

## **PoolPass Customer Service Agreement**

This Customer Agreement (this “Agreement”) contains the terms and conditions that govern access to and use of the PoolPass Cloud Service (the “Service”) and is an agreement between the proprietor of the Service (“we,” “us,” or “our”) and you or the entity you represent (“you” or “your”). This Agreement takes effect when you first use the Pool Pass Cloud Service (the “Effective Date”). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. Please see Section 14 for definitions of certain capitalized terms used in this Agreement.

### **1. Use of the PoolPass Cloud Service.**

1.1 Generally, You may access and use the Service in accordance with this Agreement and the Acceptable Use Policy. You will comply with the terms of this Agreement and all laws, rules, and regulations applicable to your use of the Service.

1.2 Your Account. You will be provided with account credentials that allow you to access and use the Service to manage memberships for one named facility. A “Facility” is defined as a resource shared for the benefit of a collective group of members, such as a community swimming pool. If you would like to use the Service to manage multiple, independent facilities (with a different collection of members), you will need a separate Account for each facility.

1.3 Service Access. You agree to use the Service only through the PoolPass Software (the “Software”), which is available on the PoolPass Website. You may install and use an unlimited number of copies of the Software only for your use with the Service and subject to the End User License Agreement provided with the Software.

## **2. Changes.**

2.1 To the Service. We may change or discontinue the Service or change or remove functionality of any part or all of the Service from time to time. We will notify you of any material change to or discontinuation of the Service as per Section 13.8.

2.2 To the Software. We may change or discontinue the Software from time to time. For any discontinuation of or material change to the Software, we will use commercially reasonable efforts to continue supporting the previous version of such Software for 12 months after the change or discontinuation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) would cause us to violate the law or requests of governmental entities).

## **3. Security and Data Privacy.**

3.1 Service Security. Without limiting Section 10 or your obligations under Section 4.2, we will implement reasonable and appropriate measures designed to help you secure Your Content against accidental or unlawful loss, access, or disclosure.

3.2 Data Privacy. We will not access or use Your Content except as necessary to maintain or provide the Service, or as necessary to comply with the law or a binding order of a governmental body. We will not disclose Your Content to any government or third party except in each case as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, we will give you notice of any legal requirement or order requiring disclosure of Your Content.

3.3. We will only use your Account Information as necessary to maintain your account and use of the Service, or as necessary to comply with the law or a binding order of a governmental body. We may employ other companies and individuals to perform functions on our behalf, such as sending postal mail and e-mail, processing

credit card payments, or providing customer service. They have access to personal information needed to perform their functions, but may not use it for other purposes. We may disclose your Account Information for promotional purposes or other business development only upon your consent to such usage.

#### **4. Your Responsibilities.**

4.1 Your Accounts. Except to the extent caused by our breach of this Agreement, (a) you are responsible for all activities that occur under your account, regardless of whether the activities are authorized by you or undertaken by you, your employees or a third party (including your contractors, agents or End Users), and (b) we and our affiliates are not responsible for unauthorized access to your account.

4.2 Your Content. You will ensure that Your Content and your and End Users' use of Your Content or the Service will not violate the Acceptable Use Policy or any applicable law. You are solely responsible for the content, maintenance, and use of Your Content.

4.3 Your Security and Backup. You are responsible for properly configuring and using the Service and otherwise taking appropriate action to secure, protect, and backup your account credentials and Your Content in a manner that will provide appropriate security and protection.

4.4 Log-In Credentials. Log-in credentials for the Service are for your internal use only and you will not sell, transfer, or sublicense them to any other entity or person, except that you may disclose credentials to your agents, End Users, and subcontractors performing work on your behalf.

4.5 End Users. You will be deemed to have taken any action that you permit, assist, or facilitate any person or entity to take related to this Agreement, Your Content, or use of the Service. You are responsible for End Users' use of Your Content and the Service. You will ensure that all End Users comply with your obligations under this

Agreement. If you become aware of any violation of your obligations under this Agreement caused by an End User, you will immediately suspend access to Your Content and the Service by such End User.

