

Club Automation, LLC

2275 Half Day Road
Suite 182
Bannockburn, IL 60015

Marin Tennis Club

Renewal Agreement for Licensing the Club
Automation System.

Proposal Date: 10/23/2019

Valid Until: 10/31/2019



ClubAutomation

This renewal agreement (the “Agreement”), is entered into between Club Automation, LLC (“Club Automation”) and Marin Tennis Club (“Customer”) located at 925 Belle Avenue San Rafael CA 94101 for the provision of hosted club management software and related services with respect to the Licensed Location(s) as set forth on Exhibit B (the “Services”). The parties agree that this Agreement shall be effective as of the date of the last of the authorized representatives of the parties to sign below (“Effective Date”). Customer and Club Automation may also be referred to individually as a “Party” or collectively as the “Parties.”

1. ACCESS TO SERVICES

All Services will be provided to Customer or other Customer Users (as defined below) over the internet and, subject to and conditioned on Customer’s and its Customer Users’ compliance with the terms of this Agreement, Club Automation will use commercially reasonable efforts to make the Services available to Customer or any applicable Customer User at all times.

Customer must provide a stable internet connection required for the Services to function properly. As used herein, “Customer User” shall mean a named or specified (by password and other appropriate user identification) employee of Customer authorized by Customer to use certain Services related to Club Automation’s mobile application, user portal, and similar software and services.

Club Automation is not responsible for Customer’s or its Customer Users’ system performance or system inaccessibility, or any loss of business resulting therefrom, due to schedule downtime’s or maintenance, or any factors outside of Club Automation’s control or unrelated to the Services. Customer and its Customer Users are responsible for the security regarding their respective passwords, access and usage of the Services.

2. SERVICES NOT INCLUDED

2.1 NOT INCLUDED IN SERVICES

As this is a renewal, the Customer has received installation and training regarding the Services. Any additional installation and training regarding Customer’s use of the Services are not included unless set forth in Exhibit A of this Agreement. The items described below are the responsibility of Customer, and shall be borne by Customer or separately reimbursed by Customer to Club Automation as set forth below:

- **Hardware and POS Equipment:** Customer, at its sole cost and expense, is responsible for procuring computer hardware and POS equipment as requested by Club Automation in connection with the use of the Services.
- **Internet Connection.** Customer, at its sole cost and expense, must at all times provide a stable internet connection as required for the Services to function properly.

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3. ANNUAL LICENSE AND MAINTENANCE FEES

Subject to and conditioned on Customer's payment of the Annual Subscription Fee (as defined below) and the fees for other Services provided by Club Automation to Customer (as listed in **Exhibit B** of this Agreement), Club Automation grants Customer a non-exclusive, non-assignable and non-transferable license to use the Services for Customer's internal business purposes. Ongoing licensing and support fees are based on **an annual subscription commitment and paid in twelve (12) equal monthly installments** outlined in **Exhibit B** of this Agreement (the "Annual Subscription Fee"). **Payment of this fee, and any other fees due under this agreement shall be automatically withdrawn from the bank account indicated in subsection B of Exhibit B** (EFT Authorization Form). This fee includes:

- **Use of the Club Automation Services as described in the Exhibits to this Agreement.**
- **Phone and email support for designated personnel:** The designated Customer contacts will have access to Club Automation support during normal business hours Monday through Friday, excluding observed holidays. The license to use the Services includes training support for up to 3 Customer personnel designated by the Customer during implementation and training.
- **Periodic System updates:** Club Automation will make available to Customer and its Customer Users periodic updates, fixes, upgrades and new releases of the Services licensed under this Agreement which are made generally available from Club Automation to all Club Automation customers at no additional charge. Club Automation may, in Club Automation's sole discretion, release other modules, updates, upgrades and new releases for an additional fee.

Although the Annual Subscription Fee is an annual commitment, Customer agrees to provide, and Club Automation agrees to accept, monthly installment payments as noted above. If Customer fails to make payment of any monthly installment of the Annual Subscription Fee when due, and fails to remedy such failure within five (5) days' notice from Club Automation of such default, then Customer's access to the Services may be suspended or terminated by Club Automation, in Club Automation's sole and absolute discretion. Customer is responsible for reimbursing Club Automation for any fees or penalties incurred by Club Automation in connection with debiting from the account designated by Customer.

Support and maintenance applies only to the Services and does not extend to Customer's or its Customer Users' underlying operating systems, third-party products or services, or Customer requests beyond the scope of the Services to be provided by Club Automation as specifically set forth in this Agreement. Club Automation shall have no obligation to provide support or maintenance if the Services are altered or damaged by anyone other than Club Automation personnel.

