

# Ettractions, Inc.

## Interactive Touch Screen Display & Service Agreement

For good and valuable consideration, Ettractions, Inc. ("Ettractions") and HT-Exit 88 Hotel TRS, LLC d/b/a Marriott Hotel Mystic (the "Establishment"), agree as follows, effective as of 2/1/2019 (the "Effective Date"):

1. The term of this Agreement is 36 months from the Effective Date unless earlier terminated as provided herein (the "Term"). During the Term, Ettractions agrees to install and service an interactive touch screen product (the "ExploreBoard"™) at the following location maintained by Establishment: HT-Exit 88 Hotel TRS, LLC d/b/a Marriott Hotel Mystic (the "Location"). During the Term, Ettractions shall insure the ExploreBoard™ and be responsible for any liability arising out of its use, damage or theft (except as caused by Establishment's gross negligence or intentional misconduct), and Establishment will be entitled to a free profile on the ExploreBoard™ and at Ettractions' Ettractions.com website. This agreement will automatically renew unless notice of cancellation is submitted in writing 60 days prior to end of the current term.
2. Establishment agrees to pay **[\$0]** per month for the right to host the ExploreBoard™ during the Term. Establishment agrees to provide electricity and a high quality Cat 5 (LAN) outlet with internet access at the Location throughout the Term for the ExploreBoard™. The parties may mutually agree in writing at any time during the Term to utilize wireless service in place of the Cat 5 (LAN) outlet. Establishment agrees to immediately notify Ettractions in the event of any malfunction or damage to the ExploreBoard™.
3. Establishment agrees that Ettractions will be the sole provider of digital tourism information in the lobby and all common areas of Establishment, including information about cultural attractions, tourist destination information and tourist related promotional material, and acknowledges that it is vital to Ettractions' ability to provide this service for it to be the exclusive provider for Establishment.
4. The ExploreBoard™ and all of its content belong exclusively to Ettractions and Ettractions shall be entitled to remove it at the end of the Term at Ettractions' expense. Establishment agrees not to tamper with, reverse engineer, hack, debug or dismantle the ExploreBoard™; nor shall it induce or authorize any other party to do the same. Each party agrees not to disclose to any third party during or after the Term any information about the other party (including the terms of this Agreement) that such party knows or should have known to be confidential or proprietary to the other party.
5. The ExploreBoard™ is provided on an "as is" basis. Ettractions disclaims any warranties, whether express or implied. Ettractions does not warrant that the services will be uninterrupted or error-free. The sole remedy available to Establishment for any breach of this Agreement shall be, at Ettractions' option, repair or replacement of the ExploreBoard™ or a refund of any amounts paid for the period of time following the breach.
6. Both parties shall be liable for any breach of their representations, warranties or covenants under this Agreement. Neither party shall be liable for indirect, incidental, consequential, special or punitive damages. Ettractions' total liability hereunder will not exceed the limits of Ettractions' commercial liability insurance policy covering the ExploreBoard™.
7. Ettractions may assign its rights. This Agreement is not assignable by Establishment. This Agreement is governed by the laws of the State of New York, without reference to its conflict of laws provisions. Establishment agrees to the exclusive jurisdiction of the courts of the State of New York sitting in New York County or the United States federal courts sitting in the Southern District of New York. This Agreement will remain in effect for the Term unless terminated with 60 days notice by Ettractions. This is the entire agreement among the Parties with respect to the transactions described herein, and supersedes all prior agreements, written or oral, with respect thereto.

By:   
Michael Murray (Dec 17, 2018)

HT-Exit 88 Hotel TRS, LLC d/b/a Marriott Hotel Mystic Representative Signature

By:   
Ettractions Representative Signature



## STANDARD SERVICE CONTRACT ADDENDUM

This Standard Service Contract Addendum (the "Addendum") shall be binding upon \_\_\_\_\_ ("Owner") and \_\_\_\_\_ ("Vendor"), and made effective as of \_\_\_\_\_ ("Effective Date"), for the property known as \_\_\_\_\_, located at \_\_\_\_\_ ("Hotel"). The Addendum shall govern all transactions with respect to Owner and Vendor under the contract entitled \_\_\_\_\_ (the "Contract," and together with the Addendum, the "Agreement").

**1. Warranty.** In addition to any warranties found under the Contract, Vendor warrants that all services and work performed by Vendor shall be performed in a good and workmanlike manner and in accordance with the highest industry standards. In the event that the work performed by Vendor fails to meet the foregoing warranty, Vendor shall, at the option of Owner:

- 1.1. Re-perform the services or work, as the case may be, within thirty (30) days after notification of the breach of warranty, or
- 1.2. Promptly reimburse Owner for the price paid for such work within thirty (30) days after notification of the breach of warranty; or
- 1.3. Upon notice to Vendor, Owner shall have the right, in its sole discretion, to terminate the Agreement.

**2. Default.** In addition to any defaults under the Contract, if Vendor breaches any of the terms of the Addendum, Owner shall provide Vendor with notice of such breach. Owner may terminate this agreement upon thirty (30) days prior written notice, but in the event that Vendor fails to cure any breach to Owner's reasonable satisfaction, within ten (10) business days, Owner may terminate the Agreement effective immediately.

