

# CLUBREADY PAYMENTS™ TERMS AND CONDITIONS

**1. INTRODUCTION.** These Payment Terms and Conditions govern the terms and conditions under which ClubReady, LLC (“ClubReady,” “Company,” “we,” “us,” or “our”) is willing to provide you, the Sub-Merchant (“Sub-Merchant,” “you” or “your”), with certain payment-related services as further defined below. These ClubReady Payments™ Terms and Conditions, in addition to your Sub-Merchant Application and Agreement (“SMAA”), collectively form the Sub-Merchant Agreement that will be binding on you and the Payment Facilitator listed in your SMAA. Terms not specifically defined in the Sub-Merchant Agreement will have the same meanings as set forth in Section 1 of the Terms of Service.

**2. PAYMENT SERVICES; FEES.** The payment-related services we have agreed to provide to you, together with the fees you have agreed to pay for such services, shall be as described in your Services Agreement, or, as applicable, the Master Services Agreement signed with your Franchisor (“Payment Services”).

**3. SCOPE; EXCLUSIVITY.** In exchange for payment of all Fees and other charges associated with Payment Services, you will receive the right to accept payments from your customers, clients and/or members (“End Users”) via bankcards (“Cards”) validly issued by Visa, Mastercard, Discover and American Express (“Card Brands”), and also, if approved, via automated clearing house transactions (“ACH”). Payment Services will only be provided on transactions run on active, non-defaulted End User Agreements properly delivered to us through the ClubReady System in accordance with the Agreement. Payment Services must only be used for business-related purposes, and shall not be used for personal, family or household use. You grant us exclusive rights to provide you with the Payment Services identified in the Services Agreement and Sub-Merchant Agreement for the duration of the Term.

**4. TERM; EARLY TERMINATION FEE.** The term of the Sub-Merchant Agreement will run concurrently with the term described in your Services Agreement, or, as applicable, the Master Vendor Agreement signed by your Franchisor. If you terminate the Sub-Merchant Agreement prior to the expiration of a fixed term (whether during the initial term or any renewal term, as applicable), we reserve the right to charge you an early terminate fee equal to our average fees related to Payment Services over a trailing six-month period, multiplied by any remaining months in the Term. Any partial months will be prorated. If a term is not defined, then your Sub-Merchant Agreement will automatically renew on a month-to-month basis, and you shall have a right to cancel at any time, penalty-free, with a 60-day advance written notice.

**5. ELECTRONIC FUNDS TRANSFER AGREEMENT.** You authorize us to initiate, process, transmit, and settle ACH debits or credits to the account or accounts which you have specified (collectively, “Designated Account(s)”). Your authorization will remain in effect, even after termination of the Sub-Merchant Agreement or Agreement, until we, in our sole discretion, decide that all of your financial obligations have been fully satisfied. You hereby irrevocably authorize us to debit your Designated Account(s) for the amount of any chargebacks, ACH returns, refunds, tax liabilities, fines, losses and costs that we may incur because of your use of the Payment Services. For the avoidance of doubt, ClubReady may pull available funds from any of your Designated Accounts with us, even if such account is unrelated to

the business location that may have incurred the liability. You may change the Designated Account no more than once every 180 days. Please notify us immediately of any changes.

**6. REQUIRED INFORMATION.** In order to use the Payment Services, you are required to provide us with certain information relating to your identity, End Users, transactions, and financial statements. You must provide us with accurate and complete information and keep the information up-to-date. We rely on this information for underwriting and to meet our obligations under applicable laws and agreements with our payment processor and sponsor bank. If the scope or nature of your business changes, you must notify us immediately. Your failure to do so will be considered a material breach of the Sub-Merchant Agreement.

**7. VERIFICATION.** You expressly authorize us to make any business and/or personal credit inquiries (including, but not limited to, credit reports for your directors, officers, and principals), identity-verification inquiries, transaction-verification inquiries (including, but not limited to, inquiries with End Users), and any other inquiries considered necessary relating to our provision of Payment Services, and to provide any information and documentation to our payment processor, our sponsor bank and/or the Card Brands as required by them. Furthermore, you expressly authorize any person or credit reporting agency to compile information to answer those inquiries and to furnish that information to us.

