

# 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 Application and Agreement, Payment Terms and Conditions, or any other applicable Addenda.

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

**“Agreement”** means a Services Agreement, the Terms of Service, the Privacy Policy, and any other applicable Addenda, including but not limited to, the Sub-Merchant Application and Agreement, the Payment Terms and Conditions, a Master Vendor Agreement, or any other supplemental terms or conditions.

**“Billing Period”** means the period of time covered by a single payment of Fees, usually one (1) calendar month.

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

**“Club-Managed Subscriber”** is a Subscriber that elects to process payments through ClubReady’s primary merchant account but otherwise handles all aspects of its own billing and/or payment services.

**“ClubReady”** means ClubReady, LLC, its subsidiaries, successors and assigns. ClubReady’s business address is 14515 North Outer Forty, Ste. 300, Chesterfield, MO 63017. ClubReady may also be referred to as “Company,” “we,” “our,” or “us.”

**“ClubReady System”** means our proprietary technology, including our hosted club-management and payments platform (and all associated components and modules), leadSPEAK™, Performance IQ™, the mobile app, APIs, website, and any associated documentation, including manuals, guides, FAQs, subscriber-facing resources, written policies, contracts and training materials.

**“Effective Date”** shall have the meaning set out in the Services Agreement or, as applicable, the Master Vendor Agreement.

**“End User Agreements”** are the contracts that your members, customers or clients sign with you. End User Agreements typically include membership agreements and agreements for individual or group training services.

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

**“End User Data”** is information about your members, customers or clients that may be stored in the ClubReady System. End User Data may include Cardholder Data. End User Data is a subset of Subscriber Data.

**“Exit File”** is an encrypted file containing all relevant Subscriber Data associated with a specific club location that is being off-boarded from the ClubReady System. Exit Files are transferred to a secure FTP site where the Subscriber, or an authorized third-party, can access it.

**“Fees”** mean any one-time or recurring fees for Services as set forth in the Services Agreement. Fees may also include any other set-up fees or other charges permitted by the Agreement.

**“Fully-Managed Subscriber”** is a Subscriber that elects to process payments through ClubReady’s primary merchant account and contracts with ClubReady to provide a full range of services related to the processing of payments, including but not limited to, account settlement and reconciliation, royalties management, remit issuance, and chargeback management and defense.

**“GYM HQ”** means GYM HQ, LLC, a wholly-owned subsidiary of ClubReady located at 303 Research Dr., Ste. 150, Norcross, GA 30092. GYM HQ provides a full suite of premium back-office services in accounting, payroll processing, customer service, past due communications, HR best practices and operation best practices and guidance.

**“Hardware”** means the computer equipment distributed by ClubReady, or by a reseller on ClubReady’s behalf. Hardware may contain firmware or software.

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

**“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.

**“Performance IQ”** means the Performance IQ™ app, together with all hardware, software and/or other related deliverables. Performance IQ™ is provided by ClubReady, LLC.

**“Presale”** means when a Subscriber seeks to sell services to would-be members, customers or clients before its facility or club location has officially opened for business.

**“Services Agreement”** means the contract (together with any schedules or attachments) signed by you which details the specific Services purchased and any associated Fees.

**“Services”** means the services we have agreed to provide you as described in the Services Agreement. Services may include, but are not limited to, one-time professional services, such as implementation and training, or recurring fees and charges for licensed access to our software, payment-related services, Performance IQ™, past due communications, or other services. Your Fees cover our Services.

**“Sub-Merchant Agreement”** means our Sub-Merchant Application and Agreement, including Payment Terms and Conditions, which govern our payment-related services to Subscribers electing to receive these services.

**“Subscriber”** is our customer; it is the individual or business entity contracting to receive our Services. Subscriber may be referred to in the Agreement as “you” or “your.”

**“Subscriber Data”** is all the data entered into your club’s site in the ClubReady System, including all End User Data.

**“Renewal Term”** means one or more periods, as described in the Services Agreement, which immediately follows the expiration of the Initial Term or any Renewal Term.

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

**“Term”** means the term for Services and includes the Initial Term together with any Renewal Term.

**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 ClubReady System or accept the benefits of our Services. You agree that the person accepting the terms and conditions of the Agreement on behalf of a Subscriber has the proper legal authority to bind the Subscriber.

**3. GRANT OF RIGHTS.** Subject to your timely payment of Fees and remaining compliant 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 (a) permit your End Users to access and use the ClubReady System; and (b) 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 the ClubReady System, our 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 Subscriber Data, inclusive of End User Data, to deliver and monitor the Services in accordance with the Agreement.

**4. TERM; TERMINATION FOR CAUSE.** You will be obligated to the Term as described in your Services Agreement. Prior to expiration of the Initial Term, or any Renewal Term, as applicable, either you or we may terminate this 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 termination for cause by you, we shall refund you any prepaid fees covering the remainder of the Initial Term, or a Renewal Term, as applicable, after the effective date of termination. Upon any termination for cause by us, you shall pay any unpaid 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.

