

## TICKETING SERVICES AGREEMENT

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”), acting by and through its City Manager, pursuant to Ordinance No. 2019 – \_\_\_ – \_\_\_ – \_\_\_, passed and approved on the \_\_\_ day of \_\_\_, 2019, and \_\_\_\_\_ (“Contractor”), by and through its \_\_\_\_\_, both of which may be referred to collectively as the “Parties.”

**WHEREAS**, City issued a Request for Proposals (“RFP”) for Automated Ticket System in January 2019, a copy of which is attached and incorporated as Exhibit B, and Contractor submitted a proposal (“Proposal”), a copy of which is attached and incorporated as Exhibit A.

**NOW THEREFORE**, the Parties agree, and by the execution of this Agreement are bound, to the mutual obligations contained and to the performance and accomplishment of the tasks described.

### I. DEFINITIONS

1.1 “AccessManager” means Contractor’s software which interfaces with the TM System to facilitate reporting systems and to provide enhanced services to the patron admissions process through the use of bar codes or other media printed on Tickets.

1.2 “Account” is defined in Section 13.1.

1.3 “Account Balance” is defined in Section 13.2.

“AccountManager” means the Contractor software and hosting services that allow Subscribers to manage their Season/Contract Ticket accounts.

1.4 “Advertising Allowance” means an annual disbursement of funds from the Contractor to the City to advertise and promote Contractor as the source for advance Tickets to Attractions at the Facility.

1.5 “Advertising Restrictions” is defined in Section 11.6.3.

1.6 “Agreement Year” is defined in Section 2.4.

1.7 “Archtics” means the Contractor software that delivers extensive season, miniplan and single ticket functionality in conjunction with Contractor’s host system and distribution channels for inventory control by Contractor and City.

1.8 “Attraction” means concerts, sports, entertainment and family shows, artistic presentations, and other events to be held at the Facilities, excluding (i) (upon the consent of Contractor) certain local, civic and charitable events (i.e. high school sports, cheerleading competitions, graduations, proms, fundraising events such as galas and benefits, and scholarship events) for which only hard Tickets are privately marketed and sold directly by the event

promoter or organizer directly to the event's patrons; (ii) events with event day only ticket sales (no presale); and (iii) Men's and Women's National Collegiate Athletic Association (NCAA) events. Under no circumstances do any of these exclusions allow for the sale or distribution of any tickets through a third-party or competing ticketing company. Additionally, the San Antonio Home and Garden Show shall be excluded from the definition of Attraction and the event will be permitted to handle its own ticketing on its website.

1.9 "Attraction Detail Page" means a webpage on Contractor's Website where users begin their search for Tickets to an Attraction by requesting a quantity and section and that contains detailed information about a specific Attraction, including such information as the time and date of the Attraction, artist information, and pricing details.

1.10 "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 City Taxes and Contractor Taxes as further described below. To the extent such taxes relate to the funds paid or owed to City under this Agreement such portion of Attraction Taxes may also be referred to as City Taxes, and to the extent such taxes relate to fees or charges collected and retained by Contractor under this Agreement, such portion of Attraction Taxes may also be referred to as Contractor Taxes.

1.11 "Broadway Across America Attractions" mean events produced or promoted by Broadway Across America, which terms shall be covered under a separate ticketing services agreement between Contractor and Broadway Across America.

1.12 "Cancelled Attraction" is defined in Section 13.2.

1.13 "Chargebacks" mean the amounts that the merchant bank is charged 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.).

1.14 "City" is defined in the preamble of this Agreement and includes its successors and assigns.

1.15 "City Council" is defined in Section 2.2.

1.16 "City Placements" means City branding, promotions regarding Attractions, and logos of City's sponsors.

1.17 "City Website" means an internet website(s) owned, operated and maintained by City, which shall contain links to the Interface Page.

1.18 "Confidential Information" means information regarding business, products, software technology, Intellectual Property and other 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.

