

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 17th day of June, 2013, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Data Ticket, Inc., a California Corporation, whose address of record is 4600 Campus Drive, Suite 200, Newport Beach, California 92660, (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to process parking citations; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide processing services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the processing services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Finance Officer or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall be from July 1, 2013 through June 30, 2018

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Seventy Thousand Dollars (\$70,000.00) per year.

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars

(\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. WAIVER. In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

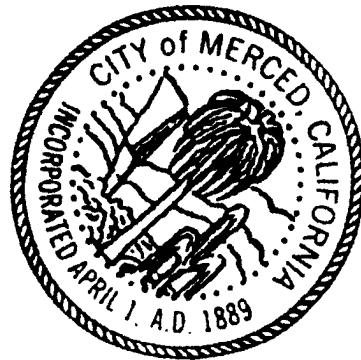
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: John M. Bramble
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: Mark Hammill
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: Ken Ryed 6/11/13
City Attorney Date

V-14279 213526 PO#: 110025
ACCOUNT DATA:

BY: P. Riley

Verified by Finance Officer.

Funds available in FY 13/14. WK 6/19/13

001-1007-522-17-00 \$70,000.00 WK

CONSULTANT
DATA TICKET, INC.,
A California Corporation

BY: _____

(Signature)

Margorie A. Fleming

(Typed Name)

Its: _____

President

(Title)

BY: _____

(Signature)

Beck Westcott

(Typed Name)

Its: _____

COO

(Title)

Taxpayer I.D. No. _____

ADDRESS: 4600 Campus Drive
Suite 200
Newport Beach CA 92660

TELEPHONE: _____

FAX: _____

E-MAIL: _____



4600 Campus Drive, Suite 200
Newport Beach, CA 92660
949 752 6937 (x) 310 - Phone
MFleming@DataTicket.com

FULL SERVICE FEE PROPOSAL FOR THE CITY OF MERCED

| <u>Description</u> | <u>Proposed Fee</u> |
|--|---|
| A monthly minimum charge | -0- |
| Fee for processing and collecting | \$ 0.95 per Citation |
| Fee for collecting each out-of-state citation | 25% of Collections |
| DMV Holds and Releases | -0- |
| Reports | -0- |
| Conversion Fee | -0- |
| Review, Hearing and Court Appearances (Scheduling) | \$0.75 per Occurrence |
| Additional Correspondence/Appeal Letters | \$1.11 per |
| Refunds, NSF's and Charge-backs handled by Company | \$5.00 per Occurrence |
| Delinquent Collections | 30% of Collections |
| Postage at the prevailing rate, currently | \$ 0.46 per Piece |
| Payment Processing and Depositing | \$0.20 per Payment |
| FTB Social Security Number | \$3.00 per Request (Reduced from \$5.00) |
| Collections made at FTB | 15% of Collections |
| Escrow Account (Agency will pay all bank charges) | \$50 per Month (New Charge) |
| Credit Reporting Collections (FDCPA Reporting) | 30% of Collections |

Convenience Fee to Violator: for Company Credit Card Usage (Web Site, phone & credit/debit card payments). No fee charged to City.

Confidential Information



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**FULL SERVICE FEE PROPOSAL FOR:
THE CITY OF MERCED**

| <u>Description</u> | <u>Cost</u> |
|---|---------------------------------|
| Manual Parking Citation Processing: | \$0.95 |
| Electronic Parking Citation Processing: | \$0.95 |
| <i>Services for the above-mentioned items include:</i> | |
| <ul style="list-style-type: none">• Citation entry into Data Ticket's Citation Management System• Registered owner information for all citations issued on California license plates• In-house, bi-lingual Customer Service staff• Call recording of all inbound and outbound customer service calls• Interactive Voice Response System available 24/7• California DMV Holds and Release performed daily | |
| Correspondence: 1st class postage at prevailing rate: currently: | \$0.46 |
| <i>Services for the above-mentioned item include:</i> | |
| <ul style="list-style-type: none">• Semi-custom Courtesy and Delinquent Notices sent to the registered owners• Return envelopes included in courtesy and delinquent notices for responsible party to submit payment or appeal• Semi-custom letters and additional correspondence | |
| Payment Acceptance, Processing and Deposit: | \$0.20 |
| <i>Services for the above-mentioned items include:</i> | |
| <ul style="list-style-type: none">• Processing of checks, cash, money orders and credit/debit cards• Payments received and batched• Payments double-blind taped• All payments and supporting documentation scanned and saved to network• Payments keyed and updated to system• Deposit Slips filled out• Bonded and Insured Courier takes deposits to the Bank daily | |
| Out-of-State Collections: | 25% of revenue collected |
| <ul style="list-style-type: none">• This fee will cover all expenses associated with obtaining out-of-state registered owner information and will be due when a citation is paid• This fee is not combined with any other collections charge. For example if a citation is rolled to a delinquent status, only 30% of revenue collected will be charged | |

