



Tickets.com

IC Tickets.com

**Christine Warner**  
cwarner@tickets.com  
Direct: 714.327.5596  
Fax: 714.327-5589

December 2, 2010

Terry Calnon  
The Idaho Center  
16114 Idaho Center Blvd., Suite 2  
Nampa, Idaho 83687

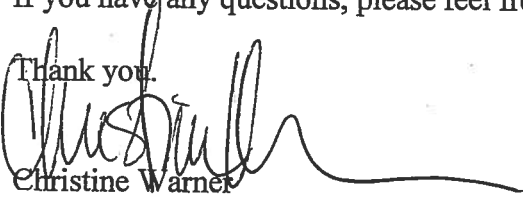
**RE: City of Nampa, Idaho / Tickets.com Agreements**

Dear Terry:

At the request of Craig Baltzer, I am sending you the enclosed fully executed copies of the Master Services Agreement and Order Form #1 for your records.

If you have any questions, please feel free to contact me at your convenience.

Thank you.

  
Christine Warner



## MASTER SERVICES AGREEMENT

This Master Services Agreement (hereinafter, the "**MSA**") between **Tickets.com, Inc.**, a Delaware corporation with its principal offices located at 555 Anton Boulevard, 11<sup>th</sup> Floor, Costa Mesa, California, 92626 ("**TDC**") and **City of Nampa, Idaho** a municipality with offices located at Nampa City Hall, 411 3<sup>rd</sup> Street South, Nampa, Idaho ("**Customer**"), is made effective as of November 20, 2010 (the "**Effective Date**"), provided that, each Order Form submitted by Customer and accepted by TDC shall become effective as of the last date of execution by a party on the Order Form. Customer and TDC agree that all rights and obligations of the parties are as set forth in this MSA, the Order Form(s), and any other exhibit, addendum or other document referenced and incorporated herein or therein (all as amended and in effect from time to time, all collectively, the "**Agreement**").

### 1. OVERVIEW.

1.1 *Scope.* The Agreement states the terms and conditions by which (i) TDC will contract with the Customer, from time to time, during the Term, for the delivery to Customer of any or all of the Services offered by TDC, and (ii) Customer may purchase Services and/or products from TDC. The specific Services and/or products to be provided hereunder are identified in the applicable Order Form(s) submitted by Customer. Order Form(s) shall be binding only upon written execution of the Order Form by both parties. Each Order Form submitted, accepted and executed by Customer and TDC hereby incorporates by this reference the terms and conditions of this MSA. The Agreement is intended to cover any and all Services and/or products ordered by Customer and provided by TDC. In the event that any terms set forth herein apply specifically to a Service not ordered by Customer, such terms shall not apply to Customer, unless and until such Service is ordered by Customer.

#### 1.2 *Definitions.*

(a) "Auction" means proprietary functionality made available online through the Ticketing System, which enables holders of tickets issued through the Ticketing System to engage in auction transactions for the sale or resale of such tickets. TDC acknowledges that ticket auction functionality is part of the Core Functionality.

(b) "Core Functionality" means the minimal resident functionality of the ProVenue® Ticketing System as more specifically described in Exhibit A of Order Form #1.

(c) "Customer Equipment" means computer hardware, not including stored data, and other tangible equipment owned or leased by the Customer. Customer Equipment may be connected to TDC Equipment, including to the TDC System for the purposes of receiving Services pursuant to an Order Form and/or Specification Sheet.

(d) "Customer Marks" means any registered or unregistered names, marks, brands, logos, designs, slogans, trademarks, trade dress and any other designations Customer uses in connection with its services and products, including but not limited to affiliates track logos, and the logos of their events.

(e) "Customer Technology" means the Customer's proprietary technology, including Customer's Internet operations design, Customer software (in source and object forms), software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the Term by either party that are not uniquely applicable to Customer or that have general applicability in the art.

(f) "Customer Website" means the page or pages (including corresponding URL) owned, operated or controlled by Customer on the World Wide Web for the purposes of promoting and conducting Customer's business.

(g) "Order Form" means a written order from Customer to TDC for Services, in a form designated by TDC and signed by an authorized representative of Customer and TDC.

(h) "ProVenue Access Control Software" means an integrated software tool with the ProVenue Ticketing System that allows customers to scan bar-coded tickets real-time.

(i) "ProVenueOnline®" means an online, real-time ticketing transaction application that integrates with TDC's back-office ticketing systems to enable TDC customers to sell tickets over the Internet in a secure, online environment twenty-four (24) hours per-day, seven (7) days per-week..

(j) "ProVenue Ticketing System" means TDC's proprietary hosted back-office ticketing application together with additional functionality as may be added by TDC, or as mutually agreed between TDC and Customer from time to time. The ProVenue Ticketing System integrates ProVenueOnline and all related functionality, as well as other functionality subject to agreement between the parties. As used herein, "ProVenue Ticketing System" does not include any equipment or other computer hardware necessary for the operation of the ProVenue Ticketing System.

(k) "Professional Services" means any professional or consulting service provided by TDC to Customer as more fully described in a Statement of Work.

(l) "Purchased Equipment" means any hardware or other products (including, if applicable, associated licensed software) purchased by Customer from TDC.

(m) "Replay Ticket Exchange® (or "Replay®")" means a proprietary online ticketing service developed and owned by TDC which facilitates Tickets previously purchased through the Ticketing System to be sold in the Secondary Market. TDC acknowledges that the Replay Ticket Exchange is part of the Core Functionality.

(n) "Secondary Market" Also known as the ticket "resale" market. Either the sale of a previously purchased Ticket for use by a person other than the original purchaser, or a Ticket otherwise placed into the ticket "resale" market by Customer.

(o) "Service(s)" means the specific service(s) provided by TDC to Customer as described in the Order Form(s) executed by the parties hereto during the Term and incorporated herein.

(p) "Specification Sheet" means the detailed description for each Service, other than Professional Services, ordered by Customer and made part of the applicable Order Form.

(q) "Statement of Work" means the detailed description(s) of the custom or non-standard Professional Services.

(r) "TDC Equipment" means all equipment, including computer hardware, network connections, storage devices and other equipment and components comprising the TDC System. In connection with the provision of certain Services pursuant to a Statement of Work and/or Specification Sheet, TDC Equipment may also mean any equipment provided to Customer by TDC as part of such Services and to which TDC retains all rights of title and ownership.

(s) "TDC Marks" means any registered or unregistered names, marks, brands, logos, designs, slogans, trademarks, trade dress and any other designations TDC uses in connection with its services and products.

(t) "TDC System" means the equipment, software, connectivity and procedures developed, established and maintained by TDC, and to which Customer may be granted access pursuant to a Statement of Work and/or Specification Sheet, as part of the Services provided to Customer by TDC.