**8. TAXES.** It is your responsibility to determine what, if any, taxes apply to the sale of your products and services, or the payments you receive in connection with your use of our Payment Services (collectively, “Taxes”). It is solely your responsibility to assess, collect, report, or remit the correct tax to the proper tax authority. We are not obligated to, nor will we determine whether Taxes apply, or calculate, collect, report, or remit any Taxes to any tax authority arising from any transaction. You acknowledge that we will satisfy all IRS reporting requirements as required by law, including providing the IRS with an information return on your Card transactions and third-party network transactions.

**9. PROCESSING LIMITS.** You acknowledge that we may, in our sole discretion as we may reasonably determine, assign a maximum dollar amount per sales ticket and an aggregate maximum dollar amount of Card and ACH transactions per calendar month. If certain Card processing volume thresholds are exceeded by your use of Payment Services, you may be required to enter into an additional agreement with our payment processor and/or sponsor bank.

**10. END USER BILLING AUTHORIZATION.** Per the Agreement, we are not liable for the contents of your End User Agreements. However, if we are providing you with Payment Services, you will be required to include a payment authorization provision acceptable to us in your End User Agreements. Failure to include an acceptable payment authorization provision in your End User Agreements could result in Payment Services being delayed or terminated. You agree to hold us harmless for any liability arising under or in connection with your End User Agreements, including but not limited to the payment authorization provision.

**11. REMIT OVERDRAFT FEES; ADVANCE REQUESTS.** You agree to pay us a Remit Overdraft Fee (sometimes called a

Negative Accrual Fee) each time your Designated Account(s) show(s) a negative balance (sometimes called a “negative accrual”). Any request for an advance on a pre-scheduled remit payment must be sent to us in writing. It shall be in our sole discretion to honor or decline any advance request. Any remit advance issued will be subject to an Advance Deposit Fee. The Remit Overdraft Fee and Advance Deposit Fee are described in the Services Agreement.

**12. COMPLIANCE WITH LAWS, RULES AND POLICIES.** You must comply with the applicable Card Brand rules and operating regulations and the National Automated Clearing House Association rules (“NACHA”) (collectively, “Rules”). An abridged version of the Visa, MasterCard, American Express and Discover Rules may be viewed [here](#), [here](#), [here](#) and [here](#). Copies of the NACHA Operating Rules and Guidelines are available for review [here](#). We are a Payment Card Industry (“PCI”) level 1 service provider and are qualified to handle Cardholder Data (e.g., information associated with a Card, such as account number, expiration date, and CVV2) in connection with the Payment Services. We will comply with the Payment Card Industry Data Security Standards (“PCI DSS”) to the extent we possess or otherwise store, process, or transmit Cardholder Data on your behalf. If you possess or otherwise store, process, or transmit Cardholder Data, then you must also comply with PCI DSS. You agree to comply with any applicable federal, state and local laws, rules, and regulations (collectively, “Laws”). You further agree to abide by our [Term of Service](#) and [Privacy Policy](#) (collectively, “Policies”), both of which are expressly incorporated into the Agreement. You will assist us if we are required to ascertain your compliance with any Rules, Laws, PCI DSS, or Policies. We may, within our sole discretion, suspend Payment Services for a reasonable period of time as needed to investigate suspicious or unusual activity, and we shall have no liability for any losses you may attribute to any suspension of remits or funds disbursement. We may reverse Card transactions that we deem to be in violation of the Agreement, including, without limitation, the Sub-Merchant Agreement, and you agree to reimburse us for any such reversal.

