

# End-User License Agreement For

## *CalenDarer LLC* Software

**IMPORTANT: THIS END USER LICENSE AGREEMENT (“EULA”) IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR A SINGLE ENTITY) AND *CalenDarer, LLC* (“*CalenDarer*”). BY ACCEPTING, INSTALLING OR USING ANY PART OF THE *CalenDarer* DOWNLOADABLE APP OR WEB APPLICATION (COLLECTIVELY THE “SOFTWARE”), YOU ACKNOWLEDGE THAT YOU HAVE READ THIS EULA, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF**

THIS EULA, OR CANNOT COMPLY WITH THESE TERMS AND CONDITIONS, DISCONTINUE THE INSTALLATION PROCESS AND USE OF THE WEB APPLICATION AND THE APP, AND YOU WILL HAVE NO AUTHORITY TO USE THE SOFTWARE.

*CalenDarer's* WILLINGNESS TO GRANT THIS EULA IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL OF THE TERMS AND CONDITIONS OF THIS EULA, *CalenDarer's* GENERAL TERMS OF USE AND ALL POLICIES INCORPORATED HEREIN AND THEREIN BY REFERENCE, TO THE EXCLUSION OF ALL OTHER TERMS. IF THESE TERMS ARE CONSIDERED TO BE AN OFFER BY *CalenDarer*, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.GENERAL TERMS AND CONDITIONS

## 1. GRANT OF LICENSE

Subject to the terms and conditions set forth herein, *CalenDarer* grants to you a non-sub licensable, non-exclusive license to use the Software for your own

use on any compatible and authorized mobile device or web-capable device, as applicable (individually, or collectively “Device”), owned or lawfully controlled by you, in object code form only, and only in accordance with the applicable end-user documentation, if any (the “License”), subject to the conditions, limitations and terms set forth herein and therein. You, the end-user, assume sole and full responsibility for the selection of the Software to achieve your intended results and subsequent use.

**THE SOFTWARE IS PROVIDED AS IS, AS AVAILABLE, AND SUBJECT TO ALL LIMITATIONS, CONDITIONS, WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN.**

## **2. LIMITATIONS**

**a. Limitations on Reverse Engineering, Decompilation, Disassembly, or Modification. You**

may not reverse engineer, decompile, or disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software or modify, adapt, translate, recast, alter, or create derivative works from the Software or any portion of it, or provide or disclose any such Software or any portion of it to any third party, except and only to the extent that such activity is expressly permitted by applicable law, or by prior written approval of **CalenDarer** (which approval may be conditioned, restricted, or denied in the sole discretion of **CalenDarer**), notwithstanding this limitation.

**b. Transfer Restrictions.** You may not distribute, rent, sell, assign, sublicense, lease, make available on a network, or otherwise, to multiple users (except as may be expressly permitted by your license to use and/or subscription to **CalenDarer**), or otherwise transfer the Software or use the Software for timesharing or service bureau purposes or otherwise for the benefit of a third party. You may not transfer or assign this EULA or any of your rights hereunder to any other party.

**c. Use in Other Products.** You may not incorporate the Software or any portion of it into, or use the Software or any portion of it to develop other algorithms, programs, software, applications, or products unless expressly approved in writing in advance by *CalenDarer*, which approval may be conditioned, restricted, or denied in the sole discretion of

**d. Separation of Components.** The Software is licensed as a platform of products. Its components, as initially provided to you, may not be further separated for any purpose, including, but not limited to, inclusion in any other software, algorithms, programs, applications, system or platform.

**e. Copying Restrictions.** The Software may be copied onto the hard disk drive of any authorized and compatible computing Device owned or lawfully controlled by you for the sole purpose of installing and using the Software. All such copies shall include the same proprietary and copyright notices and legends as

included in the authorized copy of the Software originally provided by **CalenDarer** or an authorized third party and you shall not remove any such notices or legends from the Software or any copies or modifications of the Software, or otherwise modify the Software. You may not otherwise copy or modify the Software or provide copies of the Software, in whole or in part, to any other party except as may be expressly permitted by your License or Subscription to the Software or other written agreement with **CalenDarer**.

**f. Ownership** The Software is licensed, not sold, to you for use only under the terms of this EULA. You acknowledge that **CalenDarer** retains ownership of the Software, any and all portions, copies, or authorized modifications of it, and all rights in and to it, throughout the world, including, but not limited to, intellectual property rights. Upon termination of this License and/or Subscription for any reason, the License and the Subscription and all rights granted to you under this EULA shall terminate and you shall cease to use the

Software. Personally identifying data that you may have entered into the Software during your authorized use of it, remain yours, and **CalenDarer** claims no ownership or rights in or to it. **CalenDarer** shall retain all right, title and interest in and to any non-personally identifying data or aggregated data generated by **CalenDarer**, whether derived solely from, in part from, or without reference to data that you may have entered.