1.19 “Confirmation Page” means a webpage on Contractor’s Website that is shown once a Ticket buyer has completed a Ticket purchase via Internet Sales and contains a confirmation number for the Ticket purchase.

1.20 “Contractor” is defined in the preamble of this Agreement and includes its successors.

1.21 “Contractor’s System” means the Hardware, Software, Contractor’s Website, related procedures and personnel, and repair and maintenance services established and maintained by Contractor and its affiliates for the purpose of selling, distributing, auditing and controlling the sale of Tickets for Attractions, including, without limitation, by Internet Sales, and the processing of transactions through the Software.

1.22 “Contractor’s Website” means any internet websites owned, operated and maintained by Contractor, 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.

1.23 “Convenience Charges” mean the per Ticket amounts or percentages Contractor charges consumers for the convenience of purchasing Tickets through Contractor’s System under this Agreement.

1.24 “Custom Pages” mean Attraction Detail Pages and Confirmation Pages for Attractions.

1.25 “Documents” or “Documentation” mean all documents, papers, and records, and other evidence pertaining to the Services rendered by Contractor for City pursuant to the terms of this Agreement.

1.26 “Director” means the Executive Director of City’s Convention and Sports Facilities Department.

1.27 “Electronic Payment” shall mean credit cards, debit cards, gift cards or any other electronic methods of payment.

1.28 “Electronic Payment Fees” shall mean payment authorization and processing fees with respect to Tickets purchased using Electronic Payment.

1.29 “Face Value” means the face price of a Ticket as determined by City, which shall be inclusive of all applicable Attraction Taxes and facility, parking and similar fees.

1.30 “Facility/Facilities” mean the Henry B. Gonzalez Convention Center, Alamodome, Lila Cockrell Theatre, and Carver Community Cultural Center (including the Jo Long Theatre for the Performing Arts and Little Carver Civic Center event spaces therein), all located in San

Antonio, Texas, and any additional facilities at which City schedules or presents Attractions as mutually agreed upon by City and Contractor from time to time, which are owned, controlled, operated or managed by City or where City otherwise controls the rights or has the authority to sell Tickets to Attractions.

1.31 “Facility Box Offices” mean the Facilities Ticket sales locations that are operated by City and located at the Facilities.

1.32 “Feld Attractions” mean events produced or promoted by Feld Entertainment, Inc., which terms shall be covered under a separate ticketing services agreement between Contractor and Feld Entertainment, Inc.

1.33 “Group Sales” means sales of Tickets by City to a group consisting of at least fifteen (15) people for use by the group members to attend an Attraction as a group. In no event shall Group Sales consist of the sale of Tickets to individuals to attend an Attraction separately or for individuals to purchase Tickets with the intent to resell such Tickets.

1.34 “Hardware” means all of that certain computer hardware, communications equipment, terminals and connections (including replacements thereof) listed with particularity in Exhibit D or otherwise supplied by Contractor to City at any time during the Term of this Agreement, but excluding (i) any computer hardware, communications equipment, terminals and connections purchased by City to provide the connectivity to and interfacing with Contractor’s System required under this Agreement, and (ii) any computer hardware, communications equipment, terminals and connections purchased by City from Contractor.

1.35 “Hosted Platform” means the equipment, operating system, hardware and software specifications, and networking environment on and with which Contractor’s System and Software are hosted by Contractor, and additions or replacements to the foregoing which may be implemented by Contractor in accordance with the terms of this Agreement.

1.36 “House Seats” means Tickets provided by City (i) to the Attraction's promoter, performing act or event, or their managers or agents (i.e. band holds) (ii) for distribution through legitimate fan clubs in accordance with current guidelines (i.e. fan club holds), or (iii) for legitimate promotional purposes (e.g. radio station promotions), provided that House Seats Tickets shall not be distributed to the general public.

1.37 “Initial Term” is defined in Section 2.1.

1.38 “Inside Charges” mean the amounts Contractor charges the City to sell, issue and process Tickets utilizing Contractor’s System under this Agreement, if applicable.