**5. 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 Services following that period constitutes your acceptance of the Terms of Service as modified.

**6. FEES; PAYMENT TERMS.** You agree to pay us all Fees, inclusive of any one-time fees or charges allowed by the Agreement. These payment terms also apply: (a) we accept payment only in U.S. dollars; (b) if you pay late, we have a right to collect a \$100 late fee for each instance of late payment; (c) unpaid balances owed to us will accrue

interest at an annual interest rate of 12%; (d) if you do not dispute a charge on your invoice or Remit Report within 30 days after receiving it, you will be considered to have accepted the charge (please contact us as soon as possible if you see something wrong with your bill); and (e) if you have a Services Agreement with us, we will not increase your Fees during the Term unless market conditions or other compelling business considerations require it, as we determine.

**7. 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/or 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 or levy-related invoice.

**8. BREACH; CURE; DEFAULT.** Fees are due on a scheduled due date each month (the "Due Date"). A late fee will apply if payment is made after the 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 Due Date, we may suspend Services until all outstanding Fees are paid in full. We shall have no obligation to release Subscriber Data until all outstanding Fees are paid. Non-payment of Fees in excess of 30 days from the Due Date will result in a default under the Agreement.

**9. PROHIBITED USES.** You shall not use the ClubReady System or our Services (a) 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, state health club or health spa statutes, or any consumer protection statute; (b) to intentionally bypass a security mechanism in the ClubReady System; (c) to reverse-engineer the ClubReady System, or any component thereof, regardless of the reason why; (d) in a way that adversely impacts the availability, reliability or stability of the ClubReady System, or any component thereof; (e) to intentionally transmit material using the ClubReady System which contains viruses, Trojan horses, worms or some other harmful computer program; (f) to send unsolicited advertising, marketing or promotional materials, whether by email or text, without the recipient's legally-valid consent; (g) to harvest information about others, including their email addresses, credit card information or phone number; (h) to commit fraud; (i) to transmit material that infringes on the intellectual property right of others; (j) to transmit material that is harassing, discriminatory, defamatory, vulgar, pornographic, or harmful to others; or (k) 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.

## 10. 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. The ClubReady™, GYM HQ™, leadSPEAK™ and Performance IQ™ names and logos are registered

trademarks of ClubReady, LLC, and no right or license is granted to use them without our express written permission. Title to purchased Hardware (excluding software thereon and leased or evaluated Hardware) passes to you upon delivery and payment of any applicable Hardware-related Fees. For Hardware provided to you as part of a lease for a term or for evaluation purposes ("Temporary Hardware"), ClubReady retains title.

**(b) What's Yours.** With the exception of End User Data (including, as applicable, Cardholder Data), which belongs to individual End Users, you reserve all rights, title and interest to the Subscriber Data found in the ClubReady System. You represent and warrant that you own or have appropriate rights to all of your Subscriber Data. You shall have sole responsibility for the accuracy, quality, integrity, legality, security, reliability, appropriateness, and intellectual property ownership or rights to use of all of Subscriber Data, 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 Subscriber Data. You shall be solely responsible for loading, mapping and formatting any Subscriber Data in or to the ClubReady System. You also own all rights, title and interest to your company's trademarks, service marks and other intellectual property.

**11. 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 11 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 11. 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.

**12. LIMITED WARRANTIES.** We represent and warrant that we own the appropriate rights to license and/or sublicense the ClubReady System and Services. We do not warrant that the ClubReady System or Services will be entirely free from defect or error. **EXCEPT AS SPECIFICALLY STATED HEREIN, THE CLUBREADY SYSTEM 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."

**13. LIMITATION OF LIABILITY.**

**(a) EXCLUSIVE REMEDY. YOUR EXCLUSIVE REMEDY FOR ANY FAILURE OF CLUBREADY'S OBLIGATIONS UNDER THE AGREEMENT SHALL BE YOUR RIGHT TO TERMINATE THE AGREEMENT FOR CAUSE AND WITHOUT PENALTY, AND ANY CREDITS WHICH MAY BE DUE PURSUANT TO AN APPLICABLE SERVICE LEVEL AGREEMENT (WHERE A SERVICE LEVEL AGREEMENT IS OFFERED).**

**(b) EXCLUDED DAMAGES. IN NO EVENT SHALL CLUBREADY 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.**

**(c) CAP ON DAMAGES. IN NO EVENT SHALL CLUBREADY'S LIABILITY TO YOU OR ANY THIRD PARTY IN ANY CIRCUMSTANCES EXCEED THE AMOUNT OF FEES YOU ACTUALLY PAID TO CLUBREADY FOR SERVICES IN THE ONE (1) MONTH PERIOD DIRECTLY PRIOR TO THE ACTION GIVING RISE TO ALLEGED LIABILITY.**

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

**14. INDEMNIFICATION.** You shall 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 ClubReady System 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.

