

Draft One
STATE OF GEORGIA

COUNTY OF GORDON

**AGREEMENT BETWEEN GORDON COUNTY, GEORGIA
AND CIRILIAN, INC., dbaREC1 FOR ONLINE
REGISTRATION AND SERVICING FOR THE GORDON COUNTY
PARKS AND RECREATION DEPARTMENT**

THIS AGREEMENT entered into this the ____ day of June, 2012, by and between Cirilian, Inc., a Georgia corporation d/b/a "Rec1" ("Rec1"), and Gordon County, Georgia, a political subdivision of the State of Georgia (hereinafter referred to as the "County") for the provision of online registration and servicing for the use and benefit of the Gordon County Parks and Recreation Department.

WITNESSETH:

HEREAS, Rec1 is a corporation formed pursuant to the laws of the State of Georgia and is presently in existence and in good standing; and

WHEREAS, the County desires to contract with Rec1 for a specific term, and Rec1 desires to contract with the County in accordance with and subject to the terms and conditions hereafter set forth for the provision of online registration and servicing for the use and benefit of the Gordon County Parks and Recreation Department; and

HEREAS, the parties hereto believe it to be in their best interests to create a definite and certain Online Registration and Servicing Agreement under the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the promises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

I. Recitals.

The statements above are true and correct and are incorporated by reference as a part of this Agreement between the parties.

II. Engagement.

The County hereby engages Rec1 to perform the services as more particularly described in Exhibit "A" and hereinafter referred to as "Services Provided." A copy of Exhibit "A" is attached hereto and incorporated by reference herein to this Agreement.

III. Duties of Rec1.

Rec1 shall serve as the exclusive provider to County of the services as described in the attached Exhibit "A".

IV. Term.

The initial term of this agreement shall be for a period of twelve (12) months, with the initial term beginning on July 1, 2012, and expiring on June 30, 2013. Following the expiration of this initial term, then this Agreement may be renewed by the express written consent of both parties. The County and Rec1 hereby agree that this Agreement may be terminated at any time by either party, without cause, upon written notice by the party wishing to terminate the Agreement to the other party. Said notice shall be mailed to the appropriate parties as identified in Paragraph 12 of this Agreement by registered or certified mail with postage prepaid and shall be deemed as given when so mailed. Upon the giving of said notice, the Agreement shall be terminated 30 days after receipt of such notice, and the parties agree to continue performance thereunder until the effective date of termination unless the parties mutually agree in writing to an earlier effective date of termination. Upon termination of this Agreement and expiration of any applicable notice period, the parties hereto shall have no further liability or obligation except as explicitly provided hereunder as surviving.

V. Payment Agreement.

- a. Basic Portal Agreement. The County agrees to pay Rec1 based upon usage, billed in arrears monthly at 1% per transaction ("Transactional Fee"). Rec1 shall invoice Customer the first week of each month for Transactional Fees incurred during the prior month's processing. Such fees charged by Rec1 do not include any transactional or monthly fees assessed by the County's credit card processor.
- b. Monthly Minimum Fees for Software Use. Monthly minimum fees shall be payable to Rec1 if a total of \$10,000 in total transactions are not processed through Rec1 in a given month. The County will receive an invoice for \$100 in those months independent of any merchant processing fees.
- c. Rec1 Merchant Account. If Rec1 provides the merchant account for the collection of registration and other credit card monies on behalf of the County, all fees due and payable to Rec1 will be deducted from the funds collected in the merchant account prior to disbursement. Merchant fees will be calculated according to a tiered scale based on annual volume of credit card revenue processed, which is in addition to the Transactional Fee.
 - i. Tiered Merchant Processing Rates are as follows:

Less than \$100K in Credit Card Transactions Processed Annually = 4.00%
\$100K - \$250K in Credit Card Transactions Processed Annually = 3.75%

\$250K - \$500K in Credit Card Transactions Processed Annually = 3.50%
Over \$500K in Credit Card Transactions Processed Annually = 3.25%

ii. There are no monthly minimum fees for merchant processing. The County simply pays for what it uses.

iii. Rec1 reserves the right, at any time, to adjust the merchant processing rate to more accurately reflect the amount of credit card transactions being processed. Rec1 will give 30 days notice upon such change.

iv. In addition to the Merchant Fees and Transactional Fees, the County will also be responsible for extraordinary processing fees assessed by Rec1's merchant account beyond normal transaction fees. The most typical extraordinary fee would involve a payer reversing a charge on a credit card statement. In such case, Rec1 shall invoice the County the first week of each month for any such fees in excess of the funds collected in the County's merchant account incurred during the prior month's processing. In any event, the County shall only be responsible for payment to Rec1 of actual, additional fees charged to Rec1 by the merchant as discussed under this subsection 5.c.iv.

