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# STACK SPORTS SYSTEM LICENSE AGREEMENT (United States)

This System License Agreement (this “Agreement”) is entered into between SPay, Inc. d/b/a Stack Sports, a Delaware corporation located at 5360 Legacy Drive #150, Plano, TX 75024 (or the Named Affiliate (as defined below) (“Stack Sports”) and Customer’s organization (“Customer”) as an authorized user of the Stack Sports System (defined below).

## RECITALS

WHEREAS, Stack Sports provides, among other things, electronic registration, association,

team, club, camp and league management solutions, scheduling, background checks, email marketing, staff management, equipment purchasing and inventory management services, web design and hosting services, search engine optimization services, curriculum management services, and payment processing services including (but not limited to) credit card, debit card, check processing/guarantee, gift/stored value card, ACH, and international processing.

WHEREAS, Stack Sports intends to combine, deploy or integrate certain Stack Sports IP Assets, as reasonably determined by Stack Sports, to make available to Customer certain functionality and/or solutions in an online, object-code only system configured by or to be configured by Stack Sports (collectively “Stack Sports System”) through which Stack Sports will deliver certain services, as more specifically described in a Pricing Agreement (as defined below).

WHEREAS, Customer desires to license the Stack Sports System for use according to the terms and conditions herein.

WHEREAS, the Stack Sports System is solely owned by Stack Sports. The Stack Sports System is licensed, not sold. Customer hereby agrees the Stack Sports System, as well as the Stack Sports IP Assets, are protected by U.S. and international copyright laws and treaties, as well as other intellectual property laws and treaties.

In consideration of the foregoing and the mutual promises set forth below, the parties agree as follows:

## **1. Grant of License**

1.1 Pricing Agreement. Stack Sports and Customer will delineate the services to be provided to Customer (the “Services”) in one or more separate pricing agreements (each a “Pricing Agreement”) which, among other things, shall provide that Customer will pay the fees described in such Pricing Agreement. The date of execution of said Pricing Agreement

will become the Effective Date of the relationship between the parties and this Agreement shall be incorporated by reference into such Pricing Agreement as if fully set forth therein. If Customer is using the Services on behalf of an Organization, “Customer” as used herein, includes the Organization. As used herein “Organization” means a national, state or local sports governing body, league, club, team, or other organization including but not limited to those who host and/or conduct tournaments or other events. The terms of this Agreement apply to all visitors, users, and others who access the Service through or in connection with an Organization (“Users”). If a named affiliate of SPay, Inc. is specified in the Pricing Agreement (“Named Affiliate”), then this Agreement will be deemed to be made between Customer and such Named Affiliate, and not SPay, Inc.

1.2 Scope. Subject to Customer’s compliance with all terms and conditions of this Agreement and any additional terms set forth in the Pricing Agreement, (including the prompt payment by Customer of all fees and charges), Stack Sports hereby grants to Customer, for the Term, a limited, personal, non-exclusive, nontransferable license to access and use the Stack Sports System. In addition to Customer agreeing to comply and be bound by this Stack Sports License Agreement, Customer hereby expressly agrees to Stack Sports’ Privacy Policy posted at <http://stacksports.com/legal-privacy>; Stack Sports’ Children’s Privacy Policy posted at <https://stacksports.com/legal-COPPA>; and Stack Sports’ Terms of Use posed at <http://stacksports.com/legal-terms> (collectively, the “Stack Sports Policies”), as such Stack Sports Policies may then be in effect and as such Stack Sports Policies may be updated from time to time by Stack Sports.

1.3 Restrictions. Customer agrees to use the Stack Sports System solely to receive the Services of Stack Sports and to provide access to Customer’s members or users of such Services as authorized by Stack Sports and subject to the Terms of Use displayed on the company websites of Stack Sports, which Terms of Use are hereby incorporated by reference. Except as required to use the Stack Sports System in an authorized manner, Customer warrants that it will not modify, publish, retransmit, participate in the transfer or sale of, create derivative works of, distribute, sublicense, perform or display the Stack Sports System or any intellectual property or other material owned, licensed or developed

by Stack Sports, including but not limited to any software, source code, object code, databases, information, communications, graphics or sounds. Customer shall not under any circumstances: copy the Stack Sports System; sublicense, distribute, modify, adapt, translate, reverse engineer, decompile, disassemble, or prepare derivative works based on the Stack Sports System; use or allow use of the Stack Sports System after the termination or expiration of this Agreement, except pursuant to a separate valid license or during a Transition Period (as defined below); allow others to use, copy, or access the Stack Sports System in connection with a service bureau, application service provider, public computer bulletin board, shareware or timeshare process, or any similar business or service; access, use, or disclose the Stack Sports System source code; remove, obscure or alter any copyright or other proprietary rights notices included in or affixed to the Stack Sports System; sell, license, disclose, or distribute any product designed or intended for use with the Stack Sports System; publish or disclose the results of any benchmark tests relating to the Stack Sports System; or use the Stack Sports System in applications or systems when failure of the Stack Sports System to perform could reasonably be expected to result in serious physical injury, loss of life, or material damage to property.