4. CREDIT CARD AND ACH PROCESSING FEES

Customer agrees all Credit Card and ACH transaction shall be processed using Club Automation Payment Services. In addition to fees set forth in the applicable merchant processing agreement, the following fees will be charged to Customer.

ACH Processing Schedule	Fee*
ACH Transaction Fee	\$0.35 / Per Transaction
ACH Processing Maintenance Fee	\$30.00 / Month

Credit Card Processing Schedule	Fee*
Credit Card Fees	As set forth in MPA
Credit Card Gateway Maintenance Fee	As set forth in MPA

*Specific details regarding transactions addressed in this Section 4 are governed by separate merchant processing agreements or merchant applications which may have additional terms and conditions (each an "MPA"). In the event of a conflict between this Section 4 and any MPA the provisions of the MPA shall control.

Excluding Credit Card Fees (governed by MPA), the above fees are valid for twelve (12) months from the date of this Agreement after which the fees shall be at then-current rates.

Customer agrees to the terms and conditions regarding payment processing attached as **Exhibit C** hereto, which terms are expressly incorporated by reference.

5. PCI COMPLIANCE

Club Automation is PCI-DSS Level 1 compliant. PCI Attestation on Compliance (AOC) is available upon request.

6. ADDITIONAL TERMS

- 1. Term.** The parties agree that if the term of Customer's current Club Automation agreement ends other than on the last day of the month, then the term of such current Club Automation agreement shall be amended and extended to the last day of the month in which such current Club Automation agreement is set to expire. The initial term of this renewal Agreement shall commence on the first day of the month following expiration of the current Club Automation agreement, as amended by the foregoing sentence, and will continue for a period of 72 months thereafter, unless earlier terminated in accordance with the express provisions hereof (the "Initial Term"). At the expiration of the Initial Term, this Agreement shall automatically renew at then-current pricing for successive periods, each with a duration equal to the duration of the Initial Term (each, a "Renewal Term"), unless earlier terminated pursuant to this Agreement's express provisions, the Terms and Conditions (defined below) or either Party provides the other Party with written notice of its intent not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable. The Initial Term and any Renewal Terms are collectively referred to as the "Term".
- 2. Incorporation of Online Terms and Conditions.** This Agreement specifically includes and expressly incorporates by reference online terms and conditions (the "Terms and Conditions") found at www.clubautomation.com/terms, and the terms and conditions listed in Exhibit B, and also including all terms and conditions incorporated by reference therein. Customer acknowledges that Customer has reviewed the Terms and Conditions and agrees that the Terms and Conditions are an essential part of this Agreement.
- 3. Fee Increases.** The fees in this Agreement may be increased by Club Automation, provided that the percentage increase in any twelve (12) month period shall not exceed the percentage increase in the Consumer Price Index plus one percent (1%) during the period between rate changes. The Consumer Price Index means the Consumer Price Index- All Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics at www.bls.gov for the immediately preceding calendar year. The foregoing limitation does not apply to: (a) transaction fees, training fees, installation fees, or any reimbursable expenses - all of which will be available at then-current rates or, (b) services no longer offered for license or sale, or (c) when any third party provider increases the fees it charges to Club Automation beyond the limitation provided above, in which case Club Automation reserves the right to pass such additional fees on to Customer.
- 4. Entire Agreement.** This Agreement, and online Terms and Conditions, set forth the entire agreement and understanding of the Parties with respect to its subject matter hereof and supersedes all prior oral and written Agreements, agreements, arrangements and understandings between the Parties relating to such subject matter.
- 5. Governing Law/Arbitration.** The parties agree that all disputes shall be resolved in accordance with the arbitration provision contained in the Terms and Conditions, found at www.clubautomation.com/terms.
- 6. Customer Representations.** Customer represents and warrants that: (a) Customer has all requisite power and authority to execute, deliver and perform its obligations under this Agreement; (b) the execution, delivery and performance of this Agreement by Customer (1) has been duly authorized by all necessary corporate or organizational action by Customer and (2) will not conflict with, result in a breach of or constitute a default under any other agreement to which Customer is a Party or by which Customer is bound; and (c) Customer has obtained all governmental and private consents or authorizations required of Customer in connection with its obligations under this Agreement. Upon the execution and delivery by Customer, this Agreement will constitute the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.
- 7. Severability.** In the event that any term or provision in this Agreement is held to be invalid, void, illegal or unenforceable in any respect, this Agreement will not fail, but will be deemed amended, to the least extent necessary, to delete the void or unenforceable term or provision, and the remainder of this Agreement will be enforced in accordance with its terms and will not in any way be affected or impaired thereby. In the event that any term or provision of this Agreement is held to be

overboard or otherwise unreasonable, the same will not fail, but will be deemed amended only to the extent necessary to render it reasonable, and the Parties agree to be bound by the same as thus amended.

