

# TERMS OF SERVICE

Updated January 1, 2018

## INTRODUCTION

Thank you for choosing GYM ROCKET for your business. When you use our products and services you're agreeing to our terms, so please read these Terms of Service carefully as they contain important information regarding your legal rights and obligations. Certain capitalized words below are defined in [Section 15](#) (Definitions).

GYM ROCKET provides online business management software services designed specifically for businesses in the fitness industry ("**Software Service**"). You can access our Software Service via the administrative and member login pages on our Website and through our Apps.

These Terms of Service ("**Agreement**") apply to any use of and access to our Software Service, Website, or Apps (collectively, "**Services**") by you and your Affiliates. By accessing or using the Services (or enabling an Affiliate to access or use the Services), you are indicating that you have read this Agreement and agree to be bound by its terms. If you do not agree with all of the terms of this Agreement, you may not access or use any Services.

This Agreement is effective ("**Effective Date**") on the earlier of (a) the date you accept this Agreement by clicking an "I Agree" button or otherwise indicate that you accept this Agreement (including through initiating your Merchant Account Application via .pdf or Account Setup Wizard), or (b) the date you (or an Affiliate) first access or use the Services.

# 1. GENERAL TERMS

## 1.1 Agreement

When you use our Services, you are entering into a legal agreement and you agree to all of these terms. This Agreement is a binding legal agreement between you and the applicable GYM ROCKET LLC (“**GYM ROCKET**”, “**we**”, “**us**” or “**our**”). If you enter into this Agreement on behalf of a company or other legal entity, you represent and warrant that you have the legal authority to bind that entity and its Affiliates to this Agreement, and all references to “**you**” and “**your**” in this Agreement are referring to that entity. You and GYM ROCKET are also sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”.

**You also agree to our [Privacy Policy](#).** Our [Privacy Policy](#) explains how we collect and use information that’s submitted to the Services. By using the Services, you are indicating that you’ve read the [Privacy Policy](#) and agree to its terms.

This Agreement covers Apps that allow you to access our software. This Agreement applies to any use of the Services, whether in connection with a paid subscription, a free subscription, or a free trial. In addition, if you (or any third party on your behalf) uses our APIs, you will be subject to the applicable GYM ROCKET API Terms and any other terms designated by GYM ROCKET. To request a copy GYM ROCKET API Terms, email [tech@gymrocket.com](mailto:tech@gymrocket.com)

## 1.2 Changes to the Agreement

We continuously strive to improve our products and services, and as our business grows and pivots, this agreement may change. This section describes how we can change the agreement.

We may, in our sole discretion, make changes to this Agreement from time to time. Any changes we make will become effective when we post a modified version of the Agreement to our Website, and we agree the changes will not be retroactive. If we make any material changes to the Agreement, we’ll also notify you within the Software Service or by sending you an email. If

you continue using the Services after any changes, it means you have accepted them. If you do not agree to any changes, you must stop using the Services immediately, and you can terminate your account by emailing [support@gymrocket.com](mailto:support@gymrocket.com). It is your obligation to ensure that you read, understand and agree to the latest version of the Agreement that's posted on our Website. The legend at the top of the Agreement indicates when it was last changed.

### 1.3 Supplemental Terms

Additional terms may apply to certain products that we provide. Your use of, and participation in, certain Services may be subject to additional terms ("**Supplemental Terms**") and such Supplemental Terms will either be listed in this Agreement or will be presented to you for your acceptance when you sign up to use the supplemental Service. If this Agreement is inconsistent with the Supplemental Terms, the Supplemental Terms will control with respect to the service with which it applies.

## 2. SERVICES

### 2.1 Access and Service Levels

GYM ROCKET will make the Services to which you have subscribed available to you, subject to the terms and conditions of this Agreement. During the Subscription Term, the Software Services will meet the service levels specified in the [Service Level Agreement](#) ("**SLA**"), as may be updated by GYM ROCKET from time to time.

### 2.2 Changes to Services

We may temporarily suspend your access for things like scheduled maintenance, or if a natural disaster occurs. We may also change or discontinue particular features or functions of our Services at any time.

Notwithstanding [Section 2.1](#), in addition to our rights set forth in [Section 8.4](#), we reserve the right to suspend any Services (a) during planned downtime as provided in the [SLA](#), (b) in connection with a Force Majeure event (as described in [Section 14.8](#)), or (c) if we believe any malicious software is being used in connection with your account. In addition, we reserve the right to change, suspend or discontinue any features, components or functions of the Services at any time. If we make any material changes to the Software Service, we'll notify you within the Software Service or by sending you an email. Notwithstanding the above, we have no obligation to update or enhance any Services or to produce or release new versions of any Services.

