

Subscription Order



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sales@eventable.com

Eventable Subscription Order Form

Customer: _____
Primary Contact: _____
Contact Phone: _____
Contact Email: _____
Address: _____

Subscription Term: 12-months, beginning on the Effective Date

Plan Type: Eventable _____ @ \$ _____ per Month
Discounts: _____ %
Plan Price: \$ _____ per Month
Billing Cycle: [Annual/Monthly]

Onboarding Fee: \$ _____

Due at Signing: \$ _____

Eventable Master Subscription Agreement

This Master Subscription Agreement ("**Agreement**") is entered into on this _____ day of _____, 2017 (the "**Effective Date**") between Eventable, Inc., a Delaware corporation having a principal business address at 415 Madison Ave. 4th Floor New York, NY 10017 ("**Eventable**"), and the Customer listed above ("**Customer**"). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations.

EVENTABLE, INC.

CUSTOMER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Eventable Terms and Conditions

1.0 Scope; Procurement and Provisioning by Affiliates; Subscription Services; Customer Users.

- 1.1 **Scope.** This Agreement applies to Customer's use of the online subscription services and related online training and packaged professional services offered by Eventable (collectively, the "**Subscription Services**") that are listed in one or more Eventable subscription-based ordering documents signed by the parties (each an "**Order**"). This Agreement and all executed Orders, including any addenda and exhibits and other documents referenced herein, are collectively referred to as the "**Agreement**." All capitalized terms not defined herein will have the meanings attributed to them in the Order.
- 1.2 **Procurement and Provisioning by Affiliates.** Customer may procure Subscription Services under this Agreement for its own account and on behalf of one or more Customer Affiliates (defined below). Customer is responsible for the acts and omissions of Customer Affiliates under any Order pursuant to which the Customer Affiliate receives the benefit of the Subscription Services but is not a signatory. Additionally, Customer Affiliates may procure Subscription Services directly under this Agreement pursuant to an Order executed by such Customer Affiliate and either Eventable or an Eventable Affiliate. Customer Affiliates who sign an Order will be deemed to be the Customer hereunder and solely responsible for its performance or non-performance thereunder. The Eventable Affiliate who signs an Order will be deemed to be Eventable hereunder and solely responsible for its performance or nonperformance thereunder. "Affiliate" means any legal entity directly or indirectly controlling, controlled by or under common control with a party, where control means the ownership of a majority share of the stock, equity or voting interests of such.
- 1.3 **Subscription Services; Customer Users.** During the "**Subscription Term**" set forth in each Order (which may be terminated early as set forth herein or therein), Eventable will make the Subscription Services available to Customer and its authorized Affiliates, and their respective employees, agents or contractors ("**Customer Users**"), for access and use by such Customer Users solely for Customer's internal business purposes in accordance with the terms of the Agreement for the Permitted Use. Customer is responsible for use of the Subscription Services by Customer Users and any party who accesses the Subscription Services with Customer's or a Customer User's account credentials.

2.0 Scope of Grant; Restrictions; Usage Rights; Suspension.

- 2.1 **Scope of Grant.** Subject to the terms and conditions of this Agreement, for the Subscription Term specified in the applicable Order, Eventable grants to Customer a nonexclusive, nontransferable, limited license, without right of sublicense, to access and use the Subscription Services as permitted by Eventable solely for the Permitted Use. "**Permitted Use**" means use solely to: (a) access and view the website and dashboard portions of the Subscription Services and any Eventable Data (defined below) made available via the analytics in the Subscription Services; (b) upload Event information for distribution to End Users (once entered each such Event is a "**Publisher Event**"); (c) access and configure the API (otherwise referenced as Downloadable Code in the Eventable Terms of Service) made available by the Subscription Services as described in the documentation provided by Eventable or as otherwise permitted in writing by Eventable to generate the Eventable Buttons and Shortlinks, so long as all such configurations replicate all copyright, patent or trademark notifications existing on the original API, and do not remove, diminish or otherwise obscure any notices or links therein; and (d) display and embed the Eventable Buttons as manifested by the configured API on Customer's websites or distribute Shortlinks to End Users; where:
- 2.1.1 "**Events**" means concerts, conferences, lectures, speaker series, sporting events, ticket sales, television broadcasting, retail sales/promotions, product launches, group meetings, webinars, online meetings, and other types of content or data, for commercial or private use, that can be expressed with a time period and be displayed on a calendar platform;
- 2.1.2 "**Eventable Button**" means Eventable's buttons, menus and plugins that allow End Users to add Publisher Events to their third party personal calendar platforms and receive future Publisher Event updates;
- 2.1.3 "**End User**" means an individual who accepts the Eventable Button to add the applicable Publisher Event to their personal third party calendar platforms; and

2.1.4 **“Shortlinks”** means links to Eventable’s website used by End Users to add the applicable Publisher Event to their personal third party calendar platforms.

