



Subscription Services Agreement

PLEASE READ THIS AGREEMENT CAREFULLY *BEFORE USING ANY SAFFIRE SERVICE.*

BY USING THE SERVICE OR CLICKING "AGREE," CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT AS POSTED ON THE SAFFIRE SITE (<https://www.saffire.com/ssa>). IF YOU ARE AGREEING ON BEHALF OF A COMPANY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO BIND IT TO THIS AGREEMENT.

This Subscription Services Agreement is between Saffire LLC., a Texas limited liability company ("**Saffire**") and the customer agreeing to these terms ("**Customer**").

1. **SOFTWARE SERVICE AND ORDER(S).** This agreement sets forth the terms and conditions under which Saffire agrees to license and provide Customer access to and usage of cloud-based software service(s) as specified on a mutually executed order ("**Order**"). This agreement contemplates one or more Orders for Service, all of which are governed by the terms of this agreement. Details of the Services and related fees are as set forth on the Order(s). Your signature on an Order evidences your understanding and agreement that the terms of this agreement (as posted on Saffire's website on the earlier of the date you click your acceptance or you use a Service) are automatically incorporated with the Order(s) and along with any Addenda mutually signed and intended to be attached and incorporated (all such documents, collectively the "**Agreement**").
 - a. Customer may request from Saffire hosted and proprietary ticketing (Spark™, SaffireTix™, SaffireU™ and/or SaffireTix App) optional marketing (SaffireText™), and optional integrated third-party "software as a service/SAAS," optional call center services and related services (the "**Ticketing Service**" as further described herein) with respect to certain of its ticketing needs.
 - b. Customer may request from Saffire certain hardware and related products for selling and/or scanning as necessary to carry out the Ticketing Service (the "**Hardware**" as further specified and described as a rental or purchase in an Order).
 - c. Customer may request from Saffire website design, programming and hosting using proprietary web platform (Spark™), optional commerce (SaffireCommerce™), optional marketing (SaffireText™) and/or integrated third-party "software as a service/SAAS" and related services (the "**Website Service**" as further described herein) with respect to certain of its online web presence, sales and marketing needs.
 - d. Customer has selected Saffire to manage and provide such Ticketing Service and/or Website Service (collectively, as applicable, the "**Service**") for the sole benefit of Customer and during its lawful use consistent with the terms herein.
 - e. Each party agrees to cooperate in good faith with the other on the Service by, among other things, making available without delay, as reasonably requested by the other, decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder.

2. **LICENSE AND USE OF SERVICE.**

- a. **Licenses; Hosting.**

- i. Saffire grants Customer a non-exclusive, non-transferable license to use the Software and Documentation (as defined below in Section 6.c.) that is part of any ordered Service, and to copy for its sole use (and not for distribution) any Documentation, all solely in connection with Customer's use of the Service during the Term (as defined below) of this Agreement. If Customer desires to use any optional third-party software that integrates with the Service (for example, an email service that facilitates communications with ticket purchasers), Customer will obtain a license for that software directly from that provider by signing up with them.

- ii. If Customer opts for Ticketing Services on an Order, Saffire will process Customer's Ticketing transactions on its secure cloud service, and Customer grants Saffire the sole right to sell tickets online on Customer's behalf during the Term.

- (a) If Customer opts for optional RIFD/Cashless Services on an Order, Saffire will provide Customer the Hardware, Software and Documentation and specialized supplies (namely, bracelets and/or cards) to do cashless ticketing and/or merchandise sales at event(s) during the Term.
- (b) If Customer opts for optional mobile Ticketing Services using the SaffireTix App on an Order, Saffire will provide Customer the Hardware and Software and Documentation to do mobile ticketing sales and QR/barcode scanning at event(s) during the Term.
- (c) If Customer desires to use QR/scanning, it can use QR and/or bar codes generated by Spark as may be specified on an Order.

iii. If Customer opts for Website Services as specified on an Order, Saffire will design, brand, set up and host Customer's website and optional commerce transactions on its secure cloud service. Customer grants Saffire the right and a non-exclusive license to use any Customer design elements supplied (Customer name, logo, images, branding, etc.) to benefit Customer during the Term. Customer is responsible for compliance with all laws applicable to its website, including online privacy, COPPA, GDPR, etc. Saffire provides Customer some templates for its reference, subject to the Disclaimer in Section 3.c.

