

## LICENSED USER AGREEMENT

THIS LICENSED USER AGREEMENT (this "Agreement") is made and entered into as of August 27, 2010 and is effective as of 5:01pm on September 23, 2010 ("Effective Date"), by and among Ticketmaster L.L.C., a Delaware limited liability company ("Ticketmaster"), the County of Albany, New York ("Owner"), the owner of the Facility, and SMG, a Pennsylvania general partnership, as agent for the Owner. (SMG and the Owner are collectively referred to as the "Principal").

### WITNESSETH:

Ticketmaster provides comprehensive ticketing services for entertainment facilities and events, and maintains a distribution network for the sale of tickets to the public, via any and all means and methods, including the TM System. SMG has the right to manage, operate and promote the Facility pursuant to a Management Agreement with the Owner, as agent for the Owner.

Principal desires to engage Ticketmaster, and Ticketmaster desires to be engaged, to sell Tickets for Attractions pursuant to the terms and conditions of this Agreement.

In consideration of the foregoing and the mutual promises and covenants set forth herein, the parties, intending to be legally bound, hereby agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the respective meanings indicated below unless the context otherwise requires:

- (a) "Account Balance" is defined in Section 13(b) hereof.
- (b) "AccountManager" means the Ticketmaster AccountManager software and hosting services that allow Subscribers to manage their Season/Contract Ticket accounts.
- (c) "Archtics" means Ticketmaster's software that delivers extensive season, miniplan and single ticket functionality in connection with the Ticketmaster host system and distribution channels for inventory control by Ticketmaster and Principal.
- (d) "Archtics Transaction Fees" means the amounts Ticketmaster charges for certain Products transactions as described in Section 6.
- (e) "Attraction" means a concert, sporting, entertainment or other act or event of any kind or nature whatsoever to be held at the Facility; provided, however, that events for which there is no performance and no charge for admission (e.g., private catered events that utilize all or part of the Facility) are specifically excluded.
- (f) "Attraction Taxes" means any and all sales, amusement, admissions and other taxes, charges, fees, levies or other assessments measured by reference to a charge per Ticket sold or determined based upon the purchase price of a Ticket assessed by federal, state, county, municipal or other governmental or quasi-governmental authorities as a result of, or in connection with, any Attraction, including Principal Taxes and Ticketmaster Taxes as further

described below. To the extent such taxes relate to the Ticket Receipts and funds paid or owed to Principal under this Agreement such portion of Attraction Taxes may also be referred to herein as Principal Taxes, and to the extent such taxes relate to the Convenience Charges and other amounts collected and retained by Ticketmaster under this Agreement, such portion of Attraction Taxes may also be referred to herein as Ticketmaster Taxes.

(g) "Auction Base" means the Face Value of a Ticket plus the related Convenience Charge for such Ticket (which Convenience Charge shall be subject to Royalty payments as set forth in Section 4(a)).

(h) "Auction Fee" means the amount Ticketmaster charges the customer to sell Tickets via a Ticketmaster online auction.

(i) "Auction Lift" means the difference between the ultimate price a consumer pays for a Ticket sold via a Ticketmaster online auction less the Auction Base.

(j) "Cancelled Attraction" is defined in Section 13(b) hereof.

(k) "Chargebacks" is defined in Section 13(c) hereof.

(l) "Convenience Charge" means the per Ticket amount charged by Ticketmaster to a consumer for the convenience of purchasing Tickets through the TM System as set forth in Section 3(b) hereof.

(m) "Deficiency Amount" is defined in Section 13(d) hereof.

(n) "Delivered E-mails" means all e-mails generated by Principal using Ticketmaster MailManager that are not indicated as having been returned to Principal as "undeliverable" in Ticketmaster's records.

(o) "Event of Default" is defined in Section 10(a) hereof.

(p) "Face Value" means the face price of a Ticket as determined by Principal, which shall be inclusive of all applicable Attraction Taxes and Facility, parking and similar fees.

(q) "Facility" means the venue located at 51 South Pearl Street, Albany, NY 12207 and currently known as Times Union Center.

(r) "Facility Box Office" means the Facility's Ticket sales location that is operated by Principal and located at the Facility.

(s) "Facility Website" means an Internet website(s) owned and/or operated and maintained by Principal pertaining solely to the Facility (and not any other website maintained by SMG or Owner generally or for other public assembly facilities managed by SMG or Owner), as the same may be modified from time to time, and any successor format of the same.

(t) "GroupManager" means the Ticketmaster GroupManager software and hosting services that allow Principal and Principal's customers to manage their group ticket experience.

(u) "Group Sales" means sales of Tickets to one person, on behalf of a group of at least ten (10) people to attend an Attraction as a group, and not to attend individually or to purchase Tickets with the intent to resell such Tickets.

(v) "Hardware" means all of that certain computer hardware, communications equipment, terminals and hook-ups (including replacements thereof) listed with particularity on Exhibit B, which is attached hereto and incorporated herein by this reference, or otherwise supplied by Ticketmaster to Principal at any time during the Term of this Agreement, but excluding (i) any computer hardware, communications equipment, terminals and hook-ups purchased by Principal to provide the connectivity to and interfacing with the TM System required under this Agreement, and (ii) any computer hardware, communications equipment, terminals and hook-ups purchased by Principal from Ticketmaster.

(w) "Hosted Platform" shall mean the equipment, operating system, hardware and software specifications, and networking environment on and with which the TM System and Software are hosted by Ticketmaster, and additions or replacements to the foregoing which may be implemented by Ticketmaster in accordance with the terms of this Agreement.

(x) "House Seats" means Tickets that are provided or held by Principal (e.g., complimentary, band holds and venue holds) to the promoter or presenter of an Attraction, the performing act or event or members thereof, or their managers or agents, or to others for legitimate promotional or business purposes, including for distribution through legitimate fan clubs in accordance with current Ticketmaster guidelines (i.e., fan club holds) (collectively, "House Seat Recipients"); provided, however, that at no time shall such Tickets be sold or issued to the general public and provided further that House Seats shall not include Tickets provided to fan clubs or similar organizations.

(y) "Inside Charges" means the amounts Ticketmaster charges the Ticket purchaser to sell, issue and process Tickets utilizing the TM System under this Agreement.

(z) "Interface Page" means a co-branded web page interface for use with Software transactions designed, created and maintained by Ticketmaster to have, in general, the look and feel of Principal's Website and hosted on Ticketmaster's web servers.

(aa) "Internal Ticket Forwarding" means the ability of Principal to forward a reasonable number of House Seats Tickets (other than Tickets for fan clubs) directly from Archtics to a recipient with a valid email address.

(bb) "Internet Sales" means all sales of Tickets over the Internet or any other means of interaction with the TM.com Website.

(cc) "MailManager" means the Ticketmaster MailManager software and hosting services that allows Principal to build a permissible marketing database and supports targeted, trackable direct email communication to Principal's customers.

- (dd) "Material Financial Event" is defined in Section 13(d) hereof.
- (ee) "MiniPlan Tickets" means specifically designated Tickets sold directly by Principal to a single consumer on an annual or season basis across a set of at least two (2) Attractions.
- (ff) "On-Sale Date" is defined in Section 8(d) hereof.
- (gg) "Outlet" means a retail Ticket selling agency (other than the Facility Box Office) where Tickets for an Attraction are made available and offered for sale to the public through the TM System.
- (hh) "Principal's Website" means an Internet website(s) owned, operated and maintained by Principal, which shall contain links to the Interface Page.
- (ii) "Processing Fee" means the per order amount charged by Ticketmaster to a consumer for purchasing Tickets via Internet Sales or Telephone Sales.
- (jj) "Products" means the additional ticket sales software and Internet-based premium Ticketmaster products indicated with an X in Section 6 hereof.
- (kk) "Season/Contract Tickets" means specifically designated Tickets sold directly by Principal on an annual basis across all Attractions or across a category of Attractions (i.e., luxury suites, club level seats and season tickets).
- (ll) "Sellable Capacity" means the number of Tickets that can be sold for an Attraction other than Season/Contract Tickets.
- (mm) "Set-Up Information" is defined in Section 8(d) hereof.
- (nn) "Software" means Ticketmaster's ticketing system software known and marketed as Ticketmaster Classic, Ticketmaster AccessManager, TM Charge, the Products and any new versions thereof that are provided to Principal by Ticketmaster.
- (oo) "Subscribers" means any person who holds an account on Principal's AccountManager.
- (pp) "Telephone Sales" means all sales of Tickets through the TM System by telephone, interactive voice response (IVR) and similar means.
- (qq) "Term" is defined in Section 2 hereof.
- (rr) "Third Party Provider" is defined in Section 5(c) hereof.
- (ss) "Ticket" means a printed, electronic or other type of evidence of the right, option or opportunity to occupy (i) space at or to enter or attend an Attraction or Attractions, including, without limitation, tickets printed via *ticketFast*<sup>TM</sup> at home or elsewhere by the

purchaser even if not evidenced by any physical manifestation of such right, such as a "smart card."

(tt) "ticketFast Delivery Fee" means the per order amount charged by Ticketmaster to a consumer for electing to have Tickets delivered via Ticketmaster's *ticketFast*<sup>TM</sup> print at home service.

(uu) "Ticket Forwarding" means the ability of Subscribers to forward Tickets purchased through AccountManager to a recipient with a valid email address.

(vv) "Ticket Forwarding Fee" means amounts Ticketmaster charges Subscribers for authentication and delivery of Tickets sent via Ticket Forwarding.

(ww) "Ticketmaster AccessManager" means the Ticketmaster AccessManager software which interfaces with the TM System to facilitate certain reporting systems and to provide various enhanced services to the patron admissions process through the use of bar codes or other media printed on Tickets.

(xx) "Ticket Receipts" means the Face Value of a Ticket less the applicable Inside Charge.

(yy) "TM Charge" means the credit card processing system within the TM System that utilizes the global banking association networks to authorize credit card purchases of Tickets to Attractions sold by Ticketmaster at Outlets, via Telephone Sales or Internet Sales, or sold by Principal from the Facility Box Office as permitted under this Agreement.

(zz) "TM.com Website" means any Internet websites owned, operated and maintained by Ticketmaster, as the same may be modified from time to time, and any successor format of the same and any ticketing property, feature, or product acquired by Ticketmaster or its affiliates that may become available subsequent to the Effective Date, including, without limitation, any co-branded versions and any version distributed through any broadband distribution platform or through any platform or device including television, broadband and wireless technologies.

(aaa) "TM System" means the Hardware, Software, TM.com Website, related procedures and personnel, and repair and maintenance services established and maintained by Ticketmaster and its affiliates for the purpose of selling, distributing, auditing and controlling the sale of Tickets for Attractions, including, without limitation, at Outlets, by Internet Sales and by Telephone Sales.

## **2. Term of Agreement.**

(a) The initial term of this Agreement shall begin on the Effective Date and shall continue through September 22, 2015 (the "Initial Term"). This Agreement may be renewed for an additional period of five (5) years, provided that the parties mutually agree to the terms in effect during such renewal term no later than one hundred twenty (120) days prior to the end of the Initial Term. The Initial Term and such renewal term, if applicable, shall be hereinafter the "Term." Each twelve (12) month period commencing on September 23 and

continuing through the following September 22 shall be a "Contract Year" as such term is used herein.

(b) Upon the expiration or termination of this Agreement (where Ticketmaster's services hereunder are not renewed or extended) and upon the request of Principal, Ticketmaster shall cooperate with Principal for a period not to exceed sixty (60) days in order to have a smooth transition of such services to such successor ticketing company; provided, however, such cooperation shall not result in the disclosure of any confidential or proprietary information relating to Ticketmaster's business or systems to any third party.

3. **Compensation.** In consideration for the license by Ticketmaster of the Hardware and Software to Principal, the license by Ticketmaster to Principal of the right to deeplink to the TM.com Website granted herein, and Ticketmaster's continuing services to be performed in connection herewith, Ticketmaster shall be entitled to receive the fees and compensation described herein. Principal consents to the imposition of the charges described herein on all Tickets purchased through the TM System hereunder. Those fees and compensation that are owed by Principal may be deducted by Ticketmaster from the Ticket Receipts (or the Face Value with respect to Inside Charges) collected by Ticketmaster on behalf of Principal under the settlement procedures described in Section 13 hereof.

(a) **Inside Charges:** Ticketmaster shall be entitled to assess and receive from gross Ticket proceeds collected by it on behalf of Principal an Inside Charge with respect to each Ticket sold through Outlets, Telephone Sales and Internet Sales. The amount of the Inside Charge shall initially be as follows:

Type of Transaction	Inside Charge
Outlet Sales	\$0.00 per Ticket
Telephone Sales and Internet Sales	Credit card fees set forth in Section 3(c) below
Other Tickets (including complimentary Tickets) printed by or on behalf of Principal	\$0.00 per Ticket

The amount of Inside Charges owed by Principal to Ticketmaster shall be deducted from the Face Value collected by Ticketmaster on behalf of Principal in the manner provided in Section 13 hereof.