**13. RECONCILIATIONS; ERRORS.** You are responsible for reconciling your transaction history or remit reports with your actual transactions and you agree to notify us of any errors or discrepancies (each an “Error”) arising from such reconciliation and verification. We will investigate reported Errors and attempt to promptly rectify them. In the event you are owed money as a result of an Error, we will transfer funds to your Designated Account at the next scheduled remit or pay-out cycle. While we may still work with you in our sole discretion to reconcile Errors, your failure to notify us of such Errors within 60 days of when it first appears on your transaction history or remit report will be deemed a waiver of any right to amounts that may be owed to you in connection with such Errors, including any related charges.

**14. REFUNDS AND RETURNS.** If you have sufficient funds in the EFT/ACH draft associated with your business location, the default setting in the ClubReady System will be to process those refunds automatically. All refunds processed automatically will be returned directly to the End User’s credit card associated with the transaction, and the refund will usually take between three (3) and seven (7) business days to clear. If the EFT/ACH draft is insufficient to cover the refund requests (which basically means you are running a negative accrual balance at your club), ClubReady will attempt to fund the refunds with monies from your Designated Account(s). If you have a credit card on file, we may attempt to pay the refunds through this alternate payment

method, and you expressly authorize the use of the credit card for this purpose. If we are unsuccessful at funding the refund requests through these alternate methods (which may occur automatically as well), then the automatic refund functionality for your business location will be deactivated and this functionality will remain “turned off” for as long as your business location continues to run a negative accrual balance. If you wish to process refunds at your business location while the automatic refund functionality has been deactivated, please call us at (800) 405-4818 or send an email to [support@clubready.com](mailto:support@clubready.com). ClubReady will re-activate the automatic refund functionality once your business location returns to a healthy EFT/ACH draft balance, or you have made alternate funding arrangements with us. ClubReady reserves the right, in its sole discretion, to deactivate, or delay the re-activation of the automatic refund functionality for any of your business locations. ClubReady shall have no obligation to process a refund where the business location lacks adequate funding to cover such refund(s).

**15. PROHIBITED PRACTICES.** In addition to the Prohibited Uses of our Services, as described in the Agreement, where you receive Payment Services from us: (a) you will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and the End User, or any transaction you know or should know to be fraudulent or not authorized by the End User; (b) you must not honor any Card that is expired or listed on a current Electronic Warning Bulletin file, regardless of whether authorization has been obtained; (c) you must not request an ACH transfer that violates the Rules or Laws; (d) you will not use the Payment Services to accept amounts representing the refinancing of an existing uncollectible obligation, debt, or dishonored check of an End User; and (e) you may not process transactions for, receive payments on behalf of, or (unless required by Law) redirect payments to, a third party.

**16. SALES TRANSMITTALS.** You agree to retain a copy of the sales transmittal for completed transactions for 25 months, or for such longer period as the Rules may require. Within three business days of our request, you will produce copies of sales transmittals and other transaction evidence.

**17. RECURRING TRANSACTIONS.** You agree to obtain the End User’s prior written consent for recurring transactions, including a description of the product and the frequency and duration of the recurring charge, and notify the End User that he or she may cancel recurring billing charges at any time.

**18. ACH PROCESSING.** To enable you to make and accept ACH payments, you authorize us to originate credit or debit records for the purpose of a funds transfer (“Entries”) into the ACH network. We will use reasonable efforts to originate Entries on your behalf in accordance with the Sub-Merchant Agreement. You must only submit Entries for bona fide transactions with your End Users made in the ordinary course of business in accordance with the Agreement, Rules and Laws. You shall obtain and maintain appropriate authorizations in accordance with the Rules from each End User for each ACH transaction. All disputes between you and any of your End Users relating to any ACH transaction must be resolved between you and them. If we receive any notice of an ACH dispute or NACHA inquiry, we will forward such notice directly to you. We bear no financial responsibility for any disputed transaction. If we respond to a dispute or transaction inquiry on your behalf, you consent to pay our additional fees associated with these services.