## **5. Fees and Payment.**

5.1 Service Fees. Generally, We calculate and bill fees and charges monthly. We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us the applicable fees and charges for use of the Service using one of the payment methods we support. All amounts payable by you under this Agreement will be paid to us without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new feature of the Service will be effective upon notice to you according to Section 13.8. We may increase or add new fees and charges for the Service you are using by giving you at least 30 days prior notice.

5.2 Prepaid Fees. We may offer various pre-paid billing plans that provide for usage of the Service for a specified amount of time. Provided you are not in breach of your payment obligations, we will not increase the price for the Service you are using while the plan is in effect. If either party terminates this Agreement you may be entitled to a refund of fees in accordance with Section 7.3.a.

5.3 Other Fees. We may elect to charge you interest at the rate of 10% per month (or the highest rate permitted by law, if less) on all late payments. In the event a check is returned due to insufficient funds by the institution on which it is drawn, a service charge of \$25 will be assessed.

5.4 Taxes. Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. All fees payable by you are exclusive of Indirect Taxes. We may charge and you will pay applicable Indirect Taxes that we are legally

obligated or authorized to collect from you. You will provide such information to us as reasonably required to determine whether we are obligated to collect Indirect Taxes from you. We will not collect, and you will not pay, any Indirect Tax for which you furnish us a properly completed exemption certificate or a direct payment permit certificate for which we may claim an available exemption from such Indirect Tax. All payments made by you to us under this Agreement will be made free and clear of any deduction or withholding, as may be required by law. If any such deduction or withholding (including but not limited to cross-border withholding taxes) is required on any payment, you will pay such additional amounts as are necessary so that the net amount received by us is equal to the amount then due and payable under this Agreement. We will provide you with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

## **6. Temporary Suspension.**

6.1 Generally. We may suspend your or any End User's right to access or use any portion or all of the Service immediately upon notice to you if we determine:

- (a) Your or an End User's use of the Service (i) poses a security risk to the Service or any third party, (ii) could adversely impact our systems, the Service or Content of any other customer, (iii) could subject us, our affiliates, or any third party to liability, or (iv) could be fraudulent;
- (b) You are, or any End User is, in breach of this Agreement;
- (c) You are in breach of your payment obligations under Section 5; or
- (d) You have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding.

6.2 Effect of Suspension. If we suspend your right to access or use any portion or all of the Service you remain responsible for all fees and charges you incur during the period of suspension.

## **7. Term and Termination.**

7.1 Term. The term of this Agreement will commence on the Effective Date and will remain in effect until terminated under this Section 7. Any notice of termination of this Agreement by either party to the other must include a Termination Date that complies with the notice periods in Section 7.2.

7.2 Termination.

(a) Termination for Convenience. You may terminate this Agreement for any reason by providing us notice. We may terminate this Agreement for any reason by providing you at least 30 days' advance notice.

(b) Termination for Cause.

(i) By Either Party. Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the material breach remains uncured for a period of 30 days from receipt of notice by the other party. No later than the Termination Date, your account will be closed.

(ii) By Us. We may also terminate this Agreement immediately upon notice to you (A) for cause if we have the right to suspend under Section 6, (B) if our relationship with a third-party partner who provides software or other technology we use to provide the Service expires, terminates or requires us to change the way we provide the software or other technology as part of the Service, or (C) in order to comply with the law or requests of governmental entities.

7.3 Effect of Termination.

(a) Generally. Upon the Termination Date:

(i) except as provided in Section 7.3(b), all your rights under this Agreement immediately terminate;

(ii) you remain responsible for all fees and charges you have incurred through the Termination Date and are responsible for any fees and charges you incur during the post-termination period described in Section 7.3(b);

(iii) in the event you have made a pre-paid payment for use of the Service you will receive a refund based on the pro-rata portion of unused time remaining unless (A) we have a right to suspend under Section 6 or (B) you terminated the Agreement for convenience under Section 7.2(a);

(iv) Sections 4.1, 5, 7.3, 8 (except the license granted to you in Section 8.3), 9, 10, 11, 13 and 14 will continue to apply in accordance with their terms.

