

# TERMS OF USE AND PRIVACY POLICY

Effective Date: October 31, 2019.

## TERMS OF USE

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Please choose carefully the information you post on or through CLUB services and that you provide to other Users. Your CLUB profile may not include any form of Prohibited Content, as outlined in Section 13 below. Despite this prohibition, information, materials, products, or services provided by other CLUB Users (for instance, in their profile) may, in whole or in part, be unauthorized, impermissible or otherwise violate this Agreement, and CLUB assumes no responsibility or liability for this material. If you become aware of misuse of the CLUB services by any person, please click on the "Contact CLUB", "Contact Us", or the "Report Abuse" (or similar wording thereto) link at the bottom of the CLUB website pages.

CLUB reserves the right, in its sole discretion, to reject, refuse to post, or remove any posting (including private messages) by you, or to deny, restrict, suspend, or terminate your access to all or any part of the CLUB services at any time, for any or no reason, with or without prior notice or explanation, and without liability. CLUB expressly reserves the right to remove your profile, content, and/or deny, restrict, suspend, or terminate your access to all or any part of the CLUB services if CLUB determines, in its sole discretion that you have violated this Agreement, or pose a threat to CLUB and/or its Users.

### **1. Service Requirements**

User must provide (1) all equipment necessary for their own connection (both Internet or by phone), including computer, modem, mobile phone, or other phone and a services required thereof and (2) provide for User's access to the Internet and phone service, (3) pay any fees related with such connections, and (4) maintain antivirus, anti-phishing, anti-ransomware, and other similar protection software or hardware. .

### **2. Disclaimer of Warranties.**

The website and all services thereof are provided on an "as is" and on an "as available" basis. To the fullest extent permitted by applicable law, We make no representations or warranties of any kind, express or implied, regarding the use or the results of this website and its services in terms of its correctness, accuracy, reliability, or otherwise. We shall have no liability for any interruptions in the use of this website or services. We disclaim all warranties with regard to the information provided, including the implied warranties of merchantability and fitness for a particular purpose, and non-infringement. Some jurisdictions do not allow the exclusion of implied warranties; therefore, portions of the above-referenced exclusion may be inapplicable, but remains as limiting as statutes allow.

### **3. Limitation of Liability**

WE SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, AND IN PARTICULAR WE SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS,

LOSS OF REVENUE, OR LOSS OF USE, ARISING OUT OF OR RELATED TO THIS WEB SITE AND SERVICES, THE TOOLS AND SERVICES WE PROVIDE, OR THE INFORMATION CONTAINED IN IT, WHETHER SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW, OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW FOR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, THEREFORE SOME OF THE ABOVE LIMITATIONS ARE INAPPLICABLE.

#### **4. Indemnification**

User agrees to indemnify and hold us, our parents, subsidiaries, affiliates, officers and employees, harmless from any claim or demand, including reasonable attorneys' fees and costs, made by any third party due to or arising out of User's use of the website and service, the violation of this Agreement, or infringement by User, or other user of the website and service using User's computer or phone, of any intellectual property or any other right of any person or entity.

#### **5. Phone Numbers**

We may provide phone numbers for use with our services and products. The availability of each phone number may be limited and the phone number and any associated content is subject to change, termination, and deletion without notice. We are not responsible for any loss or liability directly or indirectly resulting from the use, misuse, interruption, termination, elimination, and changes to phone numbers, availability of service, quality of service, or concurrency related to in6

#### **6. Password.**

When you sign up to become a User, you will also be asked to choose a password. You are entirely responsible for maintaining the confidentiality of your password. You agree not to use the account, username, or password of another User at any time or to disclose your password to any third party. You agree to notify CLUB immediately if you suspect any unauthorized use of your account or access to your password. You are solely responsible for any and all use of your account.