**15. END USER AGREEMENT NOTICE.** We are not responsible and will not be liable for your End User Agreements. This is true regardless of whether a member of our Team provides you with an End User Agreement template, offers guidance or other information on state law compliance, or otherwise assists you with any part of the End User Agreement upload process. Most states have laws which seek to regulate the fitness industry, including, in many cases, requirements to include certain contract provisions verbatim, obtain a security, or register with a state agency. Failure to comply with these state laws, as applicable, could result in significant fines, penalties or other damages. You are recommended to speak with an attorney about the contents of your End User Agreements. You hold ClubReady, and all members of our Team, harmless from and against any injury or liability arising under or related to your End User Agreements. Questions about End User Agreement tags or formatting can be directed to [crsetup@clubready.com](mailto:crsetup@clubready.com).

**16. PAST DUE COMMUNICATIONS.** ClubReady does not offer collection services. We offer past due communication services ("PDC") through GYM HQ. Although GYM HQ's right to perform PDC services will begin immediately, as of the Effective Date, actual PDC services may not begin until a later time. GYM HQ will only offer PDC services on active, non-defaulted End User accounts. You must tell us in advance how to set your End User Agreements for default purposes, and it shall be your responsibility to communicate these default provisions to your members, customers and clients in your End User Agreements. Absent clear instruction about default terms, our default will be to set End User Agreement default at 90 days without some form of End User payment on an open invoice. You hold ClubReady, and all members of our Team, harmless from and against any injury or liability arising under or related to PDC services.

**17. PERFORMANCE IQ™.** In addition to these Terms of Service, the following terms and conditions shall apply to your use of Performance IQ™: (a) you agree to pay all associated Performance IQ™ fees and charges as described in the Services Agreement; (b) you are only permitted to use the Performance IQ™ equipment at the location(s) specified in the Agreement, or as the parties may agree in writing; and (c) unless otherwise noted, all Performance IQ fees and charges apply to a single location and will support an unlimited number of End Users associated with that location.

**18. MINIMUM SYSTEM REQUIREMENTS.** It is your responsibility to make sure your computer systems, internet connections, peripherals, mobile devices and work stations comply with the minimum systems requirements necessary to operate the ClubReady System. Please contact us for more information.

**19. CLUB CLOSURE.** You must let us know as soon as possible, but in no event less than 30 days, prior to any club closure. As soon as you know you will be closing your club location, you must immediately stop selling prepaid services, including prepaid memberships. You will be solely and exclusively liable for any chargebacks, refunds, returns, or other fees, charges or damages, associated with closure of your club.

**20. PRESALE.** You must notify us in advance of any Presale activity at your club. We reserve the right to hold all club Remits during the Presale period. We also reserve the right to request proof-of-concept, or some other documentation (reasonably acceptable to us), to demonstrate your ability to open for business prior to Presale, and you agree to provide us with such information.

**21. CHANGE IN MANAGEMENT CONTROL.** You must let us know about any changes in management control as soon as reasonably possible. A change in management control is defined as any change in control of your business where more than 45% of equity in your business is transferred to another party. Failure to notify us in writing about a change in management control may result in the suspension or termination of Services and/or access to the ClubReady System.

**22. OFF-BOARDING; EXIT FILE FEES.** If you decide to leave ClubReady, please let us know in writing at least 30 days in advance of your planned exit date. If you provide us with less than 8 days' notice of a planned club exit, the following Expedite Fees will apply: for 6-7 days' notice: \$300; for 4-5 days' notice: \$500; for 3 days' notice: \$1,000; and for 2 days' notice: \$1,500. We do not offer same-day or next day Exit File transfers. Each Exit File created on your behalf will incur a \$350 fee and will be executed at your next regularly scheduled remit period.

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

**24. CUSTOM DEVELOPMENT.** We welcome any suggestions that you might have about how we can improve our products and services. We do not, however, custom develop the ClubReady Systems, or any feature thereof, to suit the individual needs of our many subscribers. Suggestions about product or service improvements will be considered and, as we decide, will be added to our overall product roadmap for future development. Items on the product development roadmap, and the timeline for completion, will be in our sole discretion. If there is a product, feature or functionality that you would like us to custom develop on your behalf, on *your* timeline, it will be considered a development project subject to your acceptance of a written proposal, which you can accept or reject. All custom development work must be scoped and paid for as a separate engagement, independent of the Agreement and memorialized in a Statement of Work. Any custom development work performed on your behalf shall *not* be considered work-for-hire; the outcome of any work performed on your behalf, regardless of whether you have paid for it, may be incorporated into the ClubReady System for the benefit of all subscribers, and all rights, title and interest to any such custom development project, including all Intellectual Property Rights, shall belong exclusively to us.

