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**EVENT RENTAL SYSTEMS**  
**SERVICES AGREEMENT**

Revision July 24, 2022

**By clicking "I Agree," as an individual or as an authorized representative of customer, you as customer or customer which you represent ("Customer"), agree to be bound by all terms and conditions of this Services Agreement ("Agreement"), including, without limitation, all documents, policies, and procedures incorporated herein by reference.** The term of this Agreement shall begin, and the terms of the Agreement shall be deemed accepted and binding the date Event Rental Systems Software, LLC ("ERS") gives Customer access to its services (the "Effective Date"). Customer and ERS may each be referred to as a Party and Customer and ERS taken together, may be referred to herein as the Parties.

**1. DEFINITIONS.**

For purposes of this Agreement, the definitions set forth below shall be applicable:

1.1 "Authorized User" means an individual who is an employee, agent or contractor of Customer and who Customer has authorized to use the Services on behalf of Customer and who agrees to be bound by the terms of this Agreement.

1.2 "Front End Code" means the user interface display and platform, including but not limited to the layout, color scheme, html pages and source code.

1.3 "Back End Code" means the ERS application specific source code, including but not limited to the database schema, field definitions, table relationships, marketing automation, work flow management, application methodology and interface coding.

**2. OWNERSHIP.**

2.1 LICENSE. SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, ERS HEREBY GRANTS TO CUSTOMER A NONEXCLUSIVE, NONTRANSFERABLE LICENSE TO ESTABLISH ONLINE ACCESS TO THE ERS SERVICES TO PERFORM CONTACT MANAGEMENT, AUTOMATED MARKETING, LEAD TRACKING AND OTHER RELATED BUSINESS FUNCTIONS AS THE SERVICES ARE DESIGNED TO PERFORM.

2.2 Title. ERS shall retain all right, title, and interest (including all copyrights, patents, service marks, trademarks and other intellectual property rights) in and to the ERS application software, including any and all updates, enhancements, customizations, revisions, modifications, future releases and any other changes thereto, and all related information, material and documentation. Except for the license granted pursuant to this Agreement, Customer shall not acquire any interest in the ERS application software, materials, or any copies or portions thereof, provided by ERS pursuant to this Agreement.

2.3 Customer Data. Any Customer-specific data provided to ERS hereunder, either in hard copy or electronic format is and shall remain Customer's property.

2.4 Rights Retention. ERS shall retain all rights to proprietary application development, business and technical methodologies, implementation, business processes and all other aspects of ERS' Services. Under no circumstances, is the Customer permitted to use any Front or Back End Code for other than the intended design and implementation for which this Agreement was executed. The technology and business methodologies are proprietary and the sole property of ERS.

### **3. Registration and Responsibilities.**

3.1 Registration. Access to the Services is limited to Customers to whom ERS has issued a user identification and password. Customer represents that all information provided to ERS in connection with Customer's registration is accurate and up-to-date. Customer agrees to maintain and promptly update its registration information to keep it accurate and updated. If Customer provided or provides any registration information that is untrue, inaccurate, not current or incomplete or otherwise fails to comply with this Agreement, or if ERS has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete or that Customer has otherwise failed to comply with this Agreement, ERS has the right, without prior notice to Customer, to suspend or terminate Customer's account and refuse any and all current or future use of all or any portion of the Services.

3.2 Customer's Responsibilities. Customer (i) must keep its passwords secure and confidential, (ii) is solely responsible for its Customer data and its use of the Services, (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify ERS promptly of any unauthorized access, and (iv) may use the Services provided by ERS only in accordance with this Agreement and applicable law.

3.3 Email and SMS Features. In the event that Customer chooses to use the email and/or the SMS features, Customer represents and warrants that Customer has a current relationship with each person to whom an email or text message is to be sent. Customer is solely responsible for ensuring that the email and/or SMS feature(s) are utilized in a manner that complies with local, state, and federal laws, rules and regulations. This includes, but is not limited to, compliance with applicable email and telemarketing laws such as the CAN-SPAM Act and Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, the EU ePrivacy Regulation, and comparable state laws. Moreover, Customer represents and warrants that each person to whom an email and/or text message is to be sent has specifically granted Customer permission to do so by whatever technology Customer chooses; and opt-outs are provided pursuant to applicable law, rule or regulation. Customer is responsible for the content and will be identified as the sender of each email and/or text message sent on Customer's behalf. Customer acknowledges that Customer is responsible for obtaining any and all permissions required to use the email and SMS features.

3.4 Compliance with laws and regulations. Customer shall abide by this Agreement and all applicable laws and regulations, including but not limited to Title III of the Americans with Disabilities Act ("ADA") and New York's state and city level Human Rights Act, and

California's Unruh Civil Rights Act and Consumer Privacy Act. Customer shall not transfer, use or export Services in violation of any laws or regulations of any government or governmental agency. Customer shall only use the Services for a lawful purpose.

