

STANDARD TERMS AND CONDITIONS – SPEKTRIX, INC.

This Agreement is entered into by and between Spektrix, Inc., 213 W 35th St, New York, NY 10001 (“Spektrix”), and the Party identified as the client in the Application Services Agreement to which this document is attached (the “Client”).

In return for the Client being provided with access to the Services and the undertakings in this Agreement (the “Services”), the Parties in consideration of the mutual obligations set out below hereby agree to the terms and conditions as follows:

1 Definitions

1.1 In this Agreement the following words shall have the following meanings unless otherwise expressly stated:

“**Agreement**” means the Schedules and any documents referred to therein together with the provisions contained within this document and the Appendix;

“**Application Program Interface**” means the set of commands, functions, and protocols which allow third party systems to access the features and data of the Client’s Spektrix system;

“**Charges**” means the charges set forth in the “Charges” section of the Schedule;

“**Commencement Date**” means the date specified in the “Commencement Date” section of the Schedule or if no date is specified, the date on which Spektrix begins providing access to the Services;

“**Confidential Information**” means any and all secret, proprietary or confidential information including financial, marketing, and technical information, know-how, and trade secrets all whether in written, electronic or any other form or medium, and whether disclosed before, on or after the date of this Agreement;

“**Documentation**” means the manuals and other documentation made available to the Client by Spektrix

in connection with the Services where applicable, as updated, replaced or supplemented from time to time by Spektrix;

“**Effective Date**” means the date specified in the “Effective Date” section of the Schedule;

“**Initial Term**” means the period set forth in the “Initial Term” section of the Schedule;

“**Intellectual Property Rights**” means any patent, copyright, database right, protected or protectable software or code right, moral right, design right, trade dress, registered design, trademark, service mark, domain name, metatag, know-how, model, unregistered design (and any application for any such right) and any other intellectual property right and the goodwill therein;

“**Reports**” means any database or report which Spektrix is required to generate, process, store or transmit made up of any data, text, drawings, diagrams, images or sounds supplied to Spektrix either by or on behalf of the Client or otherwise, and which are embodied in any electronic, magnetic, optical or tangible media;

“**Schedule**” means the document headed “Application Services Agreement” to which this document is attached, as updated from time to time with the agreement of both Parties;

“**Services**” means the subscription services (including access to the Software by whatever means including by means of a non-chargeable demonstration) provided by Spektrix to the Client under this Agreement from the Website or any other website notified to the Client by Spektrix from time to time, as more particularly described in the “Application Services” section of the Schedule;

“**Software**” means all software applications provided by Spektrix as part of the Services (including all client-side scripts and server side code (whether compiled or



uncompiled) which form a part of Spektrix's Application Web Site) as updated from time to time by Spektrix and where specified in the Schedule;

"**Spektrix's Application Web Site**" means websites within the spektrix.com domain (or any other domains of which the Client has been notified by Spektrix from time to time) which provide interfaces to the server-side Software and to which access is available after logging in using the User Login Details;

"**Spektrix Materials**" means any information, documentation, materials, software, equipment, data, reports and all other materials owned or licensed by Spektrix, including Spektrix's Application Web Site, the Software, the Documentation and the Reports;

"**Support Services**" means the services described in the Appendix;

"**Term**" means the Initial Term and any subsequent additional periods as and if continuing in accordance with Section 2.1;

"**Users**" means the number and types of users set forth in the "Users" section of the Schedule who are permitted to access and use the Software; and

"**User Login Details**" means the username, password and other information which a User will be required to input in order to be granted access to Spektrix' Application Web Site.

2 Duration and Scope of Agreement

2.1 This Agreement shall come into force on the Effective Date. The Services shall commence on the Commencement Date and, subject to the provisions for earlier termination in this Agreement, shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a "Renewal Period") commencing at the end of the Term unless either Party gives at least thirty (30) days' prior written notice to the other prior to the expiration of the Initial Term or any Renewal Period, in which case

this Agreement shall terminate upon the expiration of the termination notice period.

3 The Services

3.1 Spektrix grants to the Client a non-exclusive, non-transferable, non-sublicensable right to permit the Users to use the Services and the Documentation during the Term solely for the Client's internal business operations which require the same.

3.2 The Client shall be solely responsible for providing, configuring, and maintaining its systems, and all hardware, software and network connections necessary to enable it to connect to the Internet to access Spektrix's Application Web Site. The Client shall be solely responsible for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client or Client's network connections or telecommunications links or caused by the Internet.

