

SHOWUPTIX SERVICES AGREEMENT

Alliance for Audience

This AGREEMENT ("*Agreement*") is made and entered into this ____– day of _____, 20____, by and between **Alliance for Audience, doing business as ShowUp.com**, a 501c3 non-profit corporation duly incorporated under the laws of the state of Arizona, having its principal office at 13416 N. 32nd Street, Suite 106, Phoenix, Arizona 85032 ("*Alliance*"); and _____ ("*member*") having its principal office at: _____.

Recitals

- A. Alliance is offering an on-line service to allow organizations to sell full-price, general admission tickets.
- B. This technology is to be utilized by member organizations on a "private" basis – meaning that the sale of full-price tickets will be presented as a direct extension of service from the member organization's website.
- C. The title of this new service is "ShowUpTix" and presents a look distinct from ShowUp.com. From the front-end, visitors will not see a visible connection from ShowUpTix to ShowUp.com and its Ticket Marketplace. From the back-end, ShowUpTix services will run on the same administrative system as ShowUp.com's existing Ticket Marketplace.

Services To Be Provided by Alliance

- A. **Sale of a Full-Price Ticket:** As with the methodology of the existing Ticket Marketplace, upon purchase, a buyer will automatically receive a confirmation number via a confirmation screen and e-mail. Upon arriving at an event, audience members will be expected to either check-in at the admissions desk or box office "will call" window. For security reasons, it is expected that member will check a photo identification to assure that admission is being provided to the person who placed the order or by the person authorized by the person who placed the order.
- B. **Graphic Interface:** The ticket selling function is a "private label service" which means that the primary graphic association of this page will be to the member, although each page will note in that this service is "powered by ShowUpTix". member and Alliance will select mutually agreeable passwords and user identification codes for designated member personnel to gain online access to transaction information concerning the activation and use of the ShowUpTix system, which passwords and codes shall be treated as Confidential Information
- C. **Ticket Pricing Structure and Sale:** The ticket pricing structure will allow for separate ticket purchases for Adult and Child admissions. Member will have the exclusive authority to establish the on-sale and off-sale times of tickets to its events, as well as to determine price and inventory.
- D. **Sales Methods:** The ShowUpTix service is available for on-line ticket sales only. Alliance does not offer services for telephone or walk-up sales.
- E. **Payment and Reconciliation:** Alliance will provide administrative services, including credit card clearing and processing and weekly reporting.
 - a) Alliance will provide a weekly sales report and issue a check each Wednesday to member for all revenue received during the preceding Monday thru Sunday week. member will be solely responsible for the issuing of refunds or exchanges for any reason.
 - b) All fees and other sums due to Alliance pursuant to this Agreement are exclusive of all taxes, duties, including customs duties, credit card processing fees, and similar charges now in force or hereafter enacted. Alliance shall be responsible for paying credit card processing fees, sales or use taxes, and any other obligation imposed by a governmental entity or taxing

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authority that Alliance may be required to collect or pay in connection with this Agreement or imposed upon the delivery of the ticket voucher to the patron.

- c) Alliance shall be solely responsible for the taxes owed by it with respect to fees paid to it by member with respect to the amounts owed to Alliance under this Agreement. Member shall be responsible for their own federal, state, and local income taxes on monies paid to them by virtue of their participation on the ShowUpTix system.
 - d) Alliance agrees to maintain complete and accurate records and books of account sufficient to verify the information concerning activity and sale of ticket vouchers and the calculation of payments made under this Agreement. Alliance shall permit member or its designee on reasonable prior notification to audit and otherwise review all information related to the usage, payments, and revenue allocations under this Agreement and to verify payments and full compliance hereunder. All books and records relative to Alliance's obligations hereunder shall be maintained and made accessible to member or its designee for inspection during Alliance's regular business hours for the term of this Agreement and for three (3) years after termination of this Agreement
- F. **Privacy:** All customer information collected via ShowUpTix will be considered the exclusive property of member. And any information shared with Alliance shall be held as confidential as set forth in Section 6 of this agreement. Member will allow Alliance for Audience to include an "opt-in" opportunity for ticket buyers to sign up for e-mails from ShowUp.com.
- G. **Charges:** An annual set-up charge of \$_____ shall be payable to Alliance for Audience upon the execution or renewal of this contract. Subsequently, a service charge, payable to Alliance, of \$2.00 per ticket will be added as part of the sales transaction payable by the Patron. The amount of the service charge shall be at the sole discretion of Alliance for Audience and is subject to change at any time, upon notification of member.

