

## **PARTNER SERVICES TERMS AND CONDITIONS**

### **1 DEFINITIONS**

**1.1** Partner Services shall mean the services listed on the Partner Form provided by Partner to the User at facilities in Annex I ("Facilities"). Partner does not provide the Partner Services to Gympass.

**1.2** Monthly Subscription shall mean a subscription bought by Users and issued by Gympass providing access to the worldwide Gympass system (the "System") that fitness partners accept as payment by the User for the Partner Services for the duration of the month after the date of issuance of the Monthly Subscription.

**1.3** User shall mean any person with an active Monthly Subscription.

**1.4** Affiliate shall mean any entity that is directly or indirectly in control of, controlled by, or under common control with a Party

### **2 GYPASS RESPONSIBILITIES**

Gympass agrees to:

**2.1** promote to Users and corporate clients the Partner Services, through channels including but not limited to the Gympass mobile app and website; and

**2.2** enable the Partner to perform and record the Validations (defined below) through the System.

### **3 PARTNER RESPONSIBILITIES**

Partner agrees to:

**3.1** Accept the Monthly Subscription issued by Gympass to the User as payment by the User for the Partner Services

**3.2** perform the Partner Services with the level of skill and diligence in accord with industry best practice;

**3.3** provide the same level and type of services to Users as provided to members or non-User clients, and not charge Users any additional fees for Partner Services included in the Type of Service noted on the Partnership Form;

**3.4** use commercially reasonable efforts to check identification documentation to verify that the person accessing Partner Services is the User;

**3.5** validate the User visit ("Visit") before the start of a User's Visit by confirming the User's check in as directed by Gympass on Gympass' available tools ("Validation"). If the System is unavailable, the Partner shall follow Gympass' instructions regarding alternative validation methods;

**3.6** maintain insurance of the type and coverage levels in accord with industry best practice;

**3.7** provide Gympass with up-to-date information about Partner Services (including photos, classes, schedules, terms of use for its premises, and prices of memberships sold directly by Partner), including any Facility closures;

**3.8** complete the training provided by Gympass to ensure successful System enablement; and

**3.9** if noted on the Partnership Order Form, within 60 days from the Effective Date, not enter into or continue any partnership or business arrangement with any company providing physical activity intermediating or aggregator services or third party benefits providers ("Competitor"), for the initial 5 years of the Term.

3.9.1 Partner recognizes that this section 3.9 is key to the Agreement and the Price Per Validation. Accordingly, Partner's Price Per Validation and Maximum Total Payment per User will be reduced by 20% should Partner breach this section.

**3.10** Additionally, In the event Partner opens a new location not included on Annex I, such location shall automatically be added to Annex I, effective as of the date such location opens (each, a "New Location"). Partner shall provide Gympass with a report at the end of each month during the Term that indicates all such New Locations for such month. The pricing for any such New Locations shall be mutually determined by the parties in writing (email to suffice).

### **4 PAYMENTS**

**4.1** Gympass will remit to Partner the Price per Validation as consideration for the Partner Services provide by the Partner to the User, as set forth in the Partnership Form, for each Validation for a given User for a particular Service (the "Total Payment"). The Price per Validation includes any applicable tax. No remittance will be due to Partner for any Visit not Validated in accordance with section 3 above.

**4.2** Notwithstanding section 4.1:

**4.2.1** If noted on the Partnership Form, the Total Payment will be subject to a cap per User per Facility (“Maximum Total Payment Per User”) per calendar month and/or a cap per User across the Partner network (“Maximum Total Network Payment per User”) in an amount stated on the Partnership Form.

**4.2.2** Based on the number of unique Users across Partner Facilities in a calendar month, the Total Payment for that month will be discounted as indicated on the Partnership Form (“Volume Discount”).

**4.2.3** Subject to the Maximum Total Payment Per User, Gympass will pay Partner the amount stated on the Partnership Form each time a User books a class at a Facility through the System and either does not show up for the class (“No Show”) or cancels outside of the cancellation window set forth in the User Terms and Conditions (“Late Cancellation”).

**4.2.4** Any third-party booking fees paid by Gympass with respect to Partner Services will be deducted from any Total Payments.

**4.2.5** Should Gympass make the option available, Partner may elect to accept a lower Price per Validation for selected times and/or dates agreed to by Partner in order to fill excess capacity at Facilities during these agreed times and/or dates (“Partner Revenue Maximization Program”). Upon Partner’s acceptance in the Gym portal, or in any other media, of the Partner Revenue Maximization Program terms, such terms will be incorporated into this Agreement.

