes to our Terms of Service or Privacy Policy, with or without advance notice to you, where such changes are required by applicable laws, rules or regulations.

5.4 Other Changes to the Agreement. Except as otherwise stated herein, no modification of the Agreement will be binding unless in writing and manually signed by an authorized representative of the parties.

5.5 Enhancements. We strive to continually improve the CE Technology, Systems and Services made available to you. We may, from time to time, update CE Technology, Systems or Services to include enhancements, add new features or functionalities, or upgrade the Site (as applicable) or Systems (collectively, "**Enhancements**"). Whenever possible, we will provide you with advance notice of the release of any Enhancements. Unless we provide you advance notice that you will be charged for Enhancements if you use them, our general practice is not to charge for use of Enhancements.

5.6 Discontinuation. We reserve the right to discontinue, sunset, decommission or otherwise terminate any System by providing you with a 180-day written notice of such action.

6. TERM, TERMINATION & SUSPENSION

6.1 Term & Automatic Renewal. The Agreement will become active as of the Effective Date and will remain in effect until terminated in accordance with its terms. The Term (including the the Initial Term and any Renewal Term(s), as applicable) is described in your Services Agreement. The Initial Term will begin the day after your official Go Live Date, which is the day the last System is implemented at your approved business location. Unless you provide us with written notice of your intent to terminate the Agreement at least 90 days prior to the expiration of the Initial Term or any Renewal Term, as applicable, the Agreement will continue to automatically renew for successive Renewal Terms until properly terminated in accordance with the Agreement.

6.2 Termination for Cause. Either party may terminate the Agreement for cause if the other party: (a) fails to cure any material breach of the Agreement, including a failure to pay Fees, within 30 days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party and is not dismissed within 60 days. In addition to the termination rights described herein, we may terminate the Agreement for cause and without penalty if, after the Effective Date, we discover that providing the Site (as applicable) or Services, or some part thereof, is prohibited by law or has become impractical or unfeasible due to a legal or regulatory reason.

6.3 Suspension Rights. In addition to any of our other rights and remedies (including, without limitation, our termination rights), we reserve the right to suspend your access to the Site (as applicable) or use of Services: (a) if you fail to pay our Fees; (b) if you are, or if we have reason to believe, you are violating the License Restrictions described in Section 3.3 above; (c) if you are in material breach of the Agreement; (d) if we deem the suspension necessary to protect the availability, integrity,

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resilience or security of the Site, Systems or our CE Technology; or (e) as required by law or by judicial authority.

6.4 Effect of Termination. Upon expiration or termination of the Agreement for any reason, your licensed right to access the Site (as applicable) and use Services (including, as applicable, Payment Services) shall automatically terminate and we may delete your Client Data at the conclusion of the period permitted to retrieve your Client Data (described below) unless otherwise prohibited by applicable law.

6.5 No Archiving; Deletion of Client Data. We do not provide data archiving services and shall have no obligation to archive your Client Data. You should keep a copy of your Client Content and any Client Data you consider important. Unless the parties have mutually agreed on an alternate timeline, during the 90-day period between your cancellation notice and the actual termination date for the Agreement, you shall be permitted to retrieve Client Data belonging to you from the System ("**Retrieval Period**"). Upon expiration of the Retrieval Period, if you need more time to retrieve your Client Data, we will permit you an additional 30 days to retrieve your Client Data at no cost. If additional time is needed beyond the 30-day extension period to retrieve your Client Data, we may grant additional 90-day extensions of time for purposes of Client Data recovery subject to your payment of an agreed-upon fee for each extension period. Notwithstanding the foregoing, we shall have no obligation to return any of your Client Data unless and until you have brought your account current and paid all outstanding Fees owed. Once the Retrieval Period and any permitted extension periods end, we may, but shall have no obligation to, keep a copy of your Client Data for archival purposes at our cost for up to 12 months, unless a longer retention period is required by applicable law.

6.6 Survival. The terms of this Section 6 and the terms of the following Sections will survive the expiration or termination of the Agreement: Sections 7 (Intellectual Property), 8 (Confidentiality), 9 (Representations, Warranties and Disclaimers), 10 (Indemnification), 11 (Limitations of Liability), 12 (Dispute Resolution), and 15 (General Terms).