#### **7. Modifications and Interruption to Service**

We reserve the right to modify or discontinue the website and service with or without notice to the User. We shall not be liable to User or any third party should We exercise our right to modify or discontinue the website or service. User acknowledges and accepts that We do not guarantee continuous, uninterrupted or secure access to our website or services and operation of

our website may be interfered with or adversely affected by numerous factors or circumstances outside of our control.

## **8. Third-Party Sites**

Our website and services may include links to other sites on the Internet that are owned and operated by online merchants and other third parties. You acknowledge that We are not responsible for the availability of, or the content located on or through, any third-party site. You should contact the site administrator or webmaster for those third-party sites if you have any concerns regarding such links or the content located on such sites. Your use of those third-party sites is subject to the terms of use and privacy policies of each site, and We are not responsible therein. We encourage all Users to review said privacy policies of third-parties' sites prior to use and periodically thereafter.

## **9. Fees.**

You acknowledge that CLUB reserves the right to charge for any portion of the CLUB services and to change its fees (if any) from time to time in its sole discretion. If CLUB terminates your membership because you have breached the Agreement, you shall not be entitled to the refund of any unused portion of fees or payments (if any).

## **10. Use by Users.**

CLUB services are for the personal use of Users and may be used for promotional purposes as well, but direct commercial endeavors may only be used if they are specifically endorsed or authorized by CLUB. CLUB reserves the right to remove commercial content in its sole discretion without notice. Illegal and/or unauthorized use (i.e., without prior written authorization from CLUB) of the CLUB services, including collecting usernames, user id numbers, and/or email addresses of Users by electronic or other means for the purpose of sending unsolicited email or unauthorized framing of or linking to the CLUB website and services, or employing third party promotional sites or software to promote profiles for money, is prohibited. Commercial advertisements, affiliate links, and other forms of unauthorized solicitation may be removed from User profiles without notice or explanation and may result in termination of Users privileges. CLUB reserves the right to take appropriate legal action for any illegal or unauthorized use of the CLUB services. The User shall be responsible for all cost related to this performance of this section including, but not limited to reasonable legal fees.

## **11. Proprietary Rights in Content on CLUB.**

11.1 CLUB does not claim any ownership rights in the text, files, images, photos, video, sounds, musical works, works of authorship, applications, or any other materials (collectively, "Content") that You post on or through the CLUB Services. After posting

your Content to the CLUB Services, you continue to retain any such rights that you may have in your Content, subject to the limited license granted herein. By displaying or publishing ("posting") any Content on or through the CLUB services, you hereby grant to CLUB and its affiliates a limited license to use, modify, delete from, add to, publicly perform, publicly display, reproduce, and distribute such Content solely on or through the CLUB services, including without limitation distributing part or all of the CLUB website(s) in any media formats and through any media channels, except Content marked "private" will not be distributed outside the CLUB Website. This limited license does not grant CLUB the right to sell or otherwise distribute your Content outside of the CLUB services. After you remove your Content from the CLUB website(s) We will cease distribution as soon as practicable, and at such time when distribution ceases, the license will terminate shortly thereafter, except as provided and allows in archival (i.e., backup copies) storage.

- 11.2 The license you grant to CLUB is non-exclusive (meaning you are free to license your Content to anyone else in addition to CLUB), fully-paid and royalty-free (meaning that CLUB is not required to pay you for the use on the CLUB services of the Content that you post), sub licensable (so that CLUB is able to use its affiliates, subcontractors and other partners such as Internet content delivery networks and wireless carriers to provide the CLUB services and messages), and worldwide (because the Internet, phone, and the CLUB services are global in reach).
- 11.3 You represent and warrant that: (i) you own the Content posted by you on or through the CLUB services or otherwise have the right to grant the license set forth in this Section 11, and (ii) the posting of your Content on or through the CLUB services does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person or entity. You agree to pay for all royalties, fees, and any other monies owing any person or entity by reason of any Content posted by you on or through the CLUB services.
- 11.4 The CLUB services contain Content of CLUB ("CLUB Content"). CLUB Content is protected by copyright, trademark, patent, trade secret and other laws, and CLUB owns and retains all rights in the CLUB Content and the CLUB services. CLUB hereby grants you a limited, revocable, non-sub-licensable license to reproduce and display the CLUB Content (excluding any software code) solely for your personal use in connection with viewing the CLUB website, phone services, and using the CLUB services.
- 11.5 The CLUB services contain Content of Users and other CLUB licensors. Except as provided within this Agreement, you may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, or sell any Content appearing on or through the CLUB services.