**19. AMERICAN EXPRESS.** The following section applies only if you accept American Express Cards. You must maintain customer service information that is readily available for review by American Express cardholders transacting with you. The customer service information should provide clear instructions on how to contact you, including an active customer service email address and telephone number. You understand and covenant that you are not a third-party beneficiary under our agreement with American Express, including all schedules and exhibits, or the American Express Rules. You acknowledge and agree that American Express is a third-party beneficiary under the Sub-Merchant Agreement between you and us. This means American Express has the right, but not the obligation, to enforce the terms of the Sub-Merchant Agreement against you. You authorize us to submit American Express Card transactions to, and receive payment from, American Express on your behalf. You authorize us to disclose Card transaction data and data about you to American Express, its affiliates, agents, subcontractors, and employees, and further authorize these entities to use such information to perform services, operate and promote the American Express network, perform analytics and create reports, and for any other lawful business purpose, including as described in the American Express Rules.

**20. CHARGEBACKS; REFUNDS; RETURNS; FINES. We shall have no liability whatsoever for your chargebacks, ACH returns, refunds, fines, losses and costs which we may incur because of your use of the Payment Services.** You agree to indemnify us for any and all losses or damages that we suffer, inclusive of attorneys' fees and court costs, as a result of any chargebacks, ACH returns, refunds, fines, losses and costs associated with your studio, club or business, or the Payment Services. The indemnity rights described herein shall be in addition to, and not in lieu of, any other indemnity rights we have under the Agreement. ClubReady shall have a right to recoup all losses immediately, directly from any of your Designated Account(s) to which ClubReady has access.

**21. PCI COMPLIANCE FOR MERCHANTS.** As a merchant, or sub-merchant of ClubReady's, if you accept payment for goods or services at your business location using credit cards issued by Visa, Mastercard, American Express or Discovery, then you will be obligated to maintain some level of compliance with Payment Card Industry Data Security Standards ("PCI-DSS"). ClubReady, as a payment facilitator, has its own obligations to maintain PCI-DSS compliance; but our obligations and your obligations are considered separate. For more information on what you must do to maintain PCI-DSS compliance, you can visit the Payment Card Industry Security Standards Council [website](#) where you can review best practices and access other helpful [documents](#). ClubReady shall not be liable for your failure to maintain PCI-DSS compliance; we may, however, from time to time, provide you with certain tools or resources to aid in your compliance efforts. ClubReady reserves the right to charge a PCI fee, not to exceed \$19.95 per month, that may be used to help offset the cost of ClubReady's PCI-DSS obligations. ClubReady may, in its sole discretion, use part of your PCI fee to provide you with tools that may help you in meeting your own PCI-DSS obligations. Where you fail to satisfy your PCI-DSS obligations as a sub-merchant, ClubReady reserves the right to charge you a PCI non-compliance fee not to exceed \$59.95 per month.

**22. DATA SECURITY.** You agree to keep secure all systems containing account, End User, or transaction information (physical

or electronic) and destroy in a manner that will render the data unreadable all such media that is no longer necessary or appropriate to store. If you store End User account numbers, expiration dates, and other personal Cardholder Data in a database, you must follow Card Brand guidelines to secure such data. You may not retain or store magnetic stripe or CVV2, CVC2, or CID data after authorization. You shall maintain industry best practices regarding continuity procedures and systems to ensure security of End User account information in the event of a disruption, disaster, or failure of your respective data storage system and/or facility. For more information about security best practices, you can visit [here](#).

**23. RESERVE ACCOUNT.** We may, in our sole and absolute discretion, establish a reserve if we believe there is a risk of potential chargebacks, refunds, returns, or any other risk or liability associated with your use of the Payment Services, or to ensure current or future payment owed to us. We will provide you with notice of the reserve and the terms of the reserve. We may require that a certain portion of your transaction proceeds be held by us in reserve for a certain period of time, or that you make a lump sum payment for the reserve. You expressly authorize us to fund a reserve directly from the EFT/ACH draft associated with any Designated Account(s) owned or controlled by you, including but not limited to, those Designated Account(s) not immediately subject to chargeback risk or other potential liability. We may hold the reserve for as long as we deem necessary to mitigate the associated risk. You understand and agree that if you are required to establish a reserve, you have an obligation under the Sub-Merchant Agreement to maintain the balance in the reserve set by us. We may, without notice, apply funds designated as reserves against any outstanding amounts owed to us under the Agreement. We may also debit the reserve to exercise our rights under the Agreement to collect any amounts due to us including, without limitation, rights of set-off and recoupment. You agree that you are liable for all obligations associated with your use of the Payment Services even after the release of any reserve.