- (a) If Customer opts for optional Commerce Services on an Order, Saffire will process Customer's merchandise sales transactions on its secure cloud service during the Term. Customer may also opt on an Order for Saffire to provide credit card processing services as detailed in Section 4.c.
- (b) If Customer opts for optional Marketing Services on an Order, Saffire will assist Customer in integrating Customer's independently licensed software during the Term. If Customer chooses a Saffire-preferred vendor, such integration will be free, or if Customer chooses their own vendor, the cost of integration will be as specified on an Order. Customer is responsible for compliance with all applicable laws, including those on unsolicited calls/Do Not Call lists, opt-outs, texts or emails. Saffire provides Customer various templates for its reference, subject to the Disclaimer in Section 3.c.

iv. The license fee and any ticketing, set-up, design, hosting and other fees shall be due as specified in an Order.

- b. **Customer Data.** All data, setup information, logos, trade names, trademarks, text, images, customer information and other materials unique to, developed by and migrated/imported or otherwise provided by Customer and all transactional data gathered by Saffire exclusively on behalf of Customer during the Term ("**Customer Data**") remain the property of Customer. Customer represents and warrants that the Customer Data is free of bugs, viruses and is non-infringing on the rights of others and that the setup information is accurate. Customer grants Saffire and its affiliates the right to use the Customer Data solely for purposes of performing a Service under this Agreement during the Term. At any time, Customer may export its transactional Customer Data as allowed by functionality within the Service and has the rights listed under Section 7.f. upon termination.
- c. **Contractor Access and Usage.** Customer may allow its employees and/or contractors to access the Service in compliance with the terms of this Agreement, which access must be for the sole benefit of Customer, but Customer remains fully responsible for their compliance with this Agreement including, without limitation, Section 5.
- d. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data it uploads and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, (iv) must notify Saffire immediately of any unauthorized access; and (v) may use the Service only in accordance with the Saffire training materials, this Agreement and applicable law. Customer also has the responsibilities spelled out in this Agreement.
- e. **Saffire Support.** A wide variety of help and training materials are provided to Customer at no cost via SaffireU™ and at <http://support.saffire.com>. Saffire agrees to provide customer support for the Service under the terms of Saffire's Customer Support & Maintenance Addendum ("**Support**"), as attached and is incorporated into this Agreement for all purposes.

3. SERVICE LEVEL AGREEMENT & WARRANTY.

- a. **Warranty.** Saffire warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability of 99% in any given month (*excluding* maintenance outages, force majeure, and outages that result from any Customer technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term. Neither occasional short-term interruptions of service which are not unreasonable under comparable industry standards or resulting from circumstances beyond Saffire's reasonable control shall be cause for any liability, nor render Saffire in default under this Agreement.
- b. **LIMITED REMEDY.** Customer's exclusive remedy, and Saffire's sole obligation, for its failure to meet the warranty in 3.a. above will be for Saffire to provide a credit for the applicable month affected (if this Agreement is terminated, then a refund), provided that Customer notifies Saffire of such breach within thirty (30) days of the end of that month; and provided that if Saffire fails to meet the warranty in 3.a. above for two (2) consecutive months, then in addition to the credit (or refund) Customer may upon written notice to Saffire terminate the applicable Order and receive a refund of all prepaid but unused fees thereunder.
- c. **DISCLAIMER. SAFFIRE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE SAFFIRE TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, SAFFIRE DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED. SAFFIRE DISCLAIMS ANY LIABILITY REGARDING ANY TEMPLATES IT PROVIDES TO CUSTOMER (FOR EXAMPLE, WITHOUT LIMITATION, ANY TEMPLATE PRIVACY OR SECURITY POLICY). THESE TEMPLATES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND DO NOT CONSTITUTE LEGAL ADVICE. CUSTOMER IS RESPONSIBLE FOR THE TERMS OF ANY POLICIES ON ITS SITE.**

