



**TICKETING SERVICES AGREEMENT**

*dw* **FEBRUARY 1,** *fw*  
THIS AGREEMENT is made this ~~January 6,~~ 2014 by and between CITY OF CLEARWATER, a municipal corporation of the State of Florida, EVENTS AND FESTIVALS DIVISION, of the PARKS AND RECREATION DEPARTMENT, ("THE CLIENT") and Intelli-Mark Technologies, Inc. (hereinafter referred to as "ETIX" or "INTELLI-MARK") (each individually referred to herein as "Party" or collectively as the "Parties"). Correspondence concerning this agreement shall be sent to THE CLIENT at P.O. Box 4748, Clearwater, FL 33758 and to ETIX Technologies at 909 Aviation Blvd, Suite 900, Morrisville NC 27560.

**IN CONSIDERATION** of the mutual covenants contained herein being kept paid and performed, the parties hereto agree as follows:

- I. **DEFINITIONS:** As used through this Agreement.
  - A. **ATTRACTION** shall mean the theatrical production, sporting event, permanent or temporary exhibit or other entertainment feature produced or presented, in whole, by THE CLIENT for which tickets are sold. An Attraction may only be one event if only one event is presented. It may also encompass more than one event or a series of events.
  - B. **FACILITY/VENUE** shall mean the theater, arena, stadium, concert hall, or other premises where an Attraction is to be performed.
  - C. **OPEN SEATS** shall mean the Tickets to an Attraction available for sale to the public.
  - D. **OPEN ADMISSIONS** shall mean the Tickets to an Attraction available for sale to the public.
  - E. **CONVENIENCE FEE** and other **FEES** shall mean monies charged to Ticket purchasers by ETIX for the Ticket purchaser's convenience of utilizing the **SYSTEM**.
  - F. **SYSTEM** shall mean the system developed and established by ETIX, as modified from time to time, for the sale of Tickets via the Internet and permitting remote printing by purchasers of such **TICKETS**.
  - G. **TICKETS** shall mean evidence of the right to occupy space or obtain entry to the Attraction.
  - H. **TOTAL RECEIPTS** shall mean all monies processed through ETIX's merchant account (Etix will collect the proceeds) and/or the CLIENT'S merchant account (CLIENT collects proceeds) in connection with the sale of Tickets, exclusive of any Convenience Fee or handling fee, and any other fees due ETIX, and applicable taxes.
  
- II. **AUTHORIZATION.** THE CLIENT hereby grants to ETIX the exclusive authority to sell, on behalf of THE CLIENT, all available tickets through the **SYSTEM** for all events at the Attraction. This includes online, point-of-sale or box office sales, phone orders, group sales, all season tickets, and mini plans. No third party ticketing companies or brokers may sell any portion of the ticket inventory for any event. All online ticket sales shall transpire through Etix and according to the terms of this agreement. It is understood that ETIX does not guarantee that any minimum or fixed number of Tickets will be sold through the **SYSTEM** for the Attraction.

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**III. TERM.** The term of this Agreement shall be FIVE (5) YEARS from the Effective Date and maybe automatically renewed for one additional FIVE (5) year term under the same terms and conditions by mutual written agreement between the Parties. For purposes of this paragraph, mutual written agreement may be by letter or email correspondence.

**IV. COMPENSATION AND SETTLEMENT**

A. ETIX shall be entitled to compensation for its services in connection with Ticket sales through the SYSTEM as follows:

1. For Internet sales, THE CLIENT authorizes ETIX to collect from purchasers of Tickets a Convenience Fee in the amount in accordance to the following fee table:

TICKET PRICE RANGE	ETIX FEE	ETIX CREDIT-CARD PROCESSING
<b>\$0.00 - \$5.00</b>	<b>\$1.00</b>	<b>3%</b>
<b>\$5.01 - \$14.99</b>	<b>\$1.75</b>	<b>3%</b>
<b>\$15.00 - \$29.99</b>	<b>\$2.50</b>	<b>3%</b>
<b>\$30.00 - Above</b>	<b>\$4.25</b>	<b>3%</b>

ETIX agrees to pay Bank Charge Card fees associated with Internet sales of Tickets through the system for all transactions processed by ETIX merchant account. CLIENT agrees to pay Bank Charge Card fees associated with Internet sales of Tickets through the system for all transactions processed through CLIENT'S merchant account. CLIENT further authorizes ETIX to keep all fees owed to ETIX as compensation for effecting sales of the Tickets. Convenience fee may be adjusted each year for inflation.