(u) "TDC Technology" means the TDC's proprietary technology, including TDC's Internet operations design, TDC software (in source and object forms), software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by TDC or licensed to TDC from a third party) and also including any derivatives, improvements, enhancements or extensions of TDC Technology conceived, reduced to practice, or developed during the Term by either party that are not uniquely applicable to Customer or that have general applicability in the art.

(v) "Tickets@Entry™" means a method of enabling a Ticket buyer to purchase Tickets to an event using a payment card. At the time of purchase, the Tickets are not printed, but are associated in the TDC System with the payment card used for purchase. When the Ticket buyer arrives at the venue to attend the event, the Ticket purchaser's payment card is swiped by access control, which triggers the printing of paper receipts containing customary ticket information including, but not limited to, a unique barcode. Tickets@Entry is also referred to as "paperless tickets". TDC acknowledges that the Tickets@Entry method of delivery is part of the Core Functionality.

(w) "Tickets@Home®" means the proprietary software functionality developed and owned by TDC, which enables a Ticket purchased through the Internet to be delivered to the Ticket purchaser's personal computer and printed on the Ticket purchaser's personal printer. TDC acknowledges that the Tickets@Home method of delivery is part of the Core Functionality.

(x) "Tickets@Phone®" means a proprietary method of enabling a Ticket buyer to cause Tickets purchased Online to be delivered in barcode format to the Ticket buyer's cellular telephone. TDC acknowledges that the Tickets@Phone method of delivery is part of the Core Functionality.

(y) "User(s)" means an entity or individual which is authorized by Customer to access and use the Services, for whom subscriptions to the Service have been purchased, and which have been provided user identifications and passwords by Customer (or by TDC at Customer's request). The term: "User" may include but is not limited to Customer's employees, consultants, contractors and agents; or third parties with which Customer transacts business.

(z) "Work" means any tangible deliverable provided by TDC to Customer as described in the Statement of Work for any Professional Services.

## 2. DELIVERY OF SERVICES; TERM.

2.1 *Delivery of Services.* By submitting an Order Form, Customer agrees to pay for, and, by accepting the Order Form, TDC agrees to provide, the purchased Service(s) during the Term, as specified in Section 2.2 below. Customer agrees that orders placed hereunder are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written comments made by TDC regarding future functionality or features.

2.2 *Term.* The Agreement shall commence on the Effective Date and shall continue thereafter for a period of five (5) years (the "**Initial Term**"). Unless terminated earlier as provided in Section 10.1 herein, upon expiration of the Initial Term, the Agreement will be extended automatically for two (2) consecutive three (3) year terms (each, a "**Renewal Term**"). Either party may elect not to renew the Agreement by giving written notice thereof to the other party not less than thirty (30) days prior to the end of the Initial Term or the Renewal Term then in effect. The term of each Order Form shall be set forth in the applicable Order Form and may be terminated earlier if such Order Form provides for early termination. Notwithstanding anything herein to the contrary, the Agreement will expire

upon the date of expiration or termination of the last Order Form incorporated herein, or the completion of Services provided hereunder, which may be greater than the Term as stated in this Section 2.2. As used throughout the Agreement, the word "**Term**" shall include the Initial Term, and any and all Renewal Term(s). The term of each Order Form shall be set forth in the applicable Order Form and may be terminated earlier if such Order Form provides for early termination.

### **3. FEES AND PAYMENT TERMS.**

3.1 *Fees and Expenses.* Customer will pay TDC for all fees according to the prices and terms listed on the Order Form(s). The prices listed on the Order Form(s) will remain in effect during the Term, unless modified as provided herein. In the event TDC is providing Professional Services to Customer, Customer also agrees to reimburse TDC for reasonable actual out-of-pocket expenses incurred in providing such Professional Services to Customer.

3.2 *Payment Terms.* Monthly recurring charges ("**MRC**") will be billed either in advance or arrears of the provision of Services, as described in the applicable Order Form. Non-recurring charges ("**NRC**") and all other charges for Services will be billed in arrears. Customer will be invoiced monthly on the first billing cycle after the Effective Date. Payment for all fees is due within thirty (30) days of the date each TDC invoice is received by Customer. All payments will be made in U.S. Dollars unless otherwise specifically agreed to and memorialized in the Order Form(s).

3.3 *Settlements.* If applicable, TDC will provide Customer with weekly email invoices (individually and collectively, "**Invoice**") detailing any and all amounts owed to TDC which are not covered by Section 3.2 above. These may include, but are not limited to, TDC's revenue share and gross revenue from ticket sales generated from sales to TDC's clients' events collected by Customer. Upon receipt of an Invoice, Customer shall pay TDC within seven (7) days all amounts due by Automatic Clearing House (ACH) or by check. The Invoice will form the basis for the settlement between the parties and will be conclusive as to any amounts owed to TDC by Customer unless Customer submits a written objection to TDC within seven (7) days after receipt of such Invoice, setting forth in reasonable detail Customer's objection to which Customer believes the Invoice to be incorrect.

3.4 *Late Payments.* Any payment not received within thirty (30) days of receipt of the invoice date will accrue interest at a rate of one and one-half percent (1½%) per-month, or the highest rate allowed by applicable law, whichever is lower. If Customer is delinquent in its payments, TDC may, in its reasonable discretion and upon written notice to Customer, modify the applicable payment terms to require advance payment before the provision of any or all Services, or require other assurances to secure Customer's payment obligations hereunder. Customer agrees to reimburse TDC for all costs (including reasonable attorneys' fees) incurred by TDC in collecting any such late payments.

3.5 *Taxes.* All fees for Services are exclusive of all taxes and similar fees now in force or enacted in the future or imposed on the transaction and/or the delivery of Services, all of which Customer will be responsible for and will pay in full, other than taxes based on TDC's net income. Customer also agrees to pay all taxes and other governmental charges assessed in connection with the sale, use or possession of any Purchased Equipment including, without limitation, any and all sales and/or use taxes and personal property taxes (other than taxes based on TDC's net income).

#### 4. CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY OWNERSHIP; LICENSE GRANTS.

##### 4.1 Confidential Information.

(a) *Nondisclosure of Confidential Information.* TDC and Customer each acknowledge that they will have access to certain confidential information of the other party concerning the other party's business, plans, Customers, technology, and products, and other information held in confidence by the other party (individually and collectively, "**Confidential Information**"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to, TDC Technology, Customer Technology, non-public information relating to the clients of either party, and the terms and conditions and existence of the Agreement. TDC and Customer each agree that they will not use in any way, for their respective own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of the Agreement, nor disclose to any third party (except as required by law, or to that party's parents, subsidiaries, affiliates, independent contractors, attorneys, accountants and other advisors as reasonably necessary) any of the other's Confidential Information and will take all reasonable precautions to protect the confidentiality of such information, which precautions, in any event, will be at least as stringent as it takes to protect its own Confidential Information. TDC may require, as a condition of gaining access to any TDC Technology, that employees and other representatives of Customer execute a separate non-disclosure agreement which is consistent with Customer's confidentiality obligations under this Section 4. Customer may require, as a condition of gaining access to any Customer Technology, that employees and other representatives of TDC execute a separate non-disclosure agreement which is consistent with TDC's confidentiality obligations under this Section 4.