3.5 Customer is solely responsible for compliance with applicable PCI-DSS requirements; ERS has no obligation to assist with PCI-DSS requirements in any way. Any assistance provided by ERS, or by ERS's employees, contractors, agents, representatives or other related persons, at the request of Customer, is provided without warranty or liability.

#### **4. FEES.**

4.1 Customer shall pay ERS the fees as specified for the Services chosen by Customer at the execution of this Agreement (the "Fees"). ERS shall charge Customer for the Services, Setup, and Implementation Fees immediately upon execution of this Agreement. Thereafter, ERS shall charge Customer on a pre-paid basis for all Fees. All charges for Fees shall be due and payable to ERS within thirty (30) days of the date of the invoice. Any charges not paid when due are subject to interest at a rate equal to the lesser of: (i) one and one-half percent (1.5%) per month; or (ii) the maximum interest rate allowed by applicable law.

4.2 Customer must pay any fees charged by ERS for access and use of the Services. Should Customer fail to pay the fees in a timely manner, ERS reserves the right to restrict Customer's access to the Services until the fees are paid in full, to cancel Customer's account or to exercise any other remedies available to ERS at law or in equity.

4.3 Customer shall be solely responsible for and agrees to pay, indemnify, and hold ERS harmless from any and all sales, use, communications, excise, or similar tax or duty, and any other tax not based on ERS' net income, including penalties and interest and any associated professional fees, and all other imposts levied upon or chargeable with respect to the use, license, sale, or delivery of the services or other deliverables in respect of this Agreement, and any costs associated with the collection or withholding of any of the foregoing items.

#### **5. CONFIDENTIALITY.**

5.1 The Parties agree that any and all materials, documentation and information pertaining to a Party is the confidential property of that Party ("Confidential Information"). The Party receiving the Confidential Information, including such Party's employees, officers, directors and agents, (collectively, the "Receiving Party") shall hold in confidence all Confidential Information and shall not disclose or distribute Confidential Information, or any portion thereof, in any form or format to any person except on a strict "need to know" basis for the purposes of this Agreement, or as required by legal process. Customer agrees that it shall not copy, alter, decompile, disassemble, reverse engineer, or otherwise modify (except with ERS' prior written consent) or directly or indirectly disclose any ERS Confidential Information. Confidential Information under this Section 4 shall not include information that: (i) is or has become publicly available without restriction through no fault of the Receiving Party; or (ii) has been received without restriction from a third party lawfully in possession of such information.

## **6. TERM AND TERMINATION.**

6.1 Term. The term of this Agreement begins on the date ERS gives Customer access to its Services (the “Effective Date”) and shall continue for a period of one (1) year (the “Initial Term”). Thereafter the Agreement shall be automatically renewed for additional terms of one (1) month (each a “Renewal Term”) unless either Party notifies the other no later than thirty (30) days prior to the end of the then current term that it does not wish to renew the Agreement.

6.2 Return of Data. In the event of termination or expiration of this Agreement, all Fees due and payable to ERS must be paid in full. At ERS’ discretion, upon its receipt of all such Fees, or after notice of Customer’s intent to terminate has been received by ERS, ERS will make all Customer data available to Customer for a period of thirty (30) days. Thereafter, an active Agreement will be required for Customer to access its Customer Data.

## **7. WARRANTIES/LIMITATION OF LIABILITY/INDEMNIFICATION.**

7.1 DISCLAIMER OF WARRANTIES. ERS DISCLAIMS ALL WARRANTIES WITH REGARD TO THE ERS APPLICATION SOFTWARE AND SERVICES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, NO INFRINGEMENT, UNINTERRUPTED SERVICE OR FITNESS FOR A PARTICULAR PURPOSE. ERS FURTHER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE RELATED TO ANY CONFIGURATION, REPAIR, UPDATE, INSTALLATION OR OTHER WORK DONE ON THE CUSTOMER’S PREMISES BY AN EMPLOYEE, CONTRACTOR, AGENT, OR OTHER THIRD PARTY OF OR UNDER CONTRACT WITH ERS.

7.2 LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF DATA, LOSS OF BUSINESS OR OTHER LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE PARTY’S REMEDIES FAIL FOR THEIR ESSENTIAL PURPOSE. THE FOREGOING SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE. Notwithstanding the foregoing, in no event shall ERS’ cumulative liability under this Agreement exceed the amount actually paid by Customer to ERS in the six (6) month period prior to the date of the incident giving rise to the liability.

7.3 Customer Warranty. Customer represents and warrants that it shall, at all times, comply with, and shall remain solely responsible for compliance with, all applicable federal, state and local laws and regulations.