2. For Direct Pull Tickets and all tickets processed through Etix System, sometimes called "box office tickets" (tickets sold by THE CLIENT), THE CLIENT agrees to pay ETIX ten cents (\$.10) per ticket. Pre-printed thermal tickets are available for ten cents (\$.10) each through ETIX. If Special set-ups are required for pre-printed tickets, additional charges may apply. THE CLIENT agrees to pay Bank Charge Card fees associated with Direct Pull Tickets. THE CLIENT agrees to pay all shipping charges associated with the delivery of Direct Pull Tickets. Blank Etix stock is available for \$0.00 per ticket in quantities of 1000 pieces.

3. THE CLIENT has the OPTION to use the ETIX phone center. For Phone Center sales, THE CLIENT authorizes ETIX to collect from purchasers of Tickets a Convenience Fee in addition to the convenience fee established above in IV A1 in the amount of \$2.50 per order (said Convenience Fee shall be in addition to the gross Ticket price) and further authorizes ETIX to such Convenience Fee for their own respective accounts as compensation for effecting sales of the Tickets. Bank Charge Card fees to be handled as per IV. 1 A. ETIX shall not be responsible to confirm that all admission costs and state sales taxes fees collected hereunder are collected in accordance with the law. ETIX will remit all admission fees, sales tax & miscellaneous fees collected from the consumer, retaining only the convenience & processing charges outlined in section A.

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1. The CLIENT will remain responsible to pay all appropriate sales taxes pertaining to these sales.

4. Mail fulfillment center: THE CLIENT has the OPTION to use ETIX to collect from consenting purchasers of Tickets that select the mail delivery method a postage and handling Fee in addition to the fees established above in IV A1 and IV A3 of \$2.50 per order for Standard Mail and \$14.95 for Express Mail (said Convenience Fee shall be in addition to the gross Ticket price) and further authorizes ETIX to such Convenience Fee for their own respective accounts as compensation for effecting delivery of the Tickets. ETIX will print thermal tickets and mail said tickets to ticket purchaser via standard First Class US mail, or Express Mail, as applicable.

THE CLIENT authorizes ETIX to collect from consenting purchasers of Tickets that select the Express delivery method a shipping and handling Fee in addition to the fees established above in IV A1 and IV A3 per order for 2-day delivery of tickets (said Fee shall be in addition to the gross Ticket price) and further authorizes ETIX to such Convenience Fee for their own respective accounts as compensation for effecting delivery of the Tickets. ETIX will print thermal tickets and mail said tickets to ticket purchaser via a two day guaranteed delivery carrier.

5. All other costs associated with the Attraction, including expenses associated with box office, labor and staffing shall be the sole responsibility of THE CLIENT, except any and all expenses of ETIX arising out of its operations in fulfilling its obligations under this agreement, including but not limited to ETIX employee expenses and costs of equipment (unless otherwise provided for herein).
6. An annual phone/email support and maintenance fee of \$0.00 is due upon execution of this agreement and upon the anniversary of that date each year for the term of the agreement.
7. An initial set up fee of \$0.00 is due upon execution of this agreement

Merchant account connection fee (OPTIONAL): If requested by CLIENT, an initial, one-time, merchant account connection set up fee of \$0.00 USD is due upon successful connection of CLIENT and ETIX merchant accounts.

8. Etix will co-brand CLIENT'S website once upon execution of this agreement at no additional charge. CLIENT will be billed \$0.00 for any subsequent co-branding or changes to the initial co-brand. Co-Branding will include only approved event logos provided by the CLIENT.
- B. ETIX shall have the right to withhold its compensation (all fees owed to ETIX) from receipts from Ticket sales for the Attraction processed by the ETIX merchant processor, and remit the balance due to THE CLIENT in the manner provided in Paragraph V of this Agreement.