11.6 CLUB performs technical functions necessary to offer the CLUB services, including but not limited to transcoding and/or reformatting Content to allow its use throughout the CLUB services.

## **12. Content Posted.**

12.1 CLUB may reject, refuse to post or delete any Content for any or no reason, including Content that in the sole judgment of CLUB violates this Agreement or which may be offensive, illegal or violate the rights of any person or entity, or harm or threaten the safety of any person or entity. CLUB assumes no responsibility for monitoring the CLUB services for inappropriate Content or conduct. If at any time CLUB chooses, in its sole discretion, to monitor the CLUB services, CLUB nonetheless assumes no responsibility for the Content, no obligation to modify or remove any inappropriate Content, and no responsibility for the conduct of the User submitting any such Content.

12.2 You are solely responsible for the Content that you post on or through any of the CLUB services, and any material or information that you transmit to other Users and for your interactions with other Users.

## **13. Content/Activity Prohibited.**

The following are examples of the kind of Content that is illegal or prohibited to post on or through the CLUB services. CLUB reserves the right to investigate and take appropriate legal action against anyone who, in CLUB' sole discretion, violates this provision, including without limitation, removing the offending Content from the CLUB services and terminating the Usership of such violators. Prohibited Content includes, but is not limited to; Content that, in the sole discretion of CLUB:

13.1 is patently offensive and promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;

13.2 harasses or advocates harassment of another person;

13.3 exploits people in a sexual or violent manner;

13.4 contains nudity, excessive violence, or offensive subject matter or contain a link to an adult website;

13.5 solicits personal information from anyone under 18;

13.6 publicly posts information that poses or creates a privacy or security risk to any person;



- 13.7 constitutes or promotes information that you know is false or misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
- 13.8 constitutes or promotes an illegal or unauthorized copy of another person's copyrighted work, such as providing pirated computer programs or links to them, providing information to circumvent manufacturer-installed copy-protect devices, or providing pirated music or links to pirated music files;
- 13.9 involves the transmission of "junk mail," "chain letters," or unsolicited mass mailing, instant messaging, "spimming," or "spamming";
- 13.10 contains restricted or password only access pages or hidden pages or images (those not linked to or from another accessible page);
- 13.11 furthers or promotes any criminal activity or enterprise or provides instructional information about illegal activities including, but not limited to making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;
- 13.12 solicits passwords or personal identifying information for commercial or unlawful purposes from other Users;
- 13.13 involves commercial activities and/or sales without prior written consent from CLUB such as contests, sweepstakes, barter, advertising, or pyramid schemes;
- 13.14 includes a photograph or video of another person that you have posted without that person's consent;
- 13.15 for band, comedy, filmmaker and other profiles, uses sexually suggestive imagery or any other unfair, misleading or deceptive Content intended to draw traffic to the profile; or
- 13.16 violates the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any person.