1.4 Ownership of System and Intellectual Property. Customer acknowledges and agrees that no title to the intellectual property in the Stack Sports System, including any and all proprietary trade secret information and information about business processes, is transferred to Customer under the terms of this Agreement. All right, title and interest in and to the Stack Sports System is the sole property of Stack Sports, including any modifications thereto. Other than the limited license explicitly set forth in this Agreement, no interest in or rights or licenses to the Stack Sports System are granted to the Customer, and no interest in or rights or licenses to the Stack Sports System shall inure in or accrue to the Customer, whether by implication, estoppel, or otherwise. All rights of any kind in the Stack Sports System that are not expressly granted in this Agreement are entirely and exclusively reserved to and by Stack Sports, and its successors and assigns. Stack Sports reserves the right, without notice, (i) to revoke Customer's or any of its Users user identity ("User Identity") (user name together with a password); (ii) to require Customer or any of its Users to change its User Identity; or (iii) to deny, limit or terminate access to the Service

or any portion thereof, whether for security purposes, for violation of the Agreement, including the Stack Sports' Policies, or for any other reason.

1.5. Ownership of Data. As between the parties, Customer shall own all data and content that is placed by Customer and Customer's members and/or users on the Stack Sports System (including any website text, images or other content created by or for Customer through the Stack Sports System). This information (to the extent stored in the Stack Sports System by Customer) shall include participant and registration information, membership information, statistics regarding Customer's site and usage as reported to Customer by Stack Sports, credit card information and other commerce-related information provided by Customer, its members and users ("Data"). Data collected in the Stack Sports System shall be subject to the Stack Sports' Policies. In addition to any terms or policies that the Customer may have, Customer agrees that Stack Sports may, in its sole discretion, require any users of the Stack Sports System, including Customer's members and/or users, to expressly agree to the Stack Sports Policies during the member/user signup process or any time thereafter as a condition of accessing the Stack Sports system and receiving the Services. Customer hereby authorizes Stack Sports to use the Data in any manner permitted in the Stack Sports Policies and may contact or communicate with Customer's members and users, including without limitation, regarding their individual user accounts, their login credentials, updates to the Stack Sports Policies or their access to and use of the Services or other features, services and products relevant to their use of the Stack Sports System.

1.6. Permitted Stack Sports System Uses. Stack Sports supports the maintenance of the software product and -support services to clients primarily through registration fees and other service fees collected from the use of the Stack Sports System. Stack Sports does not provide web site only services. Accordingly, Customer agrees to use registration services during the normal course of business when using the Stack Sports System and Customer agrees they will not use any other registration provider during the Term.

1.7 Organizational Decisions. Stack Sports is not responsible for an Organization's administration (e.g., coaching decisions, team selections, Organization refund policies, Organization terms, etc.). An Organization's use of the Services does not imply Stack Sports' approval or endorsement of such Organization. All questions and issues with Organization administration and policies should be directed to the Organization. Customer is solely responsible for ensuring that Customer and its Users secure their User Identity and do not share their User Identity with others. Stack Sports will assume that any person using the Service under a given User Identity is the individual associated with such User Identity in Stack Sports' records and will grant access to data, records and other information and capabilities accordingly. Using, or permitting the use of, the Service under a User Identity not actually assigned to a particular individual is prohibited. Customer agrees that the Service will be used solely for the purposes and functions contemplated in this Agreement and the Stack Sports Policies. Customer represents, warrants and covenants to Stack Sports that (A) if Customer is using the Services on behalf of an Organization that Customer is an authorized representative of such Organization, (B) all materials provided by Customer to Stack Sports or uploaded, stored, processed, contained included and/or integrated in the Service, including without limitation data and/or information forms, User Data (as defined below), and other data input by or on behalf of Customer to the Service: (i) is accurate, (ii) has been obtained with Customer's consent; (iii) does not infringe on the intellectual property rights of any third party or any rights of publicity or privacy and Customer own or have the rights necessary for the use, processing, modification by Stack Sports as contemplated herein; (iv) is not offensive or obscene or in violation of any law, rule, statute, ordinance, or regulation; (v) does not violate any right of privacy or publicity; (vi) does not contain unlawful, discriminatory, libelous, harmful, obscene or otherwise objectionable material of any kind; (vii) does not encourage conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable law or regulation; and (viii) does not transmit or upload to the Service any virus, worm, defect, trojan horse, software bomb or other harmful or malicious code or feature that does or could interfere with, damage or degrade in any manner the performance or security of a Service or adversely affect another user of the Service, and (C) Customer are not located in