(b) Post-Termination. Unless we terminate your use of the Service pursuant to Section 7.2(b), during the 30 days following the Termination Date:

(i) we will not take action to remove from the Service any of Your Content as a result of the termination; and

(ii) we will allow you to access and retrieve Your Content from the Service only if you have paid all amounts due under this Agreement.

For any use of the Service after the Termination Date, the terms of this Agreement will apply and you will pay the applicable fees at the rates under Section 5.

## **8. Proprietary Rights.**

8.1 Your Content. Except as provided in this Section 8, we obtain no rights under this Agreement from you (or your licensors) to Your Content. You consent to our use of Your Content to provide the Service to you and any of your End Users.

8.2 Adequate Rights. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content and Suggestions; (b) you have all rights in Your Content and Suggestions necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content or End Users' use of Your Content or the Service Offerings will violate the Acceptable Use Policy.

8.3 Service License. We own all right, title, and interest in and to the Service, and all related technology and intellectual property rights. Subject to the terms of this Agreement, we grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to access and use the Service solely in accordance with this Agreement. Except as provided in this Section 8.3, you obtain no rights under this Agreement from us, our affiliates, or our licensors to the Service, including any related intellectual property rights.

8.4 License Restrictions. Neither you nor any End User will use the Service in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any End User will, or will attempt to (a) modify, distribute, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Service or Software, (b) reverse engineer, disassemble, or decompile the Service or Software or apply any other process or procedure to derive the source code of any software included in the Service (except to the extent applicable law doesn't allow this restriction), (c) access or use the Service in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Service. You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse, or contribute to you or your business endeavors). You will not imply any relationship or affiliation between us and you except as expressly permitted by this Agreement.

8.6 Suggestions. If you provide any Suggestions to us or our affiliates, we and our affiliates will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the Suggestions and agree to provide us any



assistance we require to document, perfect, and maintain our rights in the Suggestions.

## **9. Indemnification.**

9.1 General. You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any Losses arising out of or relating to any third-party claim concerning: (a) your use of the Service (including any activities under your account and use by your employees and personnel); or (b) breach of this Agreement or violation of applicable law by you, End Users, or Your Content. You will reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to any third party subpoena or other compulsory legal order or process associated with third party claims described in (a) through (b) above at our then-current hourly rates.

### 9.2 Intellectual Property.

(a) Subject to the limitations in this Section 9, we will defend you and your employees, officers, and directors against any third-party claim alleging that the Service infringes or misappropriates that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(b) Subject to the limitations in this Section 9, you will defend us and our affiliates, and their respective employees, officers, and directors against any third-party claim alleging that any of Your Content infringes or misappropriates that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(c) Neither party will have obligations or liability under this Section 9.2 arising from infringement by combinations of the Service or Your Content, as applicable, with any other product, service, software, data, content, or method. In addition, we will have no obligations or liability arising from your or any End User's use of the Service after we have notified you to discontinue such use. The remedies provided in this Section 9.2 are the sole and exclusive remedies for

any third-party claims of infringement or misappropriation of intellectual property rights by the Service or by Your Content.

(d) For any claim covered by Section 9.2(a), we will, at our election, either: (i) procure the rights to use that portion of the Service alleged to be infringing; (ii) replace the alleged infringing portion of the Service with a non-infringing alternative; (iii) modify the alleged infringing portion of the Service to make it non-infringing; or (iv) terminate the allegedly infringing portion of the Service or this Agreement.

9.3 Process. The obligations under this Section 9 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party (at the other party's expense) in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any commitment, other than the payment of money, without the written consent of the other party.

## **10. Disclaimers.**

THE SERVICE OFFERING IS PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, WE AND OUR AFFILIATES AND LICENSORS (A) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OR THE THIRD-PARTY CONTENT, AND (B) DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE SERVICE OFFERINGS OR THIRD-PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

## **11. Limitations of Liability.**

WE AND OUR AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE, OR, (III) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICE FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, EXCEPT FOR PAYMENT OBLIGATIONS UNDER SECTION 9.2, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE.