6.7 Liquidated Damages. Upon the occurrence of an event of default by you, we may at any time thereafter terminate this Agreement by giving you written notice thereof. If, prior to the date on which the then current term of this Agreement is scheduled to expire, either this Agreement is terminated by us as specifically permitted by this Agreement, or you for any reason discontinue receiving the services from us (except as may be specifically permitted by this Agreement), you shall be liable to us for liquidated damages in an amount equal to the average monthly amounts payable to us as a result of the Agreement for the three calendar months in which such amount was the highest during the preceding 12 calendar months multiplied by the number of months remaining during the then current term of this Agreement. You recognize and agree that the liquidated damages are fair and reasonable because it is not possible to establish the actual increase in volume and activity during the term of this Agreement. You shall also reimburse us for any damage or expense incurred by us as a result of a breach by you. All such amounts shall be due and payable upon demand.

7. INTELLECTUAL PROPERTY

7.1 Ownership.

(a) **By Client.** You own (or, where applicable, must ensure that you have a valid license to) the URL/domain name associated with the Site (as applicable) and your Client Data (including, without limitation, your Client Content), subject to our underlying Intellectual Property Rights in the CE Technology and the End User's rights to his/her own End User Data.

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(b) **By CE.** All rights in and to the Site (as applicable), Systems, Services and CE Technology, including any modifications made thereto and derivatives thereof, exclusively belong to and at all times will remain our sole and exclusive property. You will not permit any third party to take any action with respect to Site or System access or use of Services that is not expressly authorized under this Agreement.

7.2 Permitted Use. You grant us and our Affiliates a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store, and display your Client Data (including, without limitation, Client Content) to the extent necessary to perform our obligations (including, but not limited to, developing, modifying, improving, supporting, customizing, and operating the Site and providing our Services), or enforce our rights under this Agreement, or where required or authorized by law. We may use, copy, transmit, index and model Client Data for the purpose of developing, improving or customizing the Services, and publishing, displaying and distributing any anonymous information (i.e., information where neither you nor your End Users are capable of being identified which may be aggregated with other of our clients' anonymous information) derived from Client Data.

7.3 Feedback. You may, but are not required to, provide us with feedback and suggestions about the Site (as applicable) or Services (collectively, "**Feedback**"). If you provide Feedback, then we and our Affiliates may use that Feedback without restriction and financial obligation to you. You agree that your submission of Feedback will be gratuitous, non-confidential, unrestricted and made without any right to receive compensation in return.

8. CONFIDENTIALITY. The receiving party will treat Confidential Information with reasonable care and disclose only on a need-to-know basis, or as permitted under this Agreement. The receiving party will only use Confidential Information for the purposes of performing its obligations or as permitted under this Agreement. However, a receiving party may disclose Confidential Information: (a) if approved by the other party in writing; (b) if required by law or regulation; (c) in the event of dispute between the parties, as necessary to establish the rights of either party; or (d) by us as necessary to provide the Services. In the case of (b) and (c), the disclosing party will provide reasonable advance notice to the other party and provide reasonable assistance to limit the scope of the disclosure unless prohibited by law or regulation. The receiving party is responsible for ensuring that its representatives and Affiliates fully comply with the obligations of the receiving party under this section.

9. REPRESENTATIONS, WARRANTIES & DISCLAIMERS

9.1 General Representations and Warranties. Each party represents and warrants that: (a) it is an entity that is duly organized and validly existing under the laws of the jurisdiction in which it is established; (b) it has full power and authority, and has obtained all required approvals, permissions and consents necessary, to enter into this Agreement and to perform its obligations hereunder; (c) the Agreement is legally binding upon it and enforceable according to its terms; and (d) the execution, delivery and performance of the Agreement does not and will not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound.

9.2 Client Representations. You represent and warrant that: (a) you are and will be solely responsible for your own Client Content, including without limitation, the accuracy, legality, appropriateness and completeness of your Client Content; (b) you agree not to collect, process or store Sensitive Personal Data in connection with the Site (as applicable) or Services; (c) you have the necessary rights and licenses, consents, permissions, waivers and releases to use and display your Client Content; (d) your Client Content (i) does not violate, misappropriate or infringe any of our rights or the rights of third parties, (ii) does not constitute defamation, invasion of privacy or publicity, or otherwise violates the rights of a third party, and (iii) is not designed for use in any illegal activity or to promote illegal activities, including, without limitation, use in a manner that might be libelous or defamatory or otherwise malicious, illegal, harmful to any person or entity or discriminatory based on race, sex, religion, nationality,

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disability, sexual orientation or age; or (e) your Client Content, to the best of your knowledge, does not contain any unauthorized data, malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code.