a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a “terrorist supporting” country, nor are Customer listed on any U.S. Government list of prohibited or restricted parties. Customer’s use of the Services shall be subject to the “Restrictions on Use of the Websites” found in the Terms of Use.

1.8 Data. Stack Sports will have the right to use any data collected or managed by Stack Sports through the Services (e.g., player registration and e-commerce data) (collectively, the “User Data”), for advertising and marketing purposes and such other purposes as may be permitted by law and the Stack Sports Policies (collectively, the “Data Usage Rights”). If User Data collected or managed through the Services is provided on behalf of a third party, Customer represents, warrants and covenants that Customer has notified such third parties of this Agreement and obtained all required consents. In addition, Customer grants Stack Sports a limited, fully-paid, royalty free, worldwide, non-exclusive, irrevocable, right and license to use, reproduce, modify, adapt, enhance, improve, create derivative works of, edit, translate, distribute, and otherwise display the User Data: (i) for Customer’s benefit; (ii) for the purpose of performing the Services; and (iii) as permitted hereunder. Stack Sports disclaims all warranties as to the availability of the User Data. Stack Sports shall have no liability or responsibility in the event that the User Data is deleted or removed from the Services. Customer represents and warrants that all User Data that is provided by Customer or on Customer’s behalf, or uploaded, stored, processed, contained included and/or integrated into the Services by Customer or on Customer’s behalf has been collected in accordance with applicable laws and with Customer’s full consent. Customer hereby consents to Stack Sports’ use of the User Data as provided herein. If any of the User Data uploaded, stored, processed, contained included and/or integrated in the Services relates to children under the age of 13 (“Child Users”), Customer represents and warrants that prior to Customer providing such User Data to Stack Sports, Customer, as the parent or guardian of such Child User, consent to: (i) send or store such Child User’s User Data in the Services, and (ii) to permit Stack Sports to exercise its rights hereunder and under the Agreements with respect to such Child User. If Customer is not the parent or guardian of such Child User, Customer represents and warrants that Customer has obtained verifiable consent of the parent or guardian of such Child User to use the Child User’s User Data as

provided herein. Customer shall provide copies of such consents to Stack Sports upon request. In the event any such Child User (or the parent or guardian thereof) elects to withdraw such consent, Customer shall promptly notify Stack Sports and Stack Sports shall remove the Child User's User Data from the Services. If such express consent is not provided Customer shall not send or store such Child Users' User Data in the Services; and if Customer previously sent or stored Child Users' User Data without such express consent, Customer shall immediately notify Stack Sports and immediately remove any applicable User Data from the Services until Customer obtains such required express consent.

1.9 Communications Costs of Customer. Customer is solely responsible for all of Customer's internet, communication, device and other equipment, and any other costs associated with Customer's use of the Service. Use of the Service may impact Customer's cellular data usage or other data plan.

## **2. Payment Processing and Other Fees**

2.1 License Fees. In consideration for its license to use the Stack Sports System, Customer agrees to pay certain fees related to Customer's use of or access to the Services, including but not limited to registration processing fees, charge amounts, annual fees, one-time fixed fees, ongoing and credit card processing fees, and/or other applicable fees at the rates in effect when such fees are incurred (collectively, "Fees"). The rates for these Fees are outlined in the Pricing Agreement. Customer is responsible for paying all applicable taxes for the Services. Customer further acknowledges and agrees that Customer may be required to pay Fees related to Customer's use of or access to the Services subject to any Additional Terms applicable to such services, features or purchases. Customer acknowledge that Stack Sports owns all right and interest in any collected Fees regardless of the actual costs incurred by Stack Sports for providing the Services.