### 2.3 Third Party Offerings

We aren't responsible for any third party products that are integrated with or used in connection with the Services. Although the Services may allow you to access or use Third Party Offerings, they are not "Services" under this Agreement and are not subject to any of the warranties, service commitments or other obligations with respect to Services hereunder. The availability of any Third Party Offerings through the Services does not imply GYM ROCKET's endorsement of or affiliation with the provider. GYM ROCKET does not control Third Party Offerings and will have no liability to you or Affiliates in connection with any Third Party Offerings. GYM ROCKET has no obligation to monitor or maintain Third Party Offerings, and may disable or restrict access to any Third Party Offerings at any time. By using or enabling any Third Party Offering, you are expressly permitting GYM ROCKET to disclose Your Data or other information to the extent necessary to utilize the Third Party Offering. YOUR USE OF THIRD PARTY OFFERINGS IS AT YOUR OWN RISK AND IS SUBJECT TO ANY ADDITIONAL TERMS, CONDITIONS AND POLICIES APPLICABLE TO SUCH THIRD PARTY OFFERINGS (SUCH AS TERMS OF SERVICE OR PRIVACY POLICIES OF THE PROVIDERS OF SUCH THIRD PARTY OFFERINGS).

### 2.4 Support Services

Your subscription fees include our support services. As part of the Services you will have access to GYM ROCKET's support services. Email [support@gymrocket.com](mailto:support@gymrocket.com) or see our [CONTACT US PAGE](#) for departmental contact information.

## 2.5 Trial and Beta Services

GYM ROCKET may in its sole discretion offer trial services or beta services from time to time at no charge. Any trial or beta services are provided “AS IS” with no warranties of any kind. GYM ROCKET may discontinue any trial or beta services at any time, with or without notice and without any further obligations to you. GYM ROCKET will have no liability for any harm or damages suffered by you or any third party in connection with any trial or beta services.

# 3. YOUR RESPONSIBILITIES

## 3.1 Liability for Affiliates and End Users

You are responsible for making sure that your Affiliates and End Users comply with the terms of this agreement and applicable laws. You are responsible for all activity occurring under your account. You will ensure that your Affiliates and End Users comply with all of the provisions of this Agreement and any applicable local, state, national and foreign laws, including those related to data privacy and transmission of personal data, at all times while using the Services. Any reference in this Agreement to your “access” or “use” of Services (or similar phrase) is deemed to include access or use by Affiliates and End Users, and any act or omission of an Affiliate or End User that does not comply with this Agreement will be deemed a breach of this Agreement by you.

## 3.2 Data, Unauthorized Access, and Maintaining Networks

These are things you promise to do in connection with using the Services. You will: (a) have sole responsibility for the accuracy and quality of Your Data and for ensuring that your collection and use of Your Data complies with applicable laws, including those related to data privacy and transmission of personal data; (b) prevent unauthorized access to, or use of, the Services, and notify GYM ROCKET promptly of any unauthorized access or use; and (c) have sole responsibility for obtaining, maintaining and paying for any hardware, telecommunications, Internet and other services needed to use the Services.

### 3.3 Restrictions on Use

These are things you promise not to do in connection with using the Services. You and your Affiliates will not: (i) submit any infringing, obscene, defamatory, threatening, or otherwise unlawful or tortious material to the Services, including material that violates privacy rights; (ii) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (iii) attempt to gain access to the Services or related systems or networks in a manner not permitted by this Agreement; (iv) post, transmit or otherwise make available through or in connection with the Services any virus, worm, Trojan horse, Easter egg, time bomb, spyware or other harmful computer code, files, scripts agents or programs; (v) restrict or inhibit any other person or entity from using the Services; (vi) remove any copyright, trademark or other proprietary rights notice from the Services; (vii) frame or mirror any portion of the Services, or otherwise incorporate any portion of the Services into any product or service; (viii) systematically download and store Services content; or (ix) use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, “scrape,” “data mine” or otherwise gather Services content, or reproduce or circumvent the navigational structure or presentation of the Services. Notwithstanding subsection (ix) above, and subject to compliance with any instructions posted in the robots.txt file located in the root directory of any Website, GYM ROCKET grants to the operators of public search engines permission to use spiders to copy materials from the Website for the sole purpose of (and solely to the extent necessary for) creating publicly available, searchable indices of such materials, but not caches or archives of such materials. GYM ROCKET reserves the right to revoke these permissions at any time and without notice.