9.3 CE Limited Warranty. We represent and warrant that: (a) we own the appropriate rights to license or sublicense the Site (as applicable) and Services; and (b) to the best of our knowledge, the Site and Services will be provided free of viruses, malware, spyware, ransomware or other harmful code. You must notify us of a claim under this limited warranty within 45 days of the date on which the condition giving rise to the claim first appeared. To the extent permitted by law, your sole and exclusive remedy, and our sole liability under or in connection with this warranty, will be the replacement of the Site or Services, or, if there has been a service level failure under an applicable Service Level Agreement, then your sole remedy will be as set forth in the Service Level Agreement.

9.4 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9.3 ABOVE, THE SITE (AS APPLICABLE) AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. WE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT THAT YOUR ACCESS TO THE SITE OR USE OF SERVICES WILL BE UNINTERRUPTED OR BUG, VIRUS OR ERROR-FREE. WE ALSO DO NOT WARRANT THAT WE WILL INDEPENDENTLY REVIEW YOUR CLIENT DATA (INCLUDING CLIENT CONTENT) FOR ACCURACY OR LEGALITY. CE AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL LIABILITY FOR THIRD-PARTY SERVICES, BETA SERVICES, HARDWARE AND OTHER HARDWARE CONFIGURATION ISSUES, OR SITE COMPLIANCE WITH ACCESSIBILITY STANDARDS, INCLUDING, WITHOUT LIMITATION, SECTION 508 OF THE REHABILITATION ACT OF 1973, AS AMENDED (29 U.S.C. § 794d), AND ITS IMPLEMENTING REGULATIONS AT TITLE 36, CODE OF FEDERAL REGULATION PART 1194, OR THE AMERICANS WITH DISABILITIES ACT.

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."

10. INDEMNIFICATION

10.1 Indemnification by CE. We will indemnify you and your directors, officers, agents and employees from and against any losses or liabilities (including, without limitation, attorneys' fees and costs) related to Claims to the extent caused by the infringement or alleged infringement of U.S. intellectual property rights of a third party due to your access to the Site (as applicable) or use of the Services, excluding infringement or alleged infringement that arises or results from: (a) your access to the Site or use of Services in a manner not permitted by the Agreement; (b) any modification to the Site or Services made by you; (c) use of the Site or Services in combination with any other service, platform, process or materials with which the Site or Services is not intended to be combined; (d) your continued use of the infringing or allegedly infringing Site or Service (or any part or component alleged to be infringing thereof) after you have been provided with modifications or other remedies to avoid the alleged infringement; or (e) Client Content.

10.2 Indemnification by Client. You will indemnify us, our Team and our Affiliates, and each of their directors, officers, agents and employees, from and against all losses and liabilities (including, without limitation, attorneys' fees and costs) related to Claims that arise or result from: (a) your violation of any applicable law or regulation; (b) your breach of the Agreement, including, without limitation your misuse of the Site or Services in violation of the License Restrictions described in Section 3.3; (c) your Client Content; (d) your fault in any incident resulting in the loss or unauthorized access to Client Data or the

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data belonging to any other customer; or (e) any other indemnifiable event described elsewhere in the Agreement.

10.3 Indemnification Requirements. The indemnification obligations of each party (the "**Indemnifying Party**") are contingent upon the other party (the "**Indemnified Party**") providing the Indemnifying Party with: (a) prompt written notice of any Claim for which indemnification may be sought under this Agreement; (b) control over the defense and settlement of any such Claim with counsel of the Indemnifying Party's choice; and (c) proper and full information and assistance, at the Indemnifying Party's expense and request, to settle or defend any such Claim. Indemnified Party will be entitled to participate in, through its own counsel at its own cost and expense, but not to determine or conduct, any defense or settlement of a Claim. Indemnifying Party is not permitted to enter into any settlement with respect to a Claim other than one for purely money paid by Indemnifying Party with a full release of liability with respect to Indemnified Party without Indemnified Party's prior written consent, which will not be unreasonably withheld.