**3. Independent Contractor.** The employees, subcontractors, methods, facilities and equipment used by Vendor shall at all times be under the exclusive direction and control of Vendor. Vendor's relationship to Owner under the Agreement shall be that of an independent contractor. Nothing in the Agreement or in the performance of any work or services hereunder shall be construed to confer upon Vendor, its subcontractors or any of its employees, status as an employee, agent, associate, joint venture partner, or partner of Owner. Any liquidated damages or non-solicitation provisions contained in the Contract shall be null and void.



**4. Assignment; Delegation.** Owner may assign its rights and delegate its obligations under this Agreement to any related or affiliated entity, or to any purchaser of the property where the services are to be performed hereunder, and Vendor agrees that Owner shall have no further liability to Vendor after such assignment except for payment for such services performed prior to the assignment. Vendor shall not assign or delegate its duties under the Agreement without Owner's prior written consent.

**5. Indemnity.** Vendor, its agents, officers, directors, owners, representatives and employees ("Indemnifying Parties") shall indemnify, defend and hold Owner, Hersha Hospitality Management L.P. ("Manager") and their affiliates, officers, directors, employees, agents, licensees, sub-licensees and all their successors and assigns (collectively, the "Indemnitees") harmless from and against any and all losses, claims, demands, suits, damages, taxes, liabilities and related costs and expenses (including reasonable attorneys' fees and litigation expenses) incurred by or asserted against any Indemnitee arising out of or in any way connected with: (a) Vendor's performance under the Agreement; (b) Vendor's breach of any provisions or warranties of the Agreement or failure to comply with applicable laws, regulations, or orders; (c) accidents, occurrences, injuries, death or losses to or of any person or property that are in any way related to or result from, in whole or in part, the provision of the services to Owner; (d) any direct claim for workers' compensation benefits or personal injury claims for job-related bodily injury or death asserted against any Indemnitee by any of Vendor's employees or, in the event of death, by their personal representatives; or any liability of any Indemnitee under any federal or state law requiring notice to employees before termination or layoff from employment; (e) the active or passive negligence or willful misconduct of the Indemnifying Parties; and (f) any and all claims for infringement of any patent, copyright, trademark or trade secret by reason of Vendor's provision of Services to the Owner. Notwithstanding anything in the Agreement to the contrary, any limitations on Vendor's damages and liability set forth in the Agreement shall not apply to: (a) liability arising from the negligence or willful misconduct of a party, (b) amounts covered or required to be covered by insurance, (c) liability under any Vendor's indemnification obligation, and (d) the extent contrary to the laws of any state having jurisdiction. This paragraph will survive the expiration or termination of the Agreement.

**6. Payment.** Payment for Vendor's services shall be due from Owner thirty (30) days from receipt by Owner of an accurate invoice therefore. Any applicable taxes on the services and products provided under the Agreement shall be paid by Vendor. Notwithstanding anything to the contrary set forth in the Agreement, Manager shall have no obligation whatsoever, to incur any cost or expense or to make payment in connection with the Agreement.

**7. Term.** The term of the Agreement shall be one (1) year from the Effective Date, and thereafter shall automatically renew on a quarterly basis thereafter until either party terminates hereunder. Owner has the ability to terminate this Agreement at any time, for any reason whatsoever, provided that Owner provides to Vendor thirty (30) days prior written notice. Vendor has the ability to terminate this Agreement prior to the expiration of the Term, for any reason whatsoever, provided that Vendor provides to Owner ninety (90) days written notice prior to the expiration of the then-current Term. Notwithstanding the foregoing, Vendor agrees that prior to any exercise of its rights under this Section, it agrees to complete any work in progress so as not to disrupt or interfere with Owner's business operations and to provide for a reasonable transition procedure for the Owner.



**8. Insurance Requirements.**

8.1. Vendor shall at all times maintain insurance with insurance companies, and in such forms and amounts, as are satisfactory to Owner, with proof of coverage to be provided prior to the performance of any services by Vendor, to include, but not be limited to, the insurance coverages identified on Appendix I and worker's compensation insurance as required by applicable law. Vendor's insurance will be primary over any other collectible insurance except for insurance covering claims resulting from the contract holder's gross negligence. Vendor's coverage will not be considered as "excess coverage" over any collectible insurance policy the Owner maintains.

8.2. Owner and its affiliates shall be named as additional insured under Vendor's insurance policies where available by law, and Vendor shall provide Owner with verification of the endorsement prior to commencing work or performing services. Compliance with the insurance requirements herein does not limit Vendor's indemnification obligations hereunder. The additional insured named on the insurance certificate shall be as follows:

Owner and its affiliates  
Hersha Hospitality Management L.P.  
44 Hersha Drive  
Harrisburg, PA 17102

Each Certificate of Insurance must provide for thirty (30) days' notice to the Owner in the event of policy cancellation, non-renewal, or material change.

