

# ClubExpress Subscription Agreement

## 1. License.

Gembrook Systems, LLC ("Gembrook") grants "THE CHAPTER" ("THE CHAPTER") a license to use the ClubExpress website and platform ("ClubExpress") to manage club operations and services provided to your members and visitors. This license is granted subject to "THE CHAPTER"'s acceptance of and compliance with the terms and conditions of this Agreement.

In accepting this license, "THE CHAPTER" agrees to outsource certain aspects of club operations to Gembrook, including basic management of the membership database and the club's website, membership signups, renewals and expirations, event registrations, donations, E-Commerce, online payment processing via credit card, the storage of documents, photos and video, security and integrity of the data stored in the system, data backups, reliable access, and support.

You agree that this license is not exclusive (Gembrook may grant the same license to other organizations) and that it is not transferable to another organization without Gembrook's permission and the signing of a new Agreement. This license will remain in effect until terminated by either party in accordance with the Termination provisions described below. However, some provisions will survive the termination of this Agreement.

## 2. "THE CHAPTER"'s Rights Under This License.

"THE CHAPTER" has the right to use all features and modules provided by the ClubExpress platform, as well as all updates and enhancements, for as long as the license remains in effect. This right may be subject to fees as described below.

"THE CHAPTER" has the right to unrestricted access to its data, including membership records, documents, images, messages, etc. This right may only be limited if the website is unavailable for periodic maintenance or upgrades or through circumstances beyond Gembrook's control, such as natural disasters, war, terrorist act or attacks on the Internet (worms, viruses, denial of service attacks, etc.)

"THE CHAPTER" has the right to appoint its own administrators of the site and coordinators of individual modules. These administrators and coordinators have the obligation to maintain the site on a regular basis, to periodically review, correct or delete obsolete content or links, and to respond promptly to requests or complaints from members and other users of the site.

## 3. Gembrook's Rights Under This License.

Gembrook has the right to review all content on the site and data managed by the site, including documents, images, messages and member records, to ensure compliance with the provisions of this Agreement and the Terms of Use, and to respond to claims of infringing intellectual property or orders from recognized legal authorities. In exercising this right, Gembrook will respect the confidentiality of any information which is maintained in a restricted section of the site or which is only available to select club members.

Gembrook has the right to delete any content which it reasonably believes violates the Terms of Use or the intellectual rights of others. Gembrook also has the right to terminate access to this website to users who violate the Terms of Use and to pursue legal remedies against persistent or serious offenders.

Gembrook has the right to monitor "THE CHAPTER"'s usage of ClubExpress, including bandwidth, disk space, and individual modules. If "THE CHAPTER"'s usage of ClubExpress becomes significantly

excessive in comparison to clubs with a similar size or purpose, and discussions about controlling this usage are not successful, Gembrook has the right to limit "THE CHAPTER"'s usage or impose higher fees.

Gembrook has the right to place "Powered by ClubExpress" text and a logo, with a link to the ClubExpress website, at the bottom of "THE CHAPTER"'s website, and to remove code that hides or disables this text and/or link.

In the event of a dispute within the Board of Directors or other governing authority of "THE CHAPTER" or between board members or other leaders and administrators, and if Gembrook reasonably believes that the website and its content and databases may be at risk of malicious damage, Gembrook shall have the right to lock the website so that no-one from a club or association can login, until the matter has been resolved by a majority resolution of the board or other governing authority, acting in accordance with its fiduciary responsibility, and with appropriate documentation provided to Gembrook. Gembrook shall also have the right to post a notice on the website to inform members and the public of why this action has been taken. "THE CHAPTER" shall indemnify and hold harmless Gembrook from any consequences arising out of these actions.

In the event that Gembrook determines that "THE CHAPTER" is not using the ClubExpress platform as it was intended to be used, or Gembrook reasonably believes that the platform may be at risk because of "THE CHAPTER"'s use of the platform, Gembrook shall have the right to lock the website so that no-one can login, until the matter has been resolved to Gembrook's satisfaction, or if the matter cannot be resolved, to terminate "THE CHAPTER"'s use of the platform without further notice. "THE CHAPTER" shall indemnify and hold harmless Gembrook from any consequences arising out of these actions.