2.2 Payment Processing. It is the intent of both Stack Sports and Customer that a material element of this Agreement is to include/use Stack Sports's credit & debit card processing services ("Processing Services") as part of, or in combination with, the Stack Sports System. Therefore, Stack Sports and Customer specifically agree that all Processing



Services associated with Customer, including but not limited to, all related processing from websites, mobile apps, related club, league, team payments (even if white labeled sites or apps through the Customer) and any P2P payments, will be handled solely by Stack Sports. Stack Sports is not a merchant bank. In assisting users in collecting payments, Stack Sports is acting solely as a payment processor.

2.3 Transactions Initiated by Individuals. If Customer makes a registration or other payment to an Organization via the Service, Customer agrees that such transaction is between Customer and that Organization, notwithstanding Stack Sports rights to impose Fees on such transactions; therefore any refund requests, including without limitation unauthorized or incorrect charges, must be made directly to the Organization. Any Fees charged by Stack Sports for the Services are non-refundable. Customer agree to contact Stack Sports in the event of a dispute before initiating a chargeback or return with Customer's bank. In the event Customer make any chargeback claim, Stack Sports may contact Customer and the Organization with regard to the claim.

2.4 Organization. All payments will be processed via the Services and will be held by Stack Sports (unless Customer has set up Customer's own third party merchant). Stack Sports will transfer registration fees collected by Stack Sports (net of charges due to Stack Sports, including all applicable Fees and taxes or other governmental charges) to the designated Organization account through Automated Clearing House ("ACH") transfer. Stack Sports will debit against Customer's designated Organization account all applicable Fees, taxes or other governmental charges, and/or any applicable return or chargeback fees incurred by Stack Sports arising from the processing and/or resolution of any return or chargeback claim relating to Customer's Organization. All Fees debited by Stack Sports are non-refundable. Customer is responsible for presenting or re-presenting to the card issuer any challenge Customer may wish to bring to any return or chargeback claim. Customer agrees at Customer's own expense to assist Stack Sports when Stack Sports is requested to investigate any transactions processed through the Service that are the subject of a return or chargeback claim; however Stack Sports shall have no obligation to conduct any such investigation. In the event of a return or chargeback claim, Customer is responsible for

collecting any unpaid fees or charges directly from the Individual User initiating the chargeback.

2.5 Invoiced Fees; Chargebacks. All invoiced fees are due within 30 days' of invoice date. All late payments will accrue interest at a monthly rate of one percent (1%) or such lower amount as may be required by applicable law. Stack Sports assumes no responsibility to resolve disputes regarding refund requests or return or chargeback claims, or to present or re-present any challenge to any return or chargeback claim. Customer is responsible for presenting or re-presenting to the card issuer any challenge Customer may wish to bring to any return or chargeback claim. In the event of a return or chargeback claim, Customer is responsible for collecting any unpaid fees or charges directly from the individual initiating the return or chargeback. At Customer's sole discretion, Customer may elect to refund the Individuals User charge amounts, processing and other fees through the Service, which will be debited against a subsequent Customer ACH transfer.

2.6 Subscription Services. Any Fees to register to access subscription based Services shall be paid through third party payment systems, app-stores utilized by Stack Sports, or otherwise through the Services. All Fees paid for the Services are non-refundable, regardless of whether or not Customer actually uses the Services. Customer is responsible for paying all applicable taxes for the Services and any other costs incurred in connection with the use of or access to the Services. If Customer registers for a recurring subscription, Customer will continue to be charged for the Services until Customer cancels the Services. Customer may cancel a recurring subscription at any time by emailing [support@stacksports.com](mailto:support@stacksports.com). Include the name and email address associated with Customer's account. Some cancellations may require Customer to contact the third party app-store where Customer registered for the recurring subscription. Cancellation of Customer's subscription will not release Customer from Customer's responsibility to pay all charges incurred prior to cancellation. Stack Sports reserves the right to issue refunds or credits in its sole discretion. If Stack Sports issues a refund or credit, it is under no obligation to issue the same or similar refund in the future. All questions and requests related to the Services shall be submitted to [info@stacksports.com](mailto:info@stacksports.com)

2.7 Processing Partners. Based on the stated processing needs of the Customer, the Stack Sports products chosen by the Customer and listed in the Pricing Agreement, the geographical location and currency the Customer accepts, Stack Sports will place the Customer with one of the approved processing partners of Stack Sports (“Processing Partners”). Once a Processing Partner is chosen, Customer hereby agrees to provide the necessary information required by that Processing Partner to set-up the merchant account. A list of approved processing partners is shown on our website at <https://stacksports.com/processing-partners>.