### 3.4 Cardholder Data

You are liable if any Cardholder Data is mishandled under your account. You are solely responsible for any liability resulting from your or any Affiliate’s handling of Cardholder Data. You agree that you and Affiliates will comply with PCI DSS anytime the Services are used to process credit cards.

You agree to comply with and complete any PCI DSS compliance certification processes set forth by GYM ROCKET, payment processor(s) integrated with the Services and applicable agencies, regulations and statutes to include but not limited to an annual self-assessment,

quarterly security scans, and employee and staff training. These processes may change at any time without notice.

### 3.5 Usernames and Passwords

You will ensure all usernames and passwords are kept confidential. GYM ROCKET may reject or require that you change any username or password under your account. Usernames and passwords are for internal business use only and may not be shared with any third party, including any competitor of GYM ROCKET. You, and not GYM ROCKET, are responsible for any use or misuse of usernames or passwords associated with your account.

## 4. FEES AND PAYMENT

### 4.1 Software Services Fees

Fees for the subscribed Software Services (“Subscription Fees”) are set forth on our [PRICING PAGE](#), or as otherwise stated on your Subscription Fees Agreement.

### 4.2 Payment Terms

This describes our fees and your payment obligations. All fees are non-refundable and must be paid in advance. You agree to pay GYM ROCKET the Subscription Fees and any other applicable fees stated on your Subscription Fees Agreement or otherwise specified in this Agreement. All payment obligations under this Agreement are non-cancelable and all fees paid are non-refundable. Unless otherwise stated on your Subscription Fees Agreement, fees must be paid in advance of each billing period. You will provide GYM ROCKET with valid and updated debit or credit card information. If you provide debit or credit card information, you represent that you are authorized to use the card and you authorize GYM ROCKET to charge the card for all payments hereunder. By submitting payment information, you authorize GYM ROCKET to provide that information to third parties for purposes of facilitating payment. You agree to verify

any information requested by GYM ROCKET for purposes of acknowledging or completing any payment.

#### 4.3 Overdue Charges

Any amounts not received by the applicable due date may accrue late interest at 1.5% of the outstanding balance per month, or the maximum interest permitted by applicable law, whichever is less, plus costs of collection. Any amount not received by GYM ROCKET within thirty (30) days after the applicable due date will be deemed a material default under this Agreement, and GYM ROCKET will be entitled to either suspend the Services or terminate the Agreement in accordance with [Section 8.2](#).

#### 4.4 Changes In Fees

Upon notice to you, GYM ROCKET may increase any fees specified in a Subscription Fees Agreement, provided the increase will not become effective until the expiration of the current Subscription Term. GYM ROCKET may increase any fees that are not specified in an Subscription Fees Agreement at any time, with or without notice to you.

#### 4.5 Payment Errors

If you believe a payment has been processed in error, you must provide written notice to GYM ROCKET at [support@gymrocket.com](mailto:support@gymrocket.com) within thirty (30) days after the date of payment specifying the nature of the error and the amount in dispute. If notice is not received by GYM ROCKET within such thirty (30) day period, the payment will be deemed final.

#### 4.6 Taxes

Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, that are or may be assessed by any jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with purchases and transactions under this Agreement. If GYM ROCKET is legally

required to pay or collect any Taxes on your behalf, GYM ROCKET will invoice you and you will pay the invoiced amount. For clarity, GYM ROCKET will be solely responsible for taxes assessed on GYM ROCKET based on its income.

#### 4.7 Payment Processing and PCI Noncompliance Fees

The payment processor integrated with the Services is a Third Party Offering. The payment processor establishes its fees and processing rates, and enforces collection of fees for processing services. By using the Services and integrated payment processor, you acknowledge you are solely responsible for and agree to pay all payment processing fee amounts. You also agree to pay and PCI noncompliance fees, that may be assessed to your merchant account. GYM ROCKET is not responsible for paying any fees related to your merchant account.

## 5. INTELLECTUAL PROPERTY RIGHTS

### 5.1 GYM ROCKET Intellectual Property

This describes our intellectual property rights in the Services. GYM ROCKET owns all rights, title and interest in and to the Services, the GYM ROCKET Data and Aggregated Data, including, without limitation, all intellectual property rights therein. Subject to the limited rights expressly granted to you under this Agreement, GYM ROCKET reserves all rights, title and interest in and to the Services, the GYM ROCKET Data and Aggregated Data, including, without limitation, all related intellectual property rights. GYM ROCKET's service marks, logos and product and service names, including, without limitation, GYM ROCKET, and the Rocket logo(s), and registered marks (the "GYM ROCKET Marks") are owned by GYM ROCKET. You agree not to display or use any GYM ROCKET Marks in any manner without GYM ROCKET's express prior written permission. Any trademarks, service marks and logos associated with a Third Party Offering may be the property of the third party provider, and you should consult with their trademark guidelines before using any of their marks.