### **3. CONSENT TO USE OF DATA**

You agree that **CalenDarer** may collect or derive, and use technical data and related information, including, but not limited to, technical information about your Device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services or technologies to you (if any) related to the Software. **CalenDarer** may collect or derive, and use other non-personally identifying data as it deems necessary, in its sole discretion, for the purposes of evaluating customer usage of the Software, improving its

products, developing product enhancements, generating statistics, or other reasonable purposes not contrary to the terms of this EULA,. so long as that data is in a form that does not personally identify you or your customer(s), your employees, attendees, or participants.

#### **4. LICENSE, SUBSCRIPTION AND FEES**

Your use of the Software is permitted only upon your agreement to the terms of this EULA and payment in full, in advance, in good funds, of the License fee and applicable monthly or annual Subscription fees, based upon the License fee and applicable Subscription fee structure set forth at **CalenDarer's** website, as they may be revised from time to time, without prior notice, in the sole discretion of **CalenDarer**, or as may be otherwise agreed upon in writing by you and **CalenDarer**, as set forth in a **CalenDarer** License fee plan, statement of work, purchase order or other document subject to or referencing this EULA.



License fees shall be billed in accordance with **CalenDarer's** License fee terms, unless otherwise specified in a written, contractual arrangement entered into between you and **CalenDarer**, and are due and payable, timely, in full and in good funds, before the date of first Delivery of the Software (the "Effective Date"). Delivery shall be the first date on which **CalenDarer** or an authorized party on **CalenDarer's** behalf delivers to you active login credentials for use of the Software. All applicable Subscription fees shall be billed in accordance with **CalenDarer's** fee structure, or other express, written agreement between you and **CalenDarer**, and are due and payable timely, in full, and in good funds in advance. **CalenDarer** reserves the right to revise its License and/or Subscription fee structure from time to time in its sole discretion and without prior notice. **CalenDarer** shall not refund any portion of the License fee or Subscription fees based upon your election not to use the Software. If you change your Subscription level after the 15th of any month, the new

applicable monthly Subscription fee payable shall be effective at the next billing cycle.

## **5. SOFTWARE VERSIONS OR UPDATES**

**CalenDarer** may, from time to time, release updates to or new versions of the Software. **CalenDarer** shall make available to you, provided that you are not in default under the terms of this EULA, any new version of the Software, but solely to the extent that the functionality of the new version represents the then-current version of the functionality comprising the Software under your existing License. **CalenDarer** has no obligation to provide to you new functionality or components as part of regular Software updates or version releases. **CalenDarer** reserves the right to charge an additional fee for your receipt and use of any new functionality or components if you elect to upgrade in order to acquire new functionality or components under a new version of the Software. All versions of the Software, including any new functionality or components,

shall be subject to this EULA in its entirety, including, but not limited to the support terms detailed in it.

## 6. TERMINATION

Your rights under this EULA shall remain in effect only for so long as you are in compliance with all terms and conditions set forth in it. If you fail to fulfill, or are in default of, any of your material obligations under this EULA, including, but not limited to, payment of the applicable Subscription fees, **CalenDarer** may interrupt or discontinue the functionality and/or support of the Software, and may pursue all available legal and/or equitable remedies to enforce this EULA, and any and all of its rights and remedies under it, including, but not limited to, any action at law or in equity, including, but not limited to, an action to enjoin your use of the Software, and **CalenDarer** may, at any time after your default, terminate this EULA, all Licenses, Subscriptions, and rights granted to you under this EULA.

## **7. SUPPORT**

You may request support for your use of the Software through **CalenDarer's** web-based support system by visiting <http://support.eventuosity.com>.

**CalenDarer** has no obligation to provide support for any version of the Software other than (a) the then-current version of the Software; and (b) the immediate prior version for a period of one (1) year from the date of release of a subsequent version. **CalenDarer** shall have no obligation to, but may, in its sole discretion, provide support for and charge for such services in accordance with its then-current professional services rates, for problems arising from (a) the use of unsupported versions of the Software; or (b) your integration of the Software with third party systems, software or hardware.

## **8. DISCLAIMER OF WARRANTIES**

**YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SOFTWARE IS AT YOUR SELECTION AND YOUR SOLE RISK AND THAT YOU**

BEAR THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND ANY SERVICES PERFORMED OR PROVIDED BY THE SOFTWARE (“SERVICES”) ARE PROVIDED “AS IS” AND “AS AVAILABLE”, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND *CalenDarer* HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE AND ANY SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. *CalenDarer* DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE, THAT THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR

PROVIDED BY, THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE OR SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY *CalenDarer* OR AN AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. IF THE SOFTWARE OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