4. PAYMENT; TAXES; CREDIT CARD PROCESSING.

- a. Customer must pay all fees as specified on any Order but, if not specified, then within thirty (30) days of receipt of an invoice. Saffire reserves the right to alter invoice frequency or due dates upon written notice to Customer. Fees during the Initial Term and any Renewal Term will be as specified on an Order.
- b. Customer is responsible for the payment and reporting of all sales, use, withholding, VAT, amusement, admissions and other similar taxes on transactions completed using the Service. Except as provided in Section 4.c.v., Customer is also responsible for all refunds, returns and chargebacks, regardless of whether it collects its own proceeds or uses Saffire as its credit card processor (as specified in an Order).
- c. If Customer opts on an Order to use Saffire's credit card processing services:
 - i. Customer authorizes Saffire to accept any credit card, debit card or other electronic method of payment (collectively "**Cards**") in connection with sales of tickets and/or merchandise on behalf of Customer. A credit card processing fee of 4% per transaction will be deducted from the settlement payments and 4.5% for American Express. Such rate is subject to automatic increase due to increases to the Saffire's rates, which increases shall not exceed its rate increase.
 - ii. These credit card fees do NOT apply to any Ticketing Fee Minimum specified on an Order.
 - iii. Saffire agrees to collect any sales, use, withholding, VAT, amusement, admissions and other similar taxes specified to be collected by Customer and to remit them timely to Customer as part of the settlement proceeds.
 - iv. Credit card proceeds collected on behalf of Customer will be paid over to Customer on the timeframe specified in an Order. A retainer of 10% of the settlement or \$1,000 (whichever amount is higher), will be held for up to 60 days after the event has ended and will be utilized to cover any customer chargeback disputes and fees that may arise after the event. Saffire will defend the purchases through the credit card company, but any chargeback disputes awarded in the customers' favor will be deducted from the chargeback retainer. The remaining amount will be paid to the Client after the 60-day window has passed. If any chargebacks occur after settlement proceeds have been released, Saffire reserves the right to offset against any other funds Saffire may hold for Customer or to invoice Customer with payment shall be due in full immediately upon receipt.
 - v. If an event is cancelled or there is otherwise cause for a refund to ticket purchasers, only in the case where Saffire is still holding funds collected for Customer from Ticketing Services, Saffire will process refunds to ticket purchasers

out of such held proceeds (and only to the extent of such held proceeds), and Customer remains responsible for any excess refunds that may be due. In the event of any merchandise returns sold through SaffireCommerce, Customer will process and is responsible for all returns and refunds or credits.

