

## ENTERTAINMENT SERVICES

### TERMS AND CONDITIONS OF THE PROFESSIONAL SERVICES AGREEMENT

- 1. SERVICES.** ENTERTAINMENT SERVICES (“COMPANY”) shall provide to CUSTOMER the services, equipment and manpower as set forth in the Professional Services Agreement and Quote (the “Agreement”). In the event CUSTOMER rents any equipment from COMPANY the Special Terms and Conditions for Rentals in Exhibit A, attached hereto and incorporated herein by reference, shall also apply to the transaction.
- 2. COMPENSATION AND FEES.** In consideration of the services to be performed by COMPANY, CUSTOMER agrees to pay COMPANY the amounts set forth in the Agreement. The amounts shall be inclusive of any and all applicable taxes. All delinquent balances shall bear interest at the highest lawful rate allowed in the State of Florida.
- 3. RELATIONSHIP OF THE PARTIES.** Nothing in this Agreement will create, or shall be construed to create, any partnership, joint venture, franchise, agency, or employment relationship between the parties. It is understood and agreed that, in performing services for CUSTOMER, COMPANY shall act in the capacity of an independent contractor and not as the agent or employee of CUSTOMER. Each party shall, with respect to its own employees, comply with all requirements of State and Federal law with respect to Federal Withholding Tax, Social Security, State Withholding Tax, Unemployment Compensation, State Disability laws, Workers Compensation, and any other applicable laws affecting or regulating the employer/employee relationship. COMPANY will not contribute to or participate in CUSTOMER’s benefit programs including, but not limited to, life insurance, hospitalization and workers compensation.
- 4. INSURANCE.** COMPANY maintains comprehensive or commercial general liability insurance policy and workers compensation insurance as required by law. COMPANY agrees to provide CUSTOMER certificates of insurance upon request and name CUSTOMER as an additional insured as required by CUSTOMER.
- 5. INDEMNIFICATION.** COMPANY shall defend, indemnify, and hold harmless CUSTOMER and its affiliates, shareholders, directors, officers, agents and employees from and against any and all claims, demands, and litigation (collectively “Claims”) and any and all liability, loss, damages or expenses, including reasonable outside attorneys’ fees (collectively “Costs”) arising directly from the negligence or willful misconduct of COMPANY, its agents or employees in performing under this Agreement. Notwithstanding the foregoing, in no instance shall COMPANY be liable to CUSTOMER for any incidental, special, consequential or punitive damages.
- 6.** CUSTOMER shall defend, indemnify, and hold harmless COMPANY and its affiliates, shareholders, directors, officers, agents and employees from and against any and all claims, demands and litigation (collectively “Claims”) and any and all liability, loss, damages or expenses, including reasonable outside attorneys’ fees (collectively “Costs”) arising from any negligent or intentional acts or omissions of CUSTOMER, its agents or employees. Notwithstanding the foregoing, in no instance shall CUSTOMER be liable to COMPANY for any incidental, special, consequential or punitive damages.

CUSTOMER shall be responsible for the payment of any sales, use, excise, value added, services, consumption, or other transaction taxes (other than income taxes) that are assessed on COMPANY arising from the services described in paragraph 1 of this Agreement. Should any taxing authority assess, demand, collect, or otherwise make a claim for the payment of any taxes in connection with this Agreement against COMPANY, CUSTOMER agrees to indemnify COMPANY for any such taxes, including any fees, penalties, or interest due thereon. This obligation of CUSTOMER to indemnify COMPANY arises upon an assessment, demand, collection or other claim for payment by a taxing authority upon COMPANY. In the event of such obligation arising, COMPANY shall issue a written notice to CUSTOMER.

The obligations of this Section 5 shall survive any termination or expiration of the Professional Services Agreement.

**7. CONFIDENTIALITY.** COMPANY shall not disclose, without the prior written consent of CUSTOMER, any confidential or proprietary information that CUSTOMER provides or to which COMPANY gains access in connection with the services rendered by COMPANY to CUSTOMER under this Agreement. It is understood, that confidential or proprietary information does not include information that: (i) has entered the public domain without COMPANY's breach of any obligation of this Agreement, (ii) was known to COMPANY prior to CUSTOMER'S disclosure of such information to COMPANY, and (iii) is obtained from a third party without violation of an obligation of non-disclosure and without restriction on its disclosure. COMPANY shall not be in breach of this Agreement if required to disclose confidential or proprietary information in order to comply with a subpoena or court order or otherwise as required by law.

**8. PUBLICATIONS/PUBLICITY.** No publicity releases (including news releases and advertising) relating to this Agreement and the services hereunder including announcements upon contract execution shall be issued by COMPANY without the prior written approval of CUSTOMER, in its sole discretion.