3.3 Spektrix agrees to provide the Support Services from the Commencement Date for the Term.

3.4 Spektrix may, from time to time, at its sole discretion, choose to update the Services and/or Spektrix's Application Web Site. In the event that it chooses to do so, Spektrix will use reasonable efforts to provide the Client with any amendments to the Documentation necessary to enable Client's use of any improved facilities and functions of the updated Services and/or Spektrix's Application Web Site.

3.5 While providing the Services and Spektrix Materials, and otherwise performing this Agreement, Spektrix may use third party service providers.

4 Client Obligations

4.1 The Client acknowledges that on sales of any items using the Services, the Client, and not Spektrix, is the selling contracting party, and is

- responsible for supplying the relevant items, providing refunds to customers and calculating and paying any applicable sales tax and, in doing so, complying with all of its contractual obligations and applicable laws and regulations;
- 4.2 The Client undertakes (except to the extent required by: (1) law, and only then for the specific limited purposes stated in such applicable law; or (2) this Agreement):
- 4.2.1 not disseminate or make available or cause to be available the Services and/or Documentation in whole or in part and in any form, whether for sale or otherwise, to any person except Users without prior written consent from Spektrix and shall supervise and control access to the User Login Details in accordance with this Agreement and applicable law and ensure all Users comply with the terms of this Agreement
- 4.2.2 to use the Services and/or Documentation solely for its internal business purposes and not use them to provide any form of bureau services, managed services, outsourced services, sub-licensing, time sharing, rental, facility management, or process data on behalf of a third party or provide any other form of services or access to the Services and/or the Documentation to any third party unless otherwise agreed in writing by Spektrix. This does not prevent the Client from using the Services and/or the Documentation to provide ticketing to third parties who are renting the Client's venue;
- 4.2.3 not use or copy all or any part of any Spektrix Materials (other than as specifically permitted by Spektrix) nor otherwise modify, reproduce, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of any Spektrix Material in any form or media or by any means reverse compile, disassemble, reverse engineer or, except as expressly permitted by law, reduce to human-readable form all or any part of the Software.
- 4.3 **The Client shall:**
- 4.3.1 use the Software and Services as its sole and exclusive application for the processing of its ticket sales for the Term;
- 4.3.2 notify Spektrix within thirty (30) days of the Commencement Date if the User Login Details and Documentation which has been provided to the Client are not in accordance with this Agreement. The Client will be deemed to have accepted the User Login Details and Documentation in the absence of Spektrix receipt of such notification within the thirty (30) day period;
- 4.3.3 except with respect to the limited rights granted by Spektrix to use and receive the Services and Support Services under this Agreement, obtain all necessary consents, licenses and permissions (including from performers and venues) in order for the Client to use and receive the Services and Support Services; and
- 4.3.4 not take any action to remove or conceal any content, text, graphic, logo or link appearing on customer facing webpages which identifies Spektrix as the owner and/or publisher of the Software and/or Services.
- 4.3.5 Indemnify, defend and hold harmless Spektrix and its affiliates and each of their officers, directors, managers, members, shareholders, partners, agents and representatives, and each of their successors and assigns from and against all damages, losses, liabilities, obligations, costs and expenses (including reasonable legal fees) resulting from (a) any breach of any Client obligation, representation or warranty, (b) any claim that Spektrix's access to, or collection, storage, or use of any Client data, files, documentation or materials or any part thereof infringes the Intellectual Property Rights or other rights of a third party, or (c) any act or omission of Client or a contractor, vendor, agent or representative of Client.
- 4.4 The Client represents and warrants to Spektrix that:
- 4.4.1 the execution and delivery of the Agreement and the performance of its obligations hereunder have

been duly authorized and that the Agreement is a valid and legal agreement binding on it and enforceable in accordance with its terms.

4.4.2 the tickets sold using the Services are valid and provide access to the event, service or product promised on or by the ticket and all other items sold using the Services comply with their description, are of satisfactory quality, are fit for the purpose for which they were sold and in all other respects (including the solicitation, advertising or marketing therefor) comply with all applicable laws and regulations.

4.4.3 The Client acknowledges and agrees that it shall have no right or claim to any commission, royalty or other payment or benefit on or with regard to the enrolment of new users of the Services, or the licensing of the Software or any of Spektrix's other products whether arising from inquiries from any third parties about the Services or any of Spektrix's software products or otherwise.