11. LIMITATIONS OF LIABILITY. EXCEPT FOR LIABILITY WHICH, BY LAW, CANNOT BE LIMITED ("EXCLUDED CLAIMS"), TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT:

11.1 IN NO EVENT SHALL WE OR ANY MEMBER OF OUR TEAM BE LIABLE OR RESPONSIBLE TO YOU FOR LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (WHERE SUCH DATA IS LOST IN THE COURSE OF TRANSMISSION FROM YOUR SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF OURS), BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT, OR FOR ANY OTHER TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR FOR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY YOU OR YOUR AFFILIATES IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF WHETHER YOU OR YOUR AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

11.2 OUR TOTAL AGGREGATE LIABILITY TO YOU, ANY AFFILIATE, OR ANY THIRD PARTY ARISING OUT OF THE AGREEMENT, THE SITE (AS APPLICABLE) OR ANY OF OUR SERVICES (INCLUDING, WITHOUT LIMITATION, PAYMENT SERVICES AND PROFESSIONAL SERVICES) SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF FEES PAID BY YOU OVER A PERIOD OF ONE (1) MONTH FROM THE TIME PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE GIVING RISE TO SUCH LIABILITY. MULTIPLE CLAIMS WILL NOT INCREASE THE MAXIMUM AGGREGATE LIMIT DESCRIBED HEREIN.

11.3 YOU ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION IS TO ALLOCATE THE RISKS UNDER THE AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES CHARGED, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. THE PARTIES AGREE THAT THE LIABILITY LIMITS SET FORTH HEREIN ARE A MATERIAL BASIS OF THE BARGAIN AND ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

11.4 TIME LIMITATION. YOU FURTHER AGREE THAT ANY CLAIM WHICH YOU MAY HAVE AGAINST US MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM AROSE, OTHERWISE THE CLAIM SHALL BE PERMANENTLY BARRED.

12. DISPUTE RESOLUTION. Each party agrees that before it seeks any form of legal relief (except for a provisional remedy as explicitly set forth below) it shall provide written notice to the other party of the specific issue(s) in dispute and reference the relevant provisions of the Agreement which are allegedly being

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breached. Within 30 days after such notice, knowledgeable executives for the parties shall hold at least one meeting (in person or by video-or-tele-conference) for the purpose of attempting, in good faith, to resolve the dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures, or unless otherwise required by law or judicial decision. These dispute resolution procedures shall not apply to Claims that involve: (a) your non-payment of Fees; (b) a party's indemnity obligations; (b) a party seeking a provisional remedy related to claims of misappropriation or ownership of Intellectual Property Rights, trade secrets or Confidential Information; or (c) equitable or injunctive relief.

13. NOTICES

13.1 Notices to Client. All notices provided by us to you under the Agreement will be delivered: (a) in writing by nationally recognized overnight delivery service ("**Courier**") or U.S. mail to the contact mailing address listed in the Services Agreement; or (ii) by email to the email address for the primary contact listed in the Services Agreement.

13.2 Notices to CE. All legal notices provided by you to us under the Agreement must be delivered: (a) in writing by Courier or U.S. mail to Clubessential, LLC, Attn: Legal, 9987 Carver Road, Suite 230, Cincinnati, Ohio 45242; or (b) by email to legal@xplortechnologies.com. Notice of your intention not to renew the Agreement, or to terminate the Agreement for cause, will be considered a legal notice. All other notices provided by you to us under the Agreement must be delivered to legal@xplortechnologies.com.

13.3 Delivery of Notices. All notices shall be deemed to have been given immediately upon delivery by email, or, otherwise if delivered upon the earlier of receipt or two (2) business days after being deposited in the mail or with a Courier as permitted above.

14. CLIENT ACKNOWLEDGEMENTS. You understand, acknowledge and agree that:

14.1 Privacy. All privacy and security-related matters, including our role as a data processor and how we treat Client Data (which may include End User Data), is described in our Privacy Policy, which is made part of the Agreement. Separate from our Privacy Policy, you must have and comply with your own privacy policy (or a similar privacy-related document) that explains your role as the controller of Client Data and complies with appliable laws, including, without limitation, any jurisdiction-specific privacy legislation. Upon your written direction, we will post a privacy policy that you provide on the Site (as applicable).

14.2 Connectivity Issues. We will not be responsible for any internet speed or connectivity issues at your place of business, or any other problems related to or arising from Third Party Services, including, without limitation, technology equipment or hardware made available by or through a CE Partner.

