

Tempo Tickets, LLC Customer Agreement

THIS IS A BINDING CONTRACT.

This Customer Agreement (“Agreement” or “Tempo Tickets Customer Agreement”) is a binding agreement between Tempo Tickets, LLC (“Tempo Tickets”) and you and, if applicable, the company or other legal entity you represent (collectively, “you”). If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the legal authority to bind the legal entity to this agreement, in which case “you” shall mean such entity.

This Agreement takes effect (the “Effective Date”) when you first use the Tempo Tickets Service (as defined below), or if earlier, when you execute a Service & Pricing Agreement with us.

1. DEFINITIONS

Throughout this Agreement, the following definitions shall be interpreted as described.

1.1. Tempo Tickets. “Tempo Tickets,” “we,” and “us” are all direct references to Tempo Tickets, LLC.

1.2. Tempo Tickets Service. “Tempo Tickets Service” and “Service” are direct references to the access given by Tempo Tickets to a Web-based event ticketing and registration software application.

1.3. Your Content. “Your Content” refers to text or any other data that is entered into the Service by you.

1.4. Event Attendee. “Event Attendee” refers to a person or legal entity that has purchased or intends to purchase an admission ticket or registration for your event using the Tempo Tickets Service.

2. NOTICES

2.1. To You. Notices made by us under this Agreement for you will be provided to you via the email address provided to us in your registration for the Service or in any updated email address you provide to us in accordance with standard account information update procedures we may provide from time to time. It is your responsibility to keep your email address current and you will be deemed to have received any email sent to any such email address, upon our sending of the email, whether or not you actually receive the email.

2.2. To Us. For notices made by you to us under this Agreement, you may contact us as follows:

hello@tempotickets.com

and/or

Tempo Tickets, LLC
333 Washington Ave N, Suite 300
Minneapolis, MN 55401

3. TERM AND TERMINATION

3.1. Term. The term of this Agreement will commence on the Effective Date and will remain in effect until terminated under this Section 3. 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 this Section 3.

3.2. Termination by You for Convenience. You may terminate this Agreement for any reason or no reason at all, at your convenience, by providing us notice as described in Section 2.

3.3. Termination by Us Other Than for Cause. We may terminate this Agreement for any reason, or no reason, at our discretion at any time by providing you notice (as described in Section 2), at least sixty (60) days in advance.

3.4. Termination by Us for Cause. We may terminate this Agreement for cause effective as set forth below:

3.4.1. Immediately upon our notice to you (as described in Section 2) if: (i) we receive notice or we otherwise determine, in our sole discretion, that you may be using the Service for any illegal purpose or in a way that violates the law or violates, infringes, or misappropriates the rights of any third party; (ii) we determine, in our sole discretion, that your use of the Service is prohibited by applicable law, or has become impractical or infeasible for any legal or regulatory reason; or (iii) subject to applicable law, upon your liquidation, commencement of dissolution proceedings, disposal of your assets, failure to continue your business, assignment for the benefit of creditors, or if you become the subject of a voluntary or involuntary bankruptcy or similar proceeding.

3.4.2. Fifteen (15) days following our notice to you (as described in Section 2) if you are in default of any payment obligation with respect to the Service or if any payment mechanism you have provided to us is invalid or charges are refused for such payment mechanism, and you fail to cure such payment obligation default or correct such payment mechanism problem within such 15 day period.

3.4.3. Five (5) days following our notice to you (as described in Section 2) if you breach any other provision of this Agreement and fail, as determined by us, in our sole discretion, to cure such breach within such 5 day period.

3.5. Effect of Termination. Upon termination of this Agreement for any reason: (i) you remain liable for all fees, charges and any other obligations you have incurred through the date of termination with respect to the Service; and (ii) all of your rights under this Agreement shall immediately terminate.

3.6. Survival. In the event this Agreement is terminated for any reason, Sections 2, 3.5, 3.6, 5, 6, 7, and 8.7 will survive any such termination. Additionally, Sections 8.3 and 9.3 will survive any such termination, with respect to Service Usage Fees that are accrued but unpaid at the time of termination.

4. LICENSE FOR USE OF THE SERVICE

Subject to your acceptance of and compliance with this Agreement, we hereby grant you a limited, non-exclusive, non-transferable, non-sublicenseable right and license, to access and use the Service, solely in accordance with the terms and conditions of this Agreement.

5. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS; LIMITATIONS OF LIABILITY

5.1. Use of the Service. You represent and warrant that you will not use the Service: (i) in a manner that infringes, violates or misappropriates any rights of us or any third party; (ii) to engage in spamming or other impermissible advertising, marketing or other activities, including, without limitation, any activities that violate anti-spamming laws and regulations, including, without limitation, the CAN SPAM Act of 2003; (iii) in any manner that constitutes or facilitates the illegal export of any controlled or otherwise restricted items, including, without limitation, software, algorithms or other data that is subject to export laws; and/or (iv) in a way that is otherwise illegal or promotes illegal activities, including, without limitation, in a manner that might be libelous or defamatory or otherwise malicious or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age.

5.2. Your Content. You represent and warrant: (i) that you are solely responsible for Your Content, including without limitation, the accuracy, security, appropriateness and completeness of Your Content; (ii) that you have the necessary rights and licenses, consents, permissions, waivers and releases to use and display Your Content; (iii) that Your Content does not (a) violate, misappropriate or infringe any rights of us or any third party, (b) constitute defamation, invasion of privacy or publicity, or otherwise violate any rights of any third party, or (c) is not designed for use in any illegal activity or promote illegal activities, including, without limitation, in a manner that might be libelous or defamatory or otherwise malicious, illegal or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age; and (iv) that you will conduct your business in a professional manner and in a way that reflects favorably on the goodwill and reputation of us.

5.3. Disclaimers. THE SERVICE AND ALL TECHNOLOGY, SOFTWARE, FUNCTIONS, CONTENT, IMAGES, MATERIALS AND OTHER DATA OR INFORMATION PROVIDED BY US (COLLECTIVELY THE "SERVICE OFFERINGS") ARE PROVIDED "AS IS". WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICE OFFERINGS. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. WE DO NOT WARRANT THAT THE SERVICE OFFERINGS WILL FUNCTION AS DESCRIBED, WILL BE UNINTERRUPTED OR ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT THE DATA YOU STORE WITHIN THE SERVICE OFFERINGS WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. WE SHALL NOT BE RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING, WITHOUT LIMITATION, POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS, INCLUDING THOSE THAT AFFECT THE PROCESSING OR COMPLETION OF ANY TICKET OR REGISTRATION PURCHASE. NO ADVICE OR INFORMATION

OBTAINED BY YOU FROM US OR FROM ANY THIRD PARTY OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

5.4. Limitations of Liability. WE SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES; OR (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR CONTENT. IN ANY CASE, OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU TO US HEREUNDER FOR THE SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

6. INDEMNIFICATION

6.1. General. You agree to indemnify, defend and hold us, each of our business partners and each of our employees, officers, directors and representatives, harmless from and against any and all claims, losses, damages, liabilities, judgments, penalties, fines, costs and expenses (including reasonable attorneys fees), arising out of or in connection with any claim arising out of (i) your use of the Service in a manner not authorized by this Agreement, and/or in violation of the applicable law, (ii) Your Content, including but not limited to any claim involving infringement or misappropriation of third-party rights, (iii) your violation of any term or condition of this Agreement, including without limitation, your representations and warranties, or (iv) you or your employees' or personnel's negligence or willful misconduct.

6.2. Notification. We will promptly notify you of any claim subject to Section 6.1, but our failure to promptly notify you will only affect your obligations under Section 6.1 to the extent that our failure prejudices your ability to defend the claim.

7. MISCELLANEOUS PROVISIONS

7.1. Third Party Activities. If you authorize, assist, encourage or facilitate another person or entity to take any action related to the subject matter of this Agreement, you shall be deemed to have taken the action yourself.

7.2. Severability. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and any invalid or unenforceable portions shall be construed in a manner that most closely reflects the effect and intent of the original language. If such construction is not possible, the provision will be severed from this Agreement, and the rest of the Agreement shall remain in full force and effect.

7.3. Waivers. The failure by us to enforce any provision of this Agreement shall in no way be construed to be a present or future waiver of such provision nor in any way affect our right to enforce such provision thereafter. All waivers by us must be in writing to be effective.

7.4. Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

7.5. Entire Agreement. This Agreement constitutes the entire agreement between you and us regarding the subject matter hereof and supersedes any and all prior or contemporaneous representation, understanding, agreement, or communication between you and us, whether written or oral, regarding such subject matter.