5 Spektrix's Warranties

5.1 Spektrix represents and warrants to the Client that:

5.1.1 the execution and delivery of the Agreement and the performance of its obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on it and enforceable in accordance with its terms

5.1.2 it will use commercially reasonable efforts to ensure that, during the Term, the Services, when used in accordance with this Agreement, will function materially in accordance with the Documentation; provided, however, that this warranty shall not apply to the extent that any non-conformity is caused by use of the Services in any manner that is contrary to Spektrix's instructions, any modification or alteration of the Services by any party other than Spektrix or Spektrix's duly authorized contractors or agents, or any other act or omission of any other party.

5.1.3 Spektrix provides no assurance whatsoever that (i) the Services, the use thereof, or the results obtained by using the Services will be uninterrupted or error free, (ii) defects or errors in

the Services will be corrected, (iii) the Services are capable of operation with any equipment or software or that the Services will meet the Client's requirements, or (iv) the Services will yield any benefit to Client.

5.1.4 Spektrix expressly disclaims and excludes all implied (whether implied by statute, conduct, a course of dealings or otherwise) terms, conditions and warranties including any implied warranty of merchantability or fitness for a particular purpose.

6 Charges

6.1 The Client shall pay the Charges to Spektrix by cheque or bank transfer in accordance with this Agreement and in accordance with the timetable set forth on the Schedule together with applicable sales tax at the applicable rate and payment shall be made, except as expressly permitted in Section 6.2, without deduction, withholding or set off or any claim.

If at any time Spektrix is required to charge, or the Client is otherwise required to pay, sales tax in any jurisdiction, the Client shall pay the sales tax and Spektrix shall also be entitled to withhold for and collect the same, unless the Client is otherwise exempt from payment under applicable law, and, in that event, the Client shall provide Spektrix with appropriate evidence of any such exemption.

6.2 All invoices issued by Spektrix shall be due and payable by the Client in accordance with the Payment Schedule section of the Schedule.

6.3 Without prejudice to any other right or remedy of Spektrix, any invoice or part thereof which remains unpaid when due shall be subject to an interest charge of 2% per month, or such lower percentage permitted by law if 2% per month is not permitted by applicable law.

6.4 Spektrix shall be entitled to increase the Charges prior to the start of each Renewal Period upon thirty (30) days written notice to the Client and

the Schedule shall be deemed to have been amended accordingly.

- 6.5 If the payment taken by the Client for tickets or other items sold using the Services is less than the actual payment received by the Client, Spektrix will be entitled to the percentage Charges as specified in the Schedule on the entire actual payment. The Client will promptly pay the additional amount required. The Client shall maintain accurate, complete and detailed records relating to all sales using the Services. Not in limitation of any other breach which may be material hereunder or any other right or remedy hereunder or under law, failure to report sales at the correct price will be a material breach of this Agreement entitling Spektrix to withdraw access to the Services and terminate this Agreement immediately.
- 6.6 Spektrix will be entitled to audit the Client's use of the Software and Services and the number and type of users of such in the Client's business and the Client will provide all reasonable assistance to Spektrix or its third party in connection with such audit.

7 Intellectual Property Rights

- 7.1 All Intellectual Property Rights in the Spektrix Materials or otherwise, including those under license from Spektrix Limited or any third party, shall remain vested in Spektrix and/or its licensors.
- 7.2 Except as expressly set forth in this Agreement, the Client shall not acquire any right, title or interest in or to any of the Spektrix Materials or the Intellectual Property Rights of Spektrix or its licensors.
- 7.3 If the Client acquires, by operation of law, any right regarding any Intellectual Property Rights that is inconsistent with the allocation of title set forth in Sections 7.1 and 7.2, it shall immediately, unconditionally and without compensation

assign, in a writing in form and substance satisfactory to Spektrix, any and all such Intellectual Property Rights to Spektrix or its designee and deliver, execute and file any other agreement or document all upon request (whenever made).

- 7.4 Spektrix agrees to indemnify the Client against all damages, losses, costs and expenses (including reasonable legal fees) resulting directly from a finding by a court in the United States that the use of the Services or the Spektrix Materials by the Client in accordance with this Agreement infringes a valid United States copyright or misappropriates a trade secret of a third party in the United States existing at the time that this Agreement is entered into provided that the Client:

7.4.1 gives written notice to Spektrix of any such claim of infringement or misappropriation as soon as it becomes aware of the same; and

7.4.2 gives Spektrix sole control of the defense of any such claim, provides Spektrix with all reasonable assistance (at the expense of Spektrix) in connection with the defense and settlement of any such claim, and does not admit liability, or attempt to settle or compromise such claim without the prior written agreement of Spektrix; and

7.4.3 uses its best efforts to mitigate any damages, losses, costs and expenses resulting from such claim of infringement.