## 5.2 License Grant to You

You are only allowed to use the Services in accordance with this agreement and for internal business purposes. Subject to the terms and conditions of this Agreement, GYM ROCKET hereby grants to you a limited, non-exclusive, non-transferable, non-sublicenseable, revocable license and right to use the Services set forth in a Subscription Fee Agreement, during the Subscription Term and solely for your internal business purposes. You will not: (a) modify, copy or create any derivative works based on the Services; (b) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, timeshare, offer in a service bureau, or otherwise make the Services available to any third party, other than to Affiliates and End Users as permitted herein; (c) reverse engineer or decompile any portion of the Services, including but not limited to, any software utilized by GYM ROCKET in the provision of the Services; (d) access or use (or allow a third party to access or use) the Services for competitive analysis or to build any competing products or services; (e) copy any features, functions, integrations, interfaces or graphics of the Services; or (f) otherwise use or exploit the Services in any manner not expressly permitted by this Agreement.

## 5.3 License Grant to GYM ROCKET

You grant us a license to use your feedback, trademarks and logos in connection with providing the Services and for general marketing purposes. You hereby grant to GYM ROCKET and its affiliates a worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free license (a) to modify, copy, distribute and incorporate into the Services (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by you, Affiliates or End Users relating to the Services or GYM ROCKET's business; and (b) to use your business name(s), trademarks, service marks or logos (collectively, "Your Marks") in connection with providing the Services and for marketing and promotional purposes in connection with GYM ROCKET's business. GYM ROCKET agrees that any use by GYM ROCKET of any of Your Marks will inure solely to the benefit and goodwill of your business. Other than those rights specifically granted to GYM ROCKET herein, all right, title and interest in and to Your Marks are expressly reserved by you.

# 6. DATA OWNERSHIP AND USE

## 6.1 Your Data

You own all data you provide to us, but you also grant us a license to use it for certain purposes, for example, to improve our products or to provide you with complementary products of our partners. As between you and GYM ROCKET, you own all right, title and interest in Your Data. You hereby grant to GYM ROCKET a nonexclusive, worldwide, assignable, sublicensable, fully paid-up and royalty-free license and right to copy, distribute, display and perform, publish, prepare derivative works of and otherwise use Your Data for the purposes of providing, improving and developing GYM ROCKET's products and services and/or complementary products and services of our partners. You represent and warrant to GYM ROCKET that you have all rights necessary to grant the licenses in this Section 6.1, and that your provision of Your Data through and in connection with the Services does not violate any applicable laws or rights of any third party.

## 6.2 GYM ROCKET Data

Notwithstanding [Section 6.1](#), all right, title and interest in any data or information collected by GYM ROCKET independently and without access to, reference to or use of any of Your Data, including, without limitation, any data or information GYM ROCKET obtains about End Users through the associated Services and Products (whether the same as Your Data or otherwise), will be solely owned by GYM ROCKET (collectively, "**GYM ROCKET Data**").

## 6.3 Aggregated Data

GYM ROCKET will own all Aggregated Data. You agree that nothing in this Agreement will prohibit GYM ROCKET from utilizing Aggregated Data for any purpose, provided such Aggregated Data does not reveal any personally identifying information about you or any End Users.

## 6.4 Personal Information

Our Privacy Policy governs how we collect and use personal information that is submitted through the Services. By accessing or using the Services, you agree to that you have read and accept our Privacy Policy.

## 6.5 Protection and Security

We have controls in place to prevent outside parties from stealing or accessing Your Data. During the Subscription Term, GYM ROCKET will maintain administrative, physical and technical safeguards designed for the protection and integrity of Your Data. GYM ROCKET will maintain PCI DSS compliance for the portions of the Services that transmit Cardholder Data to the integrated payment processor. You are responsible for PCI DSS compliance when using the Services and safeguarding Cardholder information. You also agree to remain certified as PCI DSS compliant as required by the integrated payment processor.

## 6.6 Unauthorized Disclosure

We will notify one another if either of us becomes aware that Your Data has been compromised. If either Party believes that there has been a disclosure of Your Data in a manner not authorized under this Agreement, such Party will promptly notify the other Party. Additionally, each Party will reasonably assist the other Party in remediating or mitigating any potential damage, including any notification which should be sent to individuals impacted or potentially impacted by such unauthorized disclosure.

## 6.7 Data Related Disputes

We are not responsible for resolving or intervening in any dispute over Your Data. You are solely responsible for resolving disputes regarding ownership or access to Your Data, including those involving any current or former owners, co-owners, employees or contractors of your business.