8. **Relationship of the Parties**. It is agreed that the relationship of the Parties is primarily that of licensee/licensor and independent contractors. Nothing herein shall be construed as creating a joint venture, partnership, employment relationship, or agency relationship between the Parties, or as authorizing either party to act as agent for the other. Each Party maintains its separate identity.
9. **Notices**. Unless expressly stated otherwise herein, any notice, demand, request or delivery required or permitted to be given by either Party pursuant to the terms of this Agreement shall be in writing and shall be deemed given (a) when delivered personally, (b) on the next business day after timely delivery to an overnight courier, (c) on the third business day after deposit in the U.S. mail (certified or registered mail return receipt requested, postage prepaid), or (d) upon confirmation of receipt by email, in each case, addressed to the Party at such Party's address as set forth on the signature page of this Agreement or as subsequently modified by written notice.
10. **Assignment**. Without the prior written consent of the other Party, neither Party may assign this Agreement, other than to a successor to its business through merger, acquisition or sale of all or substantially all of its assets; provided that such successor agrees to be bound by the terms of this Agreement. This Agreement shall inure to the benefit of, and be binding upon, permitted successors and assigns of the Parties.
11. **Amendments and Modifications; Waivers**. No provision of this Agreement may be amended, modified or waived except by written instrument duly executed by both Parties in the case of an amendment or modification or by the Party against whom the waiver is to be effective in the case of a waiver. Waiver of any breach of this Agreement shall not constitute the waiver of another breach. The waiver or failure of either Party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement. Failing to enforce a provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision.
12. **Captions**. Headings and captions contained in this Agreement are inserted as a matter of convenience and for reference only and in no way define, limit, extend or prescribe the scope or intent of this Agreement or any particular section, paragraph, or provision.
13. **Attorney's Fees**. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement in accordance with the dispute resolution procedure in the Terms and Conditions, the prevailing Party in such action shall be awarded its reasonable attorneys' fees and costs incurred.
14. **Counterparts**. This Agreement may be executed in counterparts, by means of original, facsimile or portable document format (.pdf), or electronic signatures, each of which shall be deemed to be an original of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.
15. **First Data Approval**. Should First Data fail to approve the customer's merchant processing application, CA may, in CA's sole discretion, terminate this Agreement with respect to all or a portion of the Services upon written notice.

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{Signatures page to follow}

Each of the parties, by the signatures of their respective authorized representatives below, hereby agrees to the terms and conditions stated in this Agreement.

Club Automation, LLC.**Marin Tennis Club**Signature: Winston GillumSignature: Chris Horne

Name: Winston Gillum

Name: Chris Horne

Title: Chief Financial Officer

Title: General ManagerDate: 10/29/2019Date: 10/28/2019

Address for Notices Club Automation, LLC

Attn: Legal Department

Club Automation c/o Daxko, LLC

600 University Park Place, Suite 500

Homewood, AL 35209

legal@daxko.com

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EXHIBIT A | TRAINING PLAN

The parties agree that as this is a renewal agreement, the Services have been implemented and Customer has received training provided under the original agreement. No additional training or implementation services are included with this Renewal Agreement.

Reimbursable Expenses:

- In addition to the fees set forth in this Agreement, Customer shall reimburse Club Automation for out-of-pocket expenses, including travel expenses (flight, rental car, hotel, meals) incurred in providing any on-site training (“Reimbursable Expenses”).
- Reimbursable Expenses will be automatically withdrawn from the Customer bank account indicated in the Electronic Funds Transfer (EFT) Authorization Form attached to this Agreement, and Club Automation will provide the Customer with an itemized expense report for incurred expenses within 30 days of the completion of the relevant services.

EXHIBIT B | SERVICE PRICING AND LOCATIONS

Dated as of: 10/23/2019

The following table contains the Services to be provided by Club Automation to Customer, including the fees and additional terms and conditions associated with such Services. This Exhibit B may be amended or modified by the Parties at any time, but only in a writing executed by both Parties.