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- C. THE CLIENT shall have the right at all reasonable times to examine and audit the records of ETIX insofar as they relate to the Attraction. ETIX shall keep adequate records reflecting Ticket transactions to allow THE CLIENT to make a meaningful Ticket audit.

**V. OBLIGATIONS OF ETIX**

- A. For credit card transactions processed by ETIX, ETIX shall collect the Total Receipts for each Attraction. Nothing herein contained shall be deemed to prohibit ETIX from commingling funds arising from the sale of Tickets hereunder in an account with funds connected with other ticket servicing agreements. For transactions processed by ETIX's merchant account, ETIX shall remit to THE CLIENT TOTAL RECEIPTS for Tickets sold for Attractions for all events transpiring Monday through Sunday. Payment will be made by Etix the following Monday via check or Tuesday via ACH. At the time payment is made, ETIX shall furnish THE CLIENT an event settlement report setting forth the Total Receipts for the Attraction in question, the deductions therefrom, and the net amount due THE CLIENT. Such event settlement reports shall be conclusive as to all amounts contained therein unless within thirty (30) days of the date such event settlement report is provided to THE CLIENT, THE CLIENT notifies ETIX in writing setting forth in reasonable detail the respects in which THE CLIENT believes the event settlement report to be incorrect.
- B. ETIX will adhere to the refund policy of CLIENT.  
In the event of any cancellation of the Attraction, ETIX agrees to make refunds for Tickets (less ETIX' Convenience Fee) purchased through its SYSTEM and processed by ETIX's merchant account for a period of 30 days after it is notified of such cancellation, said thirty (30) day period to begin the day following the official cancelation of the event. Upon the expiration of said 30-day period, any amounts remaining from the Total Receipts for the cancelled Attraction, less all amounts due ETIX from THE CLIENT, shall be remitted to THE CLIENT and THE CLIENT shall thenceforth be solely responsible for making any further refunds. Contingent upon the Total receipts being remitted to THE CLIENT, THE CLIENT shall indemnify and hold ETIX harmless from any loss, liability, cost or expense arising from refund claims made after the expiration of said 30-day period.
- C. Provided that CLIENT sells 8,000 tickets, priced at \$15.00 or more, online through the ETIX system, in any given year of the contractual term , ETIX will provide all necessary scanners, laptops and ticket printers at no cost during that given year of the contractual term. CLIENT agrees to pay all shipping charges related to the delivery and return of equipment. Otherwise, if CLIENT sells less than 8,000 tickets, priced at \$15.00 or more, online through the ETIX system, in any given year of the contractual term, scanners and ticket printers may be rented for \$50/month each during that given year of the contractual term. CLIENT agrees to pay all shipping charges related to the delivery and return of equipment. ETIX will provide initial training via telephone and email. **It is understood that ETIX does not guarantee to have scanners and printers available at all times for rent.** CLIENT must give ETIX a minimum of 3 weeks' notice on all equipment requests, for ETIX to guarantee availability. Scanners and thermal ticket printers may also be purchased through ETIX. If any equipment, scanners or printers, become defective during the contractual term, and

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such defects are not rectifiable by help of ETIX staff, ETIX will replace and ship equipment at no cost to CLIENT.

- D. Provided that CLIENT sells 8,000 tickets, priced at \$15.00 or more, annually online through the ETIX system, in any given year of the contractual term and also in exchange for inclusion on promotional materials, ETIX will provide sponsorship funds, for each indicated year, throughout the course of the contractual term, in the following increments:

Year 2	\$1,250
Year 3	\$2,500
Year 4	\$4,000
Year 5	\$5,000

- E. ETIX will provide technical support via phone support. Separate from this arrangement, provided that CLIENT sells 8,000 tickets, priced at \$15.00 or more, online through the ETIX system, in any given year of the contractual term, On-site training and support is available at a rate of \$0.00 for the first 8 hour day, and \$0.00 for each additional, consecutive day, during that given year of the contractual term. This price includes transportation, accommodations, and meals. Otherwise, if CLIENTS sells less than 8,000 tickets, priced at \$15.00 or more, in any given year of the contractual term, online through the ETIX system, On-site training and support is available at a rate of \$1800.00 for the first 8 hour day, and \$1000.00 for each additional, consecutive day, during that given year of the contractual term. This price includes transportation, accommodations, and meals.