7.5 In the event of such a claim referenced in Section 7.4, Spektrix shall be entitled to:

7.5.1 procure the right for the Client to continue using such Services or Spektrix Materials or infringing part thereof; or

7.5.2 make such modifications to such Services or Spektrix Materials or relevant parts thereof so that such Services or Spektrix Materials become non-infringing without resulting in a material reduction in the quality or performance of such Services or Spektrix Materials; or

7.5.3 replace such Services or Spektrix Materials or relevant parts thereof with non-infringing substitutes provided that the use such substitutes do not result in a material reduction in the quality or performance of such Services or Spektrix Materials.

7.6 The Parties agree that Section 7 states the entire liability of Spektrix and the sole and exclusive remedy of the Client with respect to any claim that the Services or the Spektrix Materials infringe or misappropriate the Intellectual Property Rights of a third party.

8 Confidentiality

8.1 Subject to Section 8.2, all Confidential Information of each Party disclosed or obtained as a result of this Agreement shall be kept confidential by the Parties and neither Party shall use or disclose such Confidential Information. Where such Confidential Information is disclosed by a Party to its employees, consultants, agents or sub-contractors, it shall be subject to confidentiality obligations equivalent to those set forth in this Agreement. Each Party shall make reasonable efforts to ensure that any such employee, consultant, sub-contractor or agent complies with such obligations.

8.2 The obligations of confidentiality in Section 8.1 shall not extend to any disclosure of Confidential Information which the disclosing Party can show:

8.2.1 is necessary for the proper performance of its obligations under this Agreement;

8.2.2 has been carried out with the prior consent of the other Party;

8.2.3 was or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or

8.2.4 was in its records prior to the Commencement Date (other than from the disclosing Party); or

8.2.5 was independently disclosed to it by a third party entitled to disclose the same; or

8.2.6 is required to be disclosed under applicable law, or by order of a court or governmental body or other authority of competent jurisdiction.

9 Client Data

9.1 The Client hereby provides its consent to Spektrix to collect anonymous data regarding the Client's use of the Services and for Spektrix to provide such data to its related companies for the purposes of marketing its services or for any other purpose connected with this Agreement, including, for example, assessing Client satisfaction. Spektrix does not collect information about identifiable individuals but may collect aggregate information about Users (for example, the number of tickets processed and the values of each transaction).

10 Limitation of Liability

10.1 Subject to Sections 10.2 and 10.3, neither party shall be liable in any circumstances to the other party for any indirect, incidental, consequential, exemplary, special, or punitive damages, including any loss of profit, revenue, business opportunity, anticipated savings, good will or data, arising from or relating to this Agreement (or any damages arising from a claim by a third party for any of the above losses) whether in contract, in tort, negligence or otherwise even if such loss was reasonably foreseeable or such Party was advised of the possibility of the same.

10.2 The aggregate liability of Spektrix for all claims arising under or in connection with this Agreement, including for any indemnification hereunder, whether arising under contract, statute, tort (including negligence) or otherwise, shall be limited solely to the charges actually paid to Spektrix by the Client under this Agreement during the 12 months immediately preceding the

- date on which notice of the claim was received by Spektrix; and
- 10.3 In furtherance of the above limitation, the liability of Spektrix for all claims arising from a single event or series of events under or in connection with this Agreement, including for any indemnification hereunder, whether arising under contract, statute, tort (including negligence) or otherwise, shall be further limited solely to the charges actually paid to Spektrix by the Client under this Agreement which relate specifically to the transaction(s) in question, i.e. relating to the particular event on or at a particular date and time. Client shall give Spektrix prompt notice at the time any claim under this Agreement arises.
- 10.4 Nothing in this Section 10 or otherwise shall exclude or limit the Client's obligation to pay the Charges and damages and costs under any indemnification in favor of Spektrix.
- 10.5 The Charges have been calculated and agreed to on the basis that each Party will exclude and limit its liability as set forth in this Agreement, and the Parties therefore agree that the limitations and exclusions of liability in this Agreement are fair and reasonable.
- 10.6 In addition to and not in limitation of anything else contained herein or otherwise, Spektrix will not be liable for:
- 10.6.1 Any failure to comply with the provisions of this Agreement if such default is attributable to any extent to any act or omission of the Client, or the Client's agents, employees or contractors;
- 10.6.2 the failure in the performance of any Client obligation under this Agreement;
- 10.6.3 Any consequences arising from Spektrix complying with the law or the Client's instructions or requirements;
- 10.6.4 Any consequences arising from the Client or any other party failing to secure any necessary consents, licenses or permissions;
- 10.6.5 Any consequences arising from the Client, the Users or any other party failing correctly to enter information into the Services; or
- 10.6.6 Any act or omission of the Client, the Users or any other party in connection with the promotion and publicizing of events or otherwise.
- ## 11 Termination
- 11.1 Either Party may terminate this Agreement immediately upon notice (after the cure period) in writing to the other Party in the event that the other Party commits a breach of its obligations under this Agreement and
- 11.1.1 such breach is material and is such that it cannot be cured or the other Party fails to cure such breach within fourteen (14) days of having been notified in writing of such breach; provided, however, that on the third such breach in any 12 months period, no notice or cure period will be needed.
- 11.2 Either Party may terminate this Agreement immediately upon notice in writing to the other Party (the "Defaulting Party") if the Defaulting Party files a petition for bankruptcy or is adjudicated as bankrupt; or a petition in bankruptcy is filed against such party; such party makes an assignment for the benefit of its creditors; a receiver is appointed for such party or its business; a resolution has been passed or a petition has been filed by such party for its liquidation, dissolution or winding-up; if such party is insolvent or unable to pay its debts when due or admits the same; or such party discontinues its business or ceases to operate as a going concern.
- 11.3 Notwithstanding anything else contained herein, Spektrix shall be entitled to terminate the Agreement immediately in the event that the