You acknowledge and agree that GYM ROCKET has no obligation whatsoever to resolve or intervene in such disputes.

## 7. CONFIDENTIAL INFORMATION

A Party will not disclose or use any Confidential Information of the other Party except: (a) as reasonably necessary to perform its obligations or exercise any rights granted pursuant to this Agreement; (b) with the other Party's prior written permission; or (c) to the extent required by law or order of a court or other governmental authority or regulation. Each Party agrees to protect the other Party's Confidential Information in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a commercially reasonable standard of care. Confidential Information will not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the disclosing Party; (b) was known to a Party prior to its disclosure by the other Party without breach of any obligation owed to the other Party; (c) was independently developed by a Party without breach of any obligation owed to the other Party; or (d) was or is received from a third party without breach of any obligation owed to the other Party. For clarity, nothing in this Section 7 will restrict GYM ROCKET with respect to GYM ROCKET Data or Aggregated Data.

## 8. Term, Termination, and Suspension

### 8.1 Term

We can each end this Agreement anytime by providing 30 days' advance notice prior to the next billing cycle. Unless otherwise specified in a Subscription Fees Agreement, the term of this Agreement will be month to month ("**Subscription Term**"). The Subscription Term commences on the Effective Date and will automatically renew on a monthly basis until either Party terminates in accordance with this Agreement. Either Party may terminate the Agreement at any time, for any reason or no reason, by providing notice to the other Party at least thirty (30) days before the end of the relevant Subscription Term. Unless otherwise specified in an Subscription

Fees Agreement, Subscription Fees during any automatic renewal term will revert to the current pricing in effect at the time such renewal term commences.

## 8.2 Termination for Cause

We have the right to end the Agreement immediately if you breach it. GYM ROCKET may terminate this Agreement, effective immediately upon notice to you, if you or an Affiliate are in material breach of this Agreement. In the event of a termination pursuant to this Section 8.2, in addition to other amounts you may owe GYM ROCKET, you must immediately pay any unpaid Subscription Fees associated with the remainder of the Subscription Term. In no event will any termination relieve you of your obligation to pay any fees payable to GYM ROCKET for the period prior to the effective date of termination.

## 8.3 Rights on Termination or Expiration

Upon termination or expiration of this Agreement (a) all Subscription Fees Agreements will automatically terminate and be of no force or effect; (b) you will have no rights to continue use of the Services and will cease accessing and/or using the Services; and (c) except as specified in the following paragraph, GYM ROCKET will have no obligation to maintain your Services account or to retain or forward any data to you or any third party, except as required by applicable law.

Upon request by you within thirty (30) days following termination of this Agreement, and provided that you have paid GYM ROCKET all amounts owed under this Agreement, GYM ROCKET will make Your Data available to you through GYM ROCKET's standard web services for a period of up to thirty (30) days after receipt of such notice. After such thirty (30) day period, GYM ROCKET will have no obligation to retain or provide Your Data, except as required by applicable law. If at any time during the Subscription Term you require GYM ROCKET's assistance in retrieving Your Data, additional fees may apply.

The following will survive any expiration or termination of this Agreement: [The Introduction](#), [Section 1](#) in its entirety, [Section 2.3](#), [Section 3](#) in its entirety, [Section 4](#) with the exception of [Section 4.1](#), [Section 5](#) in its entirety, [Section 6](#) in its entirety, [Section 7](#) in its entirety, [Section 8.2](#),

this Section 8.3, [Section 9.1](#), [Section 9.3](#), [Section 10](#) in its entirety, [Section 11](#) in its entirety, [Section 12](#) in its entirety, [Section 13](#) in its entirety, [Section 14](#) in its entirety, and [Section 15](#) in its entirety.

#### 8.4 Right to Terminate or Suspend Services

We have the right to suspend or terminate the Services at any time if we detect harmful or illegal activity under your account. We may suspend or terminate the Services (or any portion thereof) at any time without notice if we believe (a) that any activity or use of Services in connection with your account violates this Agreement, the intellectual property rights of a third party or applicable laws, or is otherwise disruptive or harmful to GYM ROCKET or any third party, or (b) that we are required to do so by law.

## 9. Warranties and Disclaimer

#### 9.1 Accuracy of Your Account Information

You are responsible for keeping your account contacts and other account information up to date, and you must notify us if anything changes. You agree to provide GYM ROCKET with complete and accurate account information, including your legal company name, street address, e-mail address, and such other contact information as may be requested by GYM ROCKET. You are responsible for keeping your account information up to date, and you agree to promptly notify GYM ROCKET in writing if any information changes.