Name	Price Per Location	Number of Locations	Payable
Software License	\$725.00	1	Monthly
SMS Text Messaging \$0.01 per text over 5,000 per month limit, minimum \$100.00/month	\$100.00	1	Monthly

Total Monthly **\$825.00**

Service	Terms and Conditions
Club Automation	www.clubautomation.com/terms/
SMS Text Messaging	www.clubautomation.com/text-terms/

Customer agrees to be bound by the above-listed Terms and Conditions which are expressly incorporated by reference.

A. LICENSED LOCATIONS

As of the date of this Exhibit B, the below location will be considered a Licensed Location.

Licensed Location	Address
Marin Tennis Club	925 Belle Avenue, San Rafael, CA 94101

{Remainder of page left intentionally blank}

B. ELECTRONIC FUNDS TRANSFER (EFT) AUTHORIZATION

Customer hereby authorizes CA to debit Customer's designated bank account to be identified to CA via separate documentation, for the full amount of all fees, expenses and reimbursements then due under this Agreement. Customer shall maintain sufficient funds in Customer's designated bank account at all times during the Term of this Agreement to enable CA to

debit such accounts for the fees, expenses and reimbursements then due under this Agreement, the failure of which shall constitute a default for the failure to pay all such amounts. Customer shall provide an updated authorization form to CA promptly upon any relevant changes to the information set forth therein. Customer is responsible for reimbursing CA for any fees or penalties incurred by CA in connection with debiting from the account designated by Customer.

EXHIBIT C | ADDITIONAL PAYMENT TERMS

1. Customer acknowledges that CA is not a financial or credit reporting institution. CA is responsible only for providing data transmission to effect or direct certain payment authorizations for Customer (or its customers) and is not responsible for the results of any credit inquiry, the operation of websites or internet service providers, financial institutions, financial processors, the availability of the internet, or for any damages or costs that Customer may suffer or incur as a result of any instructions given, actions taken or omissions made by Customer or its authorized users, Customer's financial processor, financial institution, or internet service provider. CA is not a party to, and shall not be responsible for the resolution of, any dispute between Customer and a purchaser of Customer's goods or services.
2. Customer is solely responsible for the accuracy and completeness of all data provided by Customer or its authorized users. Customer represents and warrants that Customer will comply with all laws and regulations applicable to Customer's use of the Services and agrees to use the Services only as permitted by applicable law, including but not limited to export control and financial services laws and regulations.
3. CA adheres to Payment Card Industry Data Security Standards ("PCI DSS"). CA reserves the right to temporarily suspend access to the Services in order to minimize threats to the security and to protect operational stability and security of the Services. CA does not guarantee the security of the Services and will not be responsible for any infiltration of its security systems so long as CA has used commercially reasonable efforts to prevent such infiltration in compliance with PCI DSS. In no event will CA be liable for transaction processing or other services performed by any third party.
4. Customer acknowledges and agrees that CA shall have the right to suspend the services and terminate this Agreement upon the occurrence of any event giving rise to termination of the MPA between Customer and the third party provider.
5. CA may suspend Customer's access to the Services immediately, without advance notice, if: (i) certain third party licenses or access to third party components of the Services are terminated; (ii) Customer causes or fails to fix a security breach relating to the Services; (iii) CA reasonably believes Customer's breach compromises the security of the Services; (iv) CA reasonably believes fraudulent transactions are being submitted on Customer's account knowingly or negligently; (v) Customer's financial processor or financial institution requires such suspension; (vi) Customer fails to pay any fees when due; (vii) Customer fails to upgrade to the most current software version, security updates and/or patches; or (viii) Customer fails to materially comply with this Agreement or the MPA.
6. Customer agrees that the disclaimers, exclusions, and limitations of remedies, liability and damages provisions set forth in the MPA are incorporated by reference and shall apply to the Services provided by CA hereunder, the same as if those provisions were stated herein, with CA's liability hereunder limited to the full extent allowed by such provisions.

Signature Certificate

Document Ref.: XANQZ-KMHTP-EYRQJ-DTZBO

Document signed by:

	Chris Horne Verified E-mail: manager@marintennisclub.com	<i>Chris Horne</i>
IP: 76.218.119.90 Date: 28 Oct 2019 20:53:00 UTC		

	Winston Gillum Verified E-mail: wgillum@daxko.com	<i>Winston Gillum</i>
IP: 74.11.33.194 Date: 29 Oct 2019 13:09:47 UTC		

Document completed by all parties on:

29 Oct 2019 13:09:47 UTC

Page 1 of 1



Signed with PandaDoc.com

PandaDoc is the document platform that boosts your company's revenue by accelerating the way it transacts.