**9. Choice of Law.** The Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed under the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law provisions thereof. Both parties consent to the jurisdiction and venue of the Commonwealth of Pennsylvania and courts located in the Philadelphia, Pennsylvania for all actions (and for any arbitration, if applicable, to be located in an office in Philadelphia, Pennsylvania) related to the subject matter hereof. If either party should retain legal counsel and/or institute any suit against the other for breach of this Agreement or to enforce any of its rights herein, the prevailing party in any such suit shall be entitled to its costs, expenses and reasonable fees of its attorney(s). The rights in this section shall survive termination or expiration of this Agreement.

**10. Headings.** The headings in the Addendum are for reference only and shall not affect the interpretation of the Addendum. The Addendum may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument.



**11. Severability.** If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify the Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**12. Conflict.** In the event of a conflict between the Addendum and the terms of the Contract, the Addendum shall prevail, and any provisions in the Contract contrary to the provisions in the Addendum shall be deemed null and void. The parties hereby acknowledge that the Contract, as amended hereby, is ratified and affirmed, and shall remain in full force and effect. The Agreement shall be binding on all parties hereto and their successors and assigns.

**13. Amendment and Modification.** The Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No product or service specifications, or terms and conditions that are additional or contrary to the terms of the Agreement (unless reflected in an agreement signed and accepted by Owner) or other communication from Vendor or any third party, will be construed as, or constitute a waiver of the Addendum or the terms of the Agreement, or acceptance of any such additional terms, conditions or specifications. Owner hereby expressly rejects and objects to such additional or contrary terms, conditions or specifications and Vendor agrees that any such additional or contrary terms, conditions or specifications are and will be null, void and unenforceable unless set forth in a written amendment signed by the parties.

**14. Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**15. Cumulative Remedies.** The rights and remedies under the Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

**16. Compliance with Laws.** Vendor warrants that its operations and the services and or goods provided to Owner comply with all local, state and federal laws.



17. **Agreement.** The Addendum constitutes an offer by Owner to purchase services or goods, as the case may be, upon the Addendum and shall not be construed as an acceptance of an offer by Vendor to provide such goods or services. Vendor shall indicate its acceptance of this offer by executing and returning this signed Addendum to:

Hersha Hospitality Management L.P.  
Purchasing Department  
44 Hersha Drive  
Harrisburg, PA 17102  
Eric.Hobson@HHMLP.com

**IN WITNESS WHEREOF**, the parties hereto have as of the date first written above, intending to be legally bound, executed the Addendum.

**OWNER**

**VENDOR**

By:   
Michael Murray (Dec 17, 2018)

By: 

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## APPENDIX I

### INSURANCE COVERAGE REQUIREMENTS

#### General Liability:

Each Occurrence	\$1,000,000
Products/Completed	\$2,000,000
Personal Injury/Advertising	\$1,000,000
Fire Damage/Tenant's Legal Liability	\$250,000
Medical Expense	\$5,000

#### Automobile Liability:

CSL, Including Hired/Non-owned Autos	\$1,000,000
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#### Umbrella (not "excess"):

Occurrence/Aggregate	\$5,000,000
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#### Workers Compensation

Coverage A:	Statutory
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#### Coverage B:

Each Occurrence	\$100,000
Disease Each Employee	\$100,000
Disease/Policy Limit	\$500,000

Proprietor/Partner/Executive Officers must be included, if not incorporated

#### Professional Liability (only if professional services are provided)

Errors and Omissions:	\$1,000,000
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#### Garage Keepers Liability:

Limit	\$1,000,000
Comprehensive Deductible	\$500
Auto	\$2,500/occurrence
Collision Deductible	\$500

(Garage Keepers Liability is only applicable for parking and valet services)

Provided, however, if the Hotel being serviced under the Agreement is located in New York, the following requirement applies: The policies further do not include any of the following exclusions: Injury to Employee and / or Bodily Injury Exclusion – All Employees; Work Height Limitations; Exterior Work Exclusion or New York Exclusion.

## Ettractions, Inc.

### Interactive Tools Screen Display & Service Agreement

The good and valuable consideration, Ettractions, Inc. ("Ettractions") and its digital rights ("DRG") 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.






# 263-contract&addendum-Ettractions Inc-25723

Adobe Sign Document History

12/17/2018

Created:	12/17/2018
By:	Alex White (alex.white@hhmlp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAKEPPKBy1XIfclzOw4n6BylbXhfEzQn3e

## "263-contract&addendum-Ettractions Inc-25723" History

-  Document created by Alex White (alex.white@hhmlp.com)  
12/17/2018 - 10:31:26 AM EST - IP address: 38.98.197.162
-  Document emailed to Michael Murray (michael.murray@hhmlp.com) for signature  
12/17/2018 - 10:32:02 AM EST
-  Document viewed by Michael Murray (michael.murray@hhmlp.com)  
12/17/2018 - 10:32:24 AM EST - IP address: 74.87.24.230
-  Document e-signed by Michael Murray (michael.murray@hhmlp.com)  
Signature Date: 12/17/2018 - 10:32:36 AM EST - Time Source: server- IP address: 74.87.24.230
-  Signed document emailed to Michael Murray (michael.murray@hhmlp.com) and Alex White (alex.white@hhmlp.com)  
12/17/2018 - 10:32:36 AM EST