**4.3** The Total Payment for each calendar month will be paid by Gympass by the fifteenth of the following calendar month (or the business day following the fifteenth if the fifteenth is on the weekend) to the account set forth on the Partnership Form. Partner is responsible for keeping the account information updated, including bank account information, and all updates must be provided in writing to Gympass by the designated Partner Contact.

**4.4** Gympass, in its sole discretion, reserves the right to withhold any Total Payment or portion thereof upon suspicion of misuse of the System, including by automated or fraudulent activity.

**4.5** Gympass acts as a limited payment collection agent for Partner, in making Total Payments consisting of amounts collected from Users on behalf of Partner.

**4.5.1** Partner hereby appoints Gympass as the Partner’s payment collection agent solely for the limited purpose of accepting funds from Users purchasing Partner Services, and agrees that Total Payments shall be considered the same as a remittance made directly by Users to the Partner.

## **5 TERM AND TERMINATION OF CONTRACT**

**5.1** This Agreement shall enter into force on the Effective Date and shall continue for successive one-year periods (the “Term”) unless terminated pursuant to this section 5.

**5.2** Either Party may terminate the Agreement for any reason upon ninety (90) calendar days prior written notice to the other party.

**5.2.1** During this notice period, Partner must continue to allow Users to access Partner Services.

**5.2.2** Prior to any termination, Partner may not disclose to Users that the Partner will no longer be on Gympass until 15 days before the end of the Term, at the earliest.

**5.2.3** Should Partner breach this section 5.2, Partner will pay Gympass liquidated damages in an amount equal to the Total Payments for the three months prior to Partner’s notice of termination.

**5.3** Either Party may terminate the Partnership Agreement with immediate effect upon written notice if:

**5.3.1** the other Party breaches any material obligation or representation under this Agreement and such breach is not remedied within twenty calendar days from receipt of written notice of the breach;

**5.3.2** the other party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof.

## **6 INTELLECTUAL PROPERTY**

**6.1** Partner grants Gympass a royalty-free, nonexclusive license to use, edit, reproduce and display any of Partner’s trademarks, photos, or other material made available by the Partner (“Partner IP”) in connection with the System and any promotional activities.

**6.2** Partner may use the Gympass name, logo and other Gympass intellectual property only with the prior written approval of Gympass and in accordance with any guidelines that Gympass may provide from time to time. Gympass reserves the right to withdraw or limit such consent at any time.

**6.3** Gympass exclusively owns and retains all right, title and interest in all anonymized and aggregated usage data generated in connection with this Agreement.

## **7 DATA PROTECTION**

**7.1** With respect to personal data processed, Gympass and Partner will both be independent data controllers, defined as the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data (“Controllers”).

**7.2** The Parties acknowledge and agree that each will be responsible for complying with the obligations imposed on a Controller under applicable data protection legislation or regulations, including the GDPR.

**7.3** Each Party will immediately notify the other of any actual or potential data breach involving data from Validation of Users by Partner. Gympass should be notified by email to support@gympass.com.

## **8 REPRESENTATIONS AND WARRANTIES**

**8.1** Each Party warrants that it has the legal right to enter into this Agreement and that its performance hereunder will not violate any rights of any third party or any law, regulation or ordinance.

**8.2** Except as expressly stated herein, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from this Agreement. Neither Party makes any representations or warranties to the other that the performance of its obligations under this Agreement will produce any level of profits or business for the other Party, nor that any defined action will lead to further conversions or economic benefit for the other.

**8.3** Liability shall mean liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in this Agreement and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party’s obligations under this Agreement, in each case howsoever caused including if caused by negligence or if caused by a deliberate and/or repudiatory breach by that party.

**8.4** Subject always to clause 8.6 below, neither party will have any Liability to the other party for any:

i. loss of profit (whether direct, indirect or consequential); ii. loss of use, loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential); iii. loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential); iv. loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential); v. loss of bargain (whether direct, indirect or consequential); vi. liability to third parties (whether direct, indirect or consequential); vii. loss of use or value of any data or software (whether direct, indirect or consequential); viii. wasted management, operational or other time (whether direct, indirect or consequential); xi. wasted expenditure incurred in reliance upon the anticipated performance of this Agreement by the Partner (whether direct, indirect or consequential). For the avoidance of doubt, the term “wasted expenditure” does not include charges; x. loss or damage arising out of any failure to keep full and up to date security copies of any computer program and data held or used by or on behalf of the other party (whether direct, indirect or consequential); or xi. indirect, consequential or special loss.