#### 9.2 Warranty of Functionality

GYM ROCKET warrants to you that during a Subscription Term: (a) the subscribed Software Service will perform materially in accordance with the functionality described in the Documentation applicable to such Software Service; and (b) such functionality will not be materially decreased. Your sole and exclusive remedy for a breach of this warranty will be that GYM ROCKET will use commercially reasonable efforts to modify the applicable Services to achieve the functionality described above. If GYM ROCKET is unable to restore such

functionality, you may terminate the Agreement by providing written notice to GYM ROCKET, and you will be entitled to receive a pro-rata refund of any prepaid fees. GYM ROCKET will have no obligation with respect to a warranty claim under this Section 9.2 unless notified by you in writing no later than thirty (30) days after the first instance of any material functionality problem. This warranty will only apply if the applicable subscribed Services have been utilized in accordance with this Agreement and applicable laws. For clarity, this warranty will not apply to any trial or beta services.

### 9.3 Disclaimer

EXCEPT AS EXPRESSLY PROVIDED IN [SECTION 9.2](#) ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GYM ROCKET MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES AND/OR RELATED DOCUMENTATION. GYM ROCKET DOES NOT WARRANT THAT YOUR USE OF THE SERVICES WILL BE SECURE, TIMELY, ERROR-FREE OR UNINTERRUPTED, OR THAT THE SERVICES ARE OR WILL REMAIN UPDATED, COMPLETE OR CORRECT, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THE SYSTEMS THAT MAKE THE SERVICES AVAILABLE (INCLUDING WITHOUT LIMITATION THE INTERNET, OTHER TRANSMISSION NETWORKS, AND YOUR LOCAL NETWORK AND EQUIPMENT) WILL BE UNINTERRUPTED OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS PROVIDED IN [SECTION 9.2](#), THE SERVICES AND ANY PRODUCTS AND THIRD PARTY MATERIALS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND SOLELY FOR YOUR USE IN ACCORDANCE WITH THIS AGREEMENT. ALL DISCLAIMERS OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THIS AGREEMENT) ARE MADE ON BEHALF OF BOTH GYM ROCKET AND ITS AFFILIATES AND THEIR RESPECTIVE MEMBERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, CONTRACTORS, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS (COLLECTIVELY, THE “**GYM ROCKET PARTIES**”).

## 10. Indemnification

If we are sued by another party as a result of something you've done, you'll cover the costs. You agree to indemnify, defend, and hold harmless the GYM ROCKET Parties from and against any and all third party claims alleged or asserted against any of them, and all related charges, damages and expenses (including, but not limited to, reasonable attorneys' fees and costs) arising from or relating to: (a) any actual or alleged breach by you, an Affiliate or End User of any provisions of this Agreement; (b) any access to or use of the Services by you, an Affiliate or End User; (c) any actual or alleged violation by you, an Affiliate or End User of the intellectual property, privacy or other rights of a third party; and (d) any dispute between you and another party regarding ownership of or access to Your Data.

## 11. Limitations and Exclusions of Liability

GYM ROCKET EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY AND WILL NOT BE RESPONSIBLE FOR ANY DAMAGES OR LOSS CAUSED, OR ALLEGED TO BE CAUSED, BY THE TRANSMISSION OF CARDHOLDER DATA PRIOR TO ITS ENCRYPTION AND RECEIPT BY SERVER(S) OWNED OR CONTROLLED BY THE INTEGRATED PAYMENT PROCESSOR OR PROCESSORS DESIGNATED BY GYM ROCKET. THE EXCLUDED DAMAGES WILL INCLUDE, WITHOUT LIMITATION, DAMAGES RESULTING FROM FRAUD, EMBEZZLEMENT, THEFT, IDENTITY THEFT, OR INVASION OF PRIVACY.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE GYM ROCKET PARTIES' AGGREGATE LIABILITY, COLLECTIVELY, FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE SUBSCRIPTION FEES ACTUALLY PAID BY YOU DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE INCIDENT. ALL LIMITATIONS OF LIABILITY OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THIS AGREEMENT) APPLY WITH RESPECT TO BOTH GYM ROCKET AND THE GYM ROCKET PARTIES.