Client is in breach of its obligations in Sections 4, 6, 8 or 14;

- 11.4 Either Party may terminate this Agreement at any time by giving thirty (30) days prior written notice of termination, provided that, if such termination is at the Client's request, Client shall pay early termination charges which shall be the outstanding monthly charge applicable for months between the date of termination and the end of the then applicable Term calculated:
- 11.5 by applying the total charges paid or to be paid by the Client for the equivalent months in the twelve (12) months immediately preceding the date on which written notice of termination is given; or
- 11.6 if the remainder of the Term is less than twelve (12) months, the charges reasonably estimated to be remaining for the Term based on the estimated contract value of the Term pursuant to the Schedule, which for the purpose of this Agreement shall be known as the "Termination Fee".

12 Consequences of Termination

- 12.1 The termination of this Agreement shall be without prejudice to the rights and remedies of either Party which have accrued up to the date of termination.
- 12.2 Other than Sections 3, 5, and 14, upon termination of this Agreement, the provisions of this Agreement shall survive, as applicable, by their terms.
- 12.3 Client shall make no further use of any of Spektrix property, the Spektrix Materials or Confidential Information.
- 12.4 Spektrix may destroy or otherwise dispose of any of the Client's data in its possession unless Spektrix receives, no later than ten (10) days after the effective date of the termination of this Agreement, a written request for the delivery to

the Client of the then most recent back-up of the Client's data. Spektrix shall use reasonable commercial efforts to deliver the back-up to the Client in an interchange format and within thirty (30) days of its receipt of such a written request, provided that the Client has, at that time, paid all Charges to such date and all other fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). Spektrix may charge the Client for the time devoted to any data extraction if Spektrix, in its sole discretion, considers the data extraction to be outside of its standard data export process.

- 12.5 Upon termination of this Agreement, all licenses granted by Spektrix to the Client under this Agreement will immediately terminate.

13 Force Majeure

- 13.1 If either Party (the "Affected Party") is prevented from complying with its obligations due to an event outside of its reasonable control ("Force Majeure"), it shall not be in breach of this Agreement or otherwise liable to the other Party (the "Unaffected Party") by reason of such delay in performance or non-performance (however, the payment obligations of the Client under this Agreement shall not be excused by reason of Force Majeure) due to such events.
- 13.2 Subject to Section 11.4, if an event of Force Majeure continues for a consecutive period of three (3) months or more, then the Unaffected Party shall have the right to terminate this Agreement immediately upon written notice to the Affected Party, in which event, in addition to any other rights or remedies applicable, the Client shall pay to Spektrix the total Charges due through the date of termination.

14 Assignment

- 14.1 The Client shall not assign, transfer or otherwise dispose of any of its rights or responsibilities

under this Agreement without the prior written consent of Spektrix.

14.2 Spektrix shall be permitted to assign, delegate, sub-contract, or transfer this Agreement or its rights or responsibilities under this Agreement to a parent, subsidiary, or other affiliated entity without the prior written consent of the Client.