(b) *Exceptions.* Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of the Agreement by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that, unless restricted by law or by order of a governmental agency, the receiving party provides reasonable notice to the other party of the required disclosure so as to permit the other party to respond to such request for disclosure.

##### 4.2 Intellectual Property.

(a) *Ownership.* Except for the rights expressly granted herein or in an Order Form, the Agreement does not transfer to Customer any ownership rights in and to any TDC Technology. All right, title and interest in and to TDC Technology will remain solely with TDC. Except for the rights expressly granted herein, the Agreement does not transfer from Customer to TDC any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. TDC and Customer each agree that they will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party.

(b) *General Skills and Knowledge.* Notwithstanding anything to the contrary in the Agreement, TDC will not be prohibited or enjoined at any time by Customer from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including, without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another Customer of TDC.

(c) *Use of TDC Marks.* Customer may reference TDC's products and services in writing by the associated TDC Marks, provided (i) Customer has obtained TDC's prior written consent to such use, which consent may be withheld at TDC's sole discretion; (ii) such reference to TDC and TDC Marks is truthful and not misleading; and (iii) such reference complies with the then-current TDC Trademark and "**Brand Style Guide**", which will be provided to Customer upon reasonable request.

4.3 *General License Grants.* The licenses below may be supplemented by additional licenses granted to Customer by TDC dependent on the Services provided in the Order Form and/or Specification Sheet.

(a) *By TDC.* Subject to the terms of the Agreement and as may be supplemented in the applicable Order Form and/or Specification Sheet, TDC hereby grants to Customer a nonexclusive, royalty-free, license, during the Term, to access and use the TDC Technology, to which Customer gains access through the provision of the Service(s), solely for purposes of using the Service(s) and for no other purpose.

(b) *By Customer.* Customer agrees that if, in the course of performing the Service(s), it is necessary for TDC to access Customer's equipment, TDC is hereby granted and shall have a nonexclusive, royalty-free license, during the Term, to access Customer Technology solely as necessary for purposes of providing the Service(s) to Customer and for no other purpose.

## 5. TDC REPRESENTATIONS AND WARRANTIES.

5.1 *General.* TDC represents and warrants that (i) it has the legal right to enter into the Agreement and perform its obligations hereunder, (ii) it currently has no restrictions that would impair its ability to perform its obligations under the Agreement; (iii) the performance of its obligations and delivery of the Services to Customer by TDC will not violate any applicable laws or regulations; and (iv) that the products and services provided by TDC shall not infringe on any third party patent, copyright or any other intellectual property right of any third party.

5.2 *Selection of Purchased Equipment; Manufacturer Warranty.* During the Term of the Agreement, if Customer purchases any equipment from TDC, Customer acknowledges and agrees that Customer's use and possession of the Purchased Equipment shall be subject to and controlled by the terms of any manufacturer's or supplier's warranty, as appropriate. Customer agrees to look solely to the manufacturer or, if appropriate, the supplier with respect to all mechanical, service and other claims. To the extent that TDC has rights to enforce any warranty made by a manufacturer of Purchased Equipment, such rights are hereby assigned to Customer.

5.3 *No Other Warranty.* Except for the express warranties set forth in this Section 5, or as supplemented in any Specification Sheet, Customer's use of the Services and supplemental services is at Customer's own risk. Except for the express warranties provided herein, TDC, its suppliers and subcontractors, if any, do not make, and hereby disclaim, any and all other express and/or implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement and title, and any warranties arising from a course of dealing, usage, or trade practice. TDC, its suppliers and subcontractors, if any, do not warrant that the Services or the supplemental services will be uninterrupted, error-free, or completely secure. Notwithstanding the foregoing, TDC warrants that the ProVenue Ticketing System shall have a 99.7% uptime (excluding scheduled maintenance).

5.4 *Disclaimer of Actions Caused by and/or Under the Control of Third Parties.* TDC does not and cannot control the flow of data to or from TDC's network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof). TDC cannot guarantee that such events will not occur. Accordingly, TDC, its suppliers and subcontractors, if any, disclaim any and all liability resulting from or related to such events.

## 6. CUSTOMER OBLIGATIONS.

### 6.1 Warranties of Customer.

(a) *General.* Customer represents and warrants except as limited by the Idaho State Constitution that: (i) it has the power and authority to enter into and perform its obligations under the Agreement; (ii) it currently has no restrictions that would impair its ability to perform its obligations under the Agreement; (iii) that the performance of its obligations and use of the Services (by Customer, its Customers and users) will not violate any applicable laws, regulations, or TDC's operating procedures, or unreasonably interfere with other TDC Customers' use of TDC's services; and (iv) it will comply with the terms and conditions of all licenses for software included in any Order Form, Specification Sheet and/or provided by a third party with any Purchased Equipment.

(b) *Breach of Warranties.* In the event of any breach of any of the foregoing warranties or other representations of Customer set forth in the Agreement, in addition to any other remedies available at law or in equity, TDC will have the right to suspend immediately any related Services. TDC will, if practicable depending on the nature of the breach, and without in any way limiting any other rights and remedies it has in law or in equity, provide notice and opportunity to cure. Once the breach is cured, TDC will promptly restore the Service(s), unless TDC has taken action pursuant to the terms of Section 10.

6.2 *Compliance with Laws and Rules and Regulations.* Customer agrees that it will use the Services only for lawful purposes and in accordance with the Agreement. Customer will comply at all times with all applicable laws and regulations and TDC operating procedures as provided herein. Customer acknowledges that TDC exercises no control whatsoever over the content of the information passing through Customer's site(s) or shared or processed on equipment under the control of TDC on behalf of Customer, and that it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations.

6.3 *Restrictions on Use of Services.* Customer shall not resell any Services to any third parties without the prior written consent of TDC (which may be withheld in its sole discretion). Customer agrees that, to the extent TDC has authorized Customer to use the Services to provide services to Customer's clients or Users, Customer will disclaim in writing any liability whatsoever by TDC, its suppliers or subcontractors to Customer's clients or Users.

### 6.4 Purchased Equipment.

(a) *Risk of Loss. Shipping and Handling.* All Purchased Equipment is provided FOB equipment manufacturer or supplier facility, as applicable. Risk of loss passes to Customer upon acceptance by Customer of the Purchased Equipment into the custody of the carrier or, if there are subsequent carriers, to the first carrier, for transportation to the named place of destination. Customer is solely responsible for all expenses incurred in connection with the delivery of any Purchased Equipment. The Purchased Equipment will be deemed accepted by Customer upon receipt and inspection.