**25. CUSTOMER SUPPORT.** You can get in touch with a member of our Customer Support team by phone, email, or live chat. Core support hours for live calls at (800) 405-4818 are Monday through Friday, 8:00 am CST to 7:00 pm CST. Extended support hours for live chat are Monday through Friday, 6 am CST to 9 pm CST, and Saturday and Sunday, 8 am CST to 5 pm CST. Customer support via

email, at [support@clubready.com](mailto:support@clubready.com), is available 24/7; we will use reasonable but not extraordinary efforts to respond to your customer support requests within 24 to 48 hours. Customer Support includes (a) troubleshooting problems with your club site or the ClubReady System; (b) answering general questions about use of the ClubReady System; and (c) providing assistance with minor configuration issues associated with your club site. Customer Support does not include (i) training in the use of the ClubReady System; (ii) major configuration tasks; (iii) development requests; (iv) requests for business or legal advice; and (v) drafting and/or mapping of End User Agreements.

**26. TRAINING.** We offer several different training paths included with your Fees. You can always access our online library of training resources (including training videos) through the ClubReady System itself. After you sign up as a new ClubReady subscriber, we offer you a webinar-based “Initial Training” to help familiarize you with basic use of the ClubReady System. You will sometimes hear us refer to this as “Foundations Training.” Each month, we offer recurring webinar Foundations Training and reoccurring webinar trainings on focused areas of the ClubReady System. All training offered as part of your Fees are subject to scheduling changes and instructor availability. We will make reasonable efforts to notify you of the recurring webinar training schedule in advance (please check the training calendar under the learn tab to know more). You may purchase “Additional Training” at our standard day or hourly rates, as applicable. Additional Training may include one-on-one webinar training on a focused topic of your choosing, or it may include customized onsite training at your facility. Please note that onsite training will incur additional charges for travel and lodging. One-on-one webinar training or onsite training require at least five (5) attendees, and must be scheduled and paid for in advance; the cost of travel and lodging will be invoiced separately. Questions related to training content or scheduling can be directed to [support@clubready.com](mailto:support@clubready.com).

**27. HARDWARE.** We shall have no obligation to provide you with the Hardware necessary to access the ClubReady System or use our Services. Any Hardware used must comply with our minimum system requirements. If we do provide you with Hardware, a description of such Hardware and pricing will be described in your Services Agreement. In the absence of specified pricing, we may provide you with Hardware at our then-current market rates. We offer no warranties on Hardware.

**28. DISPUTE RESOLUTION.** Many concerns can be resolved by calling us at (800) 405-4818. 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, or your ClubReady account. 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 your ClubReady account.

**(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 ClubReady, LLC, ATTN: Legal, 14515 North Outer Forty, Ste. 300, Chesterfield, MO 63017.

**(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.

## 29. NOTICE; 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:	ClubReady, LLC
Legal notices should be sent to:	Subject Line: Legal Notice <a href="mailto:legal@clubready.com">legal@clubready.com</a>
The governing law is:	Missouri
The courts having exclusive jurisdiction are:	State courts of St. Louis County, Missouri, or the U.S. District Court for the Eastern District of Missouri, 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.

### 30. GENERAL PROVISIONS

**(a) Public Relations.** You agree that we may use your company's name, logo, trademark, trade name, service mark, or other commercial designation to indicate the existence of a customer relationship. You agree that we may place your name and logo in our press releases, on our website, or in other marketing material whether in print or online. Our use of your trademarks will be subject to your branding guidelines, and we will discontinue our use of your trademarks where you provide us with written notice of your desire to have us not use your name or logo in our public-facing marketing.

**(c) 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.

**(d) 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 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.

**(e) Professional Advice.** All 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 legal or professional advice.

**(f) 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.

**(g) 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, either party may assign this Agreement in its entirety without consent of the other party, to its affiliate 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.

**(h) 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.

**(i) Survivability.** Even if you terminate the Agreement with us, the following sections of this Terms of Service will still apply: Section 11 (Confidentiality); Section 12 (Limited Warranties); Section 13 (Limitation of Liability); Section 14 (Indemnification); Section 28 (Dispute Resolution); Section 29 (Notice; Governing Law; Jurisdiction); Section 30(g) Assignment; Section 30(m) (Entire Agreement); and any other provision which, by its nature, would extend beyond the term of the Agreement.

**(j) 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.

**(k) 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.

**(l) 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.

**(m) Entire Agreement.** The Agreement and written documents referenced therein (including, but perhaps not limited to, these Terms of Service, the Privacy Policy and the Services Agreement) make up the entire agreement of the parties 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.

**(n) 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.