7.6. No Endorsement. You understand and acknowledge that we are not certifying nor endorsing, and have no obligation to certify or endorse, any of your Your Content.

7.7. Relationship. Nothing in this Agreement is intended to or does create any type of joint venture, creditor-debtor, escrow, partnership or any employer/employee or fiduciary or franchise relationship between you and us.

8. BILLING AND PAYMENTS, USING OUR MERCHANT ACCOUNT

8.1. When applicable. The terms of this Section 8 apply to tickets and registrations sold with a payment collected using our credit card merchant account.

8.2. Billing Period. A billing period is one week long, beginning on Monday at 5:00pm Central Time and ending the following Monday at 5:00pm Central Time.

8.2.1. A ticket or registration for an event is included in the billing period either (a) during which the ticket or registration is sold, or (b) during which the event occurs.

8.2.2. Service Usage Fees (defined in Section 8.3) are assessed on tickets and registrations included in the billing period, and funds collected by us from tickets and registrations included in the billing period will be paid to you after the end of the billing period (as described in Section 8.5), subject to any applicable adjustments (as described in Section 8.4).

8.2.3. For certain participation-based events including running, walking, bicycling, and triathlon (and other events we may choose), when you elect to receive payments from us by ACH transfer, condition (a) of Section 8.2.1 applies. *Example: A registration is sold on Wednesday, May 8. The billing period ends the following Monday, May 13. The price paid by the registration purchaser, less our Service Usage Fee, is paid to you on the following Friday, May 17.*

8.2.4. In all other cases, condition (b) of Section 8.2.1 applies. *Example: A ticket is sold on Wednesday, May 8, for a concert on Saturday, May 25. The ticket is included in the billing period ending Monday, May 27. The price paid by the ticket purchaser, less our Service Usage Fee, is paid to you on the following Friday, May 31.*

8.3. Service Usage Fees. The price paid by Event Attendees for admission to your event is split into two components: “ticket or registration price” and “service fee,” which you set as you deem appropriate. “Service Usage Fee” refers to the charge assessed to you by us for use of the Service.

8.3.1. For each ticket or registration sold by use of the Service, where the payment is made with a credit card, the Service Usage Fee is \$1.25 + 6.75% of the “ticket or registration price,” unless a separate Service & Pricing Agreement specifies an alternative Service Usage Fee.

8.3.2. In addition, when the “service fee” (set by you) exceeds the applicable Service Usage Fee, we may collect 3.5% of the difference from you. This amount is intended to cover the additional cost of payment processing.

8.3.3. It’s possible to apply a payment to an order so that the total payments on an order exceed the total value of tickets or registrations on the order (“overpaying the order”). When the total amount of credit card payments on an order exceeds the total value of tickets and registrations on the order (“ticket or registration price” plus “service fee” for each ticket or registration), we will collect 3.5% of the difference. This amount is intended to cover the additional cost of payment processing.

8.4. Account Balance. At the end of each billing period, a statement will be made available to you summarizing all of your account activity during that period. This statement will total the funds collected by us from ticket and registration sales, Service Usage Fees, refunds processed, and any other charges or credits applied to your account. Based on these totals, an account balance will be computed. A positive account balance indicates we owe you that amount; a negative balance indicates you owe us that amount.

8.5. Payments to You. When your account has a positive balance at the end of a billing period, we will pay you by ACH transfer or by check on the Friday following the end of the billing period, unless the Friday is a bank holiday, in which case the payment will be made the next business day. Note that payments may be delayed when necessary as specified in Section 8.7.3.

8.6. Payments to Us. When your account has a negative balance at the end of a billing period and you have elected to receive payments from us by ACH transfer, you authorize us to withdraw the balance due us from your bank account by ACH transfer on the Friday following the end of the billing period, unless the Friday is a bank holiday, in which case the withdrawal will be made the next business day. If our withdrawal attempt is unsuccessful, your access to the Service may be interrupted. If you have elected to receive payments from us by check, you agree to pay us the balance due us within 30 days of the ending date of that billing period. Late payments are subject to a 1.5% service charge per 30 days overdue and may result in interruption of your access to the Service.