The following are examples of the kind of activity that is illegal or prohibited on the CLUB Website and through your use of the CLUB services. CLUB reserves the right to investigate and take appropriate legal action against anyone who, in CLUB' sole discretion, violates this provision, including without limitation, reporting you to law enforcement authorities. Prohibited activity includes, but is not limited to:

- 13.17 criminal or tortuous activity, including child pornography, fraud, trafficking in obscene material, drug dealing, solicitation, gambling, harassment, stalking, spamming, spimming,

sending of viruses or other harmful files, copyright infringement, patent infringement, or theft of trade secrets;

- 13.18 advertising to, or solicitation of, any User to buy or sell any products or services through the unauthorized or impermissible use of the CLUB services. You may not transmit any chain letters or junk email to other Users. In order to protect our Users from such advertising or solicitation, CLUB reserves the right to restrict the number of emails which a User may send to other Users in any 24-hour period to a number which CLUB deems appropriate in its sole discretion. If you breach this Agreement and send unsolicited bulk email, instant messages or other unauthorized commercial communications of any kind through the CLUB services, you acknowledge that you will have caused substantial harm to CLUB, but that the amount of such harm would be extremely difficult to ascertain. As a reasonable estimation of such harm, you agree to pay CLUB \$50 for each such unsolicited email or other unauthorized commercial communication you send through the CLUB services;
- 13.19 circumventing or modifying, attempting to circumvent or modify, or encouraging or assisting any other person in circumventing or modifying any security technology or software that is part of the CLUB services;
- 13.20 activity that involves the use of viruses, bots, worms, or any other computer code, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware, or otherwise permit the unauthorized use of or access to a computer or a computer network;
- 13.21 covering or obscuring the banner advertisements on your personal profile page, or any CLUB page via HTML/CSS or any other means;
- 13.22 any automated use of the system, such as, but not limited to, using scripts to add friends or send comments or messages;
- 13.23 interfering with, disrupting, or creating an undue burden on the CLUB services or the networks or services connected to the CLUB services;
- 13.24 impersonating or attempting to impersonate another User, person or entity;
- 13.25 for band, comedy, filmmaker and other profiles containing a CLUB player, copying the code for your CLUB Player and embedding it (or directing others to embed it) anywhere other than your band profile on CLUB;
- 13.26 using the account, username, or password of another User at any time or disclosing your password to any third party or permitting any third party to access your account;

- 13.27 selling or otherwise transferring your profile;
- 13.28 using any information obtained from the CLUB services in order to harass, abuse, or harm another person or entity, or attempting to do the same;
- 13.29 displaying an unauthorized commercial advertisement on your profile, or accepting payment or anything of value from a third person in exchange for your performing any commercial activity through the unauthorized or impermissible use of the CLUB services on behalf of that person, such as placing commercial content on your profile, posting blogs or bulletins with a commercial purpose, selecting a profile with a commercial purpose as one of your "Top 8" friends, or sending private messages with a commercial purpose; or
- 13.30 using the CLUB services in a manner inconsistent with any and all applicable laws and regulations.

#### **14. Protecting Copyrights and Other Intellectual Property.**

CLUB respects the intellectual property of others, and requires that our users do the same. You may not upload, embed, post, email, transmit or otherwise make available any material that infringes any copyright, patent, trademark, trade secret or other proprietary rights of any person or entity. CLUB has the right to terminate the Usership of infringers.

If you believe your work has been copied and posted on or through the CLUB services in a way that constitutes copyright infringement, please send CLUB' Copyright Agent a notification of claimed infringement with all of the following information: (a) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (b) identification of the claimed infringing material and information reasonably sufficient to permit us to locate the material on the CLUB services (providing the URL(s) of the claimed infringing material satisfies this requirement); (c) information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an email address; (d) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (e) a statement by you, made under penalty of perjury, that the above information in your notification is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf; and (f) your physical or electronic signature. For notification of claimed infringement CLUB' can be reached as provided in Section 18, Notification of Claimed Copyright Infringement.

CLUB' copyright agent for notification of claimed infringement can also be reached electronically by clicking "Contact Us". CLUB provides certain tools and technologies to help facilitate copyright owners' control over their copyrighted works.

#### **14. Disclaimer Regarding Accuracy of Vendor Information**

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We make no warranties or representations whatsoever with regard to any product provided or offered by any Vendor, and you acknowledge that any reliance on representations and warranties provided by any Vendor shall be at your own risk.

