



Carnival Connect Account Terms and Conditions

The Terms and Conditions (this “Agreement”) is made and entered into by and between Carnival Band, (hereinafter the “Customer”) and Carnival Connect, Inc., a United States of America, State of Ohio company, with a registered address located at 14842 Ridge Road, North Royalton, OH 44133 (hereinafter the “Company”).

1. BACKGROUND

Whereas, Company and Customer desire to enter into a relationship in which Company will provide an online costume distribution scheduling service.

Now, therefore, in consideration of the premises, and of the mutual promises and undertakings herein contained, the parties, intending to be legally bound, do hereby agree as follows:

2. DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

- a. “Services” means any and all services specified in the Statement of Work (as defined below).
- b. “Deliverables” means the use of customized software media, delivered to Customer under this Agreement, as specified in the Statement of Work.
- c. “Project” means the combination of Services and Deliverables to be provided under this Agreement.

3. TERM

The term of this Agreement shall commence on that date the set-up fee is paid by Customer, and shall continue thereafter until seven (7) days after Customer’s event, or as provided in Section 12 below.

4. STATEMENT OF WORK

Company shall perform and deliver the Project as set forth in the Statement of Work issued against and subject to the terms and conditions of this Agreement.

The work which Company shall perform shall be specified in the Statement of Work, which will be written under the terms and conditions of this Agreement. The Statement of Work shall specify: (i) description of Services and Deliverables, (ii) schedule for Deliverables, and (iii) price and payment schedule.

i. DESCRIPTION OF SERVICES AND DELIVERABLES

- a. CARNIVAL CONNECT ACCOUNT. A service account comprised of a G Suite Account, Distribution Schedule Calculator, Workflow Recommendation Calculator, Distribution Schedule, Online Check-In Service, Tutorials, Task List, FAQs, Glossary, and Analytical Reports.

Customer authorizes Company to create a G Suite account and email address with the extension of @thecarnivalconnect.com on the behalf of Customer. The G Suite account comes with all of the Google

functionality, such as email, docs, drive, etc. Customer authorizes Company to use this email account and to send emails to stated email address, via Company's bookings, to populate the Online Check-In Service.

- a. **ONLINE COSTUME DISTRIBUTION SCHEDULE.** Customized online band pages that contain the schedule Customer uses to distribute costumes based on the Distribution Schedule Calculator. Customer's masqueraders will see and use this distribution schedule to book a costume collection time online.
- b. **ONLINE CHECK-IN SERVICE.** An online, customized, integrated Trello Board used to check-in Customer's masqueraders on the days of costume distribution. This service is synced with Customer's Carnival Connect Google Account. The Trello Board automatically updates and displays all of the costume collection times, scheduled by the masqueraders, by date and time via the distribution schedule.

ii. SCHEDULE FOR DELIVERABLES

- a. **CARNIVAL CONNECT ACCOUNT.** Customer will have immediately access to the Carnival Connect account, once the yearly one-time set-fee is paid. Customer must first complete the mandatory Carnival Connect Account sign-up using either a Facebook login, Google login, or personal/business email address login, and then access is granted.
- b. **ONLINE DISTRIBUTION SCHEDULE AND ONLINE CHECK-IN SERVICE.** Company has 10 business days to present the Deliverables to Customer from the time the yearly one-time set-fee is paid. Customer must test and certify the Distribution Schedule and Online Check-In Links twenty-one (21) days before Customer's event date, at the latest.

iii. PRICE AND PAYMENT SCHEDULE

- a. **SET- UP FEE.** There is a one-time yearly set-up fee of \$500 USD to start an account with Company. This fee is non-refundable. This fee is due when Customer signs up for a Carnival Connect account.
- b. **PER MAS FEE.** Customer will be charged \$6 USD per masquerader that actually utilizes Company's Deliverables to schedule a costume collection time. Thirty (30) days prior to Customer's event, Company will charge Customer's credit card for the provided estimated number of masqueraders. Within seven (7) days after Customer's event, Company will settle the actual total of masqueraders that utilized the Deliverables on Customer's credit card. Refunds and additional charges will be processed at this time.
- c. **MULTIPLE LOCATION DISCOUNT.** Customers utilizing the Company for events in multiple locations (countries), in the same calendar year, will receive a 50% discount on the yearly one-time set-up fee. The per mas fee still applies.

