

TERMS AND CONDITIONS

These TERMS AND CONDITIONS together with the Order Form to which they are attached (collectively, this "Agreement") set forth the terms under which Clubspeed will provide the Customer with any Services (including Software and related Documentation) that are identified in the attached Order Form. Capitalized terms not defined herein shall have the meanings set forth in the Order Form.

1. GRANT OF LICENSE.

- 1.1. License Grant. During the Term and subject to Customer's compliance with this Agreement, Clubspeed hereby grants to Customer a non-exclusive, non-sublicensable, non-transferrable, and revocable license to use the Software and Documentation during the Term.
- 1.2. Scope of Licensed Access and Use. Customer may install only the number of copies of the Software that is identified in the Order Form. Customer may allow an unlimited number of individuals who are employed by Customer ("Authorized Users") to access or otherwise utilize the Services at the location identified in the Order Form. Customer may not copy the Software or the Documentation.
- 1.3. Software Upgrades. During the Term, Clubspeed may, in its sole discretion, and at no cost to Customer, provide updates, upgrades, plug-ins and any other additions to the Software (the "Updates"). Such Updates shall be provided under the terms and conditions of this Agreement, unless Clubspeed provides Customer, in writing, different terms of use.

2. CUSTOMER RESTRICTIONS.

- 2.1. License Restrictions. Except as this Agreement expressly permits, Customer shall not, and shall not permit any other person to:
 - 2.1.1. use the Software outside the location(s) designated in the Order Form;
 - 2.1.2. copy the Services, in whole or in part;
 - 2.1.3. modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Services;
 - 2.1.4. rent, lease, lend, sell, sublicense, assign, distribute, publish, or otherwise make available the Services to any third party;
 - 2.1.5. reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;
 - 2.1.6. disable any control features of the Software or allow the Software to be used with such features disabled;
 - 2.1.7. bypass or breach any security device or protection used for or contained in the Software;
 - 2.1.8. remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademark symbols or notices used on the Software or Documentation;
 - 2.1.9. use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; or
 - 2.1.10. use the Services for purposes of: (i) developing, using or providing a competing software product or service; or (ii) any other purpose that is to Clubspeed's detriment or commercial disadvantage.

3. FEES.

- 3.1. Fees. Customer shall pay for Services (the "Fees") in accordance with the Order Form. All Fees shall be auto-debited from Customer's duly designated credit card on file or via a Customer-established ACH previous to each month's billing cycle. A one-time, non-refundable initiation fee equal to the price per location per month listed in Schedule A is due upon execution of this agreement.

- 3.2. Payment of Charges. In the event any auto-debiting does not effectively process, Customer agrees to make payment in addition to a USD\$35 fee for each item returned within 24 hours. Customer agrees to pay interest on all past due amounts at the rate of 1.5% per month, calculated daily and compounded monthly, or if lower, the highest rate permitted by applicable law, plus all costs incurred by Clubspeak in collecting any late payment of amounts due or related interest, including attorneys' fees, court costs, and collection agency fees.
 - 3.3. Installation Date Change Fee. CUSTOMERS who have confirmed an installation date will be charged a fee of \$750 if a change to the installation date is made within 2 weeks of the original and confirmed installation date. Furthermore, if travel arrangements have already been booked based on the original installation date at the time CUSTOMER changes said installation date, additional fees will apply.
 - 3.4. Shipping Costs. Shipping costs and other 3rd party fees will be billed to Customer separately.
4. Clubspeak'S AUDIT RIGHTS.
During the Term and for two (2) years following termination of this Agreement, Clubspeak or its nominee (including its accountants and auditors) shall have the right, upon reasonable notice to Customer, to inspect and audit Customer's systems and records that are used in connection with the Services to verify Customer's compliance with this Agreement. All audits will be conducted during regular business hours and in a manner that does not unreasonably interfere with Customer's business operations. Customer shall make available all such books, records, equipment, and information and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Clubspeak with respect to such audit.
5. INTELLECTUAL PROPERTY RIGHTS OF THE PARTIES.
 - 5.1. Ownership of Intellectual Property. Customer agrees that the Services are licensed, not sold, to Customer by Clubspeak. Customer acknowledges that Clubspeak owns all right, title, and interest, including all intellectual property rights, in and to the Software and Documentation. In the event that Customer acquires any rights in or to the Services, including without limitation to rights in derivatives of or improvements to the Services, Customer hereby unconditionally and irrevocably assigns to Clubspeak all such rights.
 - 5.2. Feedback. If Customer or any of its Authorized Users sends or transmits any communications or materials to Clubspeak suggesting or recommending changes to the Software or Documentation, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Customer hereby assigns to Clubspeak on Clubspeak's behalf, and on behalf of its Authorized Users, all right, title, and interest in, and Clubspeak is free to use, without any attribution or compensation to any party, the Feedback, including any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever.
 - 5.3. Exclusivity. It is understood and agreed that during the Term, Customer will not license, obtain or use any software or services that provide the same or similar functions to those of the Software from any third party. Further, Customer shall not create nor design, directly or indirectly, any software or services for use with its business which are substantially similar to the Services which are the subject of this Agreement.
6. THIS SECTION LEFT INTENTIONALLY BLANK.
7. TERMINATION OF THE AGREEMENT.
 - 7.1. Termination. Clubspeak shall have the right to terminate this Agreement with or without cause, upon ninety (90) business days' written notice to Customer.
 - 7.2. Termination by Clubspeak. Clubspeak shall have the right to terminate this Agreement:

- 7.2.1. on written notice to Customer in the event of a breach of any material provision of this Agreement by Customer that is not cured within thirty (30) business days after receipt by Customer of notice of breach from Clubspeed;
 - 7.2.2. on five (5) business days' written notice to Customer, if Customer fails to pay any Fees under this Agreement and fails to cure such deficiency within five (5) business days of receipt of such notice; or
 - 7.2.3. immediately if Customer breaches the confidentiality obligations in Section 8 (Confidentiality) or uses the Service outside the scope of the license granted in Section 1 (Grant of License).
- 7.3. Termination by Customer. Customer shall have the right to terminate this Agreement on written notice to Clubspeed in the event of a breach of any material provision of this Agreement by Clubspeed that is not cured within thirty (30) business days after receipt by Clubspeed of notice of breach by Customer.
- 7.4. Effect of Termination. Upon expiration or termination of this Agreement, the license granted hereunder will also terminate, Customer shall cease using and delete, destroy, or return all copies of the Software and Documentation and certify in writing to Clubspeed that the Software and Documentation has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund. In the event that this Agreement is terminated for any reason other than breach of the Agreement by Clubspeed or by Clubspeed for convenience, Customer will pay to Clubspeed the remaining balance of all amounts that would be owed to Clubspeed under the Agreement through to the end of the then-current Initial Term or Renewal Term.
- 7.5. Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Sections 2, 4, 5.1, 5.2, 7.4, 7.5, 8, 9, 10, 11, and 12.

8. INDEMNIFICATION / WARRANTIES.

- 8.1. Clubspeed Indemnification. Clubspeed shall indemnify, defend, and hold harmless Customer from all expenses (including judgments, settlements, attorneys' fees, and costs) finally awarded or agreed to in settlement resulting from a claim by a third party that the use of the Software by Customer in accordance with this Agreement, infringes such third party's U.S. intellectual property rights. The obligations of this Section 8.1 do not apply to the extent that the alleged infringement arises from (i) third party materials; (ii) combination, operation, or use of the Services in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Clubspeed; (iii) modification of the Services other than by Clubspeed in connection with this Agreement; (iv) use of the Services after Clubspeed's notice to Customer of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights; (v) negligence, abuse, misapplication, or misuse of the Services by or on behalf of Customer and Customer's Authorized Users; or (vi) use of the Services by Customer that are outside the purpose, scope, or manner of use authorized by this Agreement.

If a claim is made or appears possible or Clubspeed believes that the Software infringes a third party's intellectual property rights, Clubspeed may, at its option and expense (a) replace or modify the Software to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Software, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer with a refund of any prepaid, unused fees for the Services. The rights set forth in this Section 8.1 shall be Customer's sole remedy for infringement related to the Software.