5. MUTUAL CONFIDENTIALITY AND DATA SECURITY.

- a. **Definition of Confidential Information.** Confidential Information means all non-public information (whether in written or electronic form) disclosed by a party ("**Discloser**") to the other party ("**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential, given the nature of the information and the circumstances of disclosure, including the terms of this Agreement ("**Confidential Information**"). Saffire's Confidential Information includes, without limitation, pricing information, marketing strategies and the Saffire Property (defined below). Customer's Confidential Information includes Customer Data.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of or inconsistent with the terms of this Agreement; provided that the sharing of Customer Data with integrated third-party software providers (for example, Google Analytics, or email services like MailChimp) is an allowed disclosure and use if Customer opts to use them. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and/or contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance notice to seek a protective order.
- d. **Security Measures for Customer Data.** In order to protect Customer Data, Saffire will (i) implement and maintain all reasonable security measures appropriate to the nature of such information, including without limitation, technical, physical, administrative and organizational controls to maintain the confidentiality and will use commercially reasonable methods to maintain the security and integrity of such information; (ii) implement and maintain industry typical systems and procedures for detecting, preventing and responding to attacks, intrusions, or other systems failures and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designate an employee or employees to coordinate implementation and maintenance of its security measures; and (iv) identify reasonably foreseeable internal and external risks to the confidentiality, security and integrity of such information that could result in the unauthorized disclosure, misuse, alteration or destruction of such information and assess the sufficiency of any safeguards in place to manage these risks.
- e. **Notice of Customer Data Breach.** If Saffire knows that Customer Data has been accessed, acquired or disclosed by any third party without proper authorization and contrary to the terms of this Agreement, Saffire will alert Customer of any such data breach within two (2) business days, and promptly take such actions as may be necessary to preserve forensic evidence and eliminate the known cause of the data breach. Saffire will give highest priority to promptly correcting any data breach and devote such resources as may be reasonably necessary to accomplish that goal. Saffire will provide Customer with all non-confidential information necessary to enable Customer to fully understand the nature and scope of the data breach as it impacts Customer. Customer is responsible to provide any notice that may be required to any or all persons affected by any breach of Customer Data. In such case, Saffire will consult with Customer in a timely fashion regarding any details or non-confidential information Customer deems necessary to notify such third parties, including information about what Saffire has done or plans to do to minimize any harmful effect of the unauthorized access, use or disclosure of such Customer Data.

6. SAFFIRE PROPERTY.

- a. **Reservation of Rights.** All information, documentation, templates, software programming code (including for all websites), specifications, functionality, non-Customer-specific graphic design and other supporting or related materials or information of any nature or description whatsoever contained within the Service, workflow processes, Software and Documentation, and other technologies provided by Saffire as part of the Service are the proprietary property of Saffire (collectively, “**Saffire Property**”) or, in some cases, its licensors, and all right, title and ownership interest in and to such items, including all associated intellectual property rights, remain only with Saffire (or its licensor, as applicable). Customer is granted only the license and/or sublicense rights in Section 2.a. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or in any Saffire Property, including the Saffire name and logo on printed tickets and/or on Customer’s website (any tagline like “powered by Saffire” or similar). Saffire reserves all rights unless expressly granted in this Agreement.
- b. **Restrictions.** Customer *may not* (i) sell, resell, rent or sublicense the Saffire website service or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, pornographic or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or their related systems or networks; (v) reverse engineer, disassemble, decompile or otherwise attempt to analyze any of the object or source code included within the Service or the Software and Documentation or any part thereof; or (vi) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c. **Software and Documentation.** All proprietary software provided by Saffire as part of the Service, and the Service documentation, sample data, marketing materials, training material and other material provided through the Service or by Saffire are and remain solely Saffire Property, and all third-party software that integrates into a Service remains the property of the third-party licensor (collectively, the “**Software and Documentation**”)
- d. **Anonymized Data.** Notwithstanding anything else herein, during and after the Term of this Agreement, Saffire may use Customer Data to create fully anonymized data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support and other business purposes, and Saffire shall own any such anonymized data.
- e. **Hardware; Supplies.** Unless specified as a purchase in an Order, all Hardware is rented to Customer for its sole use and remain the property of Saffire or its vendors. The rental fee (or purchase price) and any shipping is as specified on any Order. The Order will also specify who is responsible for installation. Customer bears the entire risk of loss and damage to the Hardware, ordinary wear and tear excepted, whether or not insured, once delivered or installed, unless caused by the negligence of Saffire or its employees or contractors. Customer agrees to use due care to protect and insure the Hardware while in its possession and to maintain the Hardware free and clear of all liens and in good operating condition and agrees not to sub-rent it or use it for any purpose other than for Customer’s event(s) during the Term of the applicable Order. Customer will promptly notify Saffire if any Hardware is lost, damaged or not functioning. Customer is responsible for supplies needed to run the Hardware (for example, electrical power, data bandwidth and internet access (Wi-Fi or wired), toner, paper, ticket stock, etc.).