2.2 **Restrictions.** Customer will not, and will ensure that its Customer Users do not, directly or indirectly (i) make the Subscription Services available to anyone other than Customer Users or use the Subscription Services for the benefit of any unrelated third party except for End Users as permitted above; (ii) sell, resell, assign, pledge, transfer, license, sublicense, distribute, rent or lease the Subscription Services or any of the Eventable IP; (iii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Subscription Services or any of the Eventable IP or any software, documentation or data related to or provided with the Subscription Services or any of the Eventable IP; (iv) modify, translate or create derivative works based on the Subscription Services or any of the Eventable IP or remove any proprietary notices or labels from the Subscription Services or any of the Eventable IP; (v) use or access the Subscription Services or any of the Eventable IP to build or support, and/or assist a third party in building or supporting products or services competitive to the Subscription Services or any of the Eventable IP; or (vi) include the Subscription Services or any of the Eventable IP in a service bureau or outsourcing offering.

2.3 **Third Party Calendar Interaction.** Customer acknowledges that in order for the Eventable Button to function as contemplated above, it necessarily must interact with the End User’s selected third party personal calendar platforms. All such third party calendar platforms are outside of Eventable’s control. Use of the third party calendar platforms may require agreement to additional terms between the End User/Customer and such third party that are not included in this Agreement. Eventable does not warrant or support the third party calendar platforms, or any availability or functionality relating thereto. EVENTABLE HAS NO LIABILITY WITH RESPECT TO ANY THIRD PARTY CALENDAR PLATFORM.

2.4 **Usage Rights.** Customer will, at all times, ensure that its use of the Subscription Services does not exceed the usage terms specified in the Order (**“Usage Rights”**). If Eventable determines that Customer is exceeding the Usage Rights, Eventable will notify Customer, and Customer will have 30 days from the date of notice in which to bring its usage within the limits of such Usage Rights. If Customer fails to do so within 30 days, without limiting Eventable’s remedies, Eventable has the right to charge Customer, and Customer agrees to pay, for the applicable usage tier, which will be co-termed with the Subscription Term in the applicable Order.

2.5 **Suspension.** Eventable may immediately suspend Customer’s account, access to the Subscription Services and functionality of the Subscription Services (including the use of the Eventable Buttons and Shortlinks to add Publisher Events to End User’s third party personal calendar platforms) if (i) Customer fails to make payment due within 10 business days after Eventable has provided Customer with written notice of such failure; or (ii) Customer violates Section 2.1 (Scope of Grant), Section 2.2 (Restrictions), or Section 9 (Confidential Information). Any suspension by Eventable of the Subscription Services under the preceding sentence will not relieve Customer of its payment obligations hereunder.

3.0 **Ownership: Subscription Services; Customer & Eventable Data.**

3.1 **Subscription Services.** Customer acknowledges that the Subscription Services are offered online on a subscription basis. Eventable reserves all rights, title and interest in and to the Subscription Services (including the Downloadable Code/API, Shortlinks, Eventable Buttons (except for the Customer Data in the Eventable Button), Eventable’s website and dashboard, and Eventable Data) and including any other software or documents related to or provided with, or used to support, the Subscription Services and all intellectual property rights and derivatives, modifications, refinements or improvements thereto (collectively, the **“Eventable IP”**).

3.2 **Feedback.** From time to time, Customer or its Customer Users may submit to Eventable comments, questions, enhancement requests, suggestions, ideas, process descriptions or other information related to the Eventable IP (**“Feedback”**). Customer agrees that Eventable has all rights to use and incorporate Feedback into the Subscription Services or other Eventable IP without restriction or payment to Customer. No rights are granted to Customer other than as expressly set forth herein.

3.3 **Customer Data.** Customer owns any data, information or material originated by Customer or that Customer or Customer Users provide in the course of using the Subscription Services (**“Customer Data”**). Customer is responsible

for ensuring that it obtains from all End Users the right to use, reproduce, distribute, publicly display and publicly perform the information the End Users provide or submit by using the Eventable Buttons or Shortlinks (“**End User Content**”). The End User owns the End User Content as between the parties. Customer will be solely responsible for the accuracy, quality, content, legality and use of Customer Data, including the means by which Customer Data is acquired and transferred by Customer or its Customer Users outside of the Subscription Services. Customer grants Eventable a nonexclusive, worldwide, assignable, sublicensable, fully paid-up and royalty-free license and right to copy, distribute, display and perform, publish, prepare derivative works of and otherwise use Customer Data for the purposes of performing the Subscription Services, including making the Publisher Events (and associated Customer Data) available to End Users via Eventable Buttons and Shortlinks. Eventable does not endorse any Events or Publisher Events or any opinion, recommendation, or advice expressed in any Events or Publisher Events, nor does Eventable review Publisher Events or Customer Data or End User Content for accuracy.