IN NO EVENT WILL ANY GYM ROCKET PARTIES HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, DATA OR OPPORTUNITIES, COST OF DATA RECONSTRUCTION, COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, OR IN

ANY WAY CONNECTED WITH THE SERVICES OR THIRD PARTY OFFERINGS, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF GYM ROCKET, ITS LICENSORS OR SUBCONTRACTORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

THE FOREGOING EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 12. Export Controls

You promise to comply with any applicable export control laws and that you are not subject to any U.S. trade restrictions or sanctions. You will comply with all applicable export laws and restrictions and regulations of the US Department of Commerce, the US Department of Treasury Office of Foreign Assets Control, or other United States or foreign agency or authority, and you will not use the Services to export, or allow any export or re-export in violation of any such restrictions, laws or regulations. You represent and warrant to GYM ROCKET that you are not a prohibited party or located in, under the control of, or a national or resident of any restricted country, and that you will otherwise comply with all applicable export control laws. If you reside outside the United States, then in addition to complying with the foregoing, you will comply with any relevant export control laws in your local jurisdiction.

## 13. Intellectual Property Policy

GYM ROCKET respects the intellectual property rights of others and will investigate and respond to notices of alleged infringement that are properly submitted in accordance with our [Intellectual Property Policy](#), as may be updated by GYM ROCKET from time to time. Any data or information submitted to the Services is subject to our Intellectual Property Policy.

## 14. Miscellaneous

## 14.1 Governing Law

Nevada law applies to this Agreement. This Agreement will be governed by and interpreted in accordance with the internal laws of the State of Nevada without regard to conflicts of laws principles. The U.N. Convention on the International Sale of Goods will not apply.

## 14.2 Mandatory Informal Dispute Resolution

In the unlikely event we end up in a legal dispute, you agree we will first attempt to resolve it through this informal process. If you have any dispute with GYM ROCKET arising out of or relating to this Agreement, you agree to notify GYM ROCKET in writing by email to [legal@gymrocket.com](mailto:legal@gymrocket.com) with a brief, written description of the dispute and your contact information, and GYM ROCKET will have thirty (30) days from the date of receipt within which to attempt resolve the dispute to your reasonable satisfaction. If the Parties are unable to resolve the dispute through good faith negotiations over such thirty (30) day period under this informal process, either Party may pursue resolution of the dispute in accordance with the arbitration agreement below.

## 14.3 Arbitration Agreement

If we can't resolve a dispute after following the process above, then we must resolve through arbitration and not in court. ALL DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY ASPECT OF THE RELATIONSHIP BETWEEN YOU AND GYM ROCKET, WHETHER BASED IN CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION OR ANY OTHER LEGAL THEORY, THAT ARE NOT RESOLVED PURSUANT TO SECTION 14.2 ABOVE WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY, AND GYM ROCKET AND YOU EACH HEREBY WAIVE THE RIGHT TO TRIAL BY A JURY. YOU AGREE THAT ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND YOU ARE AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION. The arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules and Mediation Procedures as amended by this Agreement. Any arbitration hearing will be held in Clark County, Nevada. The

applicable governing law will be as set forth in [Section 14.1](#) (provided that with respect to arbitrability issues, federal arbitration law will govern). The arbitrator's decision will follow the terms of this Agreement and will be final and binding. The arbitrator will have authority to award temporary, interim or permanent injunctive relief or relief providing for specific performance of this Agreement, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof.

#### 14.4 Entire Agreement

This Agreement, together with any Service Fee Agreements and any terms and policies that are incorporated into this Agreement by reference (including by reference to a URL), constitute the entire agreement and supersede any prior agreements between you and GYM ROCKET with respect to the subject matter hereof. In the event of a conflict between a Service Fee Agreement and this Agreement, the Service Fee Agreement will control. This Agreement supersedes and replaces all prior and contemporaneous agreements, proposals or representations, written or oral, between GYM ROCKET, on the one hand, and you or any Affiliate, on the other hand.

#### 14.5 Waiver and Severability

No waiver of any provision of this Agreement by GYM ROCKET will be effective unless in writing and signed by GYM ROCKET. No waiver by either Party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

#### 14.6 Assignment

You may not assign, delegate or transfer this Agreement in whole or in part, without GYM ROCKET's prior written consent. GYM ROCKET may assign, transfer or sublicense any or all of GYM ROCKET's rights or obligations under this Agreement without restriction.

#### 14.7 Notices

Any notices provided by GYM ROCKET under this Agreement may be delivered to you within the Services or to the email address(es) we have on file for your account. You hereby consent to receive notice from GYM ROCKET through the foregoing means, and such notices will be deemed effective when sent if on a business day, and if not sent on a business day then on the next business day. Except as otherwise specified in the Agreement, any notices to GYM ROCKET under this Agreement must be delivered via email to [legal@gymrocket.com](mailto:legal@gymrocket.com) with a subject line of Attn: Notice.