VI. OBLIGATIONS OF THE CLIENT. THE CLIENT agrees that it shall:

- A. Allow ETIX to withhold ETIX convenience fee as defined in Section IV of this agreement.
- B. Honor or cause to be honored all Tickets properly issued by ETIX.
- C. Comply with ETIX' reasonable business practices concerning the return or exchange of Tickets, if any such were allowed.
- D. Allow the sale of all Open Seats/Open Admissions associated with the Attraction via the SYSTEM. The availability and selection of Open Seats/Open Admissions shall be the same for both the SYSTEM and THE CLIENT box office operations, if any.
- E. In the event that the Attraction is cancelled for any reason and a refund is given to ticket purchasers, CLIENT agrees to cover all charges and expenses related to credit card charge-backs. Within this, ETIX shall adhere to the refund policy of the CLIENT.
- F. IT IS THE RESPONSIBILITY OF THE CLIENT TO CHECK ALL DATA IN THE SYSTEM FOR ACCURACY BEFORE THE ONSALE DATE. ETIX IS NOT RESPONSIBLE OR LIABLE FOR ANY TYPOS OR MISTAKES PERTAINING TO TICKET PRICE, SPELLING, DATE, TIME, SEATING CHART OR ANY OTHER DATA ENTERED INTO THE SYSTEM.
- G. For transactions processed by CLIENT's merchant account through the SYSTEM, CLIENT shall remit to ETIX all fees to which it is entitled as per this agreement from Ticket sales by the 12<sup>th</sup> of each month for all events which transpired during the previous month.

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**VII. ADVERTISING.** ETIX may at its discretion, promote and advertise the Attractions and the availability of Tickets through the SYSTEM, and may use the name of THE CLIENT, the Attraction, the Facility, and the performers, artists, or other persons connected therewith, to the extent that THE CLIENT has legal permission to such use and may assign this right to ETIX. If any such advertisements or promotions of the Attractions are deemed inappropriate and/or are unapproved by THE CLIENT, ETIX shall remove such promotions or advertisements. THE CLIENT shall, in advertising or other promotional material, which it creates, causes to be produced, controls, or recommends, feature instructions as to where customers can purchase tickets.

**VIII. INDEMNITY.** ETIX shall, at all times, indemnify, defend, and hold harmless THE CLIENT against and from all claims, actions, demands, costs, damages, losses, or expenses of any kind whatsoever, resulting from or connected with ETIX's operations or the omission of any act, lawful or unlawful, by ETIX or its agents and employees. This provision shall survive expiration or termination if this Agreement.

To the extent permitted by Florida Statute 768.28, as it may be amended from time to time, THE CLIENT shall, at all times, indemnify, defend, and hold harmless ETIX against and from all claims, actions, demands, costs, damages, losses, or expenses of any kind whatsoever, resulting from or connected with THE CLIENT's operations or the omission of any act, lawful or unlawful, THE CLIENT or its agents and employees. Nothing contained herein shall be construed to waive or modify the provisions of Florida Statute 768.28 or the doctrine of sovereign immunity. In addition, nothing contained herein shall be construed as creating third party beneficiaries or as consent by THE CLIENT to be sued by third parties in any manner arising from this grant of Agreement.

**IX. PREMATURE TERMINATION BY EITHER PARTY.** Either party hereto may terminate this Agreement in the event that the other party:

- A. Fails to account and make payments hereunder, and such failure is not cured within ten (10) days after written notice thereof is sent to the other party; or
- B. Fails to perform any other obligation required of it hereunder, and such failure is not cured within thirty (30) days after written notice thereof is sent to the other party. Such termination shall be effective upon the notifying party mailing a notice to the other party declaring its election to terminate. This Agreement shall automatically terminate in the event that either party suffers the appointment of a receiver for all or a substantial part of its assets or business, or otherwise takes advantage of or is subject to any other law relating to bankruptcy, insolvency, or relief from the claims of creditors. No premature termination of the Agreement shall affect any right of either party accruing prior to such termination, whether such right is conferred by the terms of the Agreement or arises under general principles of law.
- C. Either Party may terminate this Agreement with fifteen (15) days written notice without cause. This Agreement may also be terminated at any time upon the mutual written agreement of Licensor and Licensee. In the event the agreement is terminated by the CLIENT without cause, a pro-rated amount of the annual sponsorship dollars received for said year will be returned to ETIX within 30 days of termination of this agreement. In the event that

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ETIX terminates the agreement without cause the CLIENT will be entitled to all sponsorship dollars during the current agreement term.