- d. Payment. All amounts due and payable must be remitted within 30 days of distribution of the applicable invoice. All invoices are distributed electronically and can be viewed online on the Rec1 website.
- i. Any payment not received from the County by Rec1 within 60 days of distribution of the applicable statement shall be subject to an administrative fee in an amount equal to 1.5% per month of any outstanding and unpaid amount.
- e. Optional Training. Rec1 also agrees to provide optional on-site training at a rate of \$1,000 per day plus actual travel costs and expenses. Such on-site training includes 8 hours of training for as many of the County's users as deemed reasonably necessary.
- f. Custom Development. Rec1 further agrees to provide customized development beyond the initial 10 hours of organizational customization listed above at a rate of \$100 per hour. All work will be estimated and agreed upon with the County prior to work start.
- g. Fully-Earned. All amounts owed to Rec1 hereunder are fully-earned upon provision of the Services Provided or other charged amounts hereunder, are not subject to withholding or off-set in any manner whatsoever, and are non-refundable upon payment. The County expressly acknowledges and agrees that the County is familiar with the proposed Services Provided and Rec1's billing process. Unless otherwise expressly herein provided, if the County is not satisfied with the Services Provided or the performance of Rec1 hereunder for any reason or no reason whatsoever, the County's sole and exclusive remedy shall be to

terminate this Agreement as herein provided, and the County expressly waives any claim to a refund or other compensation.

VI. Indemnification.

Rec1 agrees to indemnify, defend and hold harmless the County and its respective officers, directors, members, employees, agents, representatives and affiliates from and against all claims, suits, obligations, liabilities, actual damages and expenses, including, without limitation, reasonable attorneys' fees, based upon, arising out of or resulting from any liability that the County suffers in connection with the performance of its obligations under this Agreement, including the improper use by Rec1 or its affiliates of any personally identifiable information or the gross negligence or willful misconduct of Rec1. The County agrees to indemnify, defend and hold harmless Rec1 and its respective officers, directors, members, employees, agents, representatives and affiliates from and against all claims, suits, obligations, liabilities, actual damages and expenses, including, without limitation, reasonable attorneys' fees, based upon, arising out of or resulting from any liability that Rec1 suffers in connection with the use by the County or its agents, employees or affiliates of the Rec1 system or failure to safeguard information that is produced by the Rec1 system. Further, the County represents and warrants that any changes, customizations, added functions or options and any other related items to the Software (defined below) requested by the County, if any, are not the proprietary work of a third party or owned by a third party, and the County agrees to indemnify, defend and hold harmless Rec1 and its respective officers, directors, members, employees, agents, representatives and affiliates from and against all claims, suits, obligations, liabilities, actual damages and expenses, including, without limitation, reasonable attorneys' fees, based upon, arising out of or resulting from any liability that Rec1 suffers in connection with implementing such changes, customizations, functions, options or other items at the County's request. If any party hereto receives notice of an event or possible event that would give rise to indemnification as required hereunder, such party shall provide immediate notice to the other party of such event. Further, if either party that is to be indemnified and held harmless hereunder receives payment or other compensation from a third party, any such amount received shall be applied to any amounts owed by the indemnifying party to the indemnified party or to a third party. Finally, the indemnifying party shall have the right to choose counsel to defend the indemnified party, to be accepted or rejected in the indemnified party's reasonable judgment. If the parties cannot come to agreement as to a choice of legal representation, the indemnifying party shall have the sole, final determination. Neither party shall be responsible for payment of any amount or any damages in excess of such amount actually incurred or suffered by the indemnified party.

VII. Relationship of the Parties.

The County and Rec1 agree that Rec1 is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. The County shall not be obligated to pay to Rec1, and Rec1 shall not be entitled to, any benefits accorded to the County's employees by virtue of the services provided under this Agreement. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security

or any other tax, for contributing to the state industrial insurance program or otherwise assuming the duties of an employer with respect to Rec1.

VIII. Waiver of Breach.

The waiver by either party of a breach of any of the provisions of this Agreement shall not be construed as a waiver by such waiving party of any subsequent breach by the offending party.

IX. Binding Effect; Assignment.

The rights and obligations as provided under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of each party hereto.

X. Entire Agreement.

This Agreement contains the entire agreement and supersedes all prior agreements and understandings, oral or written, with respect to the subject matter hereof. This Agreement may be changed only by an agreement in writing signed by both parties stating any waiver, change, amendment, modification or discharge which is sought.

XI. Governing Law and Venue.

This Agreement shall be construed and enforced in accordance with the laws of the State of Georgia. The parties agree and acknowledge that the venue for any litigation under this Agreement shall be in Gordon County, Georgia.

XII. Notice.

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if sent by certified or registered mail, first class, return receipt requested to the parties at the following addresses:

To Gordon County:
Mr. Don Holley, Director
Gordon County Parks and Recreation Department
Post Office Box _____
Calhoun, GA 30703
Email: dholley@gordoncounty.org

To Rec1:
12460 Crabapple Rd
Suite 202, #111
Alpharetta, GA 30004
Attn: Landon Schenck

XIII. Strict Construction.

The language used in this Agreement shall be deemed to be in the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied for or against any party by reason of such party being deemed the draftsman hereof.