1.39 “Intellectual Property” means trademarks, service marks and trade names worldwide.

1.40 “Interface Page” means a co-branded web page interface for use with Software transactions designed, created and maintained by Contractor to have, in general, the look and feel

of City's Website and hosted on Contractor's web servers.

1.41 "Internal Ticketing Forwarding" means the ability of City 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.

1.42 "Internet Sales" means all sales of Tickets over the Internet, or via mobile or smart phone application.

1.43 "License" means a non-exclusive, non-transferable license to use Contractor's Hardware and Software.

1.44 "Local Account Manager" means Contractor's representative, located in San Antonio, who is empowered by Contractor to address any and all issues related to Contractor performance under this Agreement.

1.45 "On-Sale Date" means the scheduled on-sale date of Tickets for each Attraction.

1.46 "Processing Fees" means the per order amounts Contractor charges consumers for purchasing Tickets via Internet Sales through Contractor's System.

1.47 "Processor" means Contractor's credit card processor.

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1.48 "Purchaser Data" means personally identifiable information with respect to persons who actually purchased Tickets to Attractions through Contractor's System.

1.49 "Renewal Term" is defined in Section 2.2.

1.50 "Retention Period" means a period of four (4) years from the date of Termination of this Agreement.

1.51 "Sale" and "Sell" and any derivations thereof in this Agreement mean any distribution for consideration, by any means or method (including without limitation, on the Internet) and shall include re-sales.

1.52 "Season/Contract Tickets" mean specifically designated Tickets sold directly by City on an annual basis across all Attractions or across all of a category of Attractions (i.e., luxury suites, club level seats and season tickets).

1.53 "Sellable Capacity" means the admission capacity of a Facility for any particular Attraction.

1.54 "Services" is defined in Article IV.

1.55 “Set-Up Information” means all necessary information with respect to the Attraction, including, without limitation, seating layout of the Facility, Ticket structure, discounts permissible, Attraction Taxes, any information necessary to calculate Attraction Taxes, if applicable, Ticket header information, 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.

1.56 “Software” means Contractor’s ticketing system software known and marketed as Ticketmaster Classic, AccessManager, TM Charge, TM+, and the additional ticket sales software and Internet-based premium Contractor services that include Archtics, Presence, Tm1 Engage, Hosted Platform and AccountManager, and any new versions thereof or any other deliverables for Contractor’s System access provided to City by Contractor during the Term.

1.58 “Subscribers” means any person who holds an account on City’s AccountManager.

1.59 “Termination” or “Terminate” is defined in Section 15.1.

1.60 “Ticket” means a printed, electronic or other type of evidence of the right to occupy space at or to enter or attend an Attraction even if not evidenced by any physical manifestation of such right, such as a “smart card.”

1.61 “Ticket Forwarding” means the ability of Subscribers to forward Tickets purchased through AccountManager to a recipient with a valid email address.

1.62 “Ticket Printing” means the ability of Subscribers to download their Season/Contract Tickets from their AccountMananger account and print such Season/Contract Tickets from their personal computers.

1.63 “Ticket Receipts” means the Face Value of a Ticket sold by Contractor, plus any Convenience Charges and Processing Fees retained by City, less any applicable Inside Charges, Electronic Payment Fees, or Contractor Taxes, and less any City Taxes if Contractor is required to remit City Taxes to any taxing authority.

1.64 “TM Charge” means the electronic payment processing system within Contractor’s System that utilizes the global banking association networks to authorize electronic payment for purchases of Tickets to Attractions sold by City from Facility Box Offices as permitted under this Agreement.

## **II. TERM**

2.1 Initial Term. The Initial Term of this Agreement is approximately five (5) years, commencing October 1, 2019, and ending September 30, 2024 (“Initial Term”).