**8.5** Subject to clause 8.6 below, Gympass’ maximum aggregate Liability under the Agreement shall be limited to the Total Payments actually paid by the Gympass and received by Partner during the six (6) months preceding the month in which the event occurred that caused the damage or to an amount of \$50,000 USD, whichever is higher.

**8.6** Nothing in this Agreement will operate to exclude or restrict one Party’s Liability (if any) to the other: i. for death or personal injury resulting from its gross negligence or willful misconduct or the gross negligence or willful misconduct by a person for whom it is vicariously liable; ii. for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable, or iii. for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

## **9 INDEMNIFICATION**

Subject to clause 8.4, each Party agrees to release, indemnify, defend and hold harmless (“Indemnification Obligations”) the other Party, its Affiliated and related entities, and any of its respective officers, directors, agents and employees (collectively “Related Entities”) from any Liabilities arising out of or relating to (i) any act, omission or breach of this Agreement by the indemnifying Party (including any personnel of the Party or third party contractors); (ii) any of the indemnifying Party’s IP or any infringement of the rights of a third party by the indemnifying Party; and (iii) solely with respect to Partner’s Indemnification Obligations to Gympass and its Related Entities, for the use of Partner Services by Users (including personal injury, death or property damage).

## **10 ENTIRE AGREEMENT**

**10.1** This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter.

**10.2** Neither Party has entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in this Agreement.

**10.3** Nothing in this clause will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

## **11 MISCELLANEOUS**

**11.1** The Parties hereto are independent contractors and nothing herein shall be construed to create an agency relationship, joint venture or partnership between the Parties.

**11.2** Each party and its respective Affiliates are responsible for all taxes imposed on such party or its Affiliates under applicable laws in connection with this Agreement. Gympass is not responsible for value added tax (if applicable) on the Partner Services.

**11.3** Each party (the "Receiving Party") will keep confidential and not disclose to any other party or use (except as expressly authorized by this Agreement) technology, software or business or technical information ("Confidential Information") obtained from the other party (the "Disclosing Party"). The terms of this Agreement constitute Confidential Information. Confidential Information shall not include any information that the Receiving Party can show was: (a) already known by it without restriction, (b) rightfully furnished to it without restriction by a third party not in breach of any obligation, (c) generally available to the public without breach of this Agreement or (d) independently developed by it without reliance on Confidential Information. The Receiving Party may disclose Confidential Information pursuant to the order of a court, administrative agency or other governmental body, provided that the Receiving Party gives reasonable notice to the Disclosing Party to contest such order or requirement. Promptly after the termination of this Agreement, at the Disclosing Party's written request, the Receiving Party shall return or destroy all of the other's tangible Confidential Information and any materials developed therefrom.

**11.4** This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of laws provision thereof. The parties specifically consent to the exclusive jurisdiction of the local, state and federal courts in the Southern District of New York to determine any dispute arising out of or in connection with the Agreement (including in relation to any non-contractual obligations).

**11.5** Neither party shall be liable to the other party for any loss or damage attributable to, and neither party shall be deemed to be in default hereunder as a result of, any failure or delay in performance caused by force majeure, which shall include strike, lockout, earthquake, hurricane, flood, fire or other acts of God, nature, war, rebellion, civil disorders, laws, regulations, acts of civil or military authorities (including the cancellation of any necessary license), unavailability of communications facilities, and any other causes beyond the reasonable control of the party whose performance is affected. The party affected by an event constituting "force majeure" shall use all reasonable efforts to minimize the consequences of the same.

**11.6** Neither this Agreement nor any interest herein may be assigned by either party without the prior written approval of the other party, which approval shall not be unreasonably withheld, except that Gympass may assign this Agreement in its entirety to any purchaser of all or any substantial portion of its business or assets or to any subsidiary or other Affiliate without the prior approval of Partner.

**11.7** This Agreement may be amended only by the mutual written agreement of the parties.

**11.8** The Parties may execute this Agreement in counterparts, scanned and electronic signatures acceptable, each of which shall be deemed an original, but all of which together constitute one and the same agreement.

**11.9** This Agreement, including all annexes, addendums, and other documents attached hereto, constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all prior related agreements between the Parties, written and oral.