## 9. LIMITATION OF LIABILITY

a. NOTWITHSTANDING ANYTHING CONTAINED IN THIS EULA OR OTHERWISE, *CalenDarer* WILL NOT BE LIABLE WITH RESPECT TO THE SUBJECT MATTER OF THIS EULA, SUCH SUBJECT MATTER INCLUDING, BUT NOT LIMITED TO, THE DOWNLOADING, DELIVERY, INSTALLATION, USE, OR PERFORMANCE OF THE SOFTWARE, UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, EVEN IF *CalenDarer* HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, IN NO EVENT WILL *CalenDarer* BE LIABLE FOR ANY CLAIM BY ANY THIRD PARTY ARISING OUT OF YOUR DOWNLOADING, INSTALLATION, OR USE OF THE SOFTWARE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE

**EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.**

**b. IN NO EVENT WILL THE TOTAL LIABILITY OF *CalenDarer* UNDER OR IN CONNECTION WITH THIS EULA OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE SUBSCRIPTION FEES PAID TO *CalenDarer* IN CONNECTION WITH THIS EULA AND YOUR SUBSCRIPTION AGREEMENT. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

## **10. GOVERNING LAW**

In the event of any dispute that arises under this EULA, the dispute shall be resolved by binding arbitration in accordance with the then-current Commercial Arbitration



Rules of the AAA, with the laws of the Commonwealth of Pennsylvania being applied. The parties hereby consent to conducting arbitration in Montgomery County, Pennsylvania, and consent to the jurisdiction of the courts of the Commonwealth of Pennsylvania for the enforcement of the provisions of this EULA and the entry of judgment on any award rendered . If for any reason the chosen court of the Commonwealth of Pennsylvania lacks jurisdiction to enforce this provision and enter judgment on any award, any court of competent jurisdiction may do so. The three person panel of arbitrators shall consist of attorneys specializing in information technology business litigation with at least fifteen (15) years of experience or persons having been a judge in a court of general jurisdiction. Within thirty (30) days after initiation of arbitration, the parties shall each designate one (1) arbitrator and the third shall be designated separately by the AAA. The parties shall also, within these thirty (30) days after initiation of arbitration, reach agreement on the procedures to be followed to assure that the arbitration will be concluded

and the award rendered within no more than six (6) months after initiation of the arbitration. Each party has the right before or during the arbitration to seek and obtain from the appropriate court provisional remedies such as attachment, preliminary injunction, replevin, or such similar type of equitable remedies, to avoid irreparable harm, maintain the status quo, or preserve the subject matter of the arbitration. The arbitration proceedings, together with all discovery made pursuant thereto and statements or documents exchanged by the parties in connection therewith, shall be kept confidential and shall only be used by the parties in connection with the arbitration proceedings. **THE ARBITRATORS SHALL NOT AWARD ANY PARTY PUNITIVE, SPECIAL, INCIDENTAL, OR EXEMPLARY DAMAGES, AND EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO SEEK SUCH DAMAGES. FURTHERMORE, THE ARBITRATORS SHALL NOT CONVEY, TRANSFER, ASSIGN, ENCUMBER, OR OTHERWISE REMOVE ANY INTELLECTUAL PROPERTY RIGHTS (INCLUDING, BUT NOT LIMITED**

**TO, PATENTS, TRADEMARKS, COPYRIGHTS, TRADE SECRETS) OF THE PARTIES.** All costs of arbitration shall be divided evenly between the parties, exclusive of each party's legal fees which fees shall be borne by the party that incurs them. No party shall bring a claim in any state or federal court for resolution of a dispute under or enforcement of this EULA unless permitted to do so by law after first exhausting the processes, procedures, and remedies provided in this section.

## **11. NOTICES**

Notice to ***CalenDarer*** under this EULA shall be deemed given when received by ***CalenDarer***. Notice concerning this EULA, unless otherwise provided herein, shall be in writing to:

***CalenDarer*** LLC

ATTN: Glen Hernande, Founder / Owner

Contact: Glen@CalenDarer.cloud

## 12. MISCELLANEOUS

The failure of either party to exercise, in any respect, any right provided for herein will not be deemed a waiver of any other rights hereunder, or any subsequent exercise of any right not previously exercised. To the extent, if any, that any provision of this EULA is found to be unenforceable or invalid, that provision alone will be limited or eliminated to the minimum extent necessary so that this EULA, in its entirety, otherwise remains in full force and effect, and enforceable. The parties agree that: (a ) this EULA is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and/or oral agreements, communications and other understandings relating to the subject matter of this EULA; and (b ) all modifications of this EULA must be in a writing signed by both parties, except as otherwise expressly provided herein. All rights and remedies under the EULA are enforceable by the lawful successor and/or assign of **CalenDarer**. No agency, partnership, joint venture, or employment is created by, through, or as a result of this

EULA and you do not have any authority of any kind to bind **CalenDarer** in any respect whatsoever.

If **CalenDarer** is the prevailing party in any action or proceeding to enforce its rights and/or remedies under this EULA, **CalenDarer** shall be entitled to recover its attorneys' fees and costs.