(b) **Convenience Charge (Per Ticket or Per Parking Pass):** Ticketmaster shall assess a Convenience Charge against purchasers of Tickets for Tickets sold by Ticketmaster via the TM System. The amount of the Convenience Charge for each applicable category of Ticket sale shall initially be as follows:

Type of Attraction/Face Value of Tickets	Convenience Charges – Outlets, Internet Sales and Telephone Sales
<b>Family Attractions (excluding Feld Attractions)</b> for Tickets with a Face Value of: \$24.99 and below \$25.00 and above	 \$5.00 \$6.00
<b>Minor League Hockey Attractions and Collegiate Attractions</b> for Tickets with a Face Value of: \$24.99 and below \$25.00 and above	 \$3.00 \$4.00
<b>All Other Attractions</b> for Tickets with a Face Value of: \$34.99 and below \$35.00 and above	 \$6.25 \$8.25
<b>Only For Parking Passes at the Facility Parking Garage</b> Face Value of such parking pass to be determined by Principal in advance of the Attraction	 Up to a maximum amount of \$1.50

The Convenience Charges set forth above relating to Tickets for Attractions (not for parking passes) shall be subject to automatic increase on the first day of the third Contract Year and on the first day of every other Contract Year thereafter during the Term in the amount of \$0.35 per Ticket. Additionally, on a case-by-case basis, the parties may agree to increase or reduce the Convenience Charges set forth above for Tickets for Attractions (not for parking passes).

(c) **Credit Card Sales:** Principal hereby authorizes Ticketmaster to accept American Express, MasterCard, Visa, Discover and Diner's Club charges (and any other credit card, debit card or other electronic method of payment and membership/loyalty program reward points backed by those program sponsors whom Ticketmaster in its reasonable discretion chooses to authorize as a method of payment and which may hereafter be approved by Ticketmaster) in connection with sales of Tickets purchased from Ticketmaster with credit cards. Ticketmaster agrees to absorb the credit card company charge relative to the Convenience Charge and Processing Fee. With respect to all Tickets purchased via Telephone Sales and Internet Sales, the Convenience Charge will be adjusted to include the credit card company charge in an amount equal to 2.285% of the Face Value of such Tickets, provided that the Convenience Charge will be rounded up to the nearest nickel. With respect to Tickets sold via Outlets, the Convenience Charge will be adjusted to include the credit card company charge in an amount equal to 2.78% of the Face Value of such Tickets, provided that the Convenience

Charge will be rounded up to the nearest nickel. Such rates set forth above are subject to automatic increase due to changes to the interbank rates imposed on Ticketmaster.

(d) **Processing Fee (Per Order):** Ticketmaster shall assess a Processing Fee against purchasers of Tickets in the amount of \$3.25 with respect to each order of Tickets ordered by Internet Sales and Telephone Sales. The Processing Fee shall be subject to automatic increase on the first day of the third Contract Year and on the first day of every other Contract Year thereafter during the Term in the amount of \$0.35 per order and shall be subject to increase at any time in an amount equal to the actual amount of increases in the applicable postal service rates (it being understood that the first of any such postal increase during the Term may be, at Ticketmaster's sole option, rounded up to the nearest \$0.05, but any subsequent postal increases may not be so rounded up unless and until the cumulative total of actual increases in the applicable postal service rates during the Term equals or exceeds the sum of (A) \$0.01 plus (B) \$0.05 or a multiple of \$0.05 – e.g. \$0.06, \$0.11, \$0.16, etc. – as applicable).

(e) **ticketFast Delivery Fee:** Ticketmaster shall assess a ticketFast Delivery fee against purchasers of Tickets who elect the ticketFast delivery option in the amount of \$2.50 per order. The ticketFast Delivery fee may be increased upon mutual agreement of the parties, or may be reduced or eliminated by Ticketmaster at any time during the Term consistent with Ticketmaster's ticketFast Delivery fees at similar facilities.

(f) **TM Charge:**

(i) **Features.** Ticketmaster shall provide TM Charge to Principal for use in processing Principal's credit card sales of Tickets and related transactions from the Facility Box Office utilizing the TM System. TM Charge is compatible with Ticketmaster's technology solutions and includes the following features:

- immediate credit card authorization for Ticket sales using major credit cards;
- ability to accept all major credit cards, including Visa, MasterCard, American Express, Discover and Diners Club;
- generation of printed receipts for the consumer and the Facility Box Office at the time of sale;
- settlement of Principal's credit card transactions after the close of Ticketmaster's business day;
- deposit of funds directly in Principal's specified merchant bank accounts; and
- daily access to reports regarding authorized and settled transactions.

(ii) **Operation.** Principal shall establish its own merchant numbers as necessary to process the credit cards that Principal wants to accept. Ticketmaster shall transmit



data relating to Ticket sales made by Principal using TM Charge to Ticketmaster's credit card processor (the "Processor"). Processor will then transmit such data to the applicable credit card company for payment to Principal, subject to Principal having entered into the applicable Principal Processor Agreements (as further described below). Ticketmaster shall use its best efforts to ensure the timely and accurate transfer of information from the Processor via TM Charge, but Ticketmaster does not guarantee the accuracy and timeliness of such information. Principal shall comply with all applicable credit card association or company guidelines (e.g. swiping all retail transactions and using customer address information for all non-face-to-face transactions).

(iii) Information Provided by Principal. As soon as practicable after the date of this Agreement, Principal shall (x) provide Ticketmaster with the account name and location for Ticketmaster to use for the transmission of sales data and (y) notify Ticketmaster and Processor of the account(s) where Principal wishes settlement deposits to be made by the Processor. Principal shall be responsible for promptly notifying Ticketmaster and Processor, if applicable, of any changes to the information provided pursuant to this section.

(iv) Reports. Ticketmaster shall provide Principal with daily transaction reports regarding authorized and settled transactions. Principal shall review, on a regular basis, all reports provided to Principal by Ticketmaster. Principal also agrees that, for operational and monitoring purposes, the Processor may provide Ticketmaster with processing and settlement reports related to sales of Tickets via TM Charge.

(v) Fees. In connection with Principal's credit card sales of Tickets at the Facility Box Office authorized via TM Charge, using either Visa or MasterCard, the Processor shall deduct merchant fees equal to 2.285% of the transactions processed on a daily basis. The fees are subject to automatic increases equal to any actual changes in Ticketmaster's Processor fees or based on changes in credit card association or credit card company fees (such as interchange, assessments or other charges). Ticketmaster or Processor shall promptly provide written notice to Principal of any such changes in the amount of merchant fees charged to Principal pursuant to this subsection. Principal shall also be responsible for any and all other amounts charged to Ticketmaster (if any) by a Processor for processing Principal's transactions, including, without limitation, chargebacks, fraudulent credit card use and additional charges for failure to meet the specific timing or other qualifications of the applicable credit card association or company, except those that arise from the negligence of Ticketmaster (e.g., failure of the Software or Hardware to perform properly, etc.). In the event that Principal desires to process any credit cards other than Visa or MasterCard utilizing TM Charge, then the fees for such service shall be mutually agreed upon by Principal and the Processor, and Principal shall enter into its own merchant agreement with the Processor.

(vi) Effect of Termination of Ticketmaster's Processor Agreement. Ticketmaster has entered into an agreement with the Processor (the "Processor Agreement"), and Principal agrees to enter into an agreement with such Processor (the "Principal Processor Agreement") as soon as practicable after the date of this Agreement. The Principal Processor Agreement shall provide that if the related Processor Agreement expires or terminates, then the Principal Processor Agreement shall also expire or terminate without any early termination penalties or charges. In order to facilitate streamlined credit card authorization processing for

Ticketmaster and its clients, Ticketmaster continues to seek to maintain relationships with superior processors throughout the Term of this Agreement. In the event that Ticketmaster elects to use a different or new Processor, Principal shall enter into an agreement with such new Processor, provided, however, that such agreement shall not result in increased obligations to Principal and shall provide costs and rates at least as favorable as those contained in the prior Principal Processor Agreement.

(vii) **License and Maintenance Fees.** The license and maintenance fees for TM Charge shall be waived during the Term of this Agreement.

(g) **Ticketmaster AccessManager:** Ticketmaster shall provide to Principal for use by Principal at the Facility, the Ticketmaster AccessManager Hardware listed on Section B of Exhibit B and the related software thereto, and Principal agrees to utilize and make Ticketmaster AccessManager available to the public at all times throughout the Term of this Agreement at the door(s) of the Facility. Ticketmaster agrees to waive the annual software license fees and annual maintenance fees for the Ticketmaster AccessManager Hardware and related software during the Term of the Agreement. All wiring and electrical costs related to the installation and operation of Ticketmaster AccessManager shall be paid for by Principal.

(h) **Mailing Fee:** Ticketmaster shall assess a mailing fee (the "Mailing Fee") against purchasers of Tickets who elect such option in the amount of \$3.00 per order. The Mailing Fee may be increased upon mutual agreement of the parties, or may be reduced or eliminated by Ticketmaster at any time during the Term consistent with Ticketmaster's Mailing Fees at similar facilities.

(i) **Auction Fee:** Ticketmaster shall assess the Ticket purchaser a fee (the "Auction Fee") for each Ticket sold via a Ticketmaster online auction in an amount equal to 10% of the Auction Lift plus a credit card fee in the amount of 2.9% of the Auction Lift (plus applicable taxes). Such Auction Fee and credit card fee shall be deducted as an Inside Charge from the Auction Lift otherwise payable to Principal hereunder.

#### 4. **Compensation to Principal.**

(a) **Principal's Royalties:** Principal shall be entitled to receive Ticket sales royalties (collectively, "Royalties") from Ticketmaster with respect to (i) each Convenience Charge, (ii) each Processing Fee, (iii) each TicketFast Delivery Fee, and (iv) each Mailing Fee; all to the extent received (and not refunded) by Ticketmaster. The amount of the Royalties shall be as set forth below:

<b>Type of Royalty</b>	<b>Royalties Amount</b>
Convenience Charge:	45% of the Convenience Charge
0-110,000 Tickets per Contract Year	46.5% of the Convenience Charge+
110,001 – 135,000 Tickets per Contract Year	48% of the Convenience Charge+
135,001 Tickets and above per Contract Year	+ Once the applicable Ticket threshold is met for such year, the higher sharing percentage does not apply incrementally, but rather it

	applies back to the first ticket sold for such year.
Processing Fee	\$1.00 per order
ticketFast Delivery Fee*	\$0.75 per order
Mailing Fee**	\$1.00 per order
Parking Pass Convenience Charge	\$0.50 per parking pass

\* In the event the ticketFast Delivery Fee is eliminated by Ticketmaster at any time during the Term of the Agreement, Principal shall no longer be entitled to such ticketFast Delivery Fee Royalty; provided, however, Ticketmaster shall provide an alternative form of compensation to Principal to reasonably offset the loss of such Royalty.

\*\* In the event the Mailing Fee is eliminated by Ticketmaster at any time during the Term of the Agreement, Principal shall no longer be entitled to such Mailing Fee Royalty; provided, however, Ticketmaster shall provide an alternative form of compensation to Principal to reasonably offset the loss of such Royalty.

With respect to any Cancelled Attractions, Principal shall only be entitled to its Royalties on the Convenience Charge on the above described types of Tickets in the event that Ticketmaster retains the Convenience Charge for the sale of Tickets to such Attraction. The Royalties shall be payable weekly, along with the next settlement after the end of such period conducted under Section 13(a) below. Principal may use the Royalties in such manner as it determines in its sole discretion.

(b) **Advertising Allowance:** Ticketmaster shall provide Principal with an annual advertising allowance (the "Advertising Allowance") to advertise and promote Ticketmaster as the source for advance Tickets to Attractions at the Facility in an amount equal to Eighty Thousand Dollars (\$80,000) calculated at the rate of \$6,666.67 per month during each Contract Year of the Term of the Agreement. The Advertising Allowance shall be paid to Principal within thirty (30) days following the execution of this Agreement and shall be paid to Principal within thirty (30) days of the beginning of each Contract Year thereafter, starting with the second Contract Year, during the Term of this Agreement. In the event that less than 135,000 Tickets are sold per Contract Year due to a reduction in the number or quality of Attractions presented by Principal in any Contract Year (an "Attractions Termination") or in the event that the Agreement terminates before the conclusion of any applicable Contract Year for any reason other than an uncured Event of Default by Ticketmaster, then Principal shall return to Ticketmaster, within fourteen (14) days of such termination or Attractions Termination, an amount equal to \$6,666.67 for each remaining month of the applicable Contract Year. Any return of any portion of the Advertising Allowance by Principal shall be by wire transfer or certified check. Each of the advertisements to be placed using the Advertising Allowance shall include the Naming Rights Sponsor's Website address ([www.timesunion.com](http://www.timesunion.com)), the TM.com Website address, Ticketmaster logo, Outlets and charge by phone number as well as the American Express logo and the following wording under Ticketmaster's charge by phone number: "The American Express Card - The Preferred Card of Ticketmaster," or any other sponsor's name, logo or other representation as solely designated by Ticketmaster. In the event Ticketmaster designates a sponsor other than American Express, each of the advertisements to be placed using

the Advertising Allowance shall include the TM.com Website address, Ticketmaster logo, Outlets and charge by phone number as well as such other sponsor's logo and the wording designated by Ticketmaster under Ticketmaster's charge by phone number.