1. Ownership of ShowUpTix System

Member acknowledges and agrees that the ShowUpTix system, and all Intellectual Property rights associated therewith, is the sole and exclusive property of Alliance. Alliance grants member a non-exclusive, non-transferable (except as set forth herein), personal license to use the ShowUpTix system solely during the term of this Agreement and solely for the purposes directly stated in this Agreement.

1.1 **Restrictions on Use**

- (a) Member shall not sell; transfer, lease, or sublicense its access to the ShowUpTix site, to any person or entity except as authorized to do so by the terms of this Agreement or by Alliance in writing. Member shall not attempt to improperly gain access to portions of the Alliance system to which it is not authorized, nor to make any use of the Alliance system that is not expressly set forth in this Agreement.
- (b) The Source Code and Object Code underlying the ShowUpTix system constitute a valuable trade secret of Alliance. Member shall not modify, adapt, translate, reverse engineer, reverse assemble, decrypt, decompile, disassemble, or create derivative works based on the Software, merge the Software into any other program, or use all or any portion of the Software for the purpose of deriving its Source Code. Member shall not access or use the Source Code or modify the Software.
- (c) Member agrees that modified, translated, integrated, or otherwise changed versions of the ShowUpTix system shall not constitute a new system but instead shall be derivative works

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governed by the terms and conditions of this Agreement and U.S. Copyrights law.

1.2 Terms Governing Copies

All access to the ShowUpTix system made by member or delivered by Alliance are subject to the terms of this Agreement.

2. Term

2.1 This Agreement comes into effect on _____, 20____ after it is signed by both Parties and shall remain in force for a period of one (1) year, unless terminated earlier pursuant to the terms of this Agreement.

2.2 This Agreement shall be automatically renewed for increments of one (1) additional year unless the member gives written notice to Alliance to terminate the contract not less than two (2) months before the end of the Term.

2.3 Upon any termination of this Agreement, member's license granted in Section 1 will automatically terminate, and member shall make no further use of the ShowUpTix system.

3. Documentation

3.1 The Documentation provided by Alliance shall contain sufficient information for the proper operation of the ShowUpTix system.

3.2 If Alliance substitutes or modifies the ShowUpTix system in accordance with this Agreement, it shall use its best endeavors to ensure that any consequential amendments to the Documentation are implemented and supplied to the member no later than ninety (90) calendar days of such substitution or modification.

3.3 All the Documentation shall be written in English.

4. Support

Member shall designate an employee to Alliance who will function as its liaison to Alliance ("*Member's Liaison*"). Member's Liaison shall be primarily responsible for communicating with Alliance regarding all ticketing and marketing matters and for receiving assistance and instructions on behalf of member from Alliance's staff. Member's Liaison may be substituted at any time at Member's discretion, but member acknowledges that any replacement of Member's Liaison may result in delays in support if said replacement is not fully conversant and familiar with the relevant issues.

Alliance will use commercially reasonable efforts to ensure that member will be able to reach at least one of the following persons during prime time (from 9:00 AM to 5:30 PM, during Alliance's customary Business Day): the primary Alliance support person assigned to member; or a senior manager at Alliance. In case of emergency only, Alliance will provide member with the number of a special telephone line in order to be able to contact Alliance outside the hours mentioned above.

Alliance may, from time-to-time, schedule periods of routine maintenance during which times the system may become non-operational. Alliance will use all reasonable efforts to notify member prior to such periods of scheduled maintenance. Additionally, periods of unscheduled maintenance and

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downtime may occur due to the nature of information systems. During such times, Alliance will use commercially reasonable efforts to restore service in a prompt manner.

5. Warranties

5.1 Alliance's Warranties

Alliance warrants and represents that:

- (a) Alliance owns sufficient Intellectual Property rights to the ShowUpTix system to grant the licenses contained herein
- (b) To the best of its knowledge and belief, the ShowUpTix system does not infringe the intellectual property rights of any person or entity;
- (c) All employees and agents of Alliance who carry out data management under this Agreement are and will remain suitably qualified and experienced and will possess the level of professional skill, care and judgment necessary to carry out the obligations of Alliance under this Agreement.
- (d) Alliance has provided member with the specifications for the minimum software and hardware requirements necessary to operate the ShowUpTix system; and
- (e) Alliance has the right and authority to enter into and perform all of its obligations under this Agreement.