(b) *Title.* Customer shall acquire title to the Purchased Equipment upon full payment of the purchase price(s) set forth in the Order Form. Notwithstanding the foregoing, TDC and any licensor of rights, as applicable, shall retain title to and rights in the intellectual property, software (whether or not subject to patent or copyright) and content contained in the Purchased Equipment.

6.5 *TDC Equipment.* TDC hereby leases to Customer any and all TDC Equipment named and identified in the applicable Order Form(s) for use at such location and at such rental rate for approximately such time as is stated within such Order Form(s). Customer hereby acknowledges and agrees that Customer shall be responsible (and shall pay or reimburse TDC as applicable) for all freight charges for the transportation of TDC Equipment to and from Customer.



## 7. INDEMNIFICATION.

7.1 *TDC Indemnification.* TDC will indemnify, defend and hold Customer and its members and/or subsidiaries, officers, employees, agents, sponsors, trustees, receivers, successors and assigns, parent companies, related or affiliated companies and all of their shareholders and directors (individually and collectively, "**Customer Indemnified Party**") harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable, outside attorneys' fees) (collectively, "**Losses**") resulting from any claim, suit, action, or proceeding (each, an "**Action**") brought by any third party against a Customer Indemnified Party alleging (i) the infringement or misappropriation of any intellectual property right relating to the delivery or its use of the Service(s) (but excluding any infringement contributorily caused by the Customer Indemnified Party); (ii) personal injury or any damage caused by the negligence or willful misconduct of TDC; (iii) any violation of or failure to comply with any applicable law or regulation by TDC, and (iv) any breach of this Agreement by TDC.

7.2 *Customer Indemnification.* Customer will indemnify, defend and hold TDC and its members and/or subsidiaries, officers, employees, agents, sponsors, trustees, receivers, successors and assigns, parent companies, related or affiliated companies and all of their shareholders and directors (individually and collectively, "**TDC Indemnified Party**") harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable, outside attorneys' fees) (collectively, "**Losses**") resulting from any claim, suit, action, or proceeding (each, an "**Action**") brought by any third party against a TDC Indemnified Party alleging (i) personal injury or any damage caused by the negligence or willful misconduct of Customer; (ii) any violation of or failure to comply with any applicable law or regulation by Customer, and (iii) any breach of this Agreement by Customer.

7.3 *Indemnification: Notice and Cooperation.* Each of TDC' and Customer's respective indemnification obligations set forth in this Section 7 shall be subject to (i) receiving prompt written notice of the existence of any Action or Loss; (ii) permitting the indemnified party to participate in the defense of any Action; and (iv) receiving full cooperation of the indemnified party in the defense thereof.

8. **INSURANCE.** TDC shall carry and maintain during the Term, at its own cost and expense, commercial general liability insurance of at least one million dollars (\$1,000,000) per-occurrence with a two million dollar (\$2,000,000) million aggregate covering claims for bodily injury, death, personal injury or property damage. The coverage required herein may be obtained through any combination of primary and excess or umbrella liability insurance. Said policy will name customer as an additional insured.

## 9. TERMINATION.

9.1 *Termination Without Cause.* Notwithstanding anything herein to the contrary, Customer may terminate this Agreement and all Order Forms subject hereto, upon three hundred and sixty-five (365) days written notice.

9.2 *Termination For Cause.* TDC or Customer may terminate the Agreement and all outstanding Order Forms if: (i) the other party breaches any material term or condition of the Agreement and fails to take reasonable measures to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within ten (10) days after receipt of written notice from TDC; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or an assignment of assets for the benefit of creditors; (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or assignment of assets for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing, or (iv) upon any change in ownership of a majority of the issued and outstanding shares of TDC, or the transfer of a minority interest in such shares to a third party that is either a direct competitor of Customer and/or Customer's facility management company, SMG. Customer and TDC may also terminate the Agreement in accordance with any other express terms regarding termination set forth herein.

9.3 *No Liability for Termination.* Neither TDC nor Customer will be liable to the other for any termination or expiration of any Service, or the Agreement in accordance with its terms.

9.4 *Effect of Termination.* Upon the effective date of termination of the Agreement:

(a) TDC will immediately cease providing the Service(s);

(b) Any and all payment obligations of Customer under the Agreement for Service(s) will immediately become due;

(c) Within thirty (30) days of such termination, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.

9.5 *Survival.* Any provisions in this MSA, including but not limited to Section 4 above, which by their nature are intended to survive expiration or termination shall survive expiration or termination of the Agreement for any reason.

## 10. Miscellaneous Provisions.

10.1 *Force Majeure.* Except for the obligation to make payments for Services rendered, neither party will be liable for any failure or delay in its performance under the Agreement due to any cause beyond its reasonable control, including but not limited to acts of war or military conflict, terrorism, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet and or the TDC network (not resulting from the actions or inactions of TDC), (each, individually, a "Force Majeure Event") provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses commercially reasonable efforts to promptly correct such failure or delay in performance. If TDC is unable to provide the Service(s), or any portion thereof, for a period of one hundred and twenty (120) consecutive days as a result of a continuing Force Majeure Event, either party may elect to terminate the Agreement.

10.2 *Marketing.* Notwithstanding anything contained in Section 4.1, Customer agrees that during the Term, TDC may publicly refer to Customer, orally and in writing (including a press release as mutually agreed between the parties), as a Customer of TDC.

10.3 *No Third Party Beneficiaries.* TDC and Customer agree that, except as otherwise expressly provided in the Agreement, there shall be no third party beneficiaries to the Agreement.

10.4 *Governing Law.* The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Idaho, without giving effect to the principles of comity or conflicts of laws thereof. The Parties knowingly and voluntarily intend and agree that the mandatory, exclusive venue for any action in any way related to this Agreement shall be Canyon County, Idaho for state court claims, or the United States District Court for Idaho, for issues of diversity, or federal question. All parties hereby knowingly and voluntarily waive any and all objections to venue and personal jurisdiction in the foregoing, and submit themselves thereto without. Each party hereby waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 11.5, and stipulates that such courts shall have *in personam* jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.

10.5 *Severability; Waiver.* In the event any provision of the Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of the Agreement will remain in full force and effect. The waiver of any breach or default of the Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

10.6 *Assignment.* Neither party shall have any right to sell, assign, delegate or in any way dispose of or encumber any of the rights or duties granted under this Agreement. Any such attempt shall be deemed to be null and void and shall be considered a default under this Agreement, entitling the other party, at its sole discretion, to terminate the Agreement and to seek any and all other legal or equitable remedies such party may be entitled to pursue under this Agreement.

10.7 *Notice.* Any notice or communication required or permitted to be given hereunder must be delivered by hand, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed below the signature for such party on this MSA or at such other address as may hereafter be furnished in writing by either party to the other party.