**24. SECURITY INTEREST.** The Sub-Merchant Agreement will constitute a security agreement under the Uniform Commercial Code ("UCC") wherein you grant to us a security interest in and lien upon (a) all funds representing amounts owing you under the Agreement at any time, regardless of the source of such funds; (b) all funds at any time in reserve, regardless of the source of such funds; (c) present and future Card transactions; (d) any amount which may be due to you under the Agreement, including, without limitation, all rights to receive any remits or credits under the Agreement; and (e) upon our request, any other security to secure your obligations under the Agreement (collectively, the "Secured Assets"). You agree to execute financing statements or other documents to evidence this security interest. These security interests and liens will secure all of your obligations under the Sub-Merchant Agreement and any other agreements now existing or later entered into between you and us and we will have all rights afforded under the UCC, any other applicable law, and in equity. We may exercise this security interest without notice or demand by making an immediate withdrawal or freezing of your Secured Assets. You represent and warrant that no other person or entity has a security interest in the Secured Assets and you agree to obtain from us written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and as such, we are not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets.

Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by us.

**25. REPRESENTATIONS AND WARRANTIES.** You represent and warrant to us (a) that all information you submit to us relating to your application to use and continued use of the Payment Services is correct, complete, and fully describes and details the nature, type, and scope of the business in which you are engaged; (b) that you are at least 18 years of age; (c) that, if an individual account, you are a sole proprietorship validly existing in the United States, Canada, or its territories, and if an entity, that the entity was validly formed, registered and is in good standing in at least one of the fifty United States, Canada, or its territories; (d) that you have never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File, and if so, you have disclosed this to us; and (e) that all transactions are bona fide and no transaction involves the use of a Card for any purpose other than the purchase of goods or services from you and does not involve an End User obtaining cash from you unless allowed by the Rules and agreed in writing with us.

**26. CONSENT TO CONTACT END USERS.** If we are providing you with fully-managed Payment Services, you authorize us to contact your End Users at the telephone number listed in their End User Agreement, or at the contact information as shown in the relevant Company system, with regard to any matter pertaining to billing or payment on their account, including communications on past due balances owed. It shall be your responsibility to obtain End User consent for such communications in writing, making clear that these communications could take place on the phone, via text or through voicemail message using pre-recorded voice messages or an auto-dialing system. You agree to hold us harmless and will defend and indemnify us and our affiliates and subsidiaries from any liability arising under or in connection with our communications with End Users under the Agreement, including, without limitation, your failure to obtain the necessary consents.

**27. EVENTS OF DEFAULT.** If any of the following events shall occur (each an "Event of Default") (a) a material adverse change in your business, financial condition, business products or services; (b) any assignment or transfer of voting control of you or your parent; (c) a sale of all or a substantial portion of your assets; (d) irregular Card sales by you, excessive chargebacks, noncompliance with any applicable data security standard, as determined by us, of any Card Brands, or any other entity, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your chargebacks or otherwise present a financial or security risk to us; (e) any of your conditions, covenants, obligations, representations or warranties in the Agreement are breached in any material respect or are incorrect in any material respect when made; (f) you file a petition for bankruptcy, insolvency or similar arrangement for adjustment of debts; or (g) you violate any Rules, Laws and/or Policies, and you fail to cure, as applicable, within the prescribed period, then, upon occurrence of (i) an Event of Default specified in subsections (c), (d), (f) or (g), we may consider the Sub-Merchant Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you; and (ii) any other Event of Default, the Sub-Merchant Agreement may be terminated by us giving not less than 30 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.