## **4. Fees For Service.**

Gembrook will charge "THE CHAPTER" a periodic fee which may be calculated using various means (per member, per month, per year, etc.) Gembrook may also charge a one-time setup fee and may pass direct expenses (which may include, but which are not limited to, credit card transaction fees and postage costs) on to "THE CHAPTER". One-time setup fees, periodic fees, and direct expenses are not refundable under any circumstances.

"THE CHAPTER" understands and accepts that some ClubExpress features may carry additional charges and setup fees and that "THE CHAPTER" will have the option to sign up for or cancel these features at any time.

Unless separately agreed to in writing, Gembrook may change the fee structure and schedule for ClubExpress at any time and the new fees will go into effect after 60 days notice. "THE CHAPTER"'s continued use of the system will indicate acceptance of the new schedule. If "THE CHAPTER" does not accept the new schedule, it may terminate service in accordance with the termination provisions below.

## **5. Interfacing With Your Bank Account.**

"THE CHAPTER" will provide Gembrook with details of a club or association bank account with sufficient funds to cover anticipated fees. Gembrook shall have the right to initiate credit entries to this account for the purpose of directly depositing membership fees, event registration fees and other charges collected from members and guests, in accordance with this Agreement. Gembrook shall also have the right to initiate debit entries to this account for the purpose of directly withdrawing setup fees, periodic fees, expenses and corrections as described below, in accordance with this Agreement.

Deposits and withdrawals will generally be made through the Automated Clearing House ("ACH") Network. You agree that these transactions will be governed by the ACH rules in effect at that time. You can learn more about the ACH at <http://www.nacha.org>. (NACHA - The Electronic Payments Association, develops operating rules and business practices for the ACH Network and for other areas of electronic payments.)

Gembrook warrants to you that the transactions we initiate against your bank account will be accurate, and that full documentation of each transaction will be provided on your website. If an erroneous transaction takes place, Gembrook will correct the error as soon as we are notified, including refunding money that was erroneously withdrawn from your account or that was erroneously not deposited. If you are assessed penalties or interest as a result of this error, Gembrook may also cover these fees.

"THE CHAPTER" understands that Gembrook may periodically test your account information with a small transaction. Gembrook may impose penalties if the account has insufficient funds to cover withdrawals.

If the bank account changes, "THE CHAPTER" will immediately update the bank information in its account record. This must be done not less than 10 days before the old account is closed, to allow for proper testing of the new account.

## **6. Interfacing with Merchant Accounts.**

ClubExpress includes a built-in merchant account for processing credit cards. "THE CHAPTER" shall have the option of using this merchant account, or of obtaining its own account, which can be used inside ClubExpress as long as the payment gateway is compatible with the gateway(s) supported by ClubExpress. Notwithstanding this option, Gembrook shall have the right to require specific types of clubs and associations to establish their own merchant accounts.

When "THE CHAPTER" elects to use the built-in merchant account, you understand and accept that transactions may appear on member and guest credit card statements as "ClubExpress" (or some variation thereof) and not as "THE CHAPTER", and that the funds will flow to a Gembrook bank account. Gembrook shall be obligated to remit these funds to "THE CHAPTER" in a timely fashion.

Gembrook may also collect merchant processing fees from "THE CHAPTER" to cover charges imposed by the credit card networks and their agents, in amounts which shall be documented on "THE CHAPTER"'s website. Gembrook may change the amounts charged for merchant processing fees with at least 60 days' notice, and "THE CHAPTER"'s continued use of the system will indicate acceptance of the new schedule. If "THE CHAPTER" does not accept the new schedule, it may terminate service in accordance with the termination provisions below.