7.4 ERS will indemnify, hold harmless and defend Customer against any third-party action brought against Customer to the extent that such action is based on a claim that ERS' unmodified software and Services ("Solution"), when used in accordance with the applicable documentation, infringes a third-party copyright, patent, trade secret, or other property right and ERS will pay all costs, settlements and damages awarded; provided, that Customer promptly notifies ERS in writing of any claim, gives ERS sole control of the defense and settlement and provides all reasonable assistance in the defense. If the Solution is found to infringe, or in ERS' opinion may become the subject of a claim, ERS may, at its option, either (i) procure for Customer the right to continue using the Solution, (ii) modify or replace the Solution to make it non-infringing, or (iii) refund the fee paid, less reasonable depreciation, upon return and/or cease use of the Solution. ERS will have no liability regarding any claim arising out of: (i) use of other than a current release of the Solution, unless the infringing portion is also in the then current release, (ii) use of the Solution in combination with other software, data or equipment if the infringement was caused by such use or combination, or (iii) any modification or derivation of the Solution not specifically authorized in writing by ERS.

7.5 Customer shall indemnify defend, and hold harmless ERS, including its employees, agents, subsidiaries, affiliates, and its directors, officers, shareholders and owners, from and against all losses, liabilities, judgments, awards, settlements, damages, fines, injuries, penalties and costs (including reasonable legal fees and expenses), including but not limited, personal injury (including death) and real and/or tangible property damage, resulting from any third party claim, suit, or action directly or indirectly based upon or resulting from Customer's negligence, willful misconduct under this Agreement or the use of the Services by Customer and its authorized users.

## **8. GENERAL PROVISIONS.**

8.1 Amendment. ERS may amend this Agreement from time to time by posting an amended version on its website. Such amendment will be deemed accepted and become effective ten (10) business days after such posting (the "Amendment Date"). Customer's continued use of the Services following the Amendment Date will confirm Customer's consent thereto, provided that Customer may terminate this Agreement with ten (10) days prior written notice without penalty or liability.

8.2 Assignment. Customer may not assign this Agreement or any of its rights or obligations hereunder without ERS' express written consent, and such consent shall not be unreasonably withheld. This Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

8.3 Independent Contractor. Each of the Parties is an independent contractor, and this Agreement does not in any way create the relationship of principal and agent, franchisee, joint venture, or partnership between the Parties. Neither Party shall be liable for any debts or obligations of the other.

8.4 Entire Agreement; Precedence. This Agreement, as it may be amended from time to time, and any Exhibit(s) (which may be attached hereto or incorporated by reference) contain the entire understanding between the Parties and supersede any prior verbal or written agreement

between the Parties with respect to the subject matter hereof. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any term or condition of any Exhibit hereto, the terms and conditions of this Agreement shall, in all instances, govern and control.

8.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby. In case of any dispute related to this Agreement, the Parties agree to submit to personal jurisdiction in the State of Delaware. Furthermore, the Parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any court of the State of Delaware or any federal court sitting in the State of Delaware for purposes of any suit, action or other proceeding arising out of this Agreement. **THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THE TERMS, OBLIGATIONS AND/OR PERFORMANCE OF THIS AGREEMENT.**

8.6 Force Majeure. Neither Party shall be in default hereunder by reason of its delay or failure to perform any of its obligations hereunder for any event, circumstance, or cause beyond its reasonable control such as, but not limited to, acts of God, strikes, lock-outs, general governmental orders or restrictions, war, threat of war, hostilities, revolution, acts of terrorism, riots, epidemics, fire, earthquake, or flood. The performance of this Agreement shall then be suspended for as long as any such event shall prevent the affected Party from performing its obligations under this Agreement.

8.7 Invalidity; Waivers. If any provision or portion of this Agreement is held invalid, illegal, void or unenforceable by reason of any rule of law, administrative or judicial provision or public policy, then such provision shall be construed as being enforceable to the allowed maximum extent permitted by applicable law. All other provisions of this Agreement shall nevertheless remain in full force and effect. Neither of the Parties shall be deemed to have waived any of its rights or remedies hereunder unless the waiving Party expresses such a waiver in writing.

8.8 Notices. All notices, demands, and other communications provided for hereunder shall be in writing and mailed (by certified mail, return receipt requested), sent, or delivered (including by way of overnight courier service), to each Party, to such other person and/or at such other address or number as shall be designated by such Party in a written notice to the other Party. All such notices, demands, and communications shall be effective when received, unless otherwise stated herein.

8.9 Marketing. The Parties hereto agree that each Party has the right to use the other Party's name and credentials in appropriate marketing promotions. Appropriate marketing promotions include, but are not limited to, client listings, press releases, surveys, interviews, reputable business publications, television and website presentations and promotions.

8.10 Survival of Terms. Notwithstanding the expiration or earlier termination of this Agreement for any reason, the provisions of Sections 2.2, 2.4, 5 and 7 of this Agreement shall remain in full force and effect.





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8.11 Headings. Headings used herein are for convenience purposes only and shall not affect the construction or interpretation of any provisions of this Agreement.