2.2 Renewal Term. At the end of the Initial Term, the Parties may mutually agree to

renew this Agreement, upon terms mutually agreed upon by the Parties, for an additional five (5) year period (“Renewal Term”), commencing on October 1, 2024, and terminating on September 30, 2029. So long as the financial terms are not less than such terms as are in effect at the end of the Initial Term), the Director may execute such Renewal; otherwise, City Council approval is required. This Agreement shall be deemed to continue in full force and effect during the Renewal Term.

2.3 Agreement Year. Each twelve (12) month period commencing on October 1 and continuing through the following September 30 shall be an “Agreement Year,” as such term is used in this Agreement. The first Agreement Year shall begin upon the effective date of this Agreement and continue through September 30, 2020.

### **III. RIGHTS GRANTED**

3.1 Rights Granted. City grants to Contractor, and Contractor accepts from City, the right during the Term of this Agreement, to be the exclusive seller, as City’s agent, of all Tickets for the Sellable Capacity for every Attraction via any and all means and methods, including Internet and Telephone Sales, computer, Outlets, television, clubs, auctions, VIP packages, presales, up sells, or by any other means of distribution, whether existing now or at any time in the future.

3.2 City Sales. Subject to the terms of this section, City retains the right to: (1) sell single Tickets from the Facility Box Offices to persons physically present at the Facility Box Offices; (2) sell Season/Contract Tickets; (3) conduct Group Sales of Tickets; and (4) provide a reasonable number of House Seats for any Attraction. Additionally, notwithstanding any terms herein to the contrary, third party promoters presenting an event at the Henry B. Gonzalez Convention Center may elect to sell Tickets to such event through an existing agreement with Contractor, in which case the definition of Attraction hereunder shall be deemed to exclude such event.

3.3 City Phone Room. City reserves the right to operate its own phone room for the sale of Tickets for Group Sales and Season/Contract Tickets.

3.4 Third Party Systems or Services. Except in connection with the sale of tickets to NCAA events or any other events excluded from the definition of Attraction hereunder, City shall not directly or indirectly sponsor, promote, advertise, authorize or permit the use of any third party that promotes, engages in or facilitates the sale, resale or issuance of Tickets.

3.5 Minimum Sales. It is agreed and understood that neither Contractor nor City guarantees or will guarantee that any minimum or fixed number of Tickets will be sold through Contractor’s System for any Attraction.

3.6 City Acknowledgement. City acknowledges that Contractor may act as the agent of certain third parties that may be a direct or indirect competitor of City. City also acknowledges that during the Term of this Agreement, Contractor may enter into new business relationships with other third parties, including those in the entertainment and sports industry, such as

performers who perform at the Facilities, for a variety of services. City further acknowledges that any such sales or services or solicitations to provide such sales or services as contemplated under this section do not compete with City or conflict with this Agreement or Contractor' rights, duties or obligations under this Agreement.

3.7 Final Authority. City shall, through its designated representative, be the final authority with regard to all aspects of the control, management and performance provided for under this Agreement and modifications to practices, policies or guidelines shall be approved by City prior to implementation.

#### IV. SCOPE OF SERVICES

4.1 Scope of Services. Contractor shall provide a full-service ticketing system to sell Tickets for Attractions at the Facilities including services, equipment, technical system support, and on site equipment maintenance as needed and provided for in this Agreement ("Services"). Contractor shall ensure that staffing and Services provided are of the highest quality available. Contractor shall consistently inform City of Services that may enhance the Facilities operations through identification of viable additional Services over the Term of the Agreement.

4.2 Hardware and Software. During the term of this Agreement, Contractor shall provide to the City the Hardware and online access to the Software. The Hardware and Software shall at all times be and remain the sole and exclusive property of Contractor (except Hardware purchased by City), and City shall have no right, title or interest in such Hardware and Software, except as a licensed user.

##### 4.2.1

New Versions of Software: Contractor may, from time to time, upgrade or enhance the current version of the Software, and, if it does so, it will issue copies of the upgraded or enhanced versions of the Software to City for no additional fee. All new versions of Software introduced by Contractor shall, at a minimum, maintain the same levels of functionalities as the prior Software and City shall not be charged for the incorporation of such functionalities into the new Software.