8.7. Refunds to Event Attendees. Sometimes events change. The Fair Credit Billing Act, merchant account agreements, and various state laws guarantee Event Attendees a refund for their ticket or registration if the event does not proceed as advertised, regardless of your event’s posted refund policies. Should your event not proceed as planned, an Event Attendee may choose to raise a dispute with their credit card issuer. In this case, the credit card processor will uphold the Event Attendee’s dispute and will reverse the Event Attendee’s payment collected by us (in a transaction known as a “chargeback”). To avoid chargebacks and the associated fees charged to

you, it is important to promptly resolve refund requests from Event Attendees in response to event changes. To this end, we reserve the right to issue refunds on your behalf as described in this Section 8.7.

8.7.1. We will not issue refunds to Event Attendees, except when requested by the Event Attendee and we determine, in our sole discretion, that the event for which the ticket or registration is valid for admission was: (i) canceled; (ii) rescheduled to a different date; (iii) moved to a different venue; (iv) misrepresented in any material way to the Event Attendee by Your Content.

8.7.2. If we issue a refund to an Event Attendee in accordance with Section 8.7.1, you are liable to us for the entire cost of the refund, including the full price paid by the Event Attendee (including both the “ticket or registration price” and “service fee,” as defined in Section 8.3).

8.7.3. If we determine that an Event Attendee is eligible for a refund in accordance with Section 8.7.1, we reserve the right to withhold payments scheduled by Section 8.5 in the amount necessary to cover your liability for the refund as specified in Section 8.7.2 for a period of up to six months.

8.8. Chargebacks. In the case that an Event Attendee initiates a chargeback with their credit card issuer and our credit card processor upholds the chargeback, you are liable to us for the entire cost of the chargeback, including the amount of the chargeback and the additional cost charged to us by our credit card processor, currently \$25.00.

9. BILLING AND PAYMENTS, USING YOUR MERCHANT ACCOUNT

9.1. When applicable. The terms of this Section 9 apply to tickets and registrations sold with a payment collected using your credit card merchant account.

9.2. Billing Period. A billing period is one month long, beginning on the last day of a month at 5:00pm Central Time and ending the last day of the following month at 5:00pm Central Time. Service Usage Fees (defined in Section 9.3) are assessed on tickets and registrations sold during each billing period.

9.3. Service Usage Fees. The price paid by Event Attendees for admission to your event is split into two components: “ticket or registration price” and “service fee,” which you are free to set as you deem appropriate. “Service Usage Fee” refers to the charge assessed to you by us for use of the Service. For each ticket or registration sold by use of the Service, where the payment is made with a credit card, the Service Usage Fee is \$1.25 + 4% of the “ticket or registration price,” unless a separate Service & Pricing Agreement specifies an alternative Service Usage Fee.

9.4. Payments to Us. When your account has a balance due at the end of a billing period, you authorize us to withdraw the balance due from your bank account by ACH transfer on the 5th day following the end of the billing period, unless the 5th day is not a business day, in which case the withdrawal will be made the next business day. If our withdrawal attempt is unsuccessful,

your access to the Service may be interrupted. Alternative payment terms may be specified in a separate Service & Pricing Agreement.

9.5. Refunds to Event Attendees. We will not issue refunds to Event Attendees on your behalf. When we receive a refund request from an Event Attendee, we will refer the Event Attendee to you for resolution.

10. SALES TAX

You are solely responsible for collecting and remitting all applicable taxes to the to the proper tax-assessing authorities. We do not collect, report, or remit local or state sales taxes. Note that in most cases, the “service fee” must be included with the “ticket or registration price” when computing applicable tax.

11. EVENT CHANGES OR CANCELLATION

We assume no responsibility to inform Event Attendees of changes to any event or the cancellation of any event. It is your sole responsibility to inform Event Attendees of relevant changes to events as planned.

12. CHECK-IN EQUIPMENT

12.1. Definition. At our option, we may provide you with equipment for checking in Event Attendees to your event. This equipment may include wireless phones, tablet computers, and associated charging equipment.

12.2. Liability for Hardware. If we provide you with check-in equipment, you assume liability for the total cost of replacement or repair should the equipment be destroyed, lost, stolen, or otherwise damaged while in your possession.

12.3. Liability for Wireless Service Provider Charges. If we provide you with check-in equipment, you assume liability for all wireless service provider charges resulting from use of the device(s) beyond what is necessary to check in Event Attendees to your event. Among other uses, these charges may result from phone calls, text messaging, and excessive Internet usage.