**8. WARRANTIES.** COMPANY represents and warrants that the services provided hereunder will be free from any known deficiencies and will be in accordance with CUSTOMER's instructions, specifications or supplied documentation. COMPANY will correct any deficiencies or errors in the Services delivered at no cost to CUSTOMER. COMPANY further warrants and represents that the individual(s) providing Services hereunder are qualified to perform the Services and have been assigned by COMPANY to provide the services to CUSTOMER. As to any Services and any works or materials resulting there from, COMPANY represents and warrants that COMPANY owns or has all rights necessary to convey all the rights herein conveyed to CUSTOMER and such Services and/or materials do not infringe upon any copyright, trademark, trade secret, or other right or the privacy of others.

**9. TERMINATION.** CUSTOMER may immediately terminate COMPANY's services at any time for special cause including, but not limited to: (i) felonious acts committed by a COMPANY employee, (ii) if COMPANY becomes insolvent, or makes an assignment for the benefit of creditors, (iii) if COMPANY commences any proceeding in bankruptcy; (iv) breach of CUSTOMER security/confidentiality, (v) failure to deliver services promised on a timely basis; or (vi) breach of the terms of this Agreement which isn't cured within three (3) days of COMPANY's receipt of written notice of such breach. In such case, COMPANY shall be entitled to its time

and reasonable out-of-pocket expenses authorized in writing by CUSTOMER prior to the date of termination.

**10. POSSESSION/CONTROL/USE.** COMPANY shall be in possession, control, and custody of the equipment at all times. COMPANY shall be the sole user and operator of the equipment. CUSTOMER shall not have the right to physically use or operate the equipment. CUSTOMER shall not have the right to direct COMPANY as to the physical use or operation of the equipment. The manner of physical use and operation of the equipment shall be determined solely by COMPANY.

**11. LIMITATION OF LIABILITY. THE PARTIES EXPRESSLY DISCLAIM ANY AND ALL INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO LOST REVENUE OR PROFITS, IN CONNECTION WITH THIS AGREEMENT, OR ARISING FROM THE RELATIONSHIP OF THE PARTIES OR THE CONDUCT OF BUSINESS BETWEEN THEM.**

**12. GOVERNING LAW / VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. All actions, claims and disputes arising or relating to this Agreement shall be brought and maintained exclusively in the courts for Duval County, Florida.

**13. ATTORNEYS' FEES.** If an action is brought arising out of or in connection with the Agreement (including the collection of any amounts owed to COMPANY hereunder), the prevailing party shall be entitled to recover reasonable outside attorneys' fees and other costs and expenses incurred in such action or proceeding.

**14. WAIVER OF JURY TRIAL.** CUSTOMER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY. The parties further agree that the waiver of trial by jury is a material inducement for COMPANY to provide services to Customer.

**15. NOTICES.** All notices given with respect to this Agreement shall be in writing and given to COMPANY at its Corporate Headquarters in St. Augustine, FL as listed below and delivered by U.S. registered mail, return receipt requested, facsimile, email, overnight courier or personal delivery (with corresponding evidence of delivery).

ENTERTAINMENT SERVICES  
500 World Commerce Parkway  
St. Augustine, FL 32092

**16. WAIVER.** A failure or delay by COMPANY to exercise any right or power under this Agreement or require the performance of any term in this Agreement shall not be construed as a waiver thereof. A waiver by COMPANY under this Agreement shall not be effective unless it is in writing and executed by an authorized representative.

**17. FORCE MAJEURE.** Neither party shall be liable, for any failure of performance hereunder due to causes beyond its control, including, but not limited to, acts of God (such as lightning, fire, flood, hurricane, tornado or other catastrophe), insurrections, riots, wars, or acts of terrorism. If a force majeure event precludes performance by a party, then the other party

shall be excused from performing its obligations hereunder during the period of non-performance of the party suffering the force majeure event and if such party is unable to perform for a period exceeding fourteen (14) days then in such event, the other party shall have the right to terminate this Agreement by written notice, whereupon all parties shall be excused from further performance hereunder.

**18. AMENDMENTS/COUNTERPARTS/SPECIAL TERMS AND CONDITIONS.** This Agreement may only be amended by a writing signed by both parties. This Agreement may be executed in multiple counterparts. Facsimile signatures of each party's authorized representative shall be deemed to be binding upon such party. If the transaction between the parties involves a bare or "dry-hire" rental, then Exhibit A, which contains additional special terms and conditions, shall be applicable to the Agreement. To the extent there is a conflict between the special terms and conditions contained in Exhibit A and the terms contained herein, the special terms and conditions of Exhibit A shall control.