5.2 Limitation of Liability

THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES GIVEN BY ALLIANCE WITH RESPECT TO THE SERVICES OF SHOWUPTIX.COM SYSTEM PROVIDED TO MEMBER PURSUANT TO THIS AGREEMENT. ALLIANCE MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

ALLIANCE LIABILITY IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO ACTUAL DAMAGES INCURRED AND LOSSES SUSTAINED, NOT TO EXCEED THE PAYMENTS MADE TO ALLIANCE BY MEMBER AND VENUES WITH RESPECT TO THE PARTICULAR WORK, SERVICE, HARDWARE, SOFTWARE, OR CONSUMABLES OUT OF WHICH SUCH LIABILITY ARISES. IN NO EVENT SHALL ALLIANCE OR ITS EMPLOYEES OR OFFICERS BE LIABLE FOR ANY LOSS OF PROFITS OR FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5.3 Use of Trademarks

- (a) Alliance owns the trademarks and domain names described in Schedule 1.
- (b) Member may use Alliance trademarks solely for the purposes and in furtherance of the purposes of this Agreement.

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- (c) Member shall follow Alliance's instructions as given to it from time to time as to the member's permitted use of each Alliance trademark and shall cooperate with Alliance in the registration of any trademark(s).
- (d) Prior to any proposed use of an Alliance trademark, member shall give Alliance written notice of exactly how it proposes to use the trademark, including drawings of all advertising copy. Such written notice shall be delivered to Alliance at least fifteen (15) days before public distribution and member shall make whatever changes Alliance requires in the use of the trademark before making any public distribution. If Alliance does not deliver any comments and/or recommendations regarding member's proposed use of an Alliance trademark, within ten (10) calendar days after its receipt of notice, member shall be entitled to assume that Alliance has consented to member's proposed use of such trademark, but not to any use not contained in such notice.
- (e) Alliance trademarks shall not be combined with any member or third-party trademark, name, appellation, or marking unless Alliance specifically consents in writing to such combination; Alliance approval will not be unreasonably withheld.
- (f) Alliance may discontinue the permitted use of any Alliance trademark by member at any time and member shall thereupon cease to use such trademark. Alliance may add a new or altered Alliance trademark at any time. Prior to withdrawing consent to use an Alliance trademark, Alliance shall give member fifteen (15) days prior written notice.

6. Confidential Information

6.1 Acknowledgement

Member acknowledges that information relating to or embodied in the ShowUpTix System as well as this Agreement, is Confidential Information.

6.2 The Parties' Obligation of Non Disclosure

The Parties undertake:

- (a) to keep the other Party's Confidential Information secret;
- (b) to prevent third parties from gaining access to the other Party's Confidential Information;
- (c) to use and to disclose the other Party's Confidential Information only to those of its employees and agents who need to know such Confidential Information for the purposes of the Parties' business and for the performance of this Agreement, and to obtain from each such person to whom the Confidential Information is disclosed undertakings no less onerous than those contained in this Section 12; and
- (d) to take all reasonable steps required by the other Party to enforce any obligation of confidentiality imposed on it by this Agreement.

6.3 This obligations of confidentiality shall remain in full force and effect for a period of five (5) years following the expiration or termination of this Agreement, regardless of cause or reason.

6.4 Confidential Information does not include any information which:

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- (a) at the time of the first disclosure to or observation by the Parties, was already in the lawful possession of them in written form;
- (b) is in or comes into the public domain in the Geographic Region otherwise than by disclosure in breach of this Agreement, provided that any material part of Confidential Information that is in the public domain in the Geographic Region shall not mean that the remainder of the information loses its confidential character; or
- (c) becomes available to the Parties from a third person legally entitled to possess the information and provide it to them, if the use or disclosure accords with the right or permission granted to the Parties by that third person.

7. Security

The Parties will take all reasonable steps to ensure that all of the Confidential Information and Documentation in their possession is kept in a safe and secure place and will be protected at all times from access, misuse, damage or destruction.