- X. **FORCE MAJEURE.** Neither Party shall be responsible for any delay or failure of performance resulting from fire, strike, flood, labor dispute, domestic, or international unrest, delay in receipt of supplies, energy shortage, power failure, Internet failure, or any other cause beyond its reasonable control.
  
- XI. **COMPLIANCE WITH LAW.** The parties hereto shall each comply with all laws and regulations respectively applicable to each party in connection with the operations contemplated hereunder.
  
- XII. **CONSTRUCTION/Independent Contractor.** This Agreement does not create a partnership, joint venture, or any other affiliation. ETIX agrees that persons employed by ETIX for purposes related to the operation or other purposes under this Agreement are not employees of THE CLIENT for any purpose whatsoever, including unemployment tax, social security contributions, income tax withholding or workers compensation, whether state or federal. ETIX agrees to pay and be solely responsible for all applicable taxes, both state and federal, in connection with its operations in fulfilling its obligations hereunder. This is not an agreement of lease, partnership, or employment of ETIX or any of ETIX's employees by THE CLIENT. ETIX shall not order any merchandise or equipment, incur any indebtedness, enter into any undertaking or make any commitment in THE CLIENT name or purporting to be on THE CLIENT behalf, except as required to advertise, publicize, sell or do all things pursuant or incidental to the purposes and intents of the agreement. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Florida.
  
- XIII. **NOTICE.** All notices, approvals, or requests in connection with this Agreement shall be deemed given when deposited in the United States mail, certified, return receipt requested, with postage prepaid, or when sent by telegram. Notices shall be sent to the parties at their respective addresses set forth in the first paragraph of this Agreement. Either party may change the address to which notices are to be sent by written notice to the other party.
  
- XIV. **ASSIGNMENT.** This Agreement may not be assigned by either party without the prior written consent of the other, except to a successor (by merger, purchase of assets or stock, consolidation, etc.) to all or substantially all of the assets of the assignor. To the extent that an assignment is so permitted, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of either party. Any other assignment or purported assignment of this Agreement shall be null and void.
  
- XV. **CONFLICTS.** In the event ETIX shall have a separate agreement similar hereto with the owner or management of the Facility at which the Attraction is to be performed, such separate agreement shall apply to such Attraction unless ETIX is otherwise directed by the owner or management of such facility.

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**XVI. SEPARABILITY OF PROVISIONS.** In the event that any provision hereof shall be deemed in violation of any law or held to be invalid by any court in which this Agreement shall be interpreted, the violation or invalidity of any particular provision shall not be deemed to affect any other provision hereof but this Agreement shall be thereafter interpreted as though the particular provision so held to be in violation or invalid were not contained herein.

**XVII. This Agreement** contains all the terms agreed to between the parties. Statements or representations not included herein shall not be binding upon the parties, and no modifications or amendments of any of the terms hereof shall be valid or binding unless made in writing and signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed.

CITY OF CLEARWATER EVENTS  
& FESTIVALS DIVISION

ETIX

By SEE ATTACHED SIGNATURE PAGE  
(Please print name above)

By Jeffrey Woronka

Signed: \_\_\_\_\_

Signed:  \_\_\_\_\_

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

Date Signed: 1/7/14 \_\_\_\_\_

This offer must be signed by March 31, 2014.

**Please sign and fax to 919-653-0580 OR sign and email to [jeff@etix.com](mailto:jeff@etix.com)**

909 Aviation Pkwy, Suite 900 Morrisville, NC 27560



Countersigned:

-george cretekos  
George N. Cretekos  
Mayor

CITY OF CLEARWATER, FLORIDA

By: William B. Horne II  
William B. Horne, II  
City Manager

Approved as to form:

Laura L. Mahony  
Laura Lipowski Mahony  
Assistant City Attorney

Attest:

Rosemarie Call  
Rosemarie Call  
City Clerk