7. TERM AND TERMINATION.

- a. **Term.** This Agreement commences on the date of execution of the first Order and continues through the last Order Term end date (its Initial Term plus all Renewal Terms, as may be defined on an Order) has expired (“**Term**”), unless sooner terminated as provided herein or on an Order. Termination of one Order will not affect any others except as Saffire may specify in writing upon exercise of its rights hereunder.
- b. **Mutual Termination for Material Breach.** If either party is in material breach of this Agreement, the other party may terminate the applicable Order (and if only one Order is in effect, then this Agreement) at the end of a written 30-day notice/cure period, if the breach has not been cured during such period.
- c. **Suspension for Non-Payment.** Notwithstanding anything else in this Agreement, Saffire may (i) temporarily suspend the Service or (ii) terminate the applicable Order (or, at its option, all Orders and this Agreement), or both, if Customer’s payment on any invoice is more than 10 days past due. Suspension of Service shall not extend the Term nor create a right to any refund.
- d. **Suspension for Violations of Law.** Saffire may (i) temporarily suspend the Service or (ii) remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law or infringed on any

other party's rights. Saffire will attempt to contact Customer in advance. Service will be restored only on Saffire's satisfaction that the violation or infringement no longer exists. If the violation or infringement is not cured within thirty (30) days after suspension, Saffire may terminate the applicable Order (or, at its option, all Orders and this Agreement). Suspension of Service shall not extend the Term nor create a right to any refund.

- e. **Reservation of Remedies.** No remedy of Saffire referred to in this Section shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity including, without limitation, the right to maintain an action to recover all amounts due (including the right to recover all reasonable attorneys' fees and costs incurred by Saffire in enforcing its rights and remedies).
- f. **Return of Customer Data; Destruction.**
 - i. *Within 30-days after termination*, Saffire will provide, upon written request from Customer, and provided all fees and payments due have been received, export(s) of requested data and Customer design elements supplied and used in the creation and maintenance of terminated website.
 - ii. *After such 30-day period*, Saffire has no obligation to maintain the Customer Data and may destroy it.
- g. **Return of Hardware.** Upon termination for any reason of any Order, Customer must pay Saffire for any earned and unpaid amounts and promptly return (at Customer's cost – shipping insurance recommended) all Hardware. Upon Saffire's request, Customer will confirm in writing its full compliance with this return requirement. Customer agrees to allow Saffire to go onto the Customer's premises during regular business hours to retrieve the Hardware. If Customer fails to return any piece of Hardware (or allow Saffire onsite to retrieve it) within five (5) business days of termination or the end of an event, Customer will incur a late fee of Ten Dollars (\$10.00) per day per item, which may be offset against any funds Saffire may be holding for Customer and, if none, will be invoiced to Customer and due upon receipt. If any Hardware is not returned within thirty (30) days after any termination or event or is returned damaged, Customer is responsible and will have the replacement cost offset or invoiced due upon receipt.

8. LIABILITY LIMIT.

- a. **EXCLUSION OF INDIRECT DAMAGES.** Saffire is not liable for any indirect, special, incidental, consequential or punitive damages arising out of or related to this Agreement (including, without limitation, costs of delay; loss of data, records or information; and lost profits, revenue, opportunity or anticipated cost savings), even if it knows of the possibility of such damage or loss.
- b. **TOTAL LIMIT ON LIABILITY.** Except for Saffire's indemnity obligations in Section 9.a., Saffire's total liability arising out of or related to this Agreement (whether in contract, tort or otherwise) shall in no event exceed the amount paid by Customer for the Service to which the event is related within the twelve (12) month period prior to the first occurrence of the event that gave rise to the liability. For the avoidance of doubt, if liability arises from a ticketing event, the amount paid would be equal to the amount of Ticketing Service Fees collected and any ticketing set-up fees paid, and if arises related to Website Services, the amount paid would be equal to the amount of any web hosting and licensing fees and the web set-up fees, all during the applicable prior twelve (12) month period.