8. Termination

8.1 Termination by Alliance

Alliance may terminate this Agreement at any time but not less than sixty (60) days prior to written notice to member for any of the following grounds and, without limiting any of its other rights, may stop the use of the ShowUpTix's system by member and use, sell, assign, transfer or license the ShowUpTix System to a third party free from any claim from member:

- (a) Member breaches any material provision of this Agreement and has not remedied that breach within the thirty (30) days notice period.
- (b) Any step is taken (including without limitation, an application made, proceedings commenced, or resolution proposed in a notice of meeting or passed) for:
 - (i) the winding up or dissolution of member; or
 - (ii) member entering into any arrangement, compromise or composition with, or the assignment for the benefit of its creditors, or any class of them
- (c) A receiver, or other administrator or similar officer is appointed by a court and takes control of member or its assets.
- (d) Member permanently discontinues the use of the ShowUpTix System.
- (e) Member fails to pay any of the fees required to be paid in this Agreement.

8.2 Termination by Member

Member may terminate this Agreement at any time but not less than sixty (60) days prior to written notice to Alliance on any of the following grounds:

- (a) Alliance breaches any material provision of this Agreement and has not remedied that breach within the thirty (30) notice period.

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- (b) Any step is taken (including without limitation, an application made, proceedings commenced, or resolution proposed in a notice of meeting or passed) for:
 - (i) the winding up or dissolution of Alliance; or
 - (ii) Alliance entering into any arrangement, compromise or composition with, or the assignment for the benefit of its creditors, or any class of them

8.3 Effect of Termination

Termination of this Agreement shall not affect the rights of any Patrons or any holder of any Ticket Voucher. Should this Agreement be terminated or expire, all rights granted to member in this Agreement respecting use, marketing, and promotion of the ShowUpTix program shall immediately cease.

8.4 Force Majeure

Force Majeure means a circumstance or event beyond the reasonable control of a Party that result in a Party being unable to observe or perform under this Agreement. Such circumstances shall include, but shall not be limited to:

Acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and acts or failures to act of third parties beyond the reasonable control of the Parties.

Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to a Force Majeure event. If a delay or failure of a Party to perform its obligations is caused or anticipated due to a Force Majeure event, the performance of that Party's obligations will be suspended. If a delay or failure by a Party to perform its obligations due to a Force Majeure event exceeds ninety (90) days, either party may immediately terminate the Agreement by providing notice in writing to the other Party.

9. Notices

9.1 Address

All notices shall be in writing and shall be addressed as follows:

if to Alliance:	Alliance for Audience
Address:	13416 N. 32nd Street, Suite 106, Phoenix, Arizona 85032
Facsimile:	(602) 971-5054
Telephone:	(602) 971-2223
Email:	mlehrman@allianceforaudience.org
Attention of:	Matt Lehrman
Title:	Executive Director

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if to Member:

Company _____

Address: _____

Telephone: _____

Email: _____

Attention of: _____

Title: _____

9.2 Service

All notices shall be given:

- (a) by personal delivery; or
- (b) by electronic communication, with a confirmation sent by registered or certified mail return receipt requested; or
- (c) by certified mail return receipt requested.

9.3 Date of Service

All notices shall be effective and shall be deemed delivered:

- (a) if by personal delivery; on the next Business Day following the day when delivered, received or left at the above address;
- (b) if by electronic communication; on the next Business Day following receipt of the electronic communication unless:
 - (i) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or garbled form; or
 - (ii) the transmission result report indicates a faulty or incomplete transmission; and
- (c) if by mail, five (5) Business Days after mailing.

10. Assignment

Neither party can assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

11. Entire Agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. No addition to or modification of any provision of this Agreement shall be binding unless in writing and signed by a duly authorized officer of each of the Parties.

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12. Non-Competition

Member shall not, during the term of this Agreement sell individual general admission tickets through any other on-line ticketing system that in Alliance’s reasonable judgment is directly competitive with the ShowUpTix program.

13. Governing Law

This Agreement is governed by the laws of the State of Arizona.

14. Authority

Individuals executing this Agreement on behalf of the Parties warrant that they have been duly authorized to execute this Agreement and to bind the party on whose behalf they are signing.

EXECUTED in Arizona.

Alliance for Audience

a 501c3 non-profit corporation

By: _____

By: _____

Date: _____

Date: _____

Name: Matt Lehrman

Name: _____

Title: Executive Director

Title: _____

SCHEDULE 1

Domain Names

- ShowUp.com
- ShowUpTickets.com
- ShowUptTix.com

Trademarks

- ShowUp
- ShowUpTix