#### 14.8 Force Majeure

Neither Party will be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving GYM ROCKET's or your employees, respectively), computer attacks (by government/nation entities or otherwise) or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

#### 14.9 Electronic Communications and Signatures

You agree to the use of electronic communication in order to enter into agreements and place orders, and to the electronic delivery of notices, policies and records of transactions initiated or completed through the Services. Furthermore, you hereby waive any rights or requirements under any laws or regulations in any jurisdiction that require an original (non-electronic)

signature or delivery or retention of non-electronic records, to the extent permitted under applicable law.

#### 14.10 Relationship of the Parties

This Agreement does not, and will not be construed to, create any partnership, joint venture, employer-employee, agency nor franchisor-franchisee relationship between you and GYM ROCKET.

## 15. Definitions

For the purposes of this Agreement, the following capitalized terms will have the meanings set forth for each of them below:

**“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with you, and that has been designated to receive Services under this Agreement. “Control” for purposes of this definition means the power to direct or cause the direction of the management and policies of the subject entity, whether through equity ownership, a credit arrangement, franchise agreement or other contractual arrangement. “Affiliate” also includes any of your business locations and any Franchisees that have been designated to receive Services under this Agreement.

**“Agreement”** is defined in [The Introduction](#).

**“Aggregated Data”** means anonymized, aggregated data derived by or through the operation of the Services that is created by or on behalf of GYM ROCKET and that does not reveal any personally identifying information.

**“API”** means GYM ROCKET’s application programming interface, as may be updated by GYM ROCKET from time to time, and any subsequent application programming interfaces

that are developed and made available by GYM ROCKET to interact with or otherwise be used in connection with the Services.

**“Apps”** means any applications, including but not limited to web based and mobile, through which GYM ROCKET makes the Software Service available.

**“Cardholder Data”** means credit card numbers, expiration dates, full billing addresses and components thereof, and cardholder names as entered by End Users and you. Cardholder Data is a subset of End User Data.

**“Confidential Information”** means (a) any software utilized by GYM ROCKET in the provision of the Services and its respective source code; (b) each Party’s business or technical information, including but not limited to the Documentation, information relating to software plans, designs, costs, prices and names, business opportunities, personnel, research, development or know-how that is designated by the disclosing Party as “confidential” or “proprietary” or the receiving Party knows or should reasonably know is confidential or proprietary; and (c) any special pricing or other non-standard terms agreed to by the Parties in a Subscription Fees Agreement or other separate written document.

**“Documentation”** means GYM ROCKET’s system user guides, documentation, and help and training materials, as may be updated by GYM ROCKET from time to time, accessible from the support tab on your System and any other materials provided by GYM ROCKET as part of the Services.

**“Effective Date”** is defined in [The Introduction](#).

**“End User”** means a business or individual that schedules or purchases products or services from you through the Services or otherwise interacts with you through the Services.

**“End User Data”** means all data, information or other material about an End User that you, an Affiliate or End User provides or submits to the Services. End User Data may include Cardholder Data and such portions of Your Data that relates to specific End Users.

**“Franchisee”** means any party that is bound by a franchise agreement with you, and that you have designated to receive Services under this Agreement. Franchisees are bound by the terms of this Agreement as if they were an original party hereto.

**“GYM ROCKET Apps”** means any application, web-based, downloadable, and or mobile made available by GYM ROCKET which allows users to access the Services.

**“Subscription Fees Agreement”** means a separate ordering document, invoice or other documentation that specifies the Services purchased hereunder, the applicable fees, and other terms as agreed to between the Parties. If a Subscription Fees Agreement indicates that any Affiliates or Franchisees will be receiving Services hereunder, each of them will be bound by the terms of this Agreement as if they were an original party hereto.

**“PCI DSS”** means the requirements of the Payment Card Industry Data Security Standard. For more information visit [PCISecurityStandards.org](https://www.pcisecuritystandards.org).

**“Privacy Policy”** means GYM ROCKET [Privacy Policy](#).

**“Services”** means the Software Services, the Website and the Apps. “Services” excludes Third Party Offerings.

**“Software Service”** is defined in [The Introduction](#).

**“Subscription Term”** is defined in [Section 8.1](#).

**“Supplemental Terms”** is defined in [Section 1.3](#).

**“Third Party Offerings”** means any third party products, applications, websites, implementations or services, including loyalty programs, that the Services link to, or that interoperate with or are used in conjunction with the Services.

“**Website**” means [GymRocket.com](http://GymRocket.com) and any other websites through which GYM ROCKET makes the Software Service available.

“**Your Data**” means any data, information or material provided or submitted by you and Affiliates to the Services. Your Data may include End User Data and Cardholder Data, but excludes Aggregated Data.