10.8 *Relationship of Parties.* TDC and Customer are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between TDC and Customer. Neither TDC nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

10.9 *Entire Agreement; Counterparts Originals.* The Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between Customer and TDC with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This MSA may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of this MSA made by reliable means (e.g., scanning, photocopy, facsimile) is considered an original. The Agreement may be changed only by a written document signed by authorized representatives of TDC and Customer in accordance with this Section 11.11. For purposes of the Agreement, the term "written" means anything reduced to a tangible form by a party, including a printed or handwritten document, e-mail or other electronic format.

10.10 *Interpretation of Conflicting Terms.* In the event of a conflict between or among the terms in the Agreement, the Order Form(s), the Specification Sheet(s), the Statement(s) of Work, and any other document made a part hereof, the documents shall control in the following order: this MSA, the Order Form with the latest date, the Statement of Work, the Specification Sheets, and other documents including the Request for Proposals Response dated March 29, 2010.

Authorized representatives of Customer and TDC, have read the foregoing and all documents incorporated therein and agree and accept such terms effective as of the date first above written.

{Signature Page Attached}

CITY OF NAMPA ("CUSTOMER")

Signature: Tom Dale

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

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

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

TICKETS.COM, INC. ("TDC")

Signature: Daniel H. Wu

Print Name: Daniel H. Wu

Title: CFO

Date: 12-1-10

IPAL

Address for Notice:

Nampa City Hall  
411 3<sup>rd</sup> Street South  
Nampa, Idaho 83651  
Attention: Cliff Long

Address for Notice:

555 Anton Blvd., 11<sup>th</sup> Floor  
Costa Mesa, California 92626  
Attention: Legal Department  
With copy to:  
John Walker, CEO



## ORDER FORM #1

DATE	November 30, 2010
CUSTOMER NAME ("Customer")	City of Nampa, Idaho
CUSTOMER ADDRESS	Nampa City Hall, 411 3 <sup>rd</sup> Street South, Nampa, Idaho 83651

1. Customer hereby orders, and TDC hereby agrees to provide the Services set forth in the Master Services Agreement dated November 30, 2010 between Customer and TDC (the "MSA").
2. The Services described herein are provided pursuant to the terms and conditions of this Order Form and the terms and conditions of the following documents, all of which shall be incorporated herein by this reference:
  - a. The MSA;
  - b. Service Addenda, including any applicable Specification Sheet(s) and/or Statement(s) of Work signed by Customer and TDC;

Unless separately defined, capitalized terms used in this Order Form shall have the meaning assigned to such terms in the MSA.

3. **Term.** Subject to the provisions of Section 5 below, this Order Form shall remain in effect throughout the Term, as such may be extended or otherwise amended from time to time.
4. **Ticketing System.**
  - a. *ProVenue Ticketing System.*
    - (i) *Grant of Rights.* Subject to the payment obligations set forth in Section 5 below, TDC hereby grants Customer a non-exclusive, non-assignable, limited, revocable access grant to utilize the ProVenue Ticketing System in connection with Customer's provision of ticketing services to Users. Subject to the terms and conditions of this Agreement, Customer may grant access to the ProVenue Ticketing System to Users. The ProVenue Ticketing System shall possess the Core Functionality as set forth in the attached Exhibit A and TDC shall use commercially reasonable efforts to cause the ProVenue Ticketing System to be in compliance with Payment Card Industry ("**PCI**") standards throughout the Term.
    - (ii) *Restrictions.* Customer may not (a) sell or assign any rights granted herein, (b) attempt to modify, disassemble, decompile, reverse engineer or make derivative works of the ProVenue Ticketing System, ProVenue Access Control Software or any other system or software provided by TDC, (c) provide, disclose or divulge or make available to, or permit use of the ProVenue Ticketing System to any third party except for Users, and (d) use the ProVenue Ticketing System for any purpose except as expressly provided for in this Agreement.

- (iii) *Authorized Users.* Customer agrees that before it provides any User with access to the ProVenue Ticketing System it shall have entered into a written agreement with such User that contains provisions which protect TDC's rights to the same extent that TDC's rights are protected in this Agreement and which names TDC as a third party beneficiary. Customer further agrees that it shall immediately notify TDC when a new User is granted access to the ProVenue Ticketing System. Notwithstanding anything to the contrary within this Agreement, Customer expressly agrees that it shall be liable to TDC for any breach of the terms of this Agreement by any User. For the purposes of this Agreement, the term "Users" shall mean any and all individuals or entities who are authorized by Customer to use the Services and who have been supplied user identifications and passwords by Customer (or by TDC at Customer's request). Users may include, but are not limited to, Customer's employees, consultants, contractors and agents; or third parties with whom Customer transacts business.
- (iv) *Exclusivity.* Customer hereby agrees that throughout the Term, Customer shall utilize the ProVenue Ticketing System exclusively and shall not utilize any other ticketing system to provide services to Customer's current or prospective clients or Users.
- (v) *Promotional Exceptions.* Notwithstanding the provisions of Section 4 (a)(iii) above, if Client is required under separate agreement with an event promoter, ticketing provider or show management organization to allocate tickets to an event to a legitimate fan club, or other promotional initiative, TDC agrees that Customer may make such allocation, and Customer may sell such tickets on a ticketing system other than the ProVenue Ticketing System, *provided however*, that (a) such tickets will only be sold through a "Web only" promotional on-sale; (b) Customer shall not allocate more than ten percent (10%) of the seats available per-show or event to any such promotional on sale; and (c) such allocation shall not contain an unreasonably high percentage of premium or high-demand seats ((a) through (c) collectively, the "Promotional Allocation").

In addition to the foregoing, prior to selling any Promotional Allocation through an alternate ticketing system, Customer agrees to use commercially reasonable efforts to cause such Promotional Allocation to be sold through the ProVenue Ticketing System and to assess the Transaction Fee (as hereafter defined) on all such tickets.

- b. *Other Services.* In addition to the ProVenue Ticketing System, TDC will provide the following services and equipment to Customer as part of the Agreement, at no additional cost or expense:

- (i) *Training and documentation.* TDC will provide Customer with all available documentation applicable to the operation of the ProVenue Ticketing System and related products and subsequent updates as they become available. In addition, on dates and at times as mutually agreed between the parties, TDC will

provide initial training to Customer's key personnel in the operation of the ProVenue Ticketing System. Following completion of such initial training, Customer shall be solely responsible for maintaining Customer's personnel and/or Users' competency in the ProVenue Ticketing System. In the event Customer desires additional training, such additional training shall be mutually agreed upon and considered as Additional Services the terms of which shall be set forth on a Statement(s) of Work.