5. TERMS OF PAYMENT

- a. **PRICE.** Projects will be performed on a firm fixed price basis, as indicated in the applicable Statement of Work. Any additional or unscheduled Services or Deliverables to be provided by Company outside of the Statement of Work must be mutually agreed upon in writing signed by both parties hereto referencing this Agreement.
- b. **TAXES.** The Project Price does not include and Customer is responsible for all taxes (except taxes on Company's income) tariffs, and any similar charges imposed upon or related to the Services or Deliverables or their delivery or use.
- c. **PAYMENT SCHEDULE.** Customer will receive notification of the per mas invoice, through the Service, based upon the billing/payment schedule contained in the applicable Statement of Work. If any invoice is not paid when due, Company may suspend provision of Services and/or Deliverables without liability or penalty until final resolution of the matter.

- d. TITLE AND SECURITY INTEREST. Company reserves a purchase money security interest in each Deliverable until payment of the Project Price is received. Customer agrees to sign, upon request, any documents necessary to protect Company's security interest in all Deliverables.

6. DELIVERABLES

Customer acknowledges that Company uses, or may develop hereunder, methods, concepts, code sequences, format, sequence structure, organization, menu command hierarchy, templates, masks, user interface, techniques, program organization, database structuring techniques, and the like (Company proprietary items) that are proprietary to Company. It is agreed that these Company proprietary items shall remain the sole and exclusive property of Company. Company grants Customer a limited, non-exclusive, paid-up license to use Company proprietary items subject to the following:

- a. Customer may use Company proprietary items solely in connection with the products purchased hereunder, for the purpose for which those products were originally purchased.
- b. Customer may not transfer, sell, or otherwise dispose of any Company proprietary items without the prior written consent of Company.
- c. This license gives no title or ownership rights in Company proprietary items or related intellectual property to Customer.
- d. If software source code is delivered to Customer under this license, Customer agrees to keep the source code strictly confidential in accordance with Section 14 below. If software object code is delivered, Customer will not copy or modify the software or subject the software to any process intended to create computer source code from Company proprietary items.
- e. Customer will have no rights to assign or sell the license granted herein to others.
- f. If Customer orders any commercial off-the-shelf type products, a separate licensing agreement shall be negotiated and shall become part of the applicable Statement of Work.

7. ACCEPTANCE

The Deliverables, if any, shall be deemed accepted by Customer upon completion of the following acceptance test:

- a. Immediately upon receipt of said Deliverables, Customer shall promptly perform testing of the Deliverables to confirm that the Deliverables perform in accordance with the documentation or other standards applicable thereto as set forth in the Statement of Work.
- b. Customer shall either promptly provide Company with online acceptance of the Deliverables, or deliver to Company a detailed written statement of nonconformities to be corrected prior to Customer's acceptance of the Deliverables. Unless otherwise agreed to in writing by the parties, Company will redeliver corrected Deliverables to Customer within a reasonable amount of time after receipt of such statement of nonconformities.
- c. Following redelivery of corrected Deliverables, a new acceptance test shall be immediately commenced by Customer. Any such written statement of nonconformities shall provide sufficient detail to enable Company to remedy the failure to conform to the Completion Criteria. If Customer fails to provide a written acceptance or a written statement of nonconformities within five (5) business days of initial receipt of said Deliverables or such other mutually acceptable period as defined in the applicable Statement of Work, or within five (5) business days of re-delivery of said corrected Deliverables or such other mutually acceptable period, the Deliverables shall be deemed immediately accepted by Customer.