CONFIDENTIAL INFORMATION



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**FULL SERVICE FEE PROPOSAL FOR:
THE CITY OF MERCED**

| <u>Description</u> | <u>Cost</u> |
|---|---------------------------------|
| Delinquent Collections: | 30% of revenue collected |
| <ul style="list-style-type: none">• This fee will be assessed when a citation is ninety (90) days past the citation issue date, assuming a first notice has been sent to the registered owner and the citation is not on hold for any reason• If the citation is placed on a DMV hold and payment is made at DMV, Data Ticket will not be paid this fee, rather the City will obtain the full amount collected• In addition to the Courtesy Notice, three additional notices will be sent to the registered owner• Notices will be sent via 1st Class Mail | |
| Online Access: | No Charge |
| <i>Services for the above-mentioned item include:</i> | |
| Access via the Internet for the City's citizens and visitors to perform the following functions: | |
| <ul style="list-style-type: none">• View citation specific information• Pay via VISA, MasterCard, Discover and American Express credit or debit cards• Print a receipt for payment processed• Request an Administrative Review online• Ability to attach supporting documentation to an Administrative Review• Request a Hearing online• Ability to attach supporting documentation to a Hearing• Get general information regarding the citation and adjudication processes | |
| Access via the Internet for the City's personnel to perform the following functions: | |
| <ul style="list-style-type: none">• View citation specific information• Process payments via cash, money order, or credit / debit cards• Process refunds issued by the City• Process insufficient funds notification• Reduce, dismiss, void and place citations on system holds• Manage the adjudication process, including the ability to enter judgments on citations• Generate, view and print and save month-end and real-time reports• Generate, view and print notices and appeal decisions• Add unlimited citation specific notes• Review citation specific notes entered by Data Ticket's customer service staff | |

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**FULL SERVICE FEE PROPOSAL FOR:
THE CITY OF MERCED**

| <u>Description</u> | <u>Cost</u> |
|---|---------------------------------|
| Adjudication: | |
| 1st Level Reviews Hold & Referral | \$0.75 per Citation |
| <ul style="list-style-type: none">• Place each citation on a Review Hold• Forward to Agency for review and decision | |
| Appeal Decision Letters | \$1.11 per Letter |
| <ul style="list-style-type: none">• Data Ticket will send a custom judgment letter to the Appellant via 1st Class Mail• All letters will be available on the web for City personnel to view and/or re-print at anytime | |
| 2nd Level Hearing Hold & Judgment | \$0.75 per Citation |
| <ul style="list-style-type: none">• Data Ticket will place each citation on a Hearing Hold• Forward to Agency for scheduling, hearing and decision | |
| Additional Correspondence | \$1.11 per Letter |
| Franchise Tax Board Processing | |
| SSN Look-up | \$3.00 per SSN |
| <ul style="list-style-type: none">• This fee will be assessed to lookup a social security number associated with a particular registered owner and address. This charge is charged per unique SSN, not per citation | |
| FTB Collections | 15% of revenue collected |
| <ul style="list-style-type: none">• This fee is charged if a citation is paid at the Franchise Tax Board. This charge is not combined with any other charge. For example if a citation is rolled to delinquent status and paid at FTB, only the 15% of revenue collected will be charged. | |
| Credit Reporting Collections | |
| Legal Action Not Required | 30% of revenue collected |
| <ul style="list-style-type: none">• This fee is charged if a citation is paid at the Third Party Collections. This charge is not combined with any other charge. For example if a citation is rolled to delinquent status and paid at Third Party Collections, only the 30% of revenue collected will be charged | |
| Joint Banking Account Services | \$50.00 per month |
| Services for the above-mentioned item include: | |
| <ul style="list-style-type: none">• Daily deposits of funds to the City's escrow account• Online, real-time reconciliation reports that tie directly to the bank statement• Processing of all credit card charge-backs and Insufficient Funds• Month-end reconciliation of all funds collected | |