- (ii) *ProVenue Access Control.* TDC will provide Customer with one (1) ProVenue Access Control software module (hereafter, "**PAC**") which, when installed at a facility, shall validate an admission ticket, pass, or similar medium evidencing a right of entry at an entry control point designated by the facility. In the event Customer desires additional PACs, TDC has agreed to sell such additional PACs at an annual upfront cost of Ten Thousand Dollars (**\$10,000.00**) each. TDC's PAC shall include all server software, and software that operates on a handheld scanning device, fixed or portable scanning device, or fixed or portable turnstiles. TDC's PAC utilizes Alvarado's Manufacturing Company, Inc.'s ("**Alvarado**") proprietary GateLink Validation® software. TDC acknowledges that the Annual Charges set forth in Section 5.a below includes Alvarado's licensing fees applicable to the PAC provided to Customer hereunder. As an end user of the GateLink Validation software and subject to the terms of Sections 7 and 8 below, Customer agrees to execute the form of Software License Agreement attached hereto as Exhibit B. During the Term, in accordance with that certain Admission Control Software and Hardware Agreement between TDC and Alvarado, at no additional cost to Customer, Customer shall be entitled to telephone and email support (7:30 am to 4:30 PM PST) and all software updates and enhancements to the GateLink Validation software as any such updates and enhancements are made available by Alvarado.
- (iii) *Campaign Creator™.* TDC will provide Customer with access to the Campaign Creator service on the terms and conditions as more specifically detailed on the attached Exhibit C. TDC agrees that during the Term, Customer shall not be limited in the number of e-mail/RSS feeds it sends through the Campaign Creator service. TDC further agrees that no overage charge or other fee will be assessed as a result of Customer's e-mail or RSS feeds exceeding any particular threshold during any year of the Term.
- (iv) *Marketing Tools.* During the Term, as reasonably requested, TDC shall make its sales collateral available to Customer, at no additional cost, for use in connection with the promotion of Customer's business. Customer acknowledges and agrees that any such collateral shall be as produced by TDC in the ordinary course of its business and TDC shall not be obligated to prepare any customized sales collateral for Customer.
- (v) *Private Labeled Web Pages.* TDC shall provide, at no additional cost, all development work necessary to create and implement private labeled ticketing transaction web pages for two (2) separate entities as designated by Customer, which shall provide such designated entities with an Internet ticketing application

possessing the look and feel of the websites operated by such entities. During the Term, TDC shall provide additional Private Labeled Web Pages to Customer upon reasonable notice at the cost of two thousand five hundred dollars (\$2,500) per-site.

- (vi) *National Operation Center Help Desk Service.* TDC will provide Customer with email and telephone consultation service through the National Operation Center ("NOC") for incident and/or problem reporting and for general support, including without limitation, technical support to Customer to diagnose and/or isolate a ProVenue Ticketing System problem, on a twenty-four (24) hours per-day, seven (7) days per-week basis (24x7).

**5. Fees.** In consideration of the rights granted herein, Customer agrees to pay TDC the following fees:

- a. *Annual Charges.* TDC will provide Customer with the ProVenue Ticketing System for an annual subscription fee in the amount of Forty Five Thousand Dollars (**US\$45,000.00**) for each year of the Term (hereafter, the "**Subscription Fee**"). The Subscription Fee shall be paid in four (4) equal quarterly payments of eleven thousand two hundred and fifty dollars (\$11,250.00) commencing on the date that the Ticketing System is first made available for the sale of Tickets to the general public (the "Go-Live Date") or January 17, 2011, whichever first occurs, and then on the first day of each consecutive calendar quarter thereafter during the Term.
- b. *Set-Up Fee.* Customer will pay TDC a non-refundable, one-time, set-up fee in the amount of Twenty Eight Thousand Six Hundred Dollars (**US\$28,600.00**), which amount shall be payable in two (2) equal installments of fourteen thousand three hundred dollars (\$14,300.00) each, the first installment of which is due upon execution of this Agreement and the second of which shall be payable on the Go-Live Date.
- c. *Transaction Fee.* In addition to the payment of the Subscription Fee, Customer agrees to pay TDC a transaction fee (hereafter, the "**Transaction Fee**") in the amount of One Dollar (**US\$1.00**) for each ticket sold by Customer and/or Users on the Internet through the ProVenue Ticketing System. Notwithstanding the foregoing, TDC agrees that the Transaction Fee shall not apply to tickets for which Customer must issue a refund as a result of the cancelation or postponement of the event. Beginning with the second year of the Term, the Transaction Fee shall be increased by five percent (5%) per-annum, for each successive year of the Term. At the end of each calendar week, TDC shall provide Customer with an Invoice for all tickets sold through the ProVenue Ticketing System in the preceding week, and Customer shall have seven (7) days from the receipt thereof, to pay TDC for such Invoice pursuant to the terms and conditions of Section 3.3 of the MSA.

**6. Transaction Processing and Settlement.** With respect to the collection, processing and disbursement of the Transaction Fee, Customer agrees as follows:

- a. *Collection, Processing and Disbursement.*
1. Customer will be responsible for the collection and disbursement of all revenues derived from the sale of Tickets through the ProVenue Ticketing System.
  2. All credit card transactions for Tickets sold through the ProVenue Ticketing System shall



be processed by Customer. Customer acknowledges and agrees that all fees and charges related to credit card processing shall be the sole responsibility of the Customer.

ProV  
The A

3. Customer will make settlement payments to TDC for Transaction Fees from revenues derived from all Tickets sold through the ProVenue Ticketing System in accordance with Section 6.b below.
  - b. *Settlement.* TDC will invoice Customer on a weekly basis. Each invoice will set forth the per-Ticket Transaction Fee for all Tickets including sold online through the ProVenue Ticketing System. All undisputed invoices shall be paid by Customer to TDC via Automatic Clearing House ("ACH") ten (10) days from receipt of TDC's invoice. The parties agree to work together in good faith to resolve all disputed invoices within thirty (30) days from the date of invoice.
7. **Pricing For Future Functionality.** If during the Term, should TDC develop and make other functionality available through the ProVenue Ticketing System that is not considered part of the Core Functionality, and Customer desires to utilize such future functionality in connection with the sale of tickets to Customer's and Customer's clients events, the parties agree to negotiate and establish a mutually agreeable pricing arrangement applicable for any and all such future functionality.
8. **Third Party Licensed Elements.** The Services provided pursuant to this Order Form may include third party licensed elements ("**Elements**"). In the event that any such Element becomes unavailable to TDC for any reason, including but not limited to a third party breach or Force Majeure Event, TDC will use commercially reasonable efforts to procure an alternate provider of substantially similar elements ("**Alternate Elements**"). If Alternate Elements cannot be procured, then TDC may upon prompt notice to Customer, elect to discontinue or terminate the provision of any applicable Services affected by the unavailability of such Elements. In such event, the parties shall negotiate a mutually agreeable adjustment in the remaining Annual Subscription Fee to reflect the impact of such discontinued Service on Customer's business operations, if any.
9. **Third Party Products.** Some of the hardware provided pursuant to this Order Form may include third party products ("**Third Party Products**"). TDC does not provide any warranty, express or implied, for the Third Party Products, including but not limited to, any implied warranty of merchantability or fitness for a particular use. The warranty will be limited to that offered by the Third Party Products' original manufacturer ("**Manufacturer**") and the warranty will exist solely between the Manufacturer and Customer, and Customer agrees to look solely to the Manufacturer for any existing warranty. TDC will not be liable for any loss, property damage, personal injury, legal expense or other expense incurred by any employee, agent, invitee or licensee of Customer or any other person regardless of how caused, if arising out of the use or possession of the Third Party Products by Customer, unless such loss, property damage, personal injury, legal expense or other expense is caused by the gross negligence of TDC, its employees or authorized agents. Title and risk of loss to the Third Party Products will pass to Customer upon the shipment of such Third Party Products from TDC's or Manufacturer's facility, as applicable.