2.8 Modifications; Custom Development. Stack Sports retains the right, in its sole discretion, to enhance, modify or alter the Service at any time (“Stack Sports’ Modifications”). It shall be in Stack Sports’ sole discretion to determine which Stack Sports’ Modifications Customer receives.

If Customer wants to add additional features beyond the features included in the Stack Sports System or have Stack Sports provide specific design, development or implementation services, Customer agrees to pay costs and fees for such features and services upon receipt of invoice from Stack Sports. Stack Sports will present Customer a separate statement of work confirming the details of the work, the estimated timeline to implement and the cost associated with the project (“SOW”). Stack Sports will proceed once both Stack Sports and Customer agree to and execute the SOW. Once the SOW is acknowledged, it will be deemed to be an amendment to this Agreement.

**3. System Support. Customer shall receive telephone and email support based on geographical location of customer’s chosen products. The hours of customer service can be found on the Stack Sports website.**

#### **4. Term, Termination and Transition.**

4.1 Term. The term of this Agreement shall be for the period set forth in the Pricing Agreement and shall commence as of the Effective Date (“Initial Term”). Following the Initial Term, this Agreement shall automatically renew, for successive twelve (12) month

periods (each a “Renewal Term”), unless: (i) either Party provides the other with written notice of its intent not to renew at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term; or (ii) earlier terminated pursuant to the terms of this Agreement. Renewal Terms shall be subject to reasonable cumulative annual fee increases of five percent (5%) unless expressly modified in the Pricing Agreement or otherwise superseded by applicable contractual pricing arrangements between Stack Sports and a collegiate or other governing body in so far as such arrangements relate to specific service items for which Customer is an intended beneficiary.

4.2 Termination. Either party shall have the right to terminate this Agreement prior to the end of the Term upon a material breach of this Agreement by the other party. The non-breaching party shall provide written notice to the breaching party setting forth the basis for such party’s claim of material breach, setting forth in reasonable detail the act(s) or omission(s) or circumstances giving rise to such claim, and stating the desire of the non-breaching party to terminate if the breaching party fails to cure such breach. The breaching party shall have thirty (30) days in which to cure the breach; or commence to cure and present the non-breaching party with an acceptable remediation and cure plan if the breach is curable but cannot be cured within such thirty (30) day time period, If the breach is not cured within thirty (30) days or if the remediation and cure plan presented by the breaching party is rejected by the non-breaching party, then this Agreement shall terminate. Notwithstanding the opportunity to cure provided in the previous sentences, if the material breach is of such a nature that it may not be cured, regardless of the action taken by the breaching party or the passage of time, then the non-breaching party may terminate this Agreement effective immediately upon notice. In addition, Stack may terminate this Agreement upon written notice for Customer’s violation of Section 1 (“Grant of License”) or failure to pay the Fees as set forth in the Pricing Agreement.

4.3 Effect of Termination. Termination of this Agreement for any reason (except the sole material breach by Stack Sports) shall not allow Customer a refund of Fees and Customer agrees to pay all Fees due and owing to Stack Sports up to and until the date Customer ceases all use of the Stack System. Upon termination of this Agreement for any reason,

Customer shall make no further use of the Stack System whatsoever. Customer acknowledges that upon disconnection from the Stack System, Customer shall no longer be able to use the features of the Stack System including Customer's Web Site. All Customer Content shall be accessible by Customer notwithstanding termination of this Agreement for a period of thirty (30) days following termination of this Agreement for archiving by Customer or conversion to another system by Customer.

4.4 Transition Period. If this Agreement expires pursuant to Section 4.1 or if Customer terminates this agreement due to the sole material breach by Stack Sports pursuant to Section

4.5 Customer may request that Stack Sports continue to provide the Stack System for up to three (3) months (the "Transitional Period"). Customer agrees to continue to pay any and all Fees associated with the Stack System that are in place immediately prior to the Transition Period.

4.6 Acceleration of Payments. Any expiration or termination of this Agreement shall not release Customer from its duty to pay any amount which may be then or with the passage of time will become owing to Stack Sports. Furthermore, immediately upon any termination of this Agreement, Customer shall pay to Stack Sports any and all amounts that are or with the passage of time will become due and payable.