(c) **Signing Bonus:** Within thirty (30) days of the full execution of the Agreement, Ticketmaster shall pay Principal a signing bonus ("Signing Bonus") in the amount of Fifty Thousand Dollars (\$50,000), calculated at the rate of \$10,000 per each Contract Year of the Term of the Agreement. Ticketmaster's agreement to provide the Signing Bonus to Principal is based upon Ticketmaster's exclusive rights to sell Tickets for Attractions during the Term and is contingent upon and subject to certain terms as described below. In the event of an Attractions Termination or in the event that the Agreement terminates before September 22, 2015 for any reason other than an uncured Event of Default by Ticketmaster, then Principal shall return to Ticketmaster, within fourteen (14) days of such termination or Attractions Termination, an amount equal to \$833.33 for each remaining month of the Term. Any return of any portion of the Signing Bonus by Principal shall be by wire transfer or certified check.

(d) **Volume Incentive Payments:** In such Contract Years in which Ticketmaster sells at least 200,000 Tickets for Attractions (not including parking passes) (the "Minimum Volume") via Outlets, Internet Sales and Telephone Sales for which Ticketmaster receives (and does not refund) a Convenience Charge, then Ticketmaster shall pay Principal the amounts set forth below for each such Ticket sold above the Minimum Volume ("Volume Incentive Payment"):

Volume of Tickets (not including parking passes)	Amount of Volume Incentive Payment (per Ticket)
200,000 Tickets to 224,999 Tickets	\$0.25 per Ticket
225,000 Tickets to 249,999 Tickets	\$0.35 per Ticket
250,000 Tickets to 274,999 Tickets	\$0.45 per Ticket
275,000 Tickets to 299,999 Tickets	\$0.55 per Ticket
300,000 Tickets to 324,999 Tickets	\$0.65 per Ticket
325,000 Tickets and above	\$0.75 per Ticket

Any Volume Incentive Payment due Principal shall be paid to Principal within thirty (30) days of the conclusion of the applicable Contract Year.

5. **Ticket Sales; Exclusivity.**

(a) **Grant of Rights:** Principal hereby grants to Ticketmaster, and Ticketmaster accepts from Principal, the exclusive right during the Term of this Agreement to sell on behalf of Principal all Tickets for the Sellable Capacity for every Attraction, via any and all means and methods, including, without limitation, on the Internet, by telephone, computer, IVR, television, clubs, or outlets, or by any other means of distribution. Principal shall ensure that the entire Sellable Capacity for every Attraction shall be made available for distribution on the TM System in accordance with the terms and conditions set forth in this Agreement. Notwithstanding anything to the contrary contained herein, following written confirmation to Ticketmaster from the current ticketing services company at the Facility in form reasonably acceptable to Ticketmaster, upon the request of the Albany Devils and Siena College basketball

(two long term tenants at the Facility), Ticketmaster shall, prior to the Effective Date, build the seating inventory for such tenants' Attractions and be prepared to sell such Tickets prior to the Effective Date, and to collect and share with Principal the fees related thereto as provided in this Agreement. The parties further acknowledge that (i) the grant of rights hereunder includes Ticketmaster's processing through the TM System of parking passes at the Facility's parking garage that is owned and operated by the Principal, (ii) Principal consents under Section 3 hereof to the imposition of the charges described therein on all such parking passes processed through the TM System, (iii) the parties will share the Royalties in respect of the sales of such parking passes via the TM System as provided in this Agreement, and (iv) parking passes processed through the TM System will be included in the provisions of Section 13 hereof.

(b) **Sales by Principal:** Subject to the terms of this Section 5 and notwithstanding the above, Principal retains the right to: (i) sell single Tickets from the Facility Box Office to persons physically present at the Facility Box Office; (ii) sell Season/Contract Tickets; (iii) conduct Group Sales of Tickets; (iv) provide a reasonable number of House Seats for any Attraction to House Seat Recipients; (v) provide Tickets to legitimate fan clubs in accordance with Ticketmaster's fan club policies (a copy of which has been provided to Principal) or as the parties may otherwise reasonably agree, and (vi) sell Tickets in accordance with past practices to Attractions appealing to limited segments of the population which are not promoted or marketed through normal ticket distribution channels such as trade shows, certain charitable functions, and certain gospel and Christian Attractions.

(c) **No Third Party Systems or Services:** Notwithstanding the above, Principal shall not directly or indirectly from the Facility Box Office or otherwise (i) use, sponsor, promote, authorize or permit the use of any Internet website other than the TM.com Website or any equipment or services of any computerized or Internet ticketing company or system other than the TM System (any such website, equipment, services, company or system, a "Third Party Provider") in connection with the sale, resale or issuance of Tickets; or (ii) sell or issue Tickets to any person who Principal believes (or has a reasonable basis to believe) will sell or issue such Tickets using a Third Party Provider. In addition, Principal shall not directly or indirectly authorize or permit any Tickets for any Attraction which are retained, purchased, controlled or otherwise acquired or obtained by any House Seat Recipient or any of its affiliates to be sold or issued in any way and for any purpose using a Third Party Provider. Principal will be deemed to have a reasonable basis to believe that a person will sell or issue Tickets using a Third Party Provider if Principal is aware that such person is currently doing so with respect to tickets for current attractions or has actually done so in the past with respect to any of Principal's tickets. Notwithstanding the foregoing, for those national touring events where Ticketmaster, Principal and the artist mutually agree in writing on a tour-wide fan club allotment, Principal shall be permitted to issue Tickets to a third party ticketing system or fulfillment house pursuant to the artist's direction for the distribution and sale of tickets to such fan club members.

(d) **No Minimum Sales:** It is agreed and understood that neither Ticketmaster nor Principal guarantees or will guarantee that any minimum or fixed number of Tickets will be sold through the TM System for any Attraction.

(e) **New Methods of Sales:** The parties agree that the exclusive ticketing rights granted to Ticketmaster herein are to include all future methods of and technologies for

primary Ticket distribution which may be developed from time to time during the Term of this Agreement, including, without limitation, new ways of selling, distributing and accepting Tickets.

6. **Premium Ticketmaster Products.**

(a) **Definitions; Products to be Provided:** Ticketmaster shall provide Principal with each of the premium Ticketmaster products indicated with an X in the box next to the respective definition set forth below upon the terms and conditions set forth herein.

- ☒ "Ticketmaster AccountManager" means the Ticketmaster AccountManager software and hosting services that allow Principal's Subscribers to manage their season ticket accounts.
- ☒ "Ticketmaster Archtics" means Ticketmaster's software that delivers extensive season, miniplan and single ticket functionality in connection with the Ticketmaster host system and distribution channels for inventory control by Ticketmaster and Principal.
- ☒ "Ticketmaster GroupManager" means the Ticketmaster GroupManager software and hosting services that allow Principal and Principal's customers to manage their group ticket experience. Group members may purchase or receive Tickets via an email invitation or via a link on an entity's intranet. Ticketmaster GroupManager also allows group rsvp tracking and individual Ticket pick-up via *ticketFast*™.
- ☒ "Ticketmaster MailManager" means the Ticketmaster MailManager software and hosting services that allows Principal to build a permissible marketing database and supports targeted, trackable direct email communication to Principal's customers.

(b) **License and Maintenance Fees:**

(i) Ticketmaster shall provide Principal with the Products for the license fees and maintenance fees set forth below:

<b><u>Products</u></b>	<b><u>License Fees</u></b>	<b><u>Annual Maintenance Fees</u></b>
<b>Ticketmaster Archtics</b>	Contract Year 1: \$20,000 - WAIVED  Contract Years 2-5: \$10,000 per year - WAIVED	N/A
<b>Ticketmaster Archtics – Hosting Fee</b>	\$15,000 per year, commencing in Contract Year 1	N/A
<b>Ticketmaster Archtics – Sybase Adaptive Server Anywhere</b>	Waived because bundled with annual Archtics License and Maintenance Fee	N/A

<u>Products</u>	<u>License Fees</u>	<u>Annual Maintenance Fees</u>
<b>Ticketmaster AccountManager</b>	For the first AccountManager site: WAIVED  For up to two (2) additional AccountManager sites: \$10,000.00 per site per Contract Year*	N/A
<b>Ticketmaster GroupManager</b>	Waived because bundled with Ticketmaster AccountManager	N/A
<b>Ticketmaster MailManager</b>	Waived  Base and supplemental annual fees described below**	N/A

\* The parties acknowledge that the two long-term tenants currently at the Facility are anticipated to view their respective Ticket information through Principal's version of Ticketmaster Archtics (which shall result in no additional fees or charges for such usage of Archtics) and not through their own additional Ticketmaster AccountManager sites, the development of which would be subject to the additional license fee(s) set forth above.

\*\* Principal shall also pay to Ticketmaster an annual supplemental license fee for Ticketmaster MailManager in the amounts determined in accordance with the plan selected by Principal in the schedule below (as indicated with an X).

<u>Plan Selected</u>	<u>Base License Fee</u>	<u>Supplemental License Fee</u>
<u>By Principal</u>	<u>Per Contract Year</u>	<u>Per Contract Year</u>
X	Waived	Unlimited Usage

(ii) Payment of one-time and first annual license fees shall be due and payable within thirty (30) days after the full execution of this Agreement. Thereafter, installments of annual license fees (other than supplemental license fees for Ticketmaster MailManager) and annual maintenance fees shall be invoiced and payable on the first day of each Contract Year during the Term. Ticketmaster shall deliver to Principal an invoice for the amount of the supplemental license fee for Ticketmaster MailManager then due and payable, if any, from time to time as Ticketmaster determines, but not less frequently than on an annual basis. Unless otherwise provided in writing, all invoices are payable within thirty (30) days of the date thereon and in U.S. dollars. If any sums payable to Ticketmaster under this Agreement are not paid within thirty (30) days of the date of the invoice, Ticketmaster shall charge interest at the rate of 1.5% per month or the maximum legal rate, if lower. The receipt or request for payment on such charges on overdue accounts will not prejudice any of Ticketmaster's other rights in respect of Principal's failure to pay on the due dates.

(c) **Transaction Fees:** The initial Transaction Fees associated with the use of the transaction capabilities of the Products are set forth below. Ticketmaster shall be entitled to assess and receive Transaction Fees with respect to the Products transactions. Except for those Transaction Fees that are expressly specified in this Agreement to be charged to the purchaser of the Ticket (including without limitation Subscribers) (e.g., Convenience Charges), Ticketmaster,

at its option, may deduct the Transaction Fees from the amounts owed to Principal under this Agreement or may invoice Principal for such Transaction Fees. Principal, at its option, may pay such Transaction Fees related to Products transactions or may charge Subscriber or others (if applicable) for such Transaction Fees. In the event Principal elects to charge Subscribers or others (if applicable) an amount for the Products transactions in addition to the base Transaction Fees set forth below, the additional amount charged by Principal up to 100% of the base Transaction Fee may be retained by Principal and any excess amounts charged (i.e., in excess of double the amount of the base Transaction Fee) shall then be divided equally between Principal and Ticketmaster. Any portion of the Transaction Fees paid to Principal from Transaction Fees that Ticketmaster receives (and does not refund) shall be paid to Principal as royalties ("Transaction Fee Royalties").