14.3 In the event that the Client undergoes a change of control (as defined below) and Spektrix believes that such change of control shall: (i) affect the ability of the Client to pay the Charges; or (ii) affect the ability of Spektrix or the Client to perform their respective obligations under this Agreement; or (iii) have a material impact on the scope or type of use of the Application Services then Spektrix shall be entitled to terminate this Agreement immediately on notice, or, in the sole discretion of Spektrix, propose changes to this Agreement as a consequence of such change of control and, in the absence of agreement of the Client to such changes given within ten (10) days of such proposal, Spektrix shall be entitled to terminate this Agreement immediately on notice. For the purposes of this Section “change of control” shall occur where (a) there has been a change of ownership of shares or other interests in the Client resulting overall in more than 50% of the total voting rights conferred by all such shares or other interests being held directly or indirectly by a person who did not hold at least 50% of the voting rights at the date of this Agreement or (b) the whole or a substantial part of the business or assets of the Client has been sold or otherwise disposed of.

15 No Third Party Beneficiaries

15.1 This Agreement is not intended to confer and does not confer any rights or benefits on any third party and no third party shall have any right to enforce any of the terms of this Agreement (except for the indemnitees referenced herein).

16 Independent Contractors

16.1 The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement or otherwise shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, or employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner.

17 Amendment and Modification

17.1 Spektrix may modify the terms of this Agreement at any time by written notice to the Client to comply with law, court or governmental order, best or standard practices or policies, industry standards, or insurance requirements.

17.2 If Spektrix wishes to otherwise modify this Agreement, it shall provide the Client with prior written notice of the same and any such change will be deemed accepted by the Client and binding on it unless Spektrix receives written notification from the Client to the contrary within ten (10) business days of the Client being notified of the modification. If Spektrix receives such notice from the Client, the Parties shall attempt to resolve the modification; provided, however, that neither Party shall be obligated to negotiate and this provision shall not affect the other rights, obligations, options or remedies of the Parties.

18 Severability

18.1 If any term or provision of this Agreement is found to be invalid or unenforceable under applicable law, such determination of invalidity or unenforceability shall not affect any other term or provision of this Agreement and the remaining terms and provisions of this Agreement shall remain in full force and effect

in accordance with their terms and the Agreement shall be modified to the extent necessary to make such term or provision valid and enforceable within the scope of the intent of the Parties.

19 No Waiver; Construction

19.1 No provision of the Agreement shall be waived unless agreed in writing to be waived by the Party to be charged with such 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. No waiver by any Party shall operate or be construed as a waiver of any provision not expressly identified in the written waiver.

19.2 No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party or its counsel having, or being deemed to have, structured or drafted such provision. "Including" and "includes" are inclusive and mean "including, without limitation." "Or" means "and/or."

20 Entire Agreement

20.1 This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement (the "Subject Matter") and supersedes all other prior or contemporaneous agreements or understandings, both written and oral, between the Parties relating to the Subject Matter.

20.2 The terms, conditions, representations and warranties in this Agreement are in lieu of all

warranties, conditions, terms, representations, statements, undertakings and obligations whether express or implied by law, custom, usage or otherwise all of which are hereby excluded to the fullest extent permitted by law. The Parties hereby confirm that they have not relied upon any representations, warranties, statements, promises, communications or any facts or other matters which have not been expressly stated in this Agreement. Notwithstanding any provision to the contrary, nothing in this Agreement limits or excludes either Party's liability for fraudulent misrepresentations.

21 Law and Jurisdiction

21.1 This Agreement, and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement (including any non-contractual disputes or claims), shall be governed by and construed in accordance with the law of the State of New York excluding the application of its conflict of law rules. The Parties irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts in New York County, State of New York for all disputes arising out of or relating to this Agreement and waive any objection based on forum non conveniens or any other objection to venue. With respect to this Agreement, each Party waives personal service of any summons and complaint or other process and papers therein and agrees that service may be made by certified mail, return receipt requested, directed to the Party at the address set forth herein or other address thereof of which the sending Party has received notice.

Appendix: Support Services

1. Error Correction

- 1.1 Subject to Paragraph 4 below (Excluded Services section), if the Client discovers that the Services fail to function in accordance with the Documentation, then the Client shall within seven (7) days after such discovery notify Spektrix by email to support@spektrix.com of the defect or error (“Problem”) in question and provide Spektrix (to the extent that the Client is able to do so) with a documented example of each such Problem.
- 1.2 Upon receipt of such notification, Spektrix will classify Problems as either an ‘Emergency Problem’ or a ‘Non-Business Critical Problem’ and the times by which Spektrix will respond to such problems are set forth in Paragraph 3 below.