- 3.4 **Eventable Data.** Notwithstanding Section 3.3, Customer acknowledges that Eventable collects and compiles usage data, information and statistics with respect to the performance and/or use of the Subscription Services, including the Eventable Buttons and Shortlinks. Customer acknowledges that all right, title and interest in any data, information, and/or statistics collected or compiled by or for Eventable with respect to the performance and/or use of the Subscription Services, including the Eventable Buttons and Shortlinks, including information, statistics and data generated by the End User’s interaction with the Publisher Events, will be solely owned by Eventable (collectively, “**Eventable Data**”).

4.0 Fees; Taxes and Currency; Invoices.

- 4.1 **Fees.** Customer will pay all fees set forth in the Orders and any fees invoiced pursuant to this Agreement. All fees are noncancelable and nonrefundable, except as expressly specified in the Agreement. Any fees paid pursuant to an Order will not offset any fees due under any other Order.
- 4.2 **Taxes and Currency.** All fees are exclusive of, and Customer will be responsible for payment of, taxes, levies, duties or similar local, state, provincial, federal or foreign jurisdiction governmental assessments on the Subscription Services. Customer is not responsible for any taxes based on Eventable’s net income or property. Except as otherwise specified in an Order, all fees due hereunder will be paid in U.S. Dollars.
- 4.3 **Invoices.** All amounts are due and payable as specified in the Order. If no payment terms are specified in the applicable Order, payment terms are net 30 days from receipt of invoice. Unpaid invoices not the subject of a written good faith dispute are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all reasonable expenses of collection.

5.0 Agreement Term; Termination for Cause; Effect of Termination; Survival.

- 5.1 **Agreement Term.** The Agreement will commence on the Effective Date and will remain in effect until the Subscription Term in all Orders has expired or has otherwise been terminated (the “**Agreement Term**”). Notwithstanding the foregoing, if immediately following the expiration of the Subscription Term in any Order, the parties are negotiating a renewal of such Order, the Agreement Term will remain in effect for a reasonable period of time to allow the parties to effect such renewal. Nothing contained herein will extend the Subscription Term set forth in any Order.
- 5.2 **Termination for Cause.** In the event of a material breach by either party, the non-breaching party will have the right to terminate the applicable Order for cause if such breach has not been cured within 30 days after written notice from the non-breaching party specifying the breach.
- 5.3 **Effect of Termination.** If Eventable terminates an Order for Customer’s uncured material breach (i) all fees set forth in the terminated Order will be immediately due and payable; (ii) all rights granted with respect thereto will immediately terminate; and (iii) if such terminated Order includes fees for usage of the Subscription Services in excess of the Usage Rights, such fees are also immediately due and payable. If Customer terminates an Order for Eventable’s uncured material breach, Customer will be entitled to a pro-rata refund for prepaid fees for the Subscription Services not performed as of the date of termination under such Order. Upon completion of the Subscription Term, all rights to

access and use the Subscription Services will terminate.

- 5.4 Survival.** The following Sections of the Agreement will survive termination of the Agreement: Section 1.1 (Scope), Section 1.2 (Procurement and Provisioning by Affiliates – with respect to party liable), Section 2.2 (Restrictions), Section 2.3 (no liability for third party calendar platforms), Section 3 (Ownership: Subscription Services; Customer Data; Eventable Data), Section 4 (Fees; Taxes and Currency; Invoices), Section 5.3 (Effect of Termination), Section 5.4 (Survival), Section 6.4 (Warranties Disclaimer), Section 7 (Indemnification), Section 8 (Limitation of Liability), Section 9 (Confidential Information) and Section 11 (General Terms).