XIV. Headings.

The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

XV. Severability.

If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

XVI. Waiver of Contractual Right.

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

XVII. Litigation and Attorney's Fees.

If it shall be necessary for either party to this Agreement to bring suit to enforce any provisions hereof or for damages on account of any breach of this Agreement, the substantially prevailing party on any issue in any such litigation and any appeals therefrom shall be entitled to recover from the other party, in addition to any damages or other relief granted as a result of such litigation, all costs and expenses of such litigation and a reasonable attorneys' fee as fixed by the court.

XVIII. Insurance.

During the term of this Agreement, Rec1 shall procure and maintain, at Rec1's sole cost and expense, the following insurance coverages:

Technology Liability - \$1,000,000 Per Claim/\$1,000,000 Aggregate
General Liability/Auto - \$1,000,000 Per Claim/\$2,000,000 Aggregate

XIX. Ownership and Remedies.

The County agrees that it has no right, title, interest or ownership in, or to, the software, website or portal utilized by Rec1 to provide the Services Provided, or any of its components, programming code or data structures, images or functions or any copies or modifications of the software, User Manuals, or any components, code or data structures thereof or in the software (collectively, the "Software") except to the extent that Rec1 grants the right to use the Software. The Software shall remain at all times Rec1's sole and exclusive property. The definition of "Software" shall also include any changes, customizations, added functions or options and any other related items requested by the County and implemented by Rec1, it being hereby expressly acknowledged and agreed that such changes, customizations, functions, options and items are and shall be the sole and exclusive property of Rec1 and the County shall have no right or claim to such changes, customizations, functions, options or items or any compensation whatsoever related thereto. The County shall not reproduce or copy any Software or portion thereof without Rec1's prior written consent. The obligations set forth in this paragraph shall survive the termination, cancellation or expiration of this Agreement for any reason whatsoever. The County agrees that, in the event of a breach or threatened breach by the County of the provisions of this Agreement, Rec1 shall be entitled to both a temporary and permanent restraining order and a preliminary injunction, or other similar remedy, restraining the County or any affiliate, officer, agent or assignee from violating the terms of this Agreement. The County specifically acknowledges that money damages alone would be an inadequate remedy for the injuries and damage that would be suffered and incurred by Rec1 as a result of a breach of any of the provisions of this Agreement. Such remedy is non-exclusive and shall be in addition to any other remedy available to Rec1 at law or in equity.

XX. Warranty.

Rec1 is absolutely committed to providing the highest quality software on the market. If the customer determines that some functions/capabilities within Rec1 are not performing up to required specifications, Rec1 will make the necessary corrections to those modules per the customer's request. While we do not guarantee that we will implement any and all new enhancement and module requests, it is important to us that the features that we do implement perform as designed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CIRILIAN, INC. dba Rec1

BY: _____
President

ATTEST:

Vice President
(corporate seal)

GORDON COUNTY, GEORGIA

BY: _____
Chair

ATTEST:

Clerk
(seal)

Exhibit "A"

Services Provided

Services provided by Rec1 to the County under this Agreement include the following:

- Access – Rec1 hereby grants a non-exclusive license during the term of the Agreement for the County and patrons of the County's recreational programming to access, use and display Rec1's online registration service (the "Portal"). Excluding occasional maintenance, the Software shall be available 24 hours per day, seven days per week with a guaranteed uptime of 95%. The Portal is accessible via the public Internet from any PC with an Internet connection. There is no limit to the number of organization users and participants that can enroll using the Portal.
- Training – Rec1 agrees to provide up to 5 hours of remote training per year to the County's personnel at no additional charge.
- Online Registration – The Rec1 registration engine through which the Portal is accessed can be integrated with the County's website. Rec1 will format a registration page to match the colors and theme of the rest of the County's website. The County would then display a link on its own page that would seamlessly redirect the user to a secure page on the Rec1 server.
- Documentation - All Rec1 startup and user's guides are maintained electronically in the system and can be accessed through the "Help Center" from within Rec1. Rec1 does not provide paper copies of its guides and help files.
- Data Backups – Rec1 currently performs backups daily of all of its data (6:00 AM). In case of emergency, Rec1 may restore data to the point of the previous backup.
- Enhancements – New features will be added to Rec1 throughout the term of this Agreement. The County will have full access to all of these new features without additional charge. The County is also encouraged to submit change requests as they see opportunities for improvement. Rec1 will attempt to implement any and all changes that improve the value of Rec1 to all of our customers at no charge. Thereafter, the County will be charged a development fee at a \$100 hourly rate for custom requests. All work will be estimated and agreed upon in writing by the parties hereto prior to work start.
- Customer Support – Rec1 shall provide an online utility for problem reports and change requests. The County may also reach Rec1 by phone at 1-800-335-1863 between the hours of 9:00 AM and 6:00 PM Eastern Standard Time, Monday through Friday and excluding national holidays. Email support is also available at support@rec1.com. After-hours support is often available but is not guaranteed. Emergencies will be handled as soon as possible. Enhancement requests will be queued based on priority and implemented on a schedule.
- Data – In the event the County no longer wishes to use Rec1, Rec1 will export the County's data base on a requested format (in most cases). If the data exporting request is initiated by the County, development will be charged at a \$100 hourly rate. All work will be estimated and agreed upon in writing by the parties hereto prior to work start.