<u>Type of Transaction Fee</u>	<u>Amount of Transaction Fee</u>	
<b>Ticketmaster AccountManager Transactions</b>		
New Season/Contract Ticket sales	\$2.00 per seat	
MiniPlan Ticket sales	Same Seat MiniPlans with 4 or more Attractions:	\$2.00 per seat
	Different Seat MiniPlans with 6 or more Attractions:	\$2.00 per seat
	Same Seat MiniPlans with 2 to 3 Attractions:	The Convenience Charge set forth in Section 3(b) less any Convenience Charge Royalties due to Principal per seat
	Different Seat MiniPlans with 2 to 5 Attractions (available only at playoffs):	The Convenience Charge set forth in Section 3(b) less any Convenience Charge Royalties due to Principal per seat
Suite additional	\$2.00 per Ticket	
Right of first refusal to purchase Tickets	\$2.00 per Ticket	
Per invoice processing	\$1.00 per payment processed	
Ticket Forwarding Fee	\$1.95 per Ticket	



<u>Type of Transaction Fee</u>	<u>Amount of Transaction Fee</u>
Internal Ticket Forwarding	<p>Paid House Seats Tickets: reasonable number of Tickets per Attraction, up to a maximum of 5,000 Tickets per Contract Year at Ticketmaster's <i>ticketFast</i><sup>TM</sup> fee (currently \$2.50 per order)</p> <p>Complimentary House Seats Tickets: reasonable number of Tickets per Attraction at Ticketmaster's <i>ticketFast</i><sup>TM</sup> fee (currently \$2.50 per order)</p>
Single Ticket sales to Subscribers	The Convenience Charge for such Tickets set forth in Section 3(b) hereof less any Royalties due to Principal in connection with such Tickets
Ticketmaster Group Manager Transactions	
Group Sales	\$1.00 per Ticket
Corporate Group Sales	Tickets for team sports events: \$1.00 per Ticket

Notwithstanding the foregoing, complimentary suite Tickets will be forwarded to the suite holders at no cost to Principal or the suite holder, and the suite holder may forward those Tickets to their clients at no cost. In addition, Principal may forward complimentary single Tickets to official sponsors of the Facility at no charge; provided, that any subsequent forwarding of such Tickets by the applicable sponsors shall be subject to the Ticket Forwarding Fee above.

(d) **Credit Card Charges for Products Transactions:** With respect to Products transactions processed by Ticketmaster, Ticketmaster agrees to absorb the credit card company charge with respect to the portion of the Transaction Fees payable to Ticketmaster, and Principal agrees to absorb the credit card company charge with respect to all other proceeds from Products transactions in an amount equal to 2.285% of such proceeds, which percentage rate may be deducted from amounts owed to Principal pursuant to this Agreement or invoiced by Ticketmaster as a Transaction Fee, and any chargebacks related thereto. Such percentage rate is subject to automatic increase due to increase to the interbank rates imposed on Ticketmaster.

## 7. **License and Use of Hardware and Software.**

(a) **License of Hardware and Software:** Ticketmaster hereby grants Principal a non-exclusive, non-transferable license to use the executable code and any associated online documentation and instruction manuals of the Software and a license to use the Hardware (collectively, the "License") in exchange for the fees and compensation set forth herein. Principal shall permit Ticketmaster, at Ticketmaster's sole discretion and upon reasonable written notice, the right at a reasonable time to inspect, at Ticketmaster's expense, Principal's pertinent sites and equipment (including any existing LAN or other network user monitor device) for the purpose of determining compliance with the terms of the License granted hereunder.

(b) **Use of Hardware and Software:** The Hardware and Software and all materials related to such Hardware and Software may only be used by Principal in connection with systems used, operated and owned by Ticketmaster, and only for the purposes stated in this Agreement, and may not be utilized (i) with any Third Party Provider or (ii) by or for any other

person or entity. Principal shall comply in all material respects with and conform to all federal, state, county, municipal and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Hardware. Principal hereby agrees: (i) not to permit copying or reproduction of the Software in any manner, including without limitation, use in a sharing arrangement or transmission over the Internet or over e-mail and similar electronic transmission; (ii) not to disassemble, re-manufacture, repair, re-configure, enhance, upgrade, modify, translate, adapt, create derivative works, decompile or reverse engineer the Hardware or Software in any way nor merge them into any other program for any purpose; (iii) not to transfer, license or sub-license, assign, rent, sell, grant, publish, disclose, display, dispose or otherwise make available the Hardware or Software, or any rights therein or copies or derivatives thereof, including other templates or working systems; (iv) not to delete, remove, change or otherwise alter any trademarks, copyright notices or other proprietary marks in or on the Hardware or Software, or any copies, modifications or partial copies thereof; (v) not to "hack," or attempt to "hack," any of the Software, the servers on which the Software is hosted or any other portion of the Ticketmaster network, or otherwise attempt to circumvent, or navigate outside of, the borders of such Software servers in any manner whatsoever; (vi) not to use the Hardware or Software in conjunction with any other ticket distribution company and/or software other than Ticketmaster's software or products; and (vii) not to perform any SQL database operations other than "SELECT" for any system production tables (i.e., tables starting with dba.t\_<wildcard>) from any non-Archtics interface to the database (e.g., ISQL, Access, Crystal Reports, etc.). Neither Principal, nor its employees, agents, servants or representatives, shall alter, modify, copy or add to the Software without the prior written consent of Ticketmaster; and (viii) while accessing Ticketmaster MailManager, not to download any content over the Internet or otherwise access any portion of the Internet, except as may be strictly necessary to conduct e-mail campaigns for Principal in connection with Principal's use of Ticketmaster MailManager and only to the extent that Principal has obtained the right and authority to download, access and otherwise use such content; and (ix) use Ticketmaster MailManager in violation of applicable laws, including, but not limited to, federal, state or other laws applicable to commercial emails. Principal may make a single copy of Archtics only to be used for archival or backup purposes; **COPYING FOR ANY OTHER PURPOSE IS PROHIBITED.**

(c) **New Versions of Software:** Ticketmaster shall timely provide to Principal, from time to time, all upgrades or enhancements to the current version of the Software, and in connection therewith, it will issue copies of the upgraded or enhanced versions of the Software to Principal for no additional fee. The provision of new releases of the Software by Ticketmaster shall be subject to the conditions, limitations and restrictions of this Agreement.

(d) **New Functionalities or New Hardware:** Ticketmaster reserves the right to levy additional reasonable charges for new functionalities added to the Software that are not included in new versions of such Software or for upgraded Hardware, in either case which are requested by Principal. Ticketmaster reserves the right to determine whether requests by Principal for new options for or enhancements to the Software shall be incorporated in new versions of the Software or instead considered new functionalities.

(e) **Passwords:** Principal agrees that use of the Software by Principal shall be restricted to a reasonable number of Principal's personnel having passwords in the event that Ticketmaster assigns such passwords. Such passwords shall not be transferable without the

written permission of Ticketmaster, which permission shall not be unreasonably delayed or withheld. Upon Ticketmaster's reasonable request, Principal (i) shall identify, as the case may be, the users (by name, position and site address), which use or view the Software or from where the Software is used and (ii) shall provide to Ticketmaster access to any database which records access to the Software.

(f) **Ticket Forwarding:** Principal shall notify all Subscribers that Subscribers may not utilize Ticket Forwarding in connection with any third party ticket transactions, such as forwarding to ticket brokers or any other Internet sites that utilize forwarding in connection with commercial applications. Principal shall notify Ticketmaster immediately if it becomes aware of any such activity; and Ticketmaster reserves the right to suspend any Subscriber from using the Software for any violations of the above or for violations of any other rules and regulations reasonably adopted by Ticketmaster from time to time.

(g) **Principal's Website/Interface Page:** Beginning on or shortly after the execution of this Agreement, and subject to the completion of the installation of Archtics no later than the Effective Date, Ticketmaster will develop the Interface Page that will enable Principal's Subscribers to access their account information and conduct "real-time" transactions by linking to the Interface Page from the Principal's Website. The Interface Page may contain a short, related textual description of AccountManager features and shall contain Ticketmaster's designated wording and graphic depiction thereof, currently "by Ticketmaster."

(h) **GroupManager Restrictions:** All Group Sales must comply with Ticketmaster's current Group Sales policies. In the event that Ticketmaster determines that a Group Sale is not a valid Group Sale, Ticketmaster shall have the right to assess against Principal the amount of fees that Ticketmaster would otherwise have been entitled to assess under this Agreement with respect to any such Tickets had they been purchased through Ticketmaster as single Tickets, and not from Principal as a Group Sale.

(i) **Hosting:** During the Term, Ticketmaster shall host the Software and provide and maintain the Hosted Platform on which the Software will be installed and run, including provision of the physical environment including physical security, HVAC and power for the required server hardware for the Hosted Platform and the Software. Ticketmaster will also provide access via certain Internet connectivity, by being responsible for network operation and availability from the public Internet up to the termination cables at the network interface card on the server hardware for the Hosted Platform. Ticketmaster will not be responsible for power at the Facility or Principal's connectivity to the Internet.

## 8. **Ticketmaster's Services.**

(a) **Installation; Line Costs:** Following the earlier of the Effective Date or the execution of this Agreement, and subject to Principal's obligations below, Ticketmaster shall proceed with due diligence to install at its own cost and expense the Hardware and to provide Principal with access to the Software. Such installation shall be performed in a good and workmanlike manner. Principal will provide connectivity and interfacing that satisfy Ticketmaster's minimum system requirements. Ticketmaster shall have no responsibility for any internal wiring or cabling (e.g., electrical, data lines, etc.) at the Facility, Principal's

administrative office or Principal's pertinent sites necessary for the proper functioning of the TM System. Principal will make its technical personnel available to meet with Ticketmaster personnel to discuss the installation of the Hardware and Software. The cost of all telephone line connections between the central computer facility and the Facility, and all monthly telephone line costs with respect to the operation of the TM System between the Facility and the central computer facility, shall be borne solely by Ticketmaster.

(b) **Telephone Sales:** Ticketmaster shall provide telephone Ticket sales services on behalf of Principal with respect to Attractions and, in that regard, shall receive telephone calls for Ticket sales Monday through Sunday, except on Christmas Day. Such telephone service will be adequately staffed to perform ongoing licensed user assistance with respect to such Ticket sales.

(c) **Internet Sales:** Following the earlier of the Effective Date or the execution of this Agreement, Ticketmaster shall proceed with due diligence to create pages within the applicable version of the TM.com Website to present information with respect to Tickets for Attractions to facilitate Internet Sales to such Attractions. Such pages shall be designed in accordance with the look and feel of the TM.com Website, as such design may change from time to time. Ticketmaster shall operate one or more versions of the TM.com Website with respect to the sale of Tickets to Attractions or a successor website on the World Wide Web or any successor thereto every day of the year, excepting such reasonable down time as may be necessary or appropriate for website maintenance and updating for the purpose of, among other things, sales of Tickets to Attractions.

(d) **Attraction Set-Up:** In order to effectively utilize Ticketmaster's distribution technologies, within a reasonable time before (but in no event less than the time period described below) the scheduled on-sale date of Tickets for each Attraction (the "On-Sale Date"), Principal shall furnish Ticketmaster with all necessary information with respect to the Attraction, including, without limitation, seating layout of the Facility, Ticket structure, discounts permissible, Attraction Taxes, Ticket header information, color logos, entry information, vision and hearing information, wheelchair and other accessible seating information and such other information as is necessary for the proper sale of Tickets at the Facility Box Office, at all Outlets, by Internet Sales and by Telephone Sales (collectively, the "Set-Up Information"). The parties intend that all accessible seating Tickets that are available for sale to persons desiring accessible seating shall be made available for sale on the TM System. The parties acknowledge that in certain instances the sale of Tickets to persons desiring accessible seating may be better handled by the Facility Box Office and the parties will work together to accomplish such objective as needed. Principal must provide the Set-Up Information to Ticketmaster at least five (5) business days prior to the On-Sale Date for new Attractions that do not utilize seating charts then existing in the TM System. Principal must provide the Set-Up Information to Ticketmaster at least two (2) business days prior to the On-Sale Date for new Attractions that utilize seating charts then existing in the TM System. Notwithstanding anything contained herein to the contrary, Ticketmaster shall have no responsibility and Principal shall indemnify and hold Ticketmaster harmless from and against any and all liabilities, claims, expenses (including court costs and reasonable attorneys' fees) and causes of action directly resulting from the inaccuracy of any Set-Up Information furnished by Principal pursuant hereto.

(e) **Ticket Stock:** Principal shall be responsible for the security of Ticket stock in its possession, and the risk of loss of Ticket stock shall shift to Principal upon the delivery thereof to Principal or Principal's authorized representative, agent or employee. In addition, Ticketmaster shall be responsible for the security of Ticket stock in its possession and the risk of loss related thereto or unauthorized dissemination thereof.

(f) **Supplies:** Nondurable operational supplies which are used at the Facility in connection with the operation of the Hardware and Software, including, without limitation, line printer paper, printer toner and ribbons, shall be paid for by Principal, and Principal shall be responsible for maintaining adequate supplies thereof to assure continuous operations at the Facility.

(g) **Ticketmaster MailManager:**

(i) **General Services.** Ticketmaster shall (x) configure Ticketmaster MailManager such that it will function for Principal and (y) provide Principal with reasonable orientation, training and other assistance in connection with Principal's use of Ticketmaster MailManager with respect to Principal's first email campaign utilizing Ticketmaster MailManager. Additionally, Ticketmaster shall monitor Principal's use of Ticketmaster MailManager and maintain records of all Delivered E-Mails sent by Principal, which records Principal shall have the right to access via the Internet.