## **5. Confidential Information.**

Each of Stack Sports and Customer acknowledge that they may be exposed to confidential information relating to the other party's business in connection with the Services, the use of the Stack Sports System and the performance of this Agreement. Such confidential information may include but is not limited to business methods and processes, products, customers, technology and financial status to the extent that the same constitutes the non-public proprietary information or trade secrets of a disclosing party. Customer expressly acknowledges that the Stack Sports System is the confidential and proprietary intellectual property and trade secret information of Stack Sports. The parties agree that, for the Term

and subject to the provisions of this Agreement and for a period of ten (10) years from the termination or expiration of this Agreement, neither party will disclose the confidential information of the other to third parties without the prior written consent of the disclosing party.

## **6. Indemnification.**

Customer agrees to indemnify and hold harmless Stack Sports from any third party claims: (i) based on Customer's or its members'/users' use of the System, including any Data provided by Customer or its member/users; and (ii) based on or alleging any violation of Customer's representations and warranties under Section 7, provided that Stack Sports, as applicable, notifies Customer promptly in writing of the claim (provided further that any failure by Stack Sports to provide such prompt notice shall only relieve Customer of its obligations under this Section to the extent that it has actually been prejudiced by such failure), gives Customer reasonable assistance in the defense and allows Customer to control the defense or settlement. Customer may not settle any such third party claim without the prior written consent of Stack Sports.

## **7. Representations and Warranties**

7.1 By Customer. Customer represents and warrants the following: (i) all information or content provided by Customer or its members/users to Stack Sports and/or displayed on the Customer Site is true and accurate in all material respects and does not infringe upon the intellectual property and/or proprietary rights of any third parties; (ii) Customer has received all necessary permission from third parties to post all content on Customer Site; (iii) Customer is in compliance in all respects with all applicable laws and regulations; (iv) Customer shall comply with all terms and conditions of this Agreement; (v) Customer shall at all times comply with all applicable laws and regulations related to the collection, use and storage of personal information, and (vi) Customer has the authority to represent and enter into this agreement on behalf of its members/users and access their Data without restriction.

7.2 “AS IS” Warranty. The Service is controlled and operated from facilities in the United States. Stack Sports makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. Customer may not use the Service if Customer is a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

THE SYSTEM AND ITS CONTENT IS PROVIDED “AS IS” AND CUSTOMER USES THE STACK SPORTS SYSTEM AT ITS OWN RISK. FURTHERMORE, SHOULD THE CUSTOMER REQUEST THAT STACK SPORTS IMPORT CUSTOMER DATA INTO THE STACK SPORTS SYSTEM, CUSTOMER ASSUMES ALL RESPONSIBILITY FOR PROVIDING THE DATA IN A FORMAT THAT MEETS THE IMPORT REQUIREMENTS OF THE STACK SPORTS SYSTEM AND PROVIDES THE FORMAT ACCORDING TO THE CUSTOMER NEEDS. STACK SPORTS SHALL NOT BE RESPONSIBLE FOR ANY ERRORS IN DATA, THE QUALITY OF THE DATA, OR CORRECTIONS TO IMPORTED DATA IN THE SYSTEM. CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT THE STACK SPORTS SYSTEM MAY NOT PERFORM OR MEET THE CUSTOMER’S OR END USER’S EXPECTATIONS. STACK SPORTS DOES NOT WARRANT THAT THE USE OF THE STACK SPORTS SYSTEM WILL BE UNINTERRUPTED OR ERROR FREE. STACK SPORTS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **8. Limitation of Liability.**

IN NO EVENT SHALL STACK SPORTS BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS AND/OR LOSS OF BUSINESS, ARISING OUT OF OR IN

ANY WAY RELATED TO (I) THIS AGREEMENT; (II) THE PERFORMANCE OF THIS AGREEMENT; (III) THE USE OF ANY PRODUCT, SERVICE OR STACK SPORTS SYSTEM PROVIDED UNDER THIS AGREEMENT; AND/OR (IV) AN ALLEGED BREACH OF THIS AGREEMENT, WHETHER OR NOT THAT PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL STACK SPORTS, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE TO CUSTOMER FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT DIRECTLY PAID BY CUSTOMER TO STACK SPORTS HEREUNDER WITHIN THE PREVIOUS SIX MONTHS OR \$100.00, WHICHEVER IS GREATER. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF STACK SPORTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CERTAIN INDIVIDUALS. THIS AGREEMENT GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **9. Survival.**

The following provisions shall survive termination of this Agreement for any reason: Section 1.3 (“Restrictions”); Section 1.4 (“Ownership of System and Intellectual Property”); Section 1.5 (“Ownership of Data”); Section 4.3 (“Effect of Termination”); Section 5 (“Confidentiality”); Section 6 (“Indemnification”); Section 7 (“Representations and Warranties”); Section 8 (“Limitation of Liability”); Section 9 (“Survival”) and Section 10 (“General”)

## **10. General**



10.1 Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

10.2 Severability. In the event of invalidity of any provision of this Agreement, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement.