8. WARRANTIES AND REMEDIES

- a. Company warrants deliverable functionality substantially as defined in the Statement of Work following final delivery.
- b. Company further warrants that to its knowledge the Deliverables do not infringe any intellectual property right held by a third party.
- c. Customer's sole and exclusive remedy and Company's only obligation for breach of the warranty hereunder will be, at Company's option, to correct any material errors in provision of Services or to replace or repair Deliverables which do not conform to the warranty. In order for Customer to exercise this remedy, Customer must give Company written notice of such nonconformity within the warranty period, and Company must determine that any nonconformity did not arise due to any cause specified below. If this remedy is adjudged to have failed of its essential purpose, Company's total liability will be to refund the price paid to Company by Customer for the nonconforming Deliverables. The remedy provided by Company for breach of warranty does not include the following, which may be provided, at Company's sole option, at Company's then-current time rates:
 1. Repair of damage to Deliverables caused by Customer.
 2. Repair of damage caused by events beyond Company's reasonable control.
 3. Repair of damage caused by Customer's improper installation, relocation, or rearrangement of Deliverables.
- d. Except for the warranties stated in this Section, Company DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICES AND DELIVERABLES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST NON-INFRINGEMENT. Company expressly does not warrant that the operation of Deliverables which are software shall be uninterrupted or error-free; or that Deliverables will operate on any system, or with any software, other than the system with which the Company tested such Deliverables. Company does not warrant any third-party software development tools. Company specifically does not warrant the accuracy of any technical or subject matter content of the courseware or software that is based upon information or direction provided by Customer.

9. LIMITATION OF LIABILITY

The total liability of Company to Customer from any cause whatsoever, will be limited to the lesser of Customer's actual damages or the Project price paid to Company for those Services and Deliverables in a Project that are the subject of Customer's claim. In no event will either party be liable for SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, including but not limited to loss of profits, revenues, data or power, damage to or loss of the use of products, damage to property, claims of third parties, including personal injury or death, suffered as a result of provision of Services or use of Deliverables.

TIME FOR CLAIMS. All claims against Company must be brought within one (1) year after the cause of action arises and Customer waives any statute of limitations which might apply by operation of law or otherwise.

10. INDEMNIFICATION

Customer shall defend, indemnify, and save Company harmless, at Customer's own expense, against any action or suit brought for any loss, damage, expense or liability that may result by reason of an infringement of any patent, trademark, service mark, copyright, or trade secret based upon the normal and intended use of the Deliverables furnished to Company hereunder. Should any of the Deliverables furnished to Company hereunder become the subject of a claim of any infringement of a patent, trademark, service mark, copyright, or trade secret, Customer shall, at its option and expense, deliver non-infringing material, modify the material so that it becomes non-infringing, or procure for Company the right to continue using Customer's infringing material.

Customer agrees to indemnify and hold Company harmless against all claims, liabilities, demands, damages, or expenses (including attorneys' fees and expenses) arising out of or in connection with Customer's use of the Deliverables.

11. FORCE MAJEURE

Neither party shall be liable for failure to perform, nor be deemed to be in default, under this Agreement for any delay or failure in performance resulting from causes beyond its reasonable control, including but not limited to failure of performance by the other party, acts of state or governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood, earthquake, riot, insurrection, civil disturbance, sabotage, embargo, blockade, acts of war, or power failure. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

12. TERMINATION

Customer reserves the right to terminate a Project in whole or in part, upon written notice to Company up until thirty (30) days of Customer's event. Customer may not terminate a Project, if within thirty (30) days of Customer's event. Company shall not undertake further work, incur additional expenses, or enter into further commitments with regard to the Project after receiving such notice of termination from Customer, except as mutually agreed upon by the parties. In the event of termination of a Project as described above, Company shall be entitled to compensation as follows:

- a. All payments due and owing under this Agreement at the time of Company's receipt of the written notice of termination for work completed and in progress;
- b. Reimbursement for any non-cancelable services and commitments entered into by Company, in connection with the Project being terminated, provided Company provides Customer with documentation of completion of work or expenses incurred.

Termination of the Project shall not affect either party's obligations in connection with any other ongoing Projects and the rights and obligations of all non-terminating parties to the Agreement shall remain in full force and effect.