The built-in merchant account can only be used for transactions which directly relate to the primary operations and mission of "THE CHAPTER", including but not limited to membership signups and renewals, event registrations, donations, the purchase of club merchandise and additional charges that a member or guest has incurred. The built-in merchant account cannot be used to run charges for any third-parties, or charges which are not directly related to the operations and mission of "THE CHAPTER". "THE CHAPTER" and its agents understand and accept that any breach of this clause may result in immediate termination of "THE CHAPTER"'s account with ClubExpress as well as monetary and punitive damages payable to Gembrook.

In accordance with credit card network regulations, when "THE CHAPTER" uses the built-in merchant account, Gembrook is accepting initial responsibility for these transactions and the goods and services which "THE CHAPTER" is providing in return for these charges. By outsourcing the collection of these fees to Gembrook, "THE CHAPTER" accepts that it is ultimately responsible for providing these goods and services. If they are not provided, Gembrook may be required to issue refunds of monies which have already been remitted to "THE CHAPTER" and this requirement may be independent of any refund policies established by "THE CHAPTER". Gembrook shall have the right to be reimbursed for any refunds so issued, including any and all expenses incurred in obtaining these reimbursements (such as legal fees) and this provision shall survive the termination of this agreement.

In the event of a dispute regarding a transaction charged through the built-in merchant account, Gembrook will work diligently with you and the cardholder to resolve the dispute. However "THE CHAPTER" accepts and authorizes Gembrook to make final decisions regarding said disputes, including

whether charges collected from the cardholder will be refunded and whether Gembrook will be reimbursed for said refunds.

Gembrook shall have the right to monitor all aspects of “THE CHAPTER”’s use of the built-in merchant account, and to impose any and all restrictions necessary to maintain the integrity of the account and Gembrook’s reputation and rating as a merchant in good standing with the companies that issue credit cards and their agents.

## **7. Limitations Of Use.**

Except with Gembrook’s prior written consent or as otherwise expressly permitted in this Agreement, “THE CHAPTER” or its representatives or agents may not: (i) modify or create any derivative works of ClubExpress; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for ClubExpress; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to ClubExpress; or (iv) use ClubExpress in a manner which would jeopardize its reliability, stability or security. ClubExpress modules, themes, templates and features, including custom programming which was developed specifically for “THE CHAPTER”, may only be used as part of this license and not on a standalone basis or with any other product.

## **8. Terms Of Use And Privacy Policy.**

“THE CHAPTER” agrees that its use of the ClubExpress platform will be bound by a separate [Terms of Use](#) document which will be available to all users as a link throughout the site.

“THE CHAPTER” also agrees that it will adhere to a separate [Privacy Policy](#) document, which will also be available to all users as a link throughout the site. Gembrook strongly encourages “THE CHAPTER” not to sell or otherwise transmit member’s personal and contact data to third parties without the member’s express approval.

In the event of a conflict between provisions in the Terms of Use or the Privacy Policy, and this agreement, this agreement shall take precedence.

Gembrook may change these two documents at any time. “THE CHAPTER” agrees that the posting of a new version of these documents with an updated version number and date will constitute sufficient notification of the new terms and policies.

## **9. Licensee Representations.**

“THE CHAPTER” represents and warrants that it has the legal capacity to enter into this Agreement, that it will use ClubExpress only for lawful purposes and in accordance with this Agreement, and that it will not use ClubExpress to violate any law, regulation or ordinance or any right of Gembrook or any third party, including without limitation, any right of privacy, publicity, copyright, trademark, or patent.