9. INDEMNITY, INSURANCE.

6/23/2025 - Indemnification has been removed

Jadi Burash

~~**Defence of Third party Infringement Claims.** Saffire will defend or settle and hold Customer harmless from any third party claim against Customer to the extent that such claim alleges that Saffire technology used to provide the Service infringes a copyright, patent, trademark or other intellectual property right, provided that Customer promptly notified Saffire of the threat or claim in writing, cooperates with Saffire in the defence, and allows Saffire solely to control the defence or settlement of such infringement claim. **Costs.** Saffire will pay infringement claim defense costs incurred as part of its obligations above, and Saffire negotiated settlement amounts or court awarded damages. **Process.** If such a claim is threatened or otherwise appears likely, then Saffire may, in its sole discretion, modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Saffire determines that none of these are reasonably available, then Saffire may terminate the infringing Order and related Service and refund any prepaid and unused fees under such Order. **Exclusions.** Saffire has no obligation for any infringement claim arising out of or related to: Saffire's compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur "but for" the combination; use or upload of Customer Data; or technology or aspects not owned by Saffire. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY INFRINGEMENT~~

- ~~b. **By Customer.** If any third party brings or threatens to bring a claim against Saffire related to or arising out of Customer's acts, omissions, data or information within the Service, related to the Hardware or otherwise from or at a Customer event (including, without limitation, personal injury, property damage, taxes, interest and penalties, refunds, returns and chargebacks), Customer must defend, indemnify and hold Saffire and its officers, directors, employees and agents, and their successors and assigns, harmless from and against all damages, losses and expenses of any kind (including reasonable legal fees and costs) related to such claim or threatened claim.~~
- ~~c. **Insurance.** Customer shall provide, at its sole expense, appropriate levels of comprehensive or commercial general liability and property damage insurance, for its protection and the protection of Saffire that name Saffire as an additional insured. Customer agrees to furnish Saffire with a certificate of such insurance upon request.~~

10. **GOVERNING LAW AND FORUM; INJUNCTIVE RELIEF.** This Agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this Agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Travis County, Texas, and Customer submits to this personal jurisdiction and venue and waives any claims of forum *non conveniens*. Nothing in this Agreement prevents Saffire from seeking injunctive relief in a court of competent jurisdiction as follows: Customer agrees that any remedy at law for any breach or threatened breach of the provisions of Sections 5 or 6 could cause irreparable injury or harm to Saffire for which monetary damages would be insufficient and, accordingly, grants to Saffire the right and entitlement to seek injunctive relief, without the posting of bond, for any such breach or threatened breach in addition to, and not in limitation of, any and all other remedies at law or in equity otherwise available to Saffire. The prevailing party in any litigation at law or equity is entitled to recover its reasonable attorneys' fees and costs from the other party.

11. **OTHER TERMS.**

- a. **Entire Agreement and Changes.** This Agreement and all Orders in effect along with any Addenda mutually signed and intended to be attached and incorporated constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations, proposals or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this Agreement. No representation, promise or inducement not included in this Agreement is binding. No modification of this Agreement is effective unless both parties sign it, however this Agreement may be modified through an online process provided by Saffire, after which Customer's continued use of a Service is deemed acceptance. No waiver is effective unless the party waiving the right signs a waiver in writing. No delay or omission to exercise any right or remedy in favor of Saffire or Customer upon any breach or default hereunder shall impair any such right or remedy or be construed to be a waiver, nor shall any waiver of any single breach or default be deemed a waiver of any other.
- b. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this Agreement with all associated Orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party. Notwithstanding the foregoing, Saffire reserves the right to delegate certain duties and aspects of providing the Service to trusted contractors with whom it maintains a relationship to enhance the offerings available to Customer and other users.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other and shall not be construed as partners or joint venturers or as employee/employer for any purposes.
- d. **Enforceability and Force Majeure.** If any term of this Agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party shall be in default or be liable as a result of any delay or failure of performance which occurs due to any war, explosion, flood, fire, hurricane, earthquake, or other natural catastrophe, civil disturbance, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, act of God or other event beyond such party's reasonable control (any such event, a "**Force Majeure**"), but only for so long as such Force Majeure shall continue to prevent such performance. The delayed party shall use its best efforts to minimize the delays caused by any such Force Majeure. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused and must inform the other party of its plans to resume performance.
- e. **Notices.** Any notice given pursuant to this Agreement shall be in writing and shall be given by email (effective when received) or by US mail (effective 3 days after mailing certified) or national overnight carrier (effective when delivery