Failure by either party to comply in any material respect with any of its obligations in this Agreement shall entitle the other party to give notice to the party in default requiring it to cure such default. If such default is not cured within 10 business days after receipt of such notice, the notifying party shall be entitled to terminate this Agreement by giving notice of such termination to take effect immediately. The right of either party to terminate this Agreement, as herein provided, shall not be affected in any way by its waiver of, or failure to take action with respect to, any previous default.

13. DELAY OR SUSPENSION OF WORK

If Customer's acts or failure to act causes Company to delay or suspend performance of Services, Company and Customer will mutually agree to one of the following remedies:

- a. Company will use reasonable efforts to continue performance as practicable under the circumstances and Customer will continue to make all scheduled payments; or
- b. Company will re-assign personnel to extend Company's work schedule without liability, and Customer will pay all additional costs, if any.

Notwithstanding the above, Company shall have the right to invoice Customer for any work performed to date of suspension.

14. CONFIDENTIALITY

Company and Customer acknowledge that during the course of the performance of a Project, information of a confidential nature may be disclosed between the parties. Such information, excluding the Deliverables and any other

information incident to the Deliverables that a party could reasonably be expected to be provided to the other party as contemplated hereunder, shall be considered confidential information ("Confidential Information"). Neither party has the right to disclose the Confidential Information of the other, in whole or in part, to any third party, and neither party will make use of the Confidential Information of the other for its own or a third party's benefit or in any way use such Confidential Information other than for the purposes of performance of this Agreement without the prior written consent of the disclosing party. Each party agrees to take all steps reasonable to protect the other's Confidential Information from unauthorized use and/or disclosure. The parties agree not to copy in whole or in part, any Confidential Information nor modify the same in any way without prior written consent from the other party. Neither party will be liable to the other for the disclosure of Confidential Information if, as shown by clear and convincing evidence, the Confidential Information: (a) is generally known to the public at the time of disclosure by the disclosing party; or (b) becomes generally known to the public through no fault of the receiving party; or (c) was lawfully in the possession of the receiving party prior to signing this Agreement; or (d) is subject to applicable United States laws or a valid court order requiring disclosure of such Confidential Information.

In any judicial proceeding, it will be presumed that the Confidential Information in question constitutes protectable trade secrets of the disclosing party, and the receiving party shall bear the burden of proving that the Confidential Information was publicly or rightfully known or disclosed.

15. PUBLICITY

Company may use Customer's name or mark and identify Customer as a client of Company, on Company's website and/or marketing materials. Company may issue a press release, containing Customer's name, related to any award under this Agreement. Neither party will use the other party's name nor marks, refer to or identify the other party for any other reason, except as established in this section, without such other party's written approval. Any approval required under this Section shall not be unreasonably withheld or delayed by either party.

16. GENERAL TERMS

This Service Contract shall be deemed to have been made, executed and delivered in the State of Ohio, United States of America, and shall be construed in accordance with the laws of the State of Ohio.

CURRENCY. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (US Dollars).

NOTICES. Notices to be given by either party under this Agreement shall be sent by email, to the attention of the other party.

SEVERABILITY AND ASSIGNMENT. The invalidity or unenforceability, in whole or in part, of any provision in this Agreement shall not affect in any way the remainder of the provisions herein. This Agreement may not be assigned by Customer without Company's consent.

ENTIRE AGREEMENT. This Agreement, together with any other materials referenced in or expressly made a part of the Agreement, constitutes the final and entire Agreement between Company and Customer and supersedes all prior and contemporary agreements, oral or written.

COUNTERPARTS. The Parties hereto agree that the electronic signature, clicking the "Agree to Terms" button, shall serve as signature and shall be as effective as if original. This Agreement may be executed electronically in any number of counterparts, all of which taken together shall constitute one and the same agreement.

17. ELECTRONIC APPROVAL

By clicking "I have read and agree to the Terms & Conditions" on Company's website, this Agreement is duly executed by Customer.