#### **15. Governing Jurisdiction of the Courts Florida.**

Our website and services are managed by our officers in the State of Florida. As such, the laws of the State Florida laws will govern this Terms of Use, without giving effect to any choice of law rules. We make no representation that our website or other services are appropriate, legal or available for use in other locations. Accordingly, if you choose to access our site and services you agree to do so subject to the internal laws of the State of Florida.

#### **16. Compliance with Laws.**

User assumes all knowledge of applicable law and is responsible for compliance with any such laws. User may not use the Service in any way that violates applicable state, federal, or international laws, regulations or other government requirements. User further agrees not to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national, or international law or regulation.

#### **17. Copyright and Trademark Information**

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## **18. Notification of Claimed Copyright Infringement**

Pursuant to Section 512(c) of the Copyright Revision Act, as enacted through the Digital Millennium Copyright Act, We.com designates the following individual as its agent for receipt of notifications of claimed copyright infringement.

By Mail:

The Club at Henderson Beach Resort, LLC  
2701 Scenic Highway 98, Unit 5  
Destin, FL 32541

By Email:

[info@ClubAtHBR.com](mailto:info@ClubAtHBR.com)

## **19. User Supplied Content**

All User supplied recording, audio files, phone numbers, introductions, and all other information submitted, edited, changed, and posted to Our website, servers, phone receivers (collectively “User Content”) shall become the property of The Club at Henderson Beach Resort, LLC at the time of posting, recording, or submittal. The User warrantee that the User has the ownership, license, and rights to the User Content as supplied to Us.

## **20. Other Terms**

If any provision of this Terms of Use Agreement shall be unlawful, void or unenforceable for any reason, the other provisions (and any partially-enforceable provision) shall not be affected thereby and shall remain valid and enforceable to the maximum possible extent. You agree that this Terms of Use Agreement and any other agreements referenced herein may be assigned by us, in our sole discretion, to a third party in the event of a merger or acquisition. This Terms of Use Agreement shall apply in addition to, and shall not be superseded by, any other written agreement between us in relation to your participation as a User. User agrees that by accepting this Terms of Use Agreement, User is consenting to the use and disclosure of their personally identifiable information and other practices described in our Privacy Policy Statement.

# PRIVACY POLICY

The CLUB Privacy Policy describes how We treat personal information when you contact CLUB or use CLUB products and services. In addition, the following describes our privacy practices that are specific to CLUB. Please also review the TERMS OF USE.

## Personal information

CLUB asks for some personal information when contact, including your email address and a possibly password, which is used to help protect your account from unauthorized access. When you use CLUB's web site or services servers automatically records and log non-personal information. You may choose to submit additional information in order to personalize your contact information (such as a zip code, phone number, etc.). CLUB does not record or maintain any of your credit card or bank account information. Any respond to a CLUB request for your email address is an approval (or opt "IN" selection) allowing CLUB, its affiliates, and assigns permission to send you communications and advertisements.

## Uses

CLUB maintains and processes personal information in order to provide your personalized services and communication(s). CLUB only shares active opt IN subscribers with affiliates and assigns.

## Your choices

You can terminate Your CLUB website account at any time by opting "OUT" to each specific emailing or by contacting [info@ ClubAtHBR.com](mailto:info@ClubAtHBR.com). Opting OUT off the CLUB website does not terminate Your choice status at any other third party website or service.

## Information Sharing

Email addresses are provided by affiliate third parties and assigns, who may receive and process your requests and preference settings for service (e.g., opting "IN" or opting "OUT"). Use of your information by these third parties is not governed by this Privacy Policy.

## More information

For more information please contact CLUB by mail at The Club At Henderson Beach Resort, 2701 Scenic Highway 98, Destin, FL 32541 or by email to: [info@ClubAtHBR.com](mailto:info@ClubAtHBR.com).

*CHBR Terms Of Use*