**19. DRAFTING.** This Agreement has been negotiated and drafted by the parties and shall be fairly interpreted in accordance with its terms without any presumption or strict construction in favor of, or against, either party.

**20. COMPLIANCE WITH LAWS AND STATUTES.** The parties shall comply with all applicable laws, statutes, ordinances and regulations of all federal, state, county, municipal or local governments, and of any and all of the departments or bureaus thereof applicable to the transaction of its business, including, but not limited to, all laws and regulations affecting Equipment and its use, erection, design and transportation, including licensing and building code requirements.

**21. SEVERABILITY.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, then the remaining provisions of this Agreement, to the fullest extent allowed by law, shall be valid and enforceable.

**22. HEADINGS.** The headings in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement for any other purpose, and shall not affect the construction or interpretation of any of its provisions.

**23. REMEDY.** COMPANY agrees that the sole remedy of COMPANY in the event of any breach by CUSTOMER hereunder or in connection with this Agreement shall be an action at law against CUSTOMER to recover monetary damages incurred. COMPANY agrees not to seek injunctive relief to enjoin the exhibition or project.

**24. ENTIRE AGREEMENT.** This Agreement together with the Quote and orders constitutes the entire agreement between COMPANY and CUSTOMER and supersedes any prior written or oral agreements, or contemporaneous communications with respect to this subject matter. Parol or extrinsic evidence will not be used to vary or contradict the express terms of this Agreement.

CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, BY VIRTUE OF SECTION 14 OF THESE TERMS AND CONDITIONS, THEY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ALL LITIGATION BETWEEN THE PARTIES.

**Exhibit A**  
**PROFESSIONAL SERVICES AGREEMENT**  
**SPECIAL TERMS AND CONDITIONS FOR RENTALS**

This Exhibit A contains special terms and conditions that shall apply **only** to those transactions that involve the rental of equipment and/or other materials by CUSTOMER from COMPANY exclusive of services being provided by COMPANY. To the extent there is a conflict between the terms of the Agreement and this Exhibit A, the terms of this Exhibit A shall control in regard to the rental transaction:

**A. INSURANCE:** CUSTOMER shall at its own expense, during the term thereof, maintain in force a policy of general liability with a limit of at least \$1,000,000 with bodily injury and death liability limits of at least \$1,000,000 for each person in each accident on a primary and not excess or contributory basis against its liability for damages sustained by any person or persons including but not limited to employees of CUSTOMER, as a result of the maintenance, use, operation, storage erection, dismantling, servicing or transportation of such equipment and materials. Also, at CUSTOMER's expense, CUSTOMER shall insure the equipment and materials for its full replacement value under a standard physical damage ALL RISKS POLICY with an insurance company acceptable and approved by COMPANY. CUSTOMER shall furnish COMPANY a certificate of such insurance naming COMPANY as an additional insured for the full rental period, which policy may not be cancelled or materially modified except on thirty (30) days prior to written notice to COMPANY. CUSTOMER agrees to abide by the provisions of said policy and to make a written report to COMPANY and the insurer within forty-eight (48) hours of CUSTOMER's knowledge of any accident or occurrence involving such equipment and materials. CUSTOMER's agents and employees shall cooperate fully with COMPANY and CUSTOMER'S insurer in the investigation, prosecution and/or defense of any claim or suit and shall do nothing to impair or invalidate any applicable insurance coverage. CUSTOMER's insurance shall also insure except as may be otherwise provided herein, against all risks of direct physical loss or damage to the equipment and materials, while in transit or otherwise within the United States of America and Canada, and shall also include general average and salvage charges on equipment and materials while waterborne.

**B. INDEMNIFICATION:** CUSTOMER shall defend, indemnify, and hold harmless COMPANY, its subsidiaries and affiliated companies, their officers, agents and employees against all loss, liability, expenses, including reasonable attorney's fees, damages including, but not limited to, property damage, personal injury, or strict liability arising out of or in connection with the maintenance, use, operation, storage, erection, mantling, dismantling, or transportation of COMPANY's equipment. Upon receipt of any notice of Claim or receipt of applicable information giving rise to a potential claim, COMPANY shall promptly notify CUSTOMER of same and CUSTOMER shall have the right to assume the defense of such claim. COMPANY may, in its sole discretion, participate in any such defense. The terms and conditions of this indemnification agreement shall survive the termination or expiration of this Agreement.

**C. 24 HOUR SECURITY.** CUSTOMER shall, at its own expense, provide reasonable security for the equipment and material furnished at all times during the terms of this Agreement. Such security shall consist of 24 hours per day surveillance by security guards and/or event personnel who serve a security function.