2. Classification of Problems

- 2.1 Emergency Problems - Problems which Spektrix will classify as Emergency Problems are as follows:
 - (a) total failure of the Services and a total inability to access Spektrix’s Application Web Site; or
 - (b) problems of a critical nature which render a key component or function of the Services inoperable and need to be resolved expeditiously. Examples include selling and printing tickets, retrieving information about orders, and website functionality.
- 2.2 Non-Business Critical Classification – Any Problems which do not fall under the Emergency Problem classification referred to in paragraph 2.1 (a) and (b) above will be classified by Spektrix as Non-Business Critical Problems.

3. Response Times

- 3.1 Emergency Problem Response Times – Response times for Emergency Problems in accordance with paragraph 2.1 (a) and (b) above shall be within thirty (30) minutes of receiving notification of an Emergency Problem, provided that Spektrix receives such notification between the hours of 10 AM and 9 PM Eastern Time, Monday to Sunday.
- 3.2 Non-Business Critical Problem Response Times – If Spektrix receives notification of a Non-Business Critical Problem between the hours of 10 AM and 6 PM Eastern Time, Monday through Friday excluding federal and New York State holidays, it will send out an email to the email address it has on file for the Client confirming that a support ticket has been created and that the Problem is being reviewed by its support staff. The email will include a link which will enable the Client to review the status of the request and to add additional comments. The email will also provide an estimate of the turnaround time on support tickets. If the Client has an urgent request, it should make Spektrix support staff aware in the comments it adds to the ticket or by calling the support department at (646) 569-9097.
- 3.3 After receiving notification of either an Emergency Problem or Non-Business Critical Problem, Spektrix shall use reasonable efforts to correct such Problem within a reasonable period of time. To the extent possible, after resolving such Problem, Spektrix shall notify the Client that the Services and /or Spektrix’s Application Web Site has been updated (together with any amendments to the Documentation) specifying the nature of the correction and providing instructions for the use of the corrected version of the Software.

4. Excluded Services

- 4.1 The Support Services do not include services with respect to:

- 4.1.1 incorrect use of Spektrix's Application Web Site or Software or an operator error;
 - 4.1.2 defects or errors caused by the use of Spektrix's Application Web Site or Software on or with a system not approved in writing by Spektrix; and
 - 4.1.3 requests for support made by customers of the Client trying to buy tickets or other items from the Client over the Internet.
- 4.2 Spektrix agrees to include a reasonable level (such level to be determined by Spektrix in its sole discretion) of on-site and off-site support and training in the Support Services. The Client acknowledges that Spektrix has the right to refuse to provide a Client with on-site and/or off-site support and training if in Spektrix's sole judgment such level has been exceeded by that Client.
- 4.3 Spektrix shall charge an additional amount in accordance with its schedule of rates then in effect for any services which Spektrix agrees to provide:
- 4.3.1 at the request of the Client which are excluded from the Support Services; or
 - 4.3.2 at the request of the Client but which Spektrix determines in its sole judgment are unnecessary. Nothing in this Section or otherwise shall impose any obligation on Spektrix to provide services with respect to any of the exclusions referred to in this Agreement.
- 4.4 Spektrix shall not unless otherwise expressly agreed in writing, provide the Client with:
- 4.4.1 consulting services or;
 - 4.4.2 support of any of the Client's other systems.
- 4.5 The service charge includes access to a third party email marketing platform. Email "sends" through this platform are also included in the service charge as long as they are at a reasonable level (such level to be determined by Spektrix in its sole discretion).

5. Service Availability

5.1 Spektrix will seek to maintain service availability 100% of the time except when:

5.1.1 planned maintenance needs to be performed in which case Spektrix will, to the extent possible, seek to provide forty-eight (48) hours' notice of such maintenance and carry it out between midnight and 8 AM Eastern Time; and

5.1.2 unscheduled maintenance needs to be performed in which case Spektrix will, to the extent possible, seek to provide at least six (6) hours' notice in advance.

6. Data Loss and Recovery

6.1 Redundancy is in place on all Spektrix's data storage. Spektrix also backs up data regularly onsite and offsite. In the unlikely event that the redundancy fails, Spektrix will restore the data to the latest backup



ADYEN SERVICES ADDENDUM

This Adyen Services Addendum (“**Adyen Addendum**”) is entered into between Spektrix, Inc. (“**Spektrix**”) and its Client, as that term is defined in the Standard Terms and Conditions (“**Client**”). The Adyen Addendum supplements the Application Services Agreement and the Standard Terms and Conditions (the “**Spektrix Agreement**”) between Spektrix and Client and shall be subject to the definitions, terms, and conditions set forth in the Spektrix Agreement. Should there be any irreconcilable conflict between the Spektrix Agreement and the Adyen Addendum, the Adyen Addendum will control with respect to the Adyen Services described below.