New Functionalities or New Hardware: Contractor reserves the right to levy additional charges for new functionalities added to the Software that are not included in new versions of such Software or for upgraded Hardware requested by City. 4.2.2 Surveys. Tm1 Engage will incorporate the functionality for surveys no later than January 1, 2020.

Start-up Equipment and Back End. Contractor shall provide all of that certain start-up equipment set forth in Exhibit D.

4.3 Internet Sales Services. Contractor agrees that the provision of Internet Sales Services and all other existing sales services currently being offered or non-existent to be available in the future, are required Services it shall provide under the terms of this Agreement. Contractor acknowledges that **Exhibit C** contains substantially the Internet Sales Services, as of the date of execution of this Agreement. Contractor agrees that if its overall Internet Sales Services, should materially decline in terms of hours of operation, customer service capabilities,



or Contractor's Website capabilities, during the Term of this Agreement from that indicated in Exhibit C, Contractor will use good faith efforts to return the Internet Sales Services, to substantially the overall quality as of the date of the execution of this Agreement, in a reasonable amount of time, as determined mutually between Contractor and the City.

4.4 Marketing and Advertising Services. Contractor agrees that the provision of Marketing and Advertising Services are important Services to City under this Agreement. Contractor acknowledges that Exhibit C contains substantially the Marketing and Advertising Services, as of the date of execution of this Agreement, that are offered by Contractor from time to time to City. Contractor agrees to provide City the Marketing and Advertising Services indicated in Exhibit C and to use good faith efforts to make various other types of Marketing and Advertising Services indicated in Exhibit C available to City.

4.5 Local Account Manager. Contractor shall appoint and maintain a Local Account Manager. The Local Account Manager shall be available to attend pre-sale and other meetings with the Facilities' staff and/or clients on an as-needed basis. Contractor shall provide and maintain with City all current contact information for the Local Account Manager, including address, telephone, fax, and email address. Additionally, Contractor shall provide and maintain with City emergency contact information for the Local Account Manager or duly authorized representative(s), either of which shall be able to be contacted at all times.

4.6 Contractor shall provide certain Hardware ("Lila Cockrell Theatre BAA Hardware") valued at up to Ten Thousand Dollars (\$10,000) for TM System functionality at permanent box office at the Lila Cockrell Theatre for Broadway Across America Attractions at no cost to City. All such Lila Cockrell Theatre BAA Hardware shall be installed no later than June 1, 2023, and once installed, shall be deemed "Hardware" for all purposes hereunder.

4.7 .

## V. COMPENSATION

5.1 Contractor Charges. In consideration for Contractor's services provided under this Agreement, Contractor shall be entitled to assess and receive charges and fees from gross Ticket proceeds collected in the amounts sets forth in Exhibit C, all of which shall be assessed against customers ("Convenience Charges", "Processing Fees" and additional fees, if applicable), except for Inside Charges, which shall be assessed against City. The amount of Inside Charges owed by City to Contractor shall be deducted from gross Ticket proceeds in the manner provided in this Agreement. Notwithstanding the above, charges and fees with respect to any Feld Attractions at the Facilities shall be determined pursuant to aseparate national agreement between Contractor and Feld Entertainment, Inc., and Convenience Charges and Processing Fees shall not be charged to consumers purchasing such Tickets via Facility Box Offices.

5.2 City Approval. Contractor Charges in the amounts set forth in Exhibit C shall be competitive as compared to those offered at comparable operations, and approved by Director at award of this Agreement.

5.3 The Parties agree that Concerts shall include only Attractions involving predominantly musical forms of artistic expression and comedy, and that most other forms of artistic expression, including dance, drama, theatrical, spoken word, visual, etc. shall be considered as All Other Attractions.

5.4 The Parties agree that Customer Charges by City may need to be temporarily amended by City occasionally for individual Attractions. City shall submit written requests for changes from