## **12. Modifications to the Agreement.**

We may modify this Agreement (including any policies) at any time by posting a revised version on the Website or by otherwise notifying you in accordance with Section 13.8; provided, however, that we will provide at least 90 days' advance notice in accordance with Section

13.8 for adverse changes to the Service. Subject to the 90 day advance notice requirement with respect to adverse changes to the Service, the modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Service after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the Website regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the end of this Agreement.

### **13. Miscellaneous.**

13.1 Assignment. You will not assign or otherwise transfer this Agreement or any of your rights and obligations under this Agreement, without our prior written consent. Any assignment or transfer in violation of this Section 13.1 will be void. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective permitted successors and assigns.

13.2 Entire Agreement. This Agreement is the entire agreement between you and us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement. We will not be bound by, and specifically object to, any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) including for example, any term, condition or other provision (a) submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document, (b) related to any online registration, response to any Request for Bid, Request for Proposal, Request for Information, or other questionnaire, or (c) related to any invoicing process that you submit or require us to complete. If the terms of this document are inconsistent with the terms contained in any other policy, the terms contained in this document will control.

13.3 Force Majeure. We and our affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

13.4 Governing Law. The laws of the State of Maryland, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between you and us.

13.5 Independent Contractors; Non-Exclusive Rights. We and you are independent contractors, and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party, and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

13.6 Language. All communications and notices made or given pursuant to this Agreement must be in the English language.

13.7 Confidentiality and Publicity. You may use our Confidential Information only in connection with your use of the Service as permitted under this Agreement. You will not disclose our Confidential Information during the Term or at any time during the 5-year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of our Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release

or make any other public communication with respect to this Agreement or your use of the Service.

#### 13.8 Notice.

(a) To You. We may provide any notice to you under this Agreement by: (i) posting a notice on the Website; or (ii) sending a message to the email address then associated with your account. Notices we provide by posting on the Website will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

(b) To Us. To give us notice under this Agreement, you must contact us by personal delivery, overnight courier or registered or certified mail to 21528 Fox Field Cir, Germantown MD, 20876, attention PoolPass. We may update the address for notices to us by posting a notice on the Website. Notices provided by personal delivery will be effective immediately. Overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

13.9 No Third-Party Beneficiaries. Except as set forth in Section 9, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

13.10 No Waivers. The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

13.11 Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable

portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

#### **14. Definitions.**

“Acceptable Use Policy” means the policy located <https://www.pool-pass.com/cloud> (and any successor or related locations designated by us), as it may be updated by us from time to time.

“Account Information” means information about you that you provide to us in connection with the creation or administration of your account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with your account.

“Confidential Information” means all nonpublic information disclosed by us, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information includes: (a) nonpublic information relating to our or our affiliates or business partners’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by you without reference to our Confidential Information.

“Website” means <https://www.pool-pass.com> (and any successor or related site designated by us), as may be updated by us from time to time.

“Content” means data, text, audio, video, or images.

“End User” means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Service under your account. The term “End User” does not include individuals or entities when they are accessing or using the Service or any Content under their own account, rather than under your account.

“Indirect Taxes” means applicable taxes and duties, including, without limitation, VAT, Service Tax, GST, excise taxes, sales and transactions taxes, and gross receipts tax.

“Losses” means any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys’ fees).

“Service” means the PoolPass cloud membership service made available by us or our affiliates.

“Software” means the PoolPass software made available by us or our affiliates for your use in accessing the PoolPass Service.

“Suggestions” means all suggested improvements to the Service that you provide to us.

“Term” means the term of this Agreement described in Section 7.1.

“Termination Date” means the effective date of termination provided in accordance with Section 7, in a notice from one party to the other.

“Third-Party Content” means Content made available to you by any third party on the Website or in conjunction with the Service.

“Your Content” means Content that you or any End User transfers to the Service for processing and storage in connection with your account and any computational results that you or any End User



derive from the foregoing through their use of the Service. Your Content does not include Account Information.

**This agreement was updated February 9, 2020**