(ii) **Purchaser Database.** Subject to applicable laws, Ticketmaster will populate the database related to Principal's version of Ticketmaster MailManager with personally identifiable information with regard to persons who actually purchased Tickets through Ticketmaster (via Telephone Sales, Internet Sales and, if Ticketmaster commences collecting such data on behalf of its clients generally, then also Outlet Sales) to attend an Attraction. Principal shall solely own any data it independently collects on its websites and even if Principal adds, or asks Ticketmaster to add, such data to the database related to Principal's version of Ticketmaster MailManager.

(h) **Outlet Coverage:** In the event of a significant loss in the number of Walmart retail outlets in the Albany area during the Term of the Agreement, Ticketmaster agrees to use commercially reasonable efforts to replace such lost Walmart retail outlets with alternative retail outlets; provided such distribution method remains a commercially viable and relevant channel for distributing Tickets.

9. **Maintenance and Support of Software and Hardware.**

(a) **Hardware and Software Maintenance and Support:** Ticketmaster shall provide maintenance, repair and support of the Hardware and Software at the Facility for functions in connection with the sale of Tickets to Attractions at no additional cost to Principal, provided that such maintenance, repair or support is not necessitated by the negligence or willful misconduct of Principal, its employees, agents or representatives. Ticketmaster will not be obligated to continue to provide maintenance with respect to any version of any particular Software hosted by Principal for more than one year after a release by Ticketmaster of an upgraded version of the same Software.

(b) **Notification by Principal:** In the event of any breakdown or malfunction in the operation of the Hardware, or difficulties encountered in connection with access to the Software, Principal agrees to promptly notify Ticketmaster of any such breakdown, malfunction or difficulty to assist Ticketmaster in performing its obligations hereunder.

(c) **Central Computer Facility:** Ticketmaster shall, at its sole expense, maintain one or more central computer facility(ies) at such location(s) as it shall deem necessary for the operation of the TM System. Ticketmaster represents and warrants that adequate support personnel on duty at the central computer facility will be available to meet the reasonably anticipated service needs of Principal from time to time. In the event of any emergency, Ticketmaster further agrees to respond to such emergency as quickly as possible to provide Principal with repair services. Support services will be provided, on a return call basis, during Ticketmaster's normal business hours by personnel qualified to answer telephone inquiries by Principal seeking advice on questions and problems. Non-emergency calls made at the end of the day, which require support services that would keep staff beyond normal working hours, will be deferred to the following business day. Pager support will be provided for off-hour critical system emergencies. Notwithstanding the foregoing, Ticketmaster shall, at its sole expense, maintain appropriate system back-up and redundancy for the TM System in order to avoid, as much as reasonably possible, and to minimize the length of, interruptions in the operation of the TM System.

(d) **Access to Principal's Equipment and Data:** In order to correctly diagnose faults in the equipment and data and otherwise to determine compliance with the terms of this Agreement, Principal will provide Ticketmaster 24 hour remote electronic access to Principal's installation, pertinent sites, equipment (including any existing LAN or other network user monitor device) and user data. Failure to provide such access may prohibit effective action by Ticketmaster and render Ticketmaster unable to proceed, and in such circumstances, Ticketmaster shall be under no liability for failure to perform its obligations hereunder.

(e) **Performance of Services.** In connection with performing its services under this Agreement, Ticketmaster covenants and agrees that (i) the Set-Up Information provided to Ticketmaster by Principal will be correctly input into the TM System, (ii) it will perform its services hereunder in accordance with all applicable laws and regulations, and (iii) it will maintain sufficient equipment and personnel necessary to handle the sale of Tickets for Attractions through Outlets, Telephone Sales and Internet Sales in a timely and efficient manner. In addition, without limiting the obligations of Ticketmaster under this Agreement (including without limitation this subparagraph (e)), it shall be an Event of Default by Ticketmaster under this Agreement if the TM System is unable to process Ticket sales for a period of twenty-four (24) consecutive hours or for a period of forty-eight (48) hours during any rolling thirty (30) day period, except to the extent such failure to process Ticket sales is caused in whole or part from the acts or omissions of Principal or any third parties not under Ticketmaster's reasonable control.

(f) **Additional Archtics Services:** With respect to initial implementation of Archtics, Ticketmaster shall also provide, at no additional cost to Principal, (i) on-site support from Ticketmaster's national or regional personnel, (ii) unique Archtics customization (e.g., diagrams, invoices, other executables, etc.), (iii) custom reporting, and (iv) customized on-line

assistance (the services described in clauses (ii) through (iv) are referred to herein as "Customization Services".) Generally two hours of Customization Services each week are included in the annual maintenance fees of Archtics set forth in Section 6. Customization Services that far exceed this level of support shall be charged to Principal in accordance with Ticketmaster's standard rates; provided that Ticketmaster shall furnish Principal with an estimate of such costs in advance of commencing any such additional services.

10. **Training of Principal's Employees.** Principal shall staff the Facility Box Office with its employees for the proper operation of the TM System for Ticket sales made through the Facility. Ticketmaster shall train, at its expense, Principal's employees who shall be reasonably necessary for the initial staffing of the Facility Box Office and for initial operation of the TM System at the Facility. Ticketmaster shall also provide additional training at its cost to other employees of Principal to the extent such training is necessary as a consequence of changes in, or a modification of, the Hardware or Software initiated by Ticketmaster or in Ticketmaster's method of operation. To the extent of any change in personnel by Principal in connection with Facility Box Office sales requiring additional training beyond that initially contemplated hereunder, Principal agrees to absorb all of the reasonable expenses (including any and all travel expenses) thereof.

11. **Facility Box Office Will-Call Services.** At all times during the Term of this Agreement, Principal shall maintain a designated Facility Box Office location for the pick-up of Tickets purchased through Internet Sales and Telephone Sales. The pick-up location shall be open during the normal hours of operation of the Facility Box Office. Principal shall notify Ticketmaster of Principal's will-call capabilities and will-call Facility Box Office hours. Each time a Ticket purchaser picks up a Ticket at will-call, Principal shall use the will-call command function of the TM System which requires swiping the credit card used to purchase the Tickets, shall verify the identity of each person picking up Tickets at will-call via a valid photo identification (government issued) and shall follow any other Ticketmaster will-call procedures provided in advance in writing to Principal. In furtherance of the above, Ticketmaster shall provide to Principal credit card swiping devices for use by the Facility Box Office to execute such will-call command function. Principal shall not release Tickets to any customer whose identity has not been verified in accordance with the foregoing provisions.

12. **Advertising.**

(a) **Advertising on Tickets and Envelopes:** Ticketmaster shall pay for all Ticket stock for Tickets printed or sold at the Facility Box Office. Principal shall have the right to sell advertising on Ticket stock printed or sold at the Facility Box Office and Ticket envelopes to the extent such Ticket stock and envelopes are paid for by Principal. Principal shall have the right to put advertising sold by Principal (collectively, "Principal Placements") on approximately 50% of the available advertising spaces on TicketFast Tickets, provided that such Principal Placements conform to the Advertising Restrictions. Principal may change the Principal Placements on TicketFast Tickets upon sixty (60) days prior notice to Ticketmaster. Ticketmaster shall have the right to sell advertising on Ticket stock or envelopes with respect to (i) hard Tickets sold by Ticketmaster, (ii) hard Tickets sold by Principal to the extent such Ticket stock and envelopes are paid for by Ticketmaster, and (iii) ticketFast Tickets; provided that such advertising sold by Ticketmaster shall not violate any sponsorship, advertising, promotional or

related agreement applicable to the Facility as indicated on Exhibit C attached hereto. Principal may update Exhibit C once each Contract Year or as Ticketmaster and Principal shall otherwise mutually agree.

(b) **Advertising Restrictions:** All Principal Placements on TicketFast Tickets are subject to the prior consent of Ticketmaster which will not be withheld provided the requirements described in this subsection (the "Advertising Restrictions") are met. First, all Principal Placements are subject to any hardware or software limitations, technical requirements and Ticketmaster's standard space and text limitations. Second, no Principal Placements can (i) relate to any products or services of Ticketmaster's competitors (e.g., ticket sellers, brokers and resellers), the competitors Ticketmaster's controlled affiliates or sister companies or the competitors of Ticketmaster's principal sponsors and advertisers (including, but not limited to its current principal sponsors, American Express and Apple), (ii) include any "prohibited" content (e.g., pornography, gambling, hard liquor) or (iii) contain any links to any of the foregoing. Third, Principal may not broker, resell, or use as barter, any of its placement rights to any third parties. Any changes to Principal Placements are subject to Ticketmaster's reasonable lead times which will vary depending on the complexity of the request.

(c) **Advertisement of Attractions:** Principal hereby grants to Ticketmaster the right, in Ticketmaster's sole discretion, to advertise, in any medium determined by Ticketmaster, including on the TM.com Website or other Ticketmaster or affiliated websites, Attractions and the availability of Tickets at the Facility Box Office, at all Outlets, and by Internet Sales and Telephone Sales and, in connection therewith, to use the name and logo of Principal, the Attraction, the Facility and all other information respecting the Attraction. Principal may, during the Term hereof, provide and place advertisements in any form of media which Principal shall desire to promote the availability of Tickets (except on websites or other media operated by, or on behalf of, third-party ticketing companies); provided, however, that in the event Principal shall place any such advertisements, it shall use its best efforts to cause Ticketmaster's name, logos, applicable TM.com Website address and charge-by-phone number to be displayed in the advertisement, as well as the address of the Facility and, if possible, the identity of the Outlets where Tickets may be purchased. For sake of clarity, in connection with any such advertising for the sale of Tickets placed by Principal (or by Ticketmaster pursuant to an advertising campaign conducted at Principal's express direction), such advertising shall also include the Website address of the Naming Rights Sponsor (which is currently [www.timesunion.com](http://www.timesunion.com)). In this regard, Principal shall cause the Facility Website to deeplink to specified web page(s) within the applicable TM.com Website where ticket purchasers can begin the process of purchasing Tickets to Attractions bypassing earlier web pages shown to other ticket purchasers within the TM.com Website. Principal agrees to promote the availability of Tickets on the TM.com Website by including, at a minimum, one "above-the-fold" graphic Ticketmaster branded link to the TM.com Website on each web page featuring one or more of the Attractions on the Facility Website. Such link will include the TM.com Website graphic logo and a call to action such as "buy tickets."

(d) **Advertising Revenue:** Ticketmaster and Principal shall separately receive and retain all income derived from advertising which each is entitled to sell under subsections (a) and (b) above.



(e) **Ticketmaster Client Style Guide:** The look and feel of any and all links from Facility Website to the TM.com Website are subject to Ticketmaster's prior approval (which shall not be unreasonably withheld or delayed). Principal shall comply with all terms and conditions of Ticketmaster's Client Style Guide, as it may be updated from time to time. A current copy is available online at <http://ticketmaster.com/client>.

(f) **Banner Ads:** Neither Principal nor Ticketmaster will serve banner ads or other promotional ad units of any kind or allow any third party to serve any such ad units on the Interface Page, without the other party's prior consent.

13. **Accounting Procedures; Reports.**

(a) **Weekly Payments:** Ticketmaster shall collect and deposit all Ticket Receipts derived from Outlet sales, Telephone Sales and Internet Sales in an account to be maintained by Ticketmaster and shall hold the amount of such Ticket Receipts that are payable to Principal hereunder in trust for the sole benefit of Principal, the Owner and as applicable in the event of Cancelled Attractions and in accordance with Section 13(b) below, the purchasers of such Tickets. Withdrawals of the Ticket Receipts to which Principal is entitled shall be made from such account by Ticketmaster and sent to Principal on Friday (unless Friday is a holiday in which case such Ticket Receipts shall be sent the following Monday) of each week with each weekly payment to be on account of TM System Ticket sales for Attractions made by Ticketmaster during Monday through Sunday of the week preceding such payment date. Unless Ticketmaster consents to a different form of payment, all payments to Principal shall be made by ACH transfer to an account designated by Principal for the Facility. Each weekly payment shall be accompanied by a written accounting. If Ticketmaster fails to transfer the requisite payment to Principal on Friday of each week (or the following Monday if Friday is a holiday), Principal will notify Ticketmaster of such failure and Ticketmaster shall have two (2) additional business days from Ticketmaster's receipt of such notice to make such payment. If such payment is not made by such later date, then Ticketmaster shall pay Principal a late charge equal to one quarter of one percent (0.25%) of the amount of such payment that is late.