## **10. Ownership And Data Rights.**

In the context of the 1996 Communications Decency Act, both parties agree and accept that ClubExpress shall be treated as an interactive computer service, and not as a publisher of information. All data and content stored in and maintained by the system, including but not limited to web content, documents, images, logos, domain names, member records, messages, and events are owned by “THE CHAPTER” and not by Gembrook. Gembrook is acting as a common carrier by providing ClubExpress as a platform for “THE CHAPTER” to manage its operations, and assumes no liability or responsibility for the content in the system. Gembrook shall not have the right to release or provide any of “THE CHAPTER”’s membership data to any third party, whether or not there is a fee involved, except as required to fulfill specific operational duties (for example, to verify and charge a credit card), or unless required by order of a court

of competent legal authority. Gembrook agrees that, under no circumstances, will any information provided by "THE CHAPTER" to Gembrook be sold or otherwise transmitted to third parties, unless written consent is obtained directly from "THE CHAPTER". Gembrook understands that strict privacy laws are applicable to all member information provided by "THE CHAPTER" to Gembrook and any breach of this clause may result in monetary damages payable to "THE CHAPTER". Gembrook warrants that its information security policies and practices meet or exceed recognized industry standards.

Title, ownership rights and intellectual property rights to the ClubExpress platform itself, including but not limited to all source code, templates, user interface themes, interactive screens and content, forms, database tables and processing and middleware libraries, is retained by Gembrook. "THE CHAPTER" acknowledges these rights and will not knowingly take any action to jeopardize, limit or interfere in any manner with these rights. The ClubExpress platform is protected by copyright and other intellectual property laws and by international treaties. All trademarks used in connection with ClubExpress are owned by Gembrook.

## **11. Termination.**

"THE CHAPTER" may terminate this Agreement at any time up until the second last business day of the month, with or without cause. Termination will take effect at the end of the current month and, following termination, "THE CHAPTER"'s account on ClubExpress will be closed and no further access to the account will be permitted.

Gembrook may terminate this Agreement at any time for cause. Gembrook may also terminate this Agreement on at least 60 days written notice without cause. Termination will take effect at the end of the current month after the 30th day and, following termination, "THE CHAPTER"'s account on ClubExpress will be closed and no further access to the account will be permitted. In any termination situation, "THE CHAPTER" shall have reasonable opportunity to retrieve its data from the website.

Gembrook acknowledges that privacy laws and the confidentiality provisions of this Agreement applicable to member information provided by "THE CHAPTER" to Gembrook will survive any termination.

"THE CHAPTER" acknowledges that its obligations to reimburse Gembrook for charges associated with credit card fees will survive any termination. These may include transaction fees, refunds, chargeback fees, and reimbursement to Gembrook of any charged-back transactions which are not subsequently reversed. This clause shall survive termination of this agreement.

## **12. Indemnification.**

"THE CHAPTER" agrees to indemnify and hold harmless, Gembrook from any and all costs, damages and reasonable attorneys' fees resulting from any claim that "THE CHAPTER"'s use of the Product has injured or otherwise violated any right of any third party or violates any law. This clause shall survive termination of this agreement.

## **13. Disclaimer of Warrantees.**

THE CLUBEXPRESS PLATFORM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES THAT THE PRODUCT IS FREE OF DEFECTS OR VIRUSES, ABLE TO OPERATE ON AN UNINTERRUPTED BASIS, MERCHANTABLE, FIT FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. GEMBROOK AND ITS SUPPLIERS HAVE NO LIABILITY WITH RESPECT TO USE OF THE PRODUCT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. NO USE OF THE PRODUCT IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER.

## **14. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL GEMBROOK OR ITS OFFICERS OR INVESTORS BE LIABLE FOR ANY DIRECT OR INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO LOST REVENUE OR DATA, LOSS OF GOODWILL, OR ANY OTHER DAMAGES OR LOSSES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF. IN ANY CASE, YOU AGREE THAT THE MAXIMUM LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID TO GEMBROOK IN THE IMMEDIATELY PRECEDING 12 MONTH PERIOD.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT BE APPLICABLE.

## **15. High Risk Activities.**

ClubExpress is not fault-tolerant and is not designed or intended for use in environments in which its failure could lead directly to death, personal injury, or severe physical or environmental damage. ACCORDINGLY, GEMBROOK SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. "THE CHAPTER" AGREES THAT GEMBROOK WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM THE USE OF CLUBEXPRESS IN SUCH APPLICATIONS.