1. **Adyen Services; Account Set-Up.**

1.1 By entering into this Adyen Addendum, Client will be allowed to access through the Software and/or the Spektrix’s Application Web Site (collectively, for purposes of this Adyen Addendum, the “**Software**”) the payment processing platform known as Adyen provided by Adyen N.V. and its affiliates (collectively, “**Adyen**”) so that Client may accept payment cards and/or other electronic payments as may be supported by Adyen from time to time (“**Adyen Services**”). Before using Adyen’s Services, Client must enter into a separate contract with Adyen. The terms of that contract will be made available by Adyen and shall govern the relationship between the parties thereto.

2. **Account Information.**

2.1 Client agrees to provide Spektrix with accurate and complete information about it and its account. Further, Client authorizes Spektrix to (i) share information with Adyen; and (ii) access all information flowing through Client’s account on Spektrix’s Software—including information flowing through Client’s Adyen account—for any legal purpose consistent with the parameters of the Spektrix Agreement and/or Client’s use of the payment processing services provided by Adyen.

3. **Client Representations.**

3.1 Client agrees, represents, and warrants that (i) all information provided to Adyen, including with respect to Client and its beneficial owners, is accurate and complete; (ii) it will not use the Adyen Services for the sale of any product or service that

violates applicable law or the rules of any applicable payment network; (iii) its use of the Adyen Services will comply with applicable law and the rules of all applicable payment networks; and (iv) it will cooperate with Spektrix and Adyen in any investigation regarding compliance with this Section 3.

4. **Cardholder Data.**

4.1 Client is solely responsible for any liability related to its use or handling of cardholder data, if any. Client agrees to comply, and to cause any third-party having access to cardholder data to comply, with PCI DSS and applicable law with respect to such data, as applicable.

5. **Disclaimer of Warranties and Liability for Adyen Services.**

5.1 Even though Client’s access to Adyen Services is through Spektrix’s Software, Spektrix does not control Adyen’s technology or systems. Adyen is solely responsible for providing the Adyen Services through its own platform. WITHOUT LIMITING ANY OTHER DISCLAIMERS OR LIABILITY LIMITATIONS CONTAINED IN THE SPEKTRIX AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, CLIENT AGREES THAT UNDER NO CIRCUMSTANCES WILL SPEKTRIX HAVE ANY LIABILITY WHATSOEVER FOR ANY SERVICES OUTAGES, ERRORS, OMISSIONS, IRREGULARITIES, DISPUTES, CLAIMS, OR PROBLEMS OF ANY KIND OR NATURE THAT CLIENT MAY EXPERIENCE WITH THE ADYEN SERVICES. SPEKTRIX DOES NOT MAKE ANY WARRANTIES WHATSOEVER ABOUT ADYEN OR THE ADYEN SERVICES. Consequently, any promises in the Spektrix Agreement to provide services or service levels will not extend to the Adyen Services. Likewise, Adyen does not control Spektrix’s services, platform, or technology, and Client agrees that Adyen is not responsible for any issues solely arising out of or relating to its use of Spektrix’s systems or services, separate and apart from the Adyen Services. Notwithstanding the foregoing, Spektrix shall provide first-level customer support to Client in connection with the Adyen Services.



6. Incorporated Terms; Compliance with Law.

6.1 In addition to and without limiting the foregoing Sections, Client agrees that Sections 9 (Client Data), 10 (Limitation of Liability), 13 (Force Majeure), 19 (No Waiver; Construction), 20 (Entire Agreement), and 21 (Law and Jurisdiction) of the Spektrix Agreement shall likewise apply to Client's use of the Adyen Services. In addition, Client agrees to be solely responsible for compliance with all federal, state, and local laws (as applicable) in connection with its use of the Services and the Adyen Services.

7. Term; Account Migration.

7.1 This Adyen Addendum shall remain in effect during the term of the Spektrix Agreement and/or so long as Client is using the Adyen Services, whichever is

longer. In addition, Client agrees that, for a period of 12 months after the date it enters into this Adyen Addendum, it will not terminate its relationship with Spektrix in favor of entering into a relationship with Adyen that excludes the use of Spektrix's Services. Client further agrees that if Spektrix ceases to do business with Adyen for any reason, Client will cooperate with Spektrix in the transition of its merchant processing account to another acquiring provider of Spektrix's reasonable election, and Client authorizes Spektrix to take the steps necessary to facilitate migration of Client's processing account to such provider. To the extent necessary to effect that migration, Client appoints Spektrix as its agent and attorney in fact for the limited purpose of executing agreement(s) related to such migration on Client's behalf.