10.3 No Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

10.4 Assignment. This Agreement and any rights and responsibilities hereunder may not be assigned or delegated by Customer, including by action of law, without the express written consent of Stack Sports but may be assigned by Stack Sports without restriction. Any assignment or delegation in violation of this Section will be void and of no effect.

10.5 Injunctive and Other Equitable Relief. The Customer agrees that the remedy at law for any breach or threatened breach of this Agreement by the Customer would, by its nature, be inadequate, and that in that event Stack Sports shall be entitled, in addition to damages, to a restraining order, temporary or permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or providing that any monetary damage has been sustained.

10.6 Commercial Transaction. If this Agreement is between Stack Sports and an Organization, Organization hereby certifies that this Agreement is a commercial transaction between two corporations or business entities and Organization's use of the Service is for commercial purposes.

10.7 Notification Procedures and Changes to the Agreement. Stack Sports may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to Customer via email notice, written or hard copy notice, or

through posting of such notice on our website, as determined by Stack Sports in its sole discretion. Stack Sports reserves the right to determine the form and means of providing notifications to Customers and Users, provided that Customer may opt out of certain means of notification as described in this Agreement. Stack Sports is not responsible for any automatic filtering Customer or Customer's network provider may apply to email notifications Stack Sports sends to the email address Customer provides to Stack Sports. Stack Sports may, in its sole discretion, modify or update this Agreement from time to time, and so Customer should review this page periodically. When Stack Sports changes the Agreement in a material manner, Stack Sports will update the 'last modified' date at the bottom of this page. Customer's continued use of the Service after any such change constitutes Customer's acceptance of the new terms of the License Agreement. If Customer does not agree to any of these terms or any future License Agreement, do not use or access (or continue to access) the Service.

**10.8 Disputes. PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.**

1. Stack Sports and Customer agree that these Terms affect interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions.
2. In the event of a dispute, claim, or controversy arising out of or in connection with Customer's access to, and/or use of the Services, and/or the provision of content, services, and/or technology on or through the Services, Stack Sports or Customer must give the other notice of the dispute, claim, or controversy which notice will include a brief written statement that sets forth the name, address, and contact information of the party giving it, the facts giving rise to the dispute, claim, or controversy, and the relief requested. Customer must send any such notice to us by email to [disputes@stacksports.com](mailto:disputes@stacksports.com) AND by U.S. Mail to, Stack Sports, 5360 Legacy Drive, Suite 150, Plano, TX 75034 Attn: Legal Department. To the extent that Stack Sports has Customer's contact information, Stack Sports will send any such notice to Customer by U.S. Mail or to Customer's email address. Customer and Stack Sports will

attempt to resolve any dispute, claim, or controversy through informal negotiation within sixty (60) days from the date that any notice of dispute, claim, or controversy is sent. Customer and Stack Sports shall use reasonable, good faith, efforts to settle any dispute, claim, or controversy through consultation and good faith negotiations. After thirty (30) days, Customer or Stack Sports may resort to the other alternatives described in this Section 10.8 Notwithstanding the foregoing, the notice and sixty (60)-day negotiation period required by this Section 10.8 shall not apply, however, to disputes, claims, or controversies concerning patents, copyrights, moral rights, trademarks, trade secrets, and claims of piracy or unauthorized use of the Service.

3. Except as otherwise specifically set forth below, any dispute, claim, or controversy of any kind between Stack Sports and Customer arising under these Terms or in connection with Customer's access to, and/or use of the Service, and/or the provision of content, services, and/or technology on or through the Service, if unresolved through informal discussions within sixty (60) days of receipt of notice, shall be resolved by binding arbitration to be held in the state in which Customer resides, or if Customer is an Organization, domiciled. Notwithstanding the foregoing, nothing in this Section shall be deemed as preventing Stack Sports from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of Stack Sports' data security, Intellectual Property Rights or other proprietary rights.
4. For residents outside the United States, arbitration shall be initiated in New York, New York, and Customer and Stack Sports agree to submit to the personal jurisdiction of any state or federal court in New York, New York to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.
5. Customer and Stack Sports each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided herein) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof (collectively, "Claims"), by binding arbitration by JAMS, under

the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. JAMS may be contacted at [www.jamsadr.com](http://www.jamsadr.com).