14.3 Interoperability. It is your responsibility to ensure that your computer systems, internet connections, IT infrastructure, peripherals, services, mobile devices and workstations comply with our minimum system requirements, and as may be revised from time to time. We will only be responsible for supporting the last two versions of the Office Accounting Software.

14.4 Promotion. You expressly authorize us to use your name and logo ("**Marks**") to indicate the existence of a business relationship in our marketing or other promotions including, without limitation, posting such Marks on www.clubessential.com, in a press release, or in any other marketing or promotional materials. You may withdraw your consent to our use of your Marks by sending us a written notice.

14.5 Remote Access (As Applicable). You expressly authorize us to remotely access your technology systems for the limited purpose of implementing the Systems and providing the Services at your approved

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business location(s). You will be responsible for all costs associated with our remote access, including, without limitation, any security protocols that you must pay for to give effect to our remote access. Our inability to remotely access your technology systems shall not be considered a material breach of the Agreement. We will use commercially reasonable efforts to comply with any security-related policies or protocols that you provide us in advance of our remote access to your technology systems.

14.6 Export Controls. The software supporting the Site (as applicable) or Services may be subject to U.S. Export Control Laws and Regulations and other applicable export laws and regulations ("**Export Control Laws**"). Export Control Laws have been set up by the U.S. government to keep certain goods and services from reaching other countries, usually because of security concerns or trade agreements. None of our software may be downloaded or otherwise exported (or re-exported) in violation of Export Control Laws. You agree that you will not, directly or indirectly, allow the Services, or the software supporting the Site to be accessed or generated from within, or distributed or sent to, any prohibited or embargoed country as mentioned in any Export Control Laws. In addition, you certify that neither you nor any of your principals, officers, directors or any person or entity you know to be directly involved with your use of the Site or Services designated on any U.S. government list of prohibited or restricted persons.

14.7 Electronic Consent. You consent to doing business with us electronically, meaning that you agree that all of our contractual understandings, policies and communications, including all notices and instructions, may be presented, delivered, stored, retrieved, and transmitted electronically. 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. The Agreement may be executed in any number of counterparts, each of which 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.

15. GENERAL TERMS

15.1 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in its entirety in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities to such party's successor. We may assign this Agreement in its entirety to any of our Affiliates. Any attempt to transfer or assign this Agreement except as expressly authorized under this section will be null and void.

15.2 Severability. If a court of competent jurisdiction holds any provision of this Agreement to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.

15.3 Interpretation. Section headings are inserted for convenience only and shall not affect the construction of the agreement. Wherever the context requires, the singular shall include the plural, the masculine gender shall include the feminine and neuter gender, and "and" shall include "or." The parties acknowledge that this Agreement was initially prepared by CE. Both parties, however, have had an opportunity for legal review of all terms. The parties therefore agree that, in interpreting any issues which may arise, any rules of construction related to which party prepared the Agreement will be inapplicable, each party having contributed or having had the opportunity to clarify any issues.

15.4 No Waiver. No failure or delay by either party in exercising any right under the Agreement including, without limitation, these Terms of Service, will constitute a waiver of that right.

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15.5 Governing Law & Venue. The Agreement shall be governed by the laws of the State of Ohio, without reference to conflict of laws principles. Any disputes under the Agreement shall be resolved in a court of general jurisdiction in Hamilton County, Ohio. You hereby expressly agree to submit to the exclusive personal jurisdiction of this jurisdiction for the purpose of resolving any dispute relating to the Agreement, your use of the Services, or your access to the Site (as applicable).

15.6 Relationship. The parties will be considered independent contractors in the performance of each and every part of the Agreement. Nothing in the Agreement is intended to create or shall be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise. Each party will be solely responsible for their respective employees and agents and respective labor costs and expenses arising in connection with those employees and agents.

15.7 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 our Services or the Site (as applicable) resulting from any cause beyond our reasonable control, including, but not limited to: 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; volcanic eruptions; insurrection; riots or war; terrorism or civil disturbance; zombie apocalypse, global pandemics; strikes; lock-outs; work stoppages or other labor difficulties; supplier failure; shortage; or telecommunication or other internet provider failure (each, a "**Force Majeure Event**").

15.8 Entire Agreement. These Terms of Service, together with your Ser, the Privacy Policy, and any applicable Addenda, make up the entire Agreement between us in relation to its subject matter and supersede all prior agreements, representations and understandings between the parties. Any direct conflict in terms will be resolved in favor of the later-signed Addenda.

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