10. THERE ARE IMPORTANT TERMS AND CONDITIONS, WARRANTY DISCLAIMERS, LIABILITY LIMITATIONS AND SERVICES DESCRIPTIONS CONTAINED IN THE MSA, SERVICE ADDENDA, PROFESSIONAL SERVICES AGREEMENT AND SOWs (COLLECTIVELY, "CONTRACT DOCUMENTS"). DO NOT SIGN THIS ORDER FORM UNTIL YOU HAVE READ ALL THE TERMS OF THE CONTRACT DOCUMENTS THAT PERTAIN TO THIS ORDER. YOUR SIGNATURE BELOW INDICATES YOU HAVE READ THE TERMS OF THIS ORDER FORM AND THE ADDITIONAL TERMS IN THE CONTRACT DOCUMENTS AND AGREE TO BE BOUND BY THEM.

The parties hereby indicate their agreement to this Order Form by their signatures below.

CITY OF NAMPA ("Customer")

TICKETS.COM, INC. ("TDC")



Authorized Signature

Authorized Signature

Printed Name

Printed Name

Daniel H. Wu

Title

Date

Title

Date

CFO

12-1-10

**Exhibit A**

**Ticketing System Core Functionality**

A. The Core Functionality comprising the ProVenue Ticketing System is as follows:

1. ProVenue back office ticketing application.
2. Single and package ticket sales via ProVenueOnline.
3. Secondary market ticket sales through the Replay Ticket Exchange.
4. Online Auctions
5. Targeted On-Sales
6. Protected On-Sales
7. Tickets@Home method of delivery
8. Tickets@Phone method of delivery
9. Paperless Tickets functionality

**Exhibit B**

**ALVARADO**

*Alvarado Manufacturing Company, Inc.*

12660 Colony Street, Chino, CA 91710 - (909) 591-8431  
(800) 423-4143 FAX: (909) 628-1403 - alvaradomfg.com

**SOFTWARE LICENSE AGREEMENT**

This Software License Agreement ("Agreement") is entered into between Alvarado Manufacturing Company, Inc., ("Alvarado"), and City of Nampa, Idaho ("Customer").

**AGREEMENT**

- A. The Customer desires to license software from Alvarado for installation at **The Idaho Center Complex**.
- B. This document sets forth the license terms.

**1. Definitions**

As used in this Agreement, the following definitions shall apply:

- (a) "**Licensed Product**" means the Licensed Software and Licensed Documentation (as hereinafter defined).
- (b) "**Licensed Software**" means Alvarado's GateLink Validation software and all associated modules; GateWatch software and all associated modules; and PocketGate software running on handheld scanning devices and all associated modules.
- (c) "**Licensed Documentation**" means all documentation related to the Licensed Software.
- (d) "**Licensed Site**" means **the Idaho Center Complex, situated at 16200 Idaho Center Boulevard, Nampa, Idaho.**
- (e) "**Use**" means the use of the Licensed Software at the Licensed Site.
- (f) "**Customer**" means **the City of Nampa, a municipality.**
- (g) "**End User**" means **The City of Nampa, a municipality,** the actual user of the software.

**2. License of Software**

The Customer will license the following software.

Quantity	Description
	GateLink Validation Server Software and associated modules
	PocketGate communication application and associated modules

### **3. License Use**

Alvarado grants Customer a nonexclusive, nontransferable, license to Use the Licensed Software at the Licensed Site, subject to the terms and restrictions set forth in the Agreement. No license is granted in the human readable code of the Licensed Software (source code).

The Customer may not give, sell, rent or loan the Licensed Software to others or Use the Licensed Software at a location other than the Licensed Site.

### **4. Term of License**

Unless otherwise terminated, or canceled as provided herein, the license begins on the date of installation and continues until the Customer discontinues Use of the Licensed Software at the Licensed Site.

### **5. No Assignment; Protection of Trade Secrets**

- (a) The Customer may not transfer or assign the Licensed Product and/or this Agreement.
- (b) The Customer (including but not limited to end users, agents, employees, contractors or vendors) may not reverse engineer, reverse compile, or disassemble the Licensed Software.
- (c) The Customer agrees that the Licensed Product is Alvarado's exclusive property and that the Licensed Product as well as the structure, and organization of Licensed Software constitutes a valuable trade secret of Alvarado. The Customer (including but not limited to end users, agents, employees, contractors or vendors) shall not disclose or make the Licensed Product available to third parties without Alvarado's prior written consent.
- (d) The Customer agrees to take all steps reasonably necessary to protect the Licensed Property and to prevent actions contemplated by sections 5 (a), (b) and (c), above. This includes securing agreements similar to this Agreement from anyone who will have access to the Licensed Product, including end users, agents, employees, contractors or vendors who may have access to Licensed Product

### **6. Reproduction and Modification of Software**

- (a) The Customer may reproduce one copy of the Licensed Product for backup or emergency purposes only.
- (b) The Licensed Software may not be modified by the Customer, except for modifications and configuration consistent with normal operation of the programs. If any changes are made in violation of this Agreement, the resulting merged software will be a Licensed Product for purposes of this Agreement and will be subject to all of the terms and conditions in this Agreement.

### **7. Product Selection; Support**

- (a) The Customer has the sole and exclusive responsibility for the selection and suitability of the Licensed Product.
- (b) After installation, Alvarado will provide the Customer with technical support under the terms and conditions of a separate Maintenance Agreement.

## 8. Software Warranty

Licensed Software will be free from defects in material and workmanship for a period of three months from the date of installation. Alvarado will fix or repair any software determined to be defective during this period.

## 9. Express Limitation of Warranties

EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, ALVARADO DOES NOT MAKE AND CUSTOMER RECEIVES NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY COMMUNICATION WITH THE CUSTOMER. ALVARADO SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALVARADO DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER IS SOLELY RESPONSIBLE FOR THE SELECTION, INSTALLATION, USE, EFFICIENCY AND SUITABILITY OF THE LICENSED PRODUCT.