6. Stack Sports shall bear the cost of any arbitration filing fees and arbitration fees up to Five Hundred Dollars (\$500.00). Customer is responsible for all other additional costs that Customer may incur in the arbitration including, but not limited to attorneys' fees and expert witness costs unless Stack Sports is otherwise specifically required to pay such fees under applicable law. The decision of the arbitrator will be in writing and binding and conclusive on Stack Sports and Customer, and judgment to enforce the decision may be entered by any court of competent jurisdiction. Customer and Stack Sports agree that dispositive motions, including without limitation, motions to dismiss and motions for summary judgment will be allowed in the arbitration. The arbitrator must follow these Terms and can award the same damages and relief as a court, including injunctive or other equitable relief and attorneys' fees.

Notwithstanding the foregoing, Customer and Stack Sports agree not to seek any attorneys' fees and expert witness costs unless the arbitrator finds that a claim or defense was frivolous or asserted for an improper purpose, provided that if Customer is using the Service for commercial purposes, each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules, and the award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses.

Customer and Stack Sports understand that, absent this mandatory arbitration provision, Customer and Stack Sports would have the right to sue in court and have a jury trial. Customer and Stack Sports further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court.

7. If Customer's claim is solely for monetary relief of Ten Thousand Dollars (\$10,000) or less, and does not include a request for any type of equitable remedy, Customer may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the JAMS Rules.

8. Customer may choose to pursue Customer's claim in small claims court where jurisdiction and venue over Stack Sports and Customer otherwise qualifies for such small claims court and where Customer's claim does not include a request for any type of equitable relief.
9. Customer has the right to opt-out and not be bound by these arbitration provisions by sending written notice of Customer's decision to opt-out to the following address: Stack Sports, 5360 Legacy Drive, Suite 150, Plano, TX 75034 Attn: Legal Department, AND, the following Email address: [disputes@stacksports.com](mailto:disputes@stacksports.com). The notice must be sent within the later of thirty (30) days of Customer's first use of the Services or within thirty (30) days of changes to this Section being announced on the Services, otherwise Customer shall be bound to arbitrate any disputes, claims, or controversies in accordance with the terms of this Section 10.8. If Customer opts-out of these arbitration provisions, Stack Sports also will not be bound by them. If Customer does not affirmatively elect to opt out as described above, Customer's use of the Services will be deemed to be Customer's irrevocable acceptance of these Terms and any changes/updates to this Section 10.8 or otherwise.
10. If any clause within these arbitration provisions is found to be illegal or unenforceable, that specific clause will be severed from these arbitration provisions, and the remainder of the arbitration provisions will be given full force and effect. In the event some or all of these arbitration provisions are determined to be unenforceable for any reason, or if a claim, dispute, or controversy is brought that is found by a court to be excluded from the scope of these arbitration provisions, Customer and Stack Sports agree to waive, to the fullest extent allowed by law, any trial by jury.
11. The terms of these arbitration provisions will apply to any claims asserted by you against Stack Sports and its affiliates to the extent that any such claims arise out of Customer's access to, and/or use of the Service, and/or the provision of content, services, and/or technology on or through the Service.

10.9 *Class Action Waiver*. PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS.

1. Customer and Stack Sports agree that Customer and Stack Sports will resolve any disputes, claims, or controversies on an individual basis, and that any claims brought under these Terms in connection with the Services will be brought in an individual capacity, and not on behalf of, or as part of, any purported class, consolidated, or representative proceeding. Customer and Stack Sports further agree that Customer and Stack Sports shall not participate in any consolidated, class, or representative proceeding (existing or future) brought by any third party arising under these Terms of Service or in connection with the Services.
2. If any court or arbitrator determines that the class action waiver set forth in this section is void or unenforceable for any reason or that arbitration can proceed on a class basis, then the disputes, claims, or controversies will not be subject to arbitration and must be litigated in federal court located in New York, New York.
3. The terms of this Section will apply to any claims asserted by you against Stack Sports to the extent that any such claims arise out of your access to, and/or use of the Services, and/or the provision of content, services, and/or technology on or through the Services.

10.10 Entire Agreement. This Agreement, together with the Stack Sports Policies and any amendments and any additional agreements Customer may enter into with Stack Sports in connection with the Service, is the entire agreement between the parties which supersedes any prior agreement, whether written or oral, relating to the subject matter of this Agreement. This Agreement may only be modified by mutual agreement of the parties in writing.

This Agreement was last modified on November 18, 2019.