6.0 Warranties; Warranty Remedies; Warranties Disclaimer.

- 6.1 General Warranty.** Each party represents and warrants to the other party that it has the power and authority to enter into the Agreement.
- 6.2 Subscription Services Warranty.** Eventable warrants during the Subscription Term the Subscription Services, under normal use, will (i) perform materially in accordance with the applicable documentation provided by Eventable; and (ii) be provided in a manner consistent with generally accepted industry standards (to the extent the Microsoft cloud (defined below) provides such standard); provided, however, that the foregoing warranty shall not apply (a) if Customer (or Customer Users) fails to comply with its obligations under this Agreement; or (b) if the problem is caused by a third party calendar platform, Customer Data, End User Content or any other interaction with third parties not controlled by Eventable.
- 6.3 Warranty Remedies.** Customer will notify Eventable of any warranty deficiencies under Section 6.2 within 30 days of the performance of the relevant Subscription Services, and Customer's exclusive remedy will be the re-performance of the deficient Subscription Services. If Eventable cannot re-perform such deficient Subscription Services as warranted, Customer will be entitled to terminate the deficient Subscription Services under Section 5.2 above and recover a pro-rata portion of the fees paid to Eventable for such deficient Subscription Services, and such refund will be Eventable's entire liability.
- 6.4 WARRANTIES DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, EVENTABLE AND ITS THIRD PARTY PROVIDERS DISCLAIM ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. EVENTABLE DOES NOT WARRANT THE RELIABILITY, TIMELINESS, SUITABILITY, OR ACCURACY OF THE SUBSCRIPTION SERVICES OR THE RESULTS CUSTOMER MAY OBTAIN BY USING THE SUBSCRIPTION SERVICES. EVENTABLE DOES NOT WARRANT UNINTERRUPTED OR ERROR- FREE OPERATION OF THE SUBSCRIPTION SERVICES OR THAT EVENTABLE WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCESS. EVENTABLE DISCLAIMS ALL FAILURES, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET.

7.0 Indemnification.

- 7.1 Eventable.** Eventable will defend Customer against any claim brought against Customer by a third party alleging the Subscription Services as provided by Eventable directly infringe the intellectual property rights of the claimant and will pay Customer for finally-awarded damages and costs and Eventable-approved settlements of the claim. Eventable's obligations to defend or indemnify will not apply to the extent that a claim is based on (i) Customer Data, End User Content, Customer's or a third party's technology, software, materials, data or business processes; or (ii) any use of the Subscription Services not in compliance with this Agreement. Eventable may, in its discretion and at no cost to Customer, (a) modify the Subscription Services to avoid infringement; or (b) terminate Customer's subscriptions for the affected Subscription Services and refund Customer any related prepaid fees for the remainder of the Subscription Term.
- 7.2 Customer.** Customer will defend Eventable against any claim brought against Eventable by a third party alleging (i) Customer Data infringes the intellectual property, privacy or other rights of the claimant; or (ii) Customer's use of the Subscription Services, other than as authorized in this Agreement, violates applicable law or regulations, or infringes the claimant's intellectual property rights, and will pay Eventable for finally-awarded damages and costs and Customer-

approved settlements of the claim.