- 8.2. Customer Indemnification. Customer shall indemnify, defend, and hold harmless Clubspeed from and against any claims, actions, judgments, settlements, awards, penalties, fines, costs, or expenses, including reasonable attorneys' fees by third party's resulting from (i) any use of the Services by Customer not in accordance with this Agreement; (ii) Customer's breach of the confidentiality obligations of Section 9; (iii) any injuries or deaths resulting from Customer's operations including without limitation from use of the Software; and (iv) Customer's failure to maintain a remote control system for slowing down or stopping karts used in the kart racing industry.
 - 8.3. Authorization. The parties warrant that they are authorized to enter into this Agreement and that their performance will not conflict with any other agreement.
 - 8.4. DISCLAIMER OF WARRANTY. Our software subscription service will be provided in a professional manner in accordance with customary industry standards utilizing reasonable care and skill. OTHER THAN THE FOREGOING WARRANTY, THE SOFTWARE IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION 8, Clubspeed MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.
 - 8.5. Third-Party Sites and Products. Third-Party Sites and Products are not under our control. Third-Party Sites and Products are provided to you only as a convenience, and the availability and installation of any Third-Party Site or Product does not mean we endorse, support or warrant the Third-Party Site or Product.
9. CONFIDENTIALITY.
- 9.1. Confidential Information. "Confidential Information" means any information in any form or medium that the other party considers confidential or proprietary, including without limitation technical data, trade secret, know-how, business operations, customers, software, code, disclosed in writing, orally, or electronically and whether or not marked, designated, or otherwise identified as "confidential." Without limiting the foregoing, Customer's Fees are Confidential Information and may not be disclosed.
 - 9.2. Exclusions. Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is or becomes publicly known through no wrongful act of the receiving party; (ii) is rightfully received from a third party on a non-confidential basis from a third party that was not under any obligation to maintain its confidentiality; (iii) is independently developed by the receiving party; (iv) is required to be disclosed pursuant to judicial order, requirement of a governmental agency or by operation of law, and provided that prior to such disclosure, the receiving party notifies the disclosing party in writing of such requirement so that the disclosing party can seek a protective order or other remedy or waive its rights.
 - 9.3. Non-Disclosure of Confidential Information. The parties agree that neither will disclose any Confidential Information of the other party to any third party and neither will use the other's Confidential Information for any purpose other than for the performance of the rights and obligations hereunder. The parties further agree that Confidential Information of each shall remain the sole property of the disclosing party and that each receiving party will take all reasonable precautions to prevent any unauthorized disclosure of the other's Confidential Information.
 - 9.4. Use of Customer Data. During the Term, Clubspeed will have access to data of Customer and of Customer's customers and vendors (collectively, "Customer Data"). Customer hereby grants Clubspeed a perpetual, non-exclusive, non-sublicenseable license to use and copy the Customer Data for (i) in an aggregated manner for any lawful purpose; and (ii) in a non-aggregated manner

for the purpose of providing the Services to Customer and improving its Services for all customers. For the avoidance of doubt, use of the Customer Data in accordance with this Section 9.4 shall not be construed as violating the confidentiality provisions of this Agreement.

10. **EQUITABLE RELIEF.**

If one of the parties breaches any of its obligations with respect to any of its obligations of this Agreement that would cause the other party irreparable harm for which monetary damages would not be an adequate remedy, then the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy.

11. **NOTICES.**

Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party or mailed by certified, registered or Express mail, return receipt requested or by a reputable overnight delivery service to the address provided in the Order Form.

12. **MISCELLANEOUS.**

- 12.1. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement or the Order Form will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 12.2. **Governing Law.** This Agreement is governed by and construed in accordance with the laws of the State of California without giving effect to any conflict of law provisions of such state.
- 12.3. **Agreement Binding on Successors.** The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors, and assigns.
- 12.4. **Assignment.** Customer may not assign this Agreement or the rights and obligations hereunder, in each case whether voluntary, involuntary, by operation of law, or otherwise, to any third party without the prior express written approval of Clubspeed. Any purported assignment, delegation, or transfer in violation of this Section is void.
- 12.5. **Waiver.** No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.
- 12.6. **Severability.** If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.
- 12.7. **Modification.** This Agreement shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement.

13. **ARBITRATION.**

- 13.1. **Arbitration.** Both parties will attempt to settle any claims or controversy through consultation and negotiation in good faith and a spirit of mutual cooperation. If those attempts fail, then in the event of a dispute between the parties which arises out of this Agreement, or any breach thereof, such dispute will, on the written request of one party delivered to the other party, be submitted to and settled by binding arbitration in the County of Orange, California in accordance with the commercial rules of the American Arbitration Association then in effect.