## **16. HIPAA Compliance and Other Highly Confidential Data.**

ClubExpress is not HIPAA compliant and should not be used to store protected health information or highly confidential member data such as medical records or social security numbers. GEMBROOK SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR STORING HIGHLY CONFIDENTIAL PERSONAL DATA. "THE CHAPTER" AGREES THAT GEMBROOK WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM THE USE OF CLUBEXPRESS IN SUCH APPLICATIONS.

## **17. Adult Content.**

ClubExpress is designed to allow individuals and families to pursue their hobbies and interests with others of like mind and interest. Your website, messages, documents and images may be viewed by children. Accordingly, ClubExpress shall not be used to upload, store, maintain, forward or display adult content, including documents and images of a lewd or lascivious nature.

## **18. Hate Speech and Misinformation.**

Your ClubExpress website cannot be used to promote or incite hate speech or violence against other people or organizations, based on their political beliefs or affiliations, race, religion, sexual orientation or gender identity, country of origin, or disability. Your ClubExpress website also cannot be used to deliberately promote misinformation of a political, medical, or scientific nature. ClubExpress reserves the right to remove such website content and/or close websites without warning that violate either of these provisions.

## **19. Anti-Spam Policy.**

"THE CHAPTER" agrees not to send unsolicited email via the ClubExpress system. For any opt-in list of email addresses used in ClubExpress's system, you agree that on request, you will provide Gembrook

with the source of the email addresses, the method used for recipient signup, and details surrounding the process used, and whatever other information relates to the transaction or sign-up process used. This includes, but isn't limited to, date and time of sign up, IP address of signup, website signed up from, and whatever other information you asked of the recipient at point of sign up. You also certify that you will not use rented or purchased lists, email append lists, or any other list that contains email addresses captured in any other method than opt-in. The use of opt-out lists is prohibited in our system. Gembrook retains the right to review lists and emails to verify that you are abiding by the privacy and permission policies set forth herein. "THE CHAPTER" is required to comply with these policies and all applicable federal and state laws as a condition of using the email services provided by ClubExpress.

## 20. Injunctive Relief.

"THE CHAPTER" acknowledges and agrees that, notwithstanding any other provisions of this Agreement, any breach or threatened breach of this Agreement by "THE CHAPTER" may cause Gembrook irreparable damage for which recovery of money damages would be inadequate. Gembrook may therefore seek and obtain timely injunctive relief to protect its rights under this Agreement in addition to any and all other remedies available at law or in equity.

## 21. Miscellaneous.

- (a) This Agreement shall be governed by the laws of the State of Illinois, excluding its conflict of law provisions. "THE CHAPTER" expressly agrees that jurisdiction for any claim or dispute relating to or arising out of this Agreement resides in the courts of the State of Illinois.
- (b) If a court should hold any provision of this Agreement invalid or unenforceable, such provision shall be modified to the minimal extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is possible, and other provisions shall remain in full force and effect.
- (c) No party's failure or delay in exercising any right or remedy under this Agreement will operate as a waiver of such right or remedy; and no single or partial exercise by a party of any right or remedy under this Agreement will preclude any additional or further exercise of such right or remedy or the exercise of any other right.
- (d) Gembrook may transfer or assign its rights and obligations under this Agreement without permission of "THE CHAPTER". This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns.
- (e) Gembrook's employees are not authorized to make modifications to this Agreement, or to make any additional representations, commitments or warranties binding on Gembrook, except in writing signed by an authorized officer of Gembrook.
- (f) This Agreement, including related content on the ClubExpress.com website, such as the introductory and sign-up pages, and including the Terms of Use and Privacy Policy, all of which are incorporated by this reference, sets forth Gembrook's entire liability and your exclusive remedy with respect to the service, and is a complete statement of the agreement between "THE CHAPTER" and Gembrook.

I agree on behalf of "THE CHAPTER"