(b) **Cancelled Attractions; Refunds:** In the event that any Attraction for which Ticketmaster sold Tickets or processed transactions hereunder is cancelled, postponed, or modified (e.g., substitute acts) for any reason (each, a "Cancelled Attraction"), the Account Balance shall be held and made available for distribution by Ticketmaster to Ticket purchasers entitled to refunds for Tickets for Cancelled Attractions purchased from Ticketmaster. Notwithstanding the above, a modified Attraction will not be considered a Cancelled Attraction if the promoter does not permit refunds for such modified Attraction and if the modification does not alter the information presented on the original Ticket. For purposes of this Agreement, the term "Account Balance" shall mean the amount of funds held at any time by Ticketmaster on account of Ticket sales for all Attractions, less the amount of Ticket sales proceeds which Ticketmaster is entitled to retain hereunder. Principal authorizes Ticketmaster to refund the Ticket price at the original point of purchase (e.g., at Outlets or by Internet Sales or Telephone Sales) and to exchange Tickets pursuant to any exchange policy that may be adopted by Principal and Ticketmaster. It is agreed and understood that given Ticketmaster's engagement under this Agreement, Ticketmaster's agreement to make any refunds on behalf of Principal is subject and limited to Ticketmaster holding or receiving from Principal the full amount of funds

necessary to make refunds to all Ticket purchasers properly entitled to a refund. Principal and Ticketmaster agree that Ticketmaster shall be entitled to retain the Inside Charges, Convenience Charges and Processing Fees assessable with respect to the initial sale of Tickets to Cancelled Attractions and any other fees assessable and payable to Ticketmaster although no additional compensation shall be payable to, or fee assessed by, Ticketmaster with respect to the exchange of any Tickets initially purchased from Ticketmaster. However, Ticketmaster's current policy is to refund Inside Charges and Convenience Charges with respect to Cancelled Attractions. Ticketmaster shall provide Principal with prior notice of any change to such policy during the Term of this Agreement; provided, that Ticketmaster shall indemnify Principal for any claims relating to Ticketmaster's retention of its fees in the event of refunds to consumers. Principal shall be responsible for all refunds and exchanges of Tickets initially purchased at the Facility Box Office.

(c) **Chargebacks:** Ticketmaster reserves the right to deduct from Principal's settlement, portions of any Chargebacks that Ticketmaster is assessed by its merchant bank related to Tickets sold by Ticketmaster, but printed out and picked up at the will-call window of the Facility Box Office for up to twelve (12) months after the occurrence or cancellation of an Attraction if Principal does not follow the will-call procedures required by Section 11 of this Agreement. Ticketmaster shall be responsible for any other Chargebacks it is assessed by its merchant bank; provided, however, that Principal shall be responsible for any Chargebacks resulting from its negligence or misconduct or related to the Attraction as opposed to the Ticket purchase process (e.g., Chargebacks related to Ticket purchaser's dissatisfaction with the Attraction). For purposes of this Agreement, "Chargebacks" shall mean the amounts that the merchant bank is charged back by a cardholder or a card issuer under the card organization's rules (e.g., cardholder dispute, fraud, declined transaction, returned Tickets for Cancelled Attractions, etc.).

(d) **Insolvency; Deficiency Amounts; Security for Repayment:** Principal shall provide immediate written notice to Ticketmaster in the event it files any voluntary or involuntary petition under the bankruptcy or insolvency laws or upon any appointment of a receiver for all or any portion of Principal's business or the assignment of all or substantially all of the assets of Principal for the benefit of creditors (each, a "Material Financial Event"). The parties agree that this Agreement constitutes a financial accommodation by Ticketmaster to Principal as such term is utilized in 11 U.S.C. §365. If at any time, the Account Balance is not sufficient to pay for anticipated refunds or Chargebacks, Principal shall deliver the amount of such deficiency ("Deficiency Amount") to Ticketmaster no later than one (1) business day after notice by Ticketmaster to Principal. Ticketmaster shall have the right to setoff any Deficiency Amount against any amounts held by Ticketmaster on behalf of Principal. In the event of any Material Financial Event or in the event Principal has not paid any Deficiency Amount when due, Ticketmaster shall have the option to require Principal to provide additional security to Ticketmaster of a type (e.g., letter of credit, guaranty or performance bond) and in an amount as reasonably requested by Ticketmaster, which Principal shall provide to Ticketmaster within five (5) business days after Ticketmaster's request, and/or to suspend payment of Ticket Receipts in advance of the occurrence of Attractions and instead deliver Ticket Receipts to which Principal is entitled post-performance (i.e. Friday of each week with respect to Attractions that occurred Monday through Sunday of the week preceding such payment date). Ticketmaster reserves the right to require Principal to provide current financial statements of Principal pertaining only to its

operations at the Facility to Ticketmaster within five (5) business days after Ticketmaster's written request.

(e) **Counterfeit Tickets:** It is agreed and understood that Ticketmaster shall not be liable to Principal for the printing and sale of counterfeit Tickets, including, without limitation, *ticketFast*<sup>TM</sup> Tickets, provided that Ticketmaster has previously taken reasonable efforts to prevent the printing of counterfeit Tickets by adopting reasonable control procedures.

14. **Taxes.**

(a) **Taxes on Hardware.** Principal shall keep the Hardware free and clear of all levies, liens and encumbrances which are caused by Principal or under Principal's control and shall promptly reimburse Ticketmaster for all license fees, registration fees, assessments, charges and taxes, whether federal, state, county, municipal or other governmental or quasi-governmental, with respect to the Hardware located at the Facility, including, without limitation, use, excise and property taxes, and penalties and interest with respect thereto, except and excluding, however, any taxes based on or measured solely by Ticketmaster's net income.

(b) **Taxes on License Fees and Maintenance Fees.** The license fees and maintenance fees set forth in Section 6(b) of this Agreement are exclusive of any sales, use, value added, excise or other taxes, and Principal shall be responsible for paying all such applicable taxes.

(c) **Attraction Taxes.** Principal shall be responsible for calculating any and all Principal Taxes, for preparing and timely filing any and all tax returns or reports required to be filed in respect of any such Principal Taxes, and for timely remitting Principal Taxes to the appropriate taxing authority. Ticketmaster will collect and turn over to Principal the amounts to which Principal is entitled as provided in Section 13. In the event that Ticketmaster is required by law to pay any Principal Taxes on behalf of Principal, Principal shall promptly reimburse Ticketmaster for any and all such Principal Taxes paid by Ticketmaster, including penalties and interest assessed with respect thereto (other than Principal Taxes, penalties and interest that Ticketmaster pays directly out of Principal's Ticket Receipts), and shall also promptly reimburse Ticketmaster for any and all expenses (including reasonable attorneys' fees) or damages that result from the failure by Principal to properly calculate and timely remit Principal Taxes assessed on all amounts received by Principal under this Agreement, to timely file all related returns or reports, or to timely reimburse Ticketmaster for any and all such Principal Taxes, interest and penalties as provided above. Ticketmaster shall be responsible for calculating any and all Ticketmaster Taxes, for preparing and timely filing any and all tax returns or reports required to be filed in respect of any such Ticketmaster Taxes, and for timely remitting such Ticketmaster Taxes to the appropriate taxing authority.

(d) **Principal's Taxpayer ID Number.** Principal certifies that Principal's federal taxpayer identification number (FEIN or SSN) is 23-2511871. Principal further certifies that its state taxpayer identification or registration number for the state in which the Facility is located is New York.

15. **Audit of Sales.** At all times during the Term of this Agreement, (i) Principal shall have the right at its own expense to audit Ticket sales for Attractions by Ticketmaster to assure Ticketmaster's compliance with the terms of this Agreement, and (ii) Ticketmaster shall have the right at its own expense to audit Ticket sales for Attractions made by Principal and by others (including, without limitation, the promoter and sponsor of any Attraction and the act or event itself) to assure their compliance with the terms of this Agreement.

16. **Protection of Hardware and Software.**

(a) **Loss and Damage to the Hardware:** Principal acknowledges that the Hardware will be used by Principal at the Facility, and that Ticketmaster does not own, operate or control such location. Accordingly, Principal hereby assumes and shall bear the entire risk of loss and damage to the Hardware, ordinary wear and tear excepted, whether or not insured against, once installed, unless occasioned by the negligence of Ticketmaster, from any and every cause whatsoever from the date of delivery of the Hardware to the Facility until removal thereof following termination of this Agreement. In the event of loss or damage to any Hardware that is not caused by Ticketmaster, Principal, at its sole option, shall within thirty (30) days after such loss or damage:

(i) Place the same, or replace the same with similar property, in good repair, condition and working order to the satisfaction of Ticketmaster; or

(ii) Pay Ticketmaster in cash the full replacement cost of the Hardware, and Ticketmaster, at its own cost and expense, shall promptly install new hardware to replace the lost or damaged Hardware.

(b) **Insurance of the Hardware:**

(i) Principal shall, at its own expense, provide and maintain at all times during the Term hereof insurance to protect the Hardware against loss caused by fire (with extended coverage), vandalism, malicious mischief, theft, or any other cause in an amount equal to the full replacement value of the Hardware as reasonably determined by Ticketmaster. Should Principal become unable to provide or maintain such insurance coverage, Principal shall promptly notify Ticketmaster in writing prior to the expiration of any such coverage, and, thereafter, Ticketmaster shall have the right, but shall not be obligated, to provide insurance coverage for the occurrences specified above and charge Principal the costs of such insurance coverage;

(ii) Principal shall provide, at its sole expense, comprehensive or commercial general liability and property damage insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for its protection and the protection of Ticketmaster; and

(iii) Except as expressly provided in clause (ii) above, all insurance provided and maintained by Principal shall be in such amounts, under such forms of policies, upon such terms, for such periods and written by such companies as Ticketmaster and Principal shall agree upon, and in all cases such insurance policies shall provide for the waiver of the insurer's right of subrogation against Principal and Ticketmaster. All policies of insurance shall

name Ticketmaster as an additional insured and shall provide for at least ten (10) days' prior written notice of cancellation, non-renewal or material modification to Ticketmaster. Principal shall furnish Ticketmaster with certificates of such insurance or other evidence satisfactory to Ticketmaster as to its compliance with the provisions of this Section.

(c) **Title to the Hardware and Software:** Principal covenants and agrees that the Hardware, Software, and any deliverables or work product furnished by Ticketmaster under this Agreement are, and shall at all times be and remain, personal property which shall, at all times, remain the sole and exclusive property of Ticketmaster, and Principal shall have no right, title or interest therein or thereto except as a licensed user thereof. Principal hereby agrees that it will, whenever reasonably requested by Ticketmaster, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, agreements, instruments, and documents necessary or desirable, in form satisfactory to Ticketmaster, to protect the rights and ownership of Ticketmaster to and of the Hardware and Software, including but not limited to certificates from parties with a real property interest in the premises wherein the Hardware may be located waiving any claim with respect to the Hardware. Except as may be necessary to prevent damage to or destruction of the Hardware, Principal will not move the Hardware nor permit such Hardware to be moved without Ticketmaster's prior written consent, which consent shall not be unreasonably withheld, and shall give Ticketmaster prompt written notice of any attachment or other judicial process affecting any item of Hardware. Upon the expiration or termination of this Agreement, Principal shall return the Hardware and Software to Ticketmaster. The Hardware returned to Ticketmaster shall be in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, and any and all licenses and other rights to the Software shall terminate with respect to Principal. Principal's obligations under this Section 16 shall survive the termination or expiration of this Agreement.

(d) **Designation of Ownership:** If, at any time during the Term hereof, Ticketmaster supplies Principal with labels, plates or other markings stating that the Hardware or Software is owned by Ticketmaster, Principal shall affix and keep the same in a prominent place on the Hardware or Software, as applicable, in recognition of Ticketmaster's ownership of the same.

17. **Insurance.** Ticketmaster, as its own expense, shall provide and maintain during the Term of this Agreement workers compensation insurance, employer's liability insurance, commercial general liability, automobile liability insurance, errors and omissions insurance, business interpretation and extra expenses insurance, and crime coverage, each in the amounts set forth in Section 15.1 of the County's RFP-2010-011 for Computerized Ticketing System (the "County's RFP"), with such terms and conditions as are reasonable given the context of its business. The insurance policies may be obtained as part of a group of insurance policies issued to Ticketmaster's corporate parent and its subsidiaries, provided, however, that such insurance may be obtained by Ticketmaster's parent company through a self-insurance program reasonably acceptable to Principal. Ticketmaster shall name each of SMG, the Owner and the then current naming rights sponsor for the Facility, which as of the date hereof is Hearst Corporation (the "Naming Rights Sponsor") as an additional insured under all such policies, except the workers compensation insurance, and all policies shall provide for at least thirty (30) days' prior written notice of cancellation, non-renewal or material modification to Principal. Ticketmaster also

agrees to a waiver of insurer's rights of subrogation against SMG and the Owner under all such policies, as applicable.

18. **Termination.**

(a) Upon an Event of Default pursuant to Exhibit A by Ticketmaster, Ticketmaster shall, without demand, forthwith pay to Principal all amounts due and owing pursuant hereto, and Principal may:

(i) require Ticketmaster, at its own cost and expense, to remove all Hardware and if applicable, all Software from the Facility and leave the Facility in a clean, proper and orderly condition; and

(ii) terminate this Agreement.

(b) Upon an Event of Default pursuant to Exhibit A by Principal, Principal shall, without demand, forthwith pay to Ticketmaster all amounts due and owing pursuant hereto, and Ticketmaster may:

(i) terminate Principal's right to access and use the TM System and take immediate possession of the Hardware and Software wherever the same may be located without demand, notice or court order; and

(ii) terminate this Agreement.

(c) No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy herein or otherwise available at law or in equity, each and all of which are subject to the limitations contained in Section 8 of Exhibit A.

19. **Miscellaneous.**

(a) **Representatives:** During the Term of this Agreement, each party shall designate in writing an individual who will serve as its representative with respect to the resolution of disputes which may arise in connection with the administration of this Agreement. Principal initially designates Bob Belber as Principal's representative in such capacity. Ticketmaster initially designates David Shipitofsky as Ticketmaster's representative in such capacity.

(b) **Name Changes:** In the event Ticketmaster changes, revises or updates any Software or the applicable TM.com Website names or website addresses, the terms and conditions of this Agreement shall continue in full force and effect throughout the Term with the new name as a replacement, at Ticketmaster's expense, for the previous name.

(c) **Additional Documents:** Each of the parties hereto agrees to execute and deliver such additional and further documents and instruments as may be necessary or appropriate to carry out the intents and purposes of this Agreement.

(d) **Entire Agreement; Interpretation.** This Agreement consists of this Agreement, the Exhibits attached hereto, the County's RFP, and all materials provided by Ticketmaster in connection with its response to the County's RFP ("Ticketmaster's Response"), which RFP and response thereto is incorporated by reference herein, and all of which supersede any prior or contemporaneous oral or written agreement with respect to the subject matter hereof. If there is any conflict or inconsistency among or between the terms of this Agreement, the Exhibits hereto, the County's RFP and Ticketmaster's Response, such conflict or inconsistency shall be resolved by reference to the following priority rules: (i) Exhibit A has the highest priority, (ii) this Agreement has the next highest priority, (iii) the Exhibits (other than Exhibit A) have the next highest priority, (iv) Ticketmaster's Response has the next highest priority and the County's RFP has the lowest priority, and (v) the document with the higher priority shall govern and control any such conflict or inconsistency.

(e) **MacBride Principles:**

(i) Ticketmaster hereby represents that it is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. [3] for 1993, in that Ticketmaster either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles. In the event of a violation of this stipulation, the Owner reserves all rights to take remedial measures as authorized under section 4 of Local Law No. [3] in 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring Ticketmaster in default and/or seeking debarment or suspension of Ticketmaster.

(ii) In the case of a contract which must be let by competitive sealed bidding, whenever the lowest bidder has not agreed to stipulate to the conditions set forth in this Section 19(e), and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer the contract to the County Legislature, which shall determine whether the lowest bidder is responsible. In making such determination, the County Legislature may consider, as a factor bearing on responsibility, whether the lowest bidder discriminates in employment in Northern Ireland.

(iii) As used in this Section 19(e), the term "contract" shall not include contracts with government and non-profit organizations, contracts awarded pursuant to an emergency procurement procedure or contracts, resolutions, indentures, declarations of trust or other instruments of authorizing or relating to the authorization, issuance, award, sale or purchase or bonds, certificates of indebtedness, notes or other fiscal obligations of the County, provided that the policies of this Section 19(e) shall be considered when selecting managing underwriters in connection with such activities.

(iv) The provisions of this Section 19(e) shall not apply to contracts for which the County receive funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on

agreement to comply with the MacBride Principles, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

(f) **Antidiscrimination Clause:** Pursuant to Section 220-E of the NYS Labor Law, regarding provisions in contracts prohibiting discrimination on account of race, creed, color or national origin in employment of citizens upon public works, Ticketmaster agrees: (i) That in the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of Ticketmaster or subcontractor, shall by reason of race, creed, color, disability, gender, marital status, military status, sexual orientation or national origin discriminate against any citizen of the state of New York who is qualified and available to perform the work in which the employment relates; (ii) That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, gender, marital status, military status, sexual orientation or national origin; (iii) That this Agreement may be canceled or terminated by the Owner, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 19(f); and (iv) The aforesaid provisions of this Section 19(f) covering every contract for or on behalf of the County for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the state of New York.

(g) **Non Appropriations Clause:** Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the Owner for payment under this Agreement. The Owner will immediately notify Ticketmaster of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to either party of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.



IN WITNESS WHEREOF, Ticketmaster and Principal have caused this Licensed User Agreement to be duly executed as of the date first above written.

TICKETMASTER L.L.C.,  
a Delaware limited liability company

SMG,  
a Pennsylvania general partnership,  
as agent for the County of Albany, New York

By: [Signature]

By: [Signature]

Title: SVP

Title: Gen. Mgr.

Date: 8/31/10

Date: 9/1/10

Address: 550 W. Van Buren, 13<sup>th</sup> Floor  
Chicago, IL 60607

Address: 51 South Pearl Street  
Albany, NY 12207

Attn: George Wood

Attn: Bob Belber

With a copy to:

With a copy to:

Ticketmaster L.L.C.  
Address: 888 Seventh Avenue, 2<sup>nd</sup> Floor  
New York, NY 10019  
Attn: Executive Vice President,  
North East Region

SMG  
701 Market Street, Suite 4400  
Philadelphia, PA 19106  
Attn: Chief Financial Officer

and with a copy to:

COUNTY OF ALBANY, NEW YORK

Ticketmaster L.L.C.  
8800 Sunset Boulevard  
West Hollywood, CA 90069  
Attn: General Counsel

By: [Signature]

Name: Michael Perrin

Title: Deputy County Exec.

Date: 9/1/10

Address: County of Albany  
112 State Street  
Albany, NY 12207

Attn: County Executive

## EXHIBIT A

### STANDARD TERMS AND CONDITIONS

In the event that any of the provisions of this Exhibit A conflict or are inconsistent with the provisions of the Agreement to which it is attached, the applicable provision of this Exhibit A will govern.

#### 1. Definitions.

- (a) "Confidential Information" is defined in Section 11(a).
- (b) "Event of Default" is defined in Section 10(a).
- (c) "Intellectual Property" is defined in Section 2(a).
- (d) "Principal's Indemnitees" is defined in Section 9(b).
- (e) "Principal's Representatives" is defined in Section 9(a).
- (f) "Proprietary Information" is defined in Section 3.
- (g) "Purchaser Data" is defined in Section 4.
- (h) "Systems" is defined in Section 7(a).
- (i) "Ticketmaster's Indemnitees" is defined in Section 9(a).

#### 2. Intellectual Property/Limited License.

(a) Each party shall retain all right, title and interest in and to its respective trademarks, service marks and trade names worldwide ("Intellectual Property") subject to a limited non-exclusive, non-transferable license necessary to perform this Agreement. Each party grants the other a royalty-free, non-exclusive, non-transferable license, during the Term, within the territory, to include such party's pre-approved Intellectual Property solely in connection with the promotions and marketing contemplated in this Agreement.

(b) Each party shall use the other's Intellectual Property only as provided, and shall not alter the Intellectual Property in any way, nor shall it act or permit action in any way that would impair the rights of owning party in its Intellectual Property. Each party acknowledges that its use of the other party's Intellectual Property shall not create any right, title or interest in or to such Intellectual Property. Each party shall have the right to monitor the quality of the other party's use of its Intellectual Property. Additionally, each party shall notify the other promptly in writing of any known infringement of the other's Intellectual Property. Any references to a party's Intellectual Property shall contain the appropriate trademark, copyright or other legal notice provided from time to time by owning party.

3. Proprietary Information. Principal acknowledges and agrees that all information, methods, formulae, techniques, processes, system and programs devised, produced or supplied by Ticketmaster in text or displayed on the computer screens when utilizing the TM System or any other information disclosed to Principal regarding the TM System, future modifications or product direction for current or future products, is confidential and proprietary (hereafter "Proprietary Information") and shall be and remain the property of Ticketmaster or its licensors. In addition to the proprietary rights described above, Principal is warned and acknowledges that Ticketmaster has invention rights, copyrights, and other intellectual property rights in the TM System and the information contained therein which prohibit copying, sale, modification and re-

manufacture of the TM System and information regarding the TM System and which will be enforced. Nothing contained in this Section 3 is deemed to apply to the Purchaser Data, which is covered in Section 4 below.

4. **Purchaser Data/Use of Opt-Outs.** Principal and Ticketmaster each has rights in the personally identifiable information with respect to persons who actually purchased tickets to Principal's Attractions through Ticketmaster by whatever means, including, but not limited to, by telephone call, outlet or via the Internet, to the extent such information is collected ("Purchaser Data"), subject to the terms hereof. Ticketmaster and Principal each takes seriously its efforts to ensure the privacy rights of ticket purchasers. Principal and Ticketmaster therefore agree to use the Purchaser Data only in compliance with all applicable laws and administrative rulings and in accordance with their own posted privacy policies. Both Ticketmaster and Principal shall each include in any email communications that such party may make based on the Purchaser Data a mechanism to provide the recipient with the right to "opt-out" from receiving further communications from such party and such party shall honor such opt-out preferences. Upon the expiration or termination of this Agreement for any reason, Ticketmaster shall provide a copy of the Purchaser Data to Principal in an electronic format that is readable by Principal.

5. **Approvals.** All materials submitted to either party for approval must be submitted in writing to the location and person(s) as indicated by such party from time to time.

6. **Representations and Warranties.**

(a) Each party represents, warrants and covenants to the other that:

(i) It is duly organized and in good standing under the laws of the State indicated as its state of organization in the first paragraph of this Agreement (to the extent such good standing is applicable to such party) and has the requisite power to enter into and perform this Agreement;

(ii) This Agreement has been duly authorized, executed and delivered on behalf of such party and constitutes the legal, valid, and binding agreement of such party, enforceable in accordance with its terms;

(iii) The entering into and performance of this Agreement will not violate any judgment, order, law, regulation or agreement applicable to such party or any provision of such party's charter or bylaws, or violate the rights of any third party, or result in any breach of, constitute a default under, or result in the creation of, any lien, charge, security interest or other encumbrance upon any assets of such party (or, in the case of Principal, result in any such encumbrance upon any aspect of the TM System), pursuant to any instrument to which such party is a party or by which it or its assets may be bound; and

(iv) It owns or controls the rights granted or licensed to the other party in this Agreement.

(b) Ticketmaster represents, warrants and covenants to Principal that:

(i) Ticketmaster owns and has title to the Hardware (if applicable) and has license rights in and to the Software;

(ii) The Hardware (if any) and Software will perform, and operation of the TM System, including all repair and service responsibilities, will be undertaken in a manner reasonably adequate for the performance of Ticketmaster's obligations under this Agreement and in accordance with any representations contained in Ticketmaster's Response; provided, however, that such warranties do not extend or become applicable with respect to any delays, stoppages or malfunctions which are caused by the acts of any third parties, or which are not under or are caused by events or causes beyond the control of Ticketmaster; and

(iii) Ticketmaster's services, if any, shall be performed by competent personnel of a professional quality consistent with generally accepted industry standards for the performance of such services so that the deliverables shall comply with functional specifications, if any, agreed upon by the parties in writing or provided in Ticketmaster's Response.

(c) Principal represents, warrants and covenants to Ticketmaster that:

(i) SMG is the sole and exclusive operator of the Facility and with the Owner has the sole and exclusive right and authority to enter into this Agreement and to schedule and present the Attractions at the Facility; and

(ii) No agreement or understanding between Principal and any third party (including, without limitation, the promoter or sponsor of any Attraction or the act or event itself) with respect to rights to sell Tickets contains or shall contain any provision inconsistent with any provision, or the purpose or intent, of this Agreement.

(d) The representations and warranties contained in this Section shall be deemed "material" as such term is used in Section 10 below, for all purposes related to this Agreement. ALL IMPLIED WARRANTIES EXISTING BY OPERATION OF LAW, INCLUDING SPECIFICALLY ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND NEGATED BY THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT.

## **7. Disclaimer of Warranty.**

(a) Each party expressly disclaims any warranty that the use of its computer systems (including the TM System) or other online services (collectively, "Systems") will be uninterrupted or error free or that the specifications will meet the other party's requirements. Except for the express warranties and other provisions stated in this Agreement including, without limitation, Ticketmaster's Response, neither party makes any warranty as to its respective Systems hereunder.

(b) Except for the express warranties and other provisions stated in this Agreement including, without limitation, Ticketmaster's Response, each party's Systems are provided to the other party on an "AS-IS" basis without warranties of any kind, either express or implied, including without limitation warranties of merchantability or fitness for a particular purpose or use with respect to the Internet or use of information in connection with any Systems provided in

this Agreement. Each party acknowledges that electronic communications and databases are subject to errors, tampering and break-ins. While each party agrees to take reasonable security precautions to avoid such occurrences, neither party guarantees nor warrants that such events will not take place.

8. **Limitation on Liability.** In no event shall either party be liable to the other for any indirect, consequential, exemplary, incidental, special or punitive damages, including also lost profits, lost savings, lost or destroyed data, lost ticket revenues, lost opportunity costs or any other economic loss, of any type or nature, or for events or circumstances beyond such party's reasonable control, even if such party has been advised of the possibility of such damages; provided, however, that Principal's liability shall not be limited as set forth in this Section 8 with respect to breaches by Principal of Section 5 of the Agreement. Without limiting the provisions of Section 9(e) of this Agreement, neither occasional short term interruptions of service which are not unreasonable under comparable industry standards nor interruptions of service resulting from events or circumstances beyond Ticketmaster's reasonable control shall be cause for any liability or claim against Ticketmaster hereunder, nor shall any such occasion render Ticketmaster in default under this Agreement.

9. **Indemnification.**

(a) Principal shall indemnify Ticketmaster and its parents, subsidiaries, and their officers, directors, employees and agents and their successors and assigns (collectively, for purposes of this Section, "Ticketmaster's Indemnitees") against, and hold Ticketmaster's Indemnitees harmless from, any and all claims, actions, damages, expenses (including court costs and reasonable attorneys' fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against Ticketmaster's Indemnitees occurring as a result of, or in connection with: (i) any Event of Default under this Agreement by Principal or any of its officers, directors, employees and agents (collectively, "Principal's Representatives"); (ii) use of the TM System (including without limitation any customization of Facility Website or the Interface Page (if applicable) and any e-mail campaigns) or possession and use of the Hardware (if any) by Principal or any of Principal's Representatives; (iii) any Attraction held or scheduled to be held at the Facility (including any injuries or deaths occurring at or in connection with any Attraction or the failure of any Attraction to occur or to occur in the manner advertised or promoted) (iv) a claim that Ticketmaster's release of the Purchaser Data to Principal violates any applicable (United States or foreign) law, rule or regulation, including without limitation Canada's Personal Information Protection and Electronic Documents Act; (v) Principal's use of the Purchaser Data; (vi) violations of laws relating to the resale of Tickets; or (vii) any email campaigns or distributions conducted by Ticketmaster on Principal's request or conducted by Principal including, without limitation, email campaigns or distributions in violation of federal, state or other laws applicable to commercial emails; except, in each case, to the extent that any such claims shall relate to Ticketmaster's negligence or willful misconduct with respect thereto.

(b) Ticketmaster shall indemnify SMG (in its own right and as agent for the Owner), the Owner, the Naming Rights Sponsor and their respective parents, subsidiaries, officers, directors, employees and agents and their successors and assigns (collectively, for purposes of this Section, "Principal's Indemnitees") against, and hold Principal's Indemnitees harmless from, any and all claims, actions, damages, expenses (including court costs and reasonable attorneys'

fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against Principal's Indemnitees occurring as a result of, or in connection with: (i) any Event of Default under this Agreement by Ticketmaster or any of its officers, directors, employees and agents (collectively, "Ticketmaster's Representatives"); (ii) any alleged patent, trademark or copyright infringement asserted against Principal's Indemnitees with respect to Principal's use of the TM System, (iii) a claim that Ticketmaster's use of the Purchaser Data as provided herein violates any applicable (United States or foreign) law, rule or regulation, or (iv) Ticketmaster's use of the Purchaser Data; except, in each case, to the extent that any such claim shall relate to Principal's negligence or willful misconduct with respect thereto.

(c) The indemnified party must notify the other party promptly in writing of any claim hereunder, and provide, at such other party's expense, all reasonably necessary assistance, information and authority to allow the other party to control the defense and settlement of such claim.

#### 10. Termination.

(a) This Agreement may be terminated by either party in the event of any material default in or material breach of the terms and conditions of this Agreement by the other party, after the other party has received written notice of default and thirty (30) days (or ten (10) days, in the case of a monetary default) to cure such default (each such occurrence, after the expiration of such cure period, shall be an "Event of Default"); or the filing of any voluntary or involuntary petition against the other party under the bankruptcy or insolvency laws of any applicable jurisdiction, which petition is not dismissed within sixty (60) days of filing, or upon any appointment of a receiver for all or any portion of the other party's business, or any assignment of all or substantially all of the assets of such other party for the benefit of creditors.

(b) This Agreement may be terminated by Ticketmaster in the event any act by Principal threatens with reasonable certainty to cause any infringement of any Ticketmaster (or Ticketmaster licensor) intellectual property or other property right, including without limitation, any copyright, license right or trade secret right, and Principal fails to refrain from so acting within ten (10) business days' written notice from Ticketmaster.

(c) Upon the effective date of any termination or expiration of this Agreement, provisions regarding ownership of intellectual property rights, representations and warranties, confidentiality, indemnification, limitation of liability, non-solicitation, jurisdiction and venue shall remain in full force and effect; each party shall immediately cease the use of the other party's Intellectual Property; and each party shall return, or at the other party's request, destroy all copies of Confidential Information, and all other property belonging to and/or received from the other party.

#### 11. Confidential Information.

(a) The parties acknowledge that by reason of their relationship hereunder, they may from time to time disclose information regarding their business, products, software technology, Intellectual Property and other information (including without limitation the Proprietary Information) that is confidential and of substantial value to the other party, which value would be

impaired if such information were disclosed to third parties ("Confidential Information"). The provisions of this Agreement shall be deemed to be Confidential Information.

(b) Confidential Information shall not include information that (i) is or becomes generally available to the public other than as a result of the breach of the confidentiality obligations in this Agreement by the receiving party, (ii) is or has been independently acquired or developed by the receiving party without violating any of the confidentiality obligations in this Agreement, (iii) was within the receiving party's possession prior to it being furnished to the receiving party by or on behalf of the disclosing party, (iv) is received from a source other than the disclosing party, or (v) subject to subparagraph (d) below, is required by court order to disclose to such tribunal; provided that, in the case of (iii) and (iv) above, the source of such information was not known by the receiving party to be bound by a confidentiality obligation to the disclosing party or any other party with respect to such information.

(c) Each party agrees that it will keep the Confidential Information strictly confidential and will not use in any way for its own account or the account of any third party, nor disclose to any third party, any Confidential Information revealed to it by the other party without the other party's prior written consent, except to the extent expressly permitted by this Agreement; provided, however, that the receiving party may disclose the Confidential Information, or any portion thereof, to its directors, officers, employees, legal and financial advisors, controlling persons and entities who need to know such information to perform such party's obligations under this Agreement and who agree to treat the Confidential Information in accordance with the confidential obligations in this Agreement. Each party shall use the same degree of care to avoid disclosure or use of the other party's Confidential Information as it employs with respect to its own Confidential Information of like importance and represents that it has adequate procedures to protect the secrecy of such Confidential Information including without limitation the requirement that employees have executed non-disclosure agreements which have the effect of adequately protecting Confidential Information.

(d) In the event that either party receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena, document request, notice of deposition or other legal proceeding, such party agrees to notify the other pursuant to Section 19 below, within forty-eight (48) hours after receipt of such legal document, and such party agrees to cooperate with the other in any attempt to obtain a protective order.

(e) As provided in Section 18.1 of the County's RFP, the parties acknowledge that (i) the Owner is subject to the Freedom of Information Law (New York State Public Officers Law, Sections 84-90) (as the same may be amended or replaced, collectively, the "NY FOIA") and (ii) the obligations of Principal under this Section 11 are in all respects subordinate to the requirements of the NY FOIA.

12. **Governing Law.** This Agreement shall be interpreted and governed by the laws of the State of New York, without reference to conflict of laws principles.

13. **Waiver of Jury Trial.** In the event the parties are required for any reason to submit any dispute hereunder to trial, the parties expressly agree to waive the right to a jury trial, because the parties hereto, all of whom are represented by counsel, believe that the complex commercial and

professional aspects of their dealing with one another make a jury determination neither desirable nor appropriate.

14. **Modification.** No modification to this Agreement, nor any waiver of any rights, shall be effective unless assented to in writing by the party to be charged and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default. A party's delay in enforcing its rights hereunder shall not be construed as a waiver of such rights or remedies.

15. **Assignment.** Without the prior written consent of Ticketmaster, Principal shall not (i) directly or indirectly assign, transfer, pledge or hypothecate its rights or obligations in this Agreement or any interest therein; or (ii) permit the Hardware (if any) or any part thereof to be used, or access to the Software or any part thereof to be had, by anyone other than Principal or Principal's authorized employees; provided, however, that the foregoing shall not preclude (A) SMG assigning its rights and obligations hereunder to a successor management company selected by the Owner in connection with the expiration or termination of SMG's management agreement at the Facility or (B) an assignment of right and obligations hereunder by SMG to any parent, subsidiary, affiliate or successor in interest (including, without limitation, a successor by virtue of an acquisition) that is not an entity whose primary business is the sale of ticket or ticketing software or a competitor of Ticketmaster, in which case no such consent shall be required. Any such assignment pursuant to clause (B) above shall not relieve SMG of any of its obligations hereunder. Without the prior written consent of Principal, Ticketmaster shall not assign or transfer its rights or obligations in this Agreement or any interest therein, except in the event of an assignment by Ticketmaster to any parent, subsidiary, affiliate or successor-in-interest (including, without limitation, a successor by virtue of an acquisition) that is not an entity whose primary business is the management of public assembly facilities or a competitor of SMG, in which event no such consent shall be required. Any assignment, transfer, pledge or hypothecation for which consent is required hereby and which is made without such consent shall be void. In the event Owner assigns this Agreement pursuant to this Section, Principal shall, at Ticketmaster's election, either (1) remit the outstanding balance of any Signing Bonus to Ticketmaster or (2) require in writing that Owner's permitted assignee expressly agrees to assume this Agreement, including responsibility for the return of any unpaid amount of any Signing Bonus to Ticketmaster in the event the outstanding amount of the Signing Bonus is not fully earned by Principal or such assignee and fully recouped by Ticketmaster during the term of this Agreement.

16. **Relationship of the Parties.** Each party is an independent contractor and not an agent or partner of, or joint-venturer with, the other party for any purpose other than as set forth in this Agreement (e.g., Ticketmaster is the agent of Principal with respect to ticket sales and distribution). Neither party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

17. **Delays.** Neither party shall be liable or deemed in default, and no Event of Default shall be deemed to have occurred, as a result of any delay or failure in performance of this Agreement resulting directly or indirectly from any cause completely, solely and exclusively beyond the control of that party, but only for so long as such delay shall continue to prevent performance.



18. **Severability.** If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect.

19. **Notices.** Any notices required to be given under this Agreement must be sent to each party, in writing, at the address set forth immediately below the signature line hereto or at such address as may be provided by each party in writing from time to time, by certified or registered mail, return receipt requested, by an overnight courier or by e-mail. Notices will be deemed effective the day of receipt if successfully sent by e-mail (and followed by a copy of such email being sent by overnight courier), the day following sending if sent by overnight courier or five days after sending if sent by certified or registered mail.

20. **Binding Agreement/Counterparts.** The terms, conditions, provisions and undertakings of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and permitted assigns; provided, however, that this Agreement shall not be binding until executed by each of the parties. This Agreement may be executed in multiple counterparts which when taken together constitute a single instrument.

21. **Legal Review.** Each of the parties has had the opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties. The parties expressly agree that the construction and interpretation of this Agreement shall not be strictly construed against the drafter.

22. **Attorneys' Fees.** In addition to any other rights hereunder, the substantially prevailing party, as a court of competent jurisdiction may determine, in any claim or other dispute which relates to this Agreement, regardless of whether such claim or other dispute arises from a breach of contract, tort, violation of a statute or other cause of action, shall have the right to recover and collect from the other party its reasonable costs and expenses incurred in connection therewith, including, without limitation, its reasonable attorneys' fees. If a party substantially prevails on some aspects of such claim or dispute but not others, the court may apportion any award of costs or attorneys' fees in such manner as it deems equitable.

**EXHIBIT B**

**HARDWARE**

A. Facility Box Office Hardware

<u>Quantity</u>	<u>Description</u>	<u>Value</u>
25	Box office sets	\$
25	Boca ticket printers	\$
1	Router	\$

B. Ticketmaster AccessManager Hardware

<u>Quantity</u>	<u>Description</u>	<u>Value</u>
35	Scanners	\$
1	Network Server	\$
	Annual License Fee	Waived
	Annual Maintenance Fee	Waived

**EXHIBIT C**  
**PRINCIPAL'S SPONSORSHIP LIST**

**General Sponsors:**

1. Freihofer's
2. Price Chopper
3. Trans World Entertainment Corporation

**Naming Rights Sponsor:**

1. Capital Newspapers Division of The Hearst Corporation

**Pouring Rights Sponsor:**

1. Pepsi Bottling Group

**EXHIBIT D**

**TICKETMASTER'S RESPONSE TO THE RFP**