## 10. Limitation of Liability

IN NO EVENT SHALL ALVARADO, ITS SUPPLIERS OR LICENSORS, BE LIABLE FOR ANY DAMAGES RESULTING FROM OR RELATED TO THE USE OR INABILITY TO USE THE LICENSED SOFTWARE. SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF DATA, LOST PROFITS, COST OF COVER OR ANY OTHER SPECIAL OR INCIDENTAL DAMAGES, HOWEVER SUCH DAMAGES ARE CAUSED UNDER ANY THEORY OF LIABILITY. THIS LIMITATION APPLIES EVEN IF ALVARADO OR ANY AGENT, EMPLOYEE OR REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. ALVARADO'S LIABILITY TO CUSTOMER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL OF THE LICENSE FEES PAID.

## 11. Termination/Cancellation by Alvarado

- (a) Alvarado may terminate/cancel this Sales and License Agreement (and any license granted to Customer hereunder) if the Customer is in default of any material provision of this Agreement and such default is not cured within 30 days after Alvarado gives the Customer written notice of such default.
- (b) In the event of any termination/cancellation of this Agreement or of any license granted hereunder, Alvarado may:
  - (1) Require that the Customer cease any further Use of the Licensed Software and immediately return (or promptly destroy) the Licensed Software to Alvarado;
  - (2) Require that the Customer return (or promptly destroy) all originals and copies of the Licensed Documentation; and
  - (3) Cease performance of all of Alvarado's obligations hereunder, without liability to the Customer.
- (c) Alvarado's foregoing rights and remedies shall be cumulative and in addition to all other rights and remedies available to Alvarado in law and in equity.

## 12. Termination/Cancellation by Customer

- (a) Customer may terminate/cancel this Sales and License Agreement if Alvarado is in default of any material provision of this License Agreement and such default is not cured within 30 days after Customer gives Alvarado written notice of such default.
- (b) In the event of any termination/cancellation of this Agreement or of any license granted hereunder, Customer must uninstall and terminate all Use of the Licensed Product.

13. **General**

- (a) This Agreement is the only agreement between the parties. It supersedes all prior understandings, writings, proposals, representations or communications, oral or written, of either party. This Agreement may be amended only in writing by the authorized representatives of both parties.
- (b) This Agreement shall be interpreted in accordance with the substantive laws of the State of California. Venue for any action brought pursuant to this Agreement shall be in San Bernardino County, California.

Accepted on behalf of the City of Nampa, Idaho

By: Tom Dale

Title: Mayor

Date: 11/23/10

Accepted on behalf of Alvarado Mfg. Co. Inc.

By: Daniel H. Wu

Title: CFO

Date: 12-1-10

## EXHIBIT C

### CAMPAIGN CREATOR™ SERVICE

The "**Campaign Creator Service**" provided to Customer by TDC is a comprehensive third party electronic communications platform which enables clients to create, deploy and manage electronic messaging programs targeted to a designated group of recipients in the form of email marketing campaigns, website "blogs", Real Simple Syndication ("**RSS**") feeds, customer survey and poll creation, at the discretion of the client.

#### Terms and Conditions:

As part of the Campaign Creator Service, TDC agrees to (i) perform all required set up and configuration functions, (ii) provide training on use of the Campaign Creator Service, (iii) provide support services, (iv) assist Customer in obtaining one (1) white-listed IP address, and (v) create three (3) standard templates for Customer (calendar template, single event template and general information template) which will include Customer's logo. Customer acknowledges and agrees that the Campaign Creator Service is licensed by TDC from a third party provider and is subject to such third party provider's regularly scheduled maintenance window of 8:00 pm PST to 3 am PST. TDC agrees to use commercially reasonable efforts to inform Customer 24 hours in advance of any scheduled maintenance. TDC agrees that any and all patron data created and stored within the Campaign Creator Service by Customer is owned by Customer, and TDC will have no rights to utilize any such patron data for any purpose unless otherwise expressly agreed to by Customer.

Customer acknowledges and agrees that its right to access and use the Campaign Creator Service is subject to the following provisions.

- A. Access to Campaign Creator Service.** Customer acknowledges and agrees that access to the Campaign Creator Service is provided to Customer as a registered user only. TDC hereby grants to Customer a nonexclusive, non-transferable, limited, revocable right to access and use the Campaign Creator Service only in connection with services provided by TDC under the MSA dated as of November \_\_, 2010 and Order Form #1 to which this Exhibit C is attached (hereinafter the "**Agreements**").
- B. Ownership.** The Campaign Creator Service and any and all software that is or may become embedded therein is the proprietary property of WhatCounts, Inc. and is made available to Customer exclusively through TDC. Customer will not acquire any rights or licenses other than the right to use the Campaign Creator Service as expressly provided herein. Customer agrees that it will not, nor will it enable or otherwise allow any other person or entity to distribute, copy, reverse engineer, reverse compile, disassemble, enhance, modify or make derivative works of the Campaign Creator Service or any portion thereof. Customer assumes all responsibility and liability arising under any breach of this provision by Customer, its employees and agents.



- C. **Unique User Login ID.** TDC agrees to provide to Customer a unique user login ID which will enable Customer to access the Campaign Creator Service for the limited purposes as described herein. Customer acknowledges and agrees that it will not enable itself or any other party to access the Campaign Creator Service without the use of a user login ID issued from TDC in accordance with the terms of this Exhibit C. TDC reserves the right to disable any user login ID if TDC determines that Customer has breached any provision of the Agreements. Customer acknowledges and agrees that TDC disabling any such user login ID will not limit any other remedy available to TDC at law or in equity.
- D. **Training.** TDC will provide training for Customer's personnel in the use of the Campaign Creator Service on dates and at times as mutually agreed between the parties. The parties agree that initial training on use of the Campaign Creator Service will be provided by TDC at no cost to Customer. Any additional training and associated charges will be mutually agreed between the parties prior to the commencement of any such additional training. Only those employees of Customer who have been trained by TDC, or by a TDC trained employee of Customer will be authorized to use the Campaign Creator Service.
- E. **Permitted Use.** Customer agrees that in its use of the Campaign Creator Service it shall remain at all times in compliance with all applicable Federal and State privacy and anti-spam legislation, including but not limited to adhering to the requests of any recipients that have opted-out from receiving any further communications distributed by Customer. In addition to the foregoing, TDC reserves the right to refuse to distribute any communications distributed through the Campaign Creator Service, which in its reasonable discretion violates any applicable law or regulation, contains malicious content or false advertising. Customer acknowledges and agrees that the Campaign Creator Service is only available for use for events for which tickets are sold through the ProVenue Ticketing System set forth in the Agreements. The provisions of the last sentence notwithstanding, TDC agrees that Customer may, from time to time, use the Campaign Creator service for sending email marketing campaigns to not-for-profit/community organizations that promote, present, or host charity events that are not ticketed through the Ticketing System, provided that any such not-for-profit/community organization does not sell tickets to any such event through another ticketing services provider or ticketing application.