confirmed) to the person named at the end of the Applicable Order, as may be changed through written notice to the other party.

- f. **No Additional Terms.** Saffire rejects additional or conflicting terms of any Customer form purchasing document.
- g. **Order of Precedence.** If there is a conflict in terms between this Agreement and an Order, the term in the Order prevails as to the conflict. For the avoidance of doubt, the silence of one document on an issue shall not be deemed a conflict.
- h. **Survival of Terms.** Any terms that by their nature survive termination of this Agreement for a party to assert its rights and receive the protections granted herein will survive (including, without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.
- i. **Feedback.** By submitting ideas, suggestions or feedback to Saffire regarding the Service, (i) Customer agrees that such items submitted do not contain confidential or proprietary information; and (ii) Customer hereby grants Saffire an irrevocable, unlimited, royalty-free, perpetual license to use such items for any business purpose.
- j. **Counterparts; Digital Signature.** This agreement may be accepted by online click or by use, and any Order or Addendum may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a digital signature or click may substitute for and have the same legal effect as the original signature.

[end of document]

Apple Mobile App Addendum

The following terms apply to any software distributed through an Apple mobile app store:

Apple Minimum Terms. The additional Apple Minimum Terms below are incorporated into the Agreement for all purposes.

APPLE REQUIREMENTS: IF CUSTOMER DOWNLOADED THE SERVICES FROM THE APPLE ITUNES APP STORE, THE FOLLOWING TERMS ALSO APPLY:

Acknowledgement: Customer acknowledges that this Agreement is between Customer and Saffire only, and not with Apple, and therefore Saffire (not Apple) is solely responsible for the Services and the content.

Scope of License: The license granted to Customer for the Service is a limited, non-transferable license to use the Services on an iOS device that Customer owns or controls and as permitted by the Usage Rules in the Apple iTunes App Store Terms of Service.

Maintenance and Support: Saffire (not Apple) is solely responsible for providing any maintenance and support services with respect to the Service. Customer acknowledges that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Service.

Warranty: Saffire is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the Service to conform to any applicable warranty, Customer may notify Apple, and Apple will refund any paid amounts for the Service to Customer. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Service, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Saffire's sole responsibility.

Product Claims: Saffire (not Apple) is responsible for addressing any Customer or third-party claims relating to the Service or the Customer's possession and/or use of the Service, including, but not limited to: (i) product liability claims; (ii) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

Intellectual Property Rights: Customer acknowledges that, in the event of any third-party claim that the Service or Customer's possession and use of the Service infringes that third party's intellectual property rights, Saffire (not Apple) will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent provided in the Agreement.

Legal Compliance: Customer represents and warrants that (i) Customer is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) Customer is not listed on any U.S. Government list of prohibited or restricted parties.

Developer Contact Info: Direct any questions, complaints or claims to:

Email: saffiretix@saffire.com

Third Party Terms of Agreement: Customer must comply with any applicable third-party terms of agreement when using the Service, e.g., if Customer is using a VoIP application, then Customer must not be in violation of its wireless data service agreement when using the Service.

Third-party Beneficiary: Customer acknowledges and agrees that Apple and Apple's subsidiaries are third-party beneficiaries of this Agreement, and that, upon Customer's acceptance of the terms of the Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce the Agreement against Customer as a third-party beneficiary thereof.