- 7.3 Procedure.** As a condition to the indemnifying party's obligations under this Section 7, the party seeking indemnification must (i) promptly give written notice of the claim to the indemnifying party; (ii) give the indemnifying party sole control of the defense and settlement of the claim (provided that the indemnifying party may not settle any claim unless it unconditionally releases the indemnified party of all liability); and (iii) provide the indemnifying party, at the indemnifying party's cost, all reasonable assistance. THIS SECTION STATES THE INDEMNIFIED PARTY'S SOLE REMEDY, TO THE EXCLUSION OF ALL OTHER REMEDIES (IN CONTRACT, TORT OR OTHERWISE), AND THE INDEMNIFYING PARTY'S TOTAL LIABILITY, REGARDING THE CLAIMS AND LIABILITIES ADDRESSED BY THIS SECTION 7.
- 8.0 Limitation of Liability.** EXCEPT FOR LIABILITY ARISING FROM EITHER PARTY'S INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE UNDER THIS AGREEMENT OR BREACH OF SECTION 9 (CONFIDENTIAL INFORMATION) OR THE PROVISIONS OF SECTION 7 (INDEMNIFICATION) HEREIN, IN NO EVENT WILL EITHER PARTY'S CUMULATIVE AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE CUMULATIVE FEES INVOICED TO CUSTOMER UNDER THE AGREEMENT IN THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE. IN NO EVENT WILL EITHER PARTY, ITS PARENT, AFFILIATES, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL AND CONSEQUENTIAL DAMAGES OR LIKE DAMAGES, INCLUDING, LOST PROFITS, GOODWILL, LOST OPPORTUNITIES AND INTANGIBLE LOSSES, ARISING IN CONNECTION WITH THE SUBSCRIPTION SERVICES OR THIS AGREEMENT.
- 9.0 Confidential Information.** Each party (the "**Recipient**") understands that the other party (the "**Discloser**") may, during the Agreement Term and in connection with the Subscription Services, disclose non-public information relating to the Discloser's business that is designated as confidential or reasonably should be understood to be confidential given the nature of the information and circumstances of disclosure ("**Confidential Information**"). For clarity, the Eventable IP is Eventable's Confidential Information. The Recipient agrees (i) to take reasonable precautions to protect such Confidential Information; and (ii) not to use or divulge to any third person any such Confidential Information except as set forth herein and to those of its employees and contractors who need access for purposes consistent with this Agreement and who are bound to confidentiality terms with Recipient containing protections no less stringent than those herein. The Discloser agrees that the foregoing will not apply with respect to Confidential Information after 5 years following the termination of the Agreement (except for trade secrets which shall be kept confidential until they fit one of the following exceptions) or any Confidential Information the Recipient can document (a) is or becomes generally available to the public; (b) was in its possession or known by it prior to receipt from the Discloser; (c) was rightfully disclosed to it by a third party; or (d) was independently developed without use of any Confidential Information of the Discloser. If the Recipient is required by law or court order to disclose Confidential Information, it will give prior written notice to the Discloser (to the extent legally permitted) and reasonable assistance at the Discloser's cost to contest the disclosure.
- 10.0 Data Security.** Eventable will comply with all applicable privacy and data security laws and regulations governing its processing and storage of Customer Data. During the Agreement Term, Eventable takes advantage of the Microsoft cloud to provide the hosted platform for the Subscription Services. The "**Microsoft cloud**" is the Microsoft Azure cloud with the features determined by Microsoft, currently available at <https://azure.microsoft.com>.
- 11.0 General Terms.**
- 11.1 Notice.** Eventable may give general notices for Subscription Services applicable to all customers by means of a notice on the Subscription Services web portal. Specific notices applicable to Customer Users of the Subscription Services, technical support, system security and other account notices will be given by electronic mail to Customer's e-mail address on record in Eventable's account information. All legal or dispute-related notices will be sent by first class mail or express delivery, if to Eventable, attention Legal Department, at 415 Madison Ave., 4th Floor, New York, New York 10017, U.S.A, and if to Customer, to Customer's account representative and address on record in Eventable's account information or such other addresses as either party may designate in writing from time to time.
- 11.2 Force Majeure.** Neither party will be responsible for failure or delay of performance if caused by an act of nature, war, hostility or sabotage; an electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure

event. If such event continues for more than 20 days, either party may cancel unperformed Subscription Services upon written notice.

- 11.3 Governing Law.** Unless specifically set forth in the applicable Order (i) any action, claim, or dispute between the parties will be governed by New York law, without reference to its conflicts of law provisions, and controlling U.S. federal law; and (ii) the parties agree to the exclusive jurisdiction of and venue in the state and federal courts in New York County and New York City, respectively. Except for actions for nonpayment or breach of either party's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than 2 years after the cause of action has accrued.
- 11.4 Entire Agreement.** This Agreement represents the parties' entire understanding relating to the Subscription Services and supersedes any prior or contemporaneous agreements or understandings regarding the Subscription Services. In the event of a conflict between this Agreement and a contemporaneous or later-dated Order, the terms of the contemporaneous or later-dated Order will control.
- 11.5 Standard Terms of Customer.** No terms, provisions or conditions of any purchase order, acknowledgement or other business form Customer may use in connection with the acquisition of Subscription Services will affect the rights, duties or obligations of the parties hereunder, or otherwise modify this Agreement, regardless of any failure of Eventable to object to such terms, provisions or conditions.
- 11.6 Amendment / No Waiver.** The Agreement may be amended only by written agreement signed by the parties. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed to reflect the intent of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The failure of either party to enforce any right or provision in the Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing.
- 11.7 Assignment.** No joint venture, partnership, employment, or agency relationship exists between Eventable and Customer as a result of the Agreement or use of the Subscription Services. This Agreement and any rights or obligations hereunder may not be assigned, sublicensed or otherwise transferred by the parties without the prior written approval of the non-assigning party, except that either party may assign or transfer this Agreement in connection with a merger or acquisition of all or substantially all of the assets of the assigning company (other than to a direct competitor of the non-assigning party and provided that the assignee agrees in writing to be bound by all terms and conditions of this Agreement) by providing the non-assigning party with prompt written notice of assignment. Any purported assignment in violation of this section will be void.
- 11.8 Compliance with Laws.** Each party agrees to abide by all applicable federal, state, and local laws and regulations in the performance of this Agreement and usage of the Subscription Services.

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