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FULL SERVICE FEE PROPOSAL FOR:

THE CITY OF MERCED

- Disbursement of County / State Surcharges at month-end
- Payment of Data Ticket's invoice
- Disbursement of the net remittance to the City
- Scanning of all payments directly to joint bank account daily

Description

Cost

Refunds, Charge-backs and NSF's

\$5.00 per instance

- Verification & issuance of all refunds to citizen who are due a refund via 1st Class Mail
- Verification of all NSF's & charge-backs on credit cards
- Reverse applied payments and re-open citation
- Add all fees and penalties
- Send up to three additional collection notices with all additional penalties applied
- Provide additional customer service for these issues
- Handle additional collections payments

FEES CHARGED TO THE PATRON

- A convenience fee will be assessed to the citizen in the event they choose to pay online, via the IVR or phone with a customer service representative. There is NO fee is charged to the City.
- An administrative fee will be assessed to citizens who wish to participate in a payment plan. This fee will cover the cost of the payment plan initiation, and the cost of a confirmation letter that is sent to the citizen confirming the details of the payment plan. The City will have the ability to determine whether Payment Plans are accepted and if so, what the parameters for payment will be. There is NO fee to the City.

CONFIDENTIAL INFORMATION

**FIRST AMENDMENT TO AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS FIRST AMENDMENT TO AGREEMENT is made and entered into this 21st day of May, 2018, by and between the City of Merced, a California Charter Municipal Corporation ("City"), and Data Ticket, Inc., a California Corporation, 4600 Campus Drive, Suite 200, Newport Beach, California 92660, ("Consultant").

WHEREAS, City is undertaking a project to process parking citations; and,

WHEREAS, City and Consultant have previously entered into an Agreement for Professional Services ("Agreement") dated June 17, 2013; and,

WHEREAS, City and Consultant desire to amend said Agreement to extend the term of the agreement.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, agree as follows:

1. Section 3, "TERM OF AGREEMENT," of the Agreement is hereby amended to read as follows:

"3. TERM OF AGREEMENT. The term of this Agreement shall be from July 1, 2013 to June 30, 2019.

2. Except as herein amended, the Agreement dated June 17, 2013, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this First Amendment to Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: 

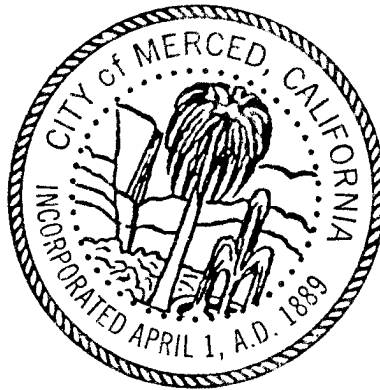
City Manager

ATTEST:

STEVE CARRIGAN, CITY CLERK

BY: 

Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: 

City Attorney


5/1/18


Date

PO#: 130679

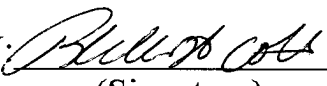
ACCOUNT DATA:

BY: 

Verified by Finance Officer  14279

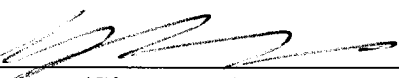
Funds contingent upon City Council
Approval of FY 18/19 Budget  6/4/18
FL 6/4/18

CONSULTANT
DATA TICKET, INC.,
A California Corporation

BY: 
(Signature)

Brock Westcott
(Typed Name)

Its: Chief Operating Officer
(Title)

BY: 
(Signature)

Marjorie Fleming
(Typed Name)

Its: President
(Title)

Taxpayer I.D. No. 93-1010811#

ADDRESS: 4600 Campus Dr., Ste 200
Newport Beach, CA 92660

TELEPHONE: 949-428-7240

FAX: 949-281-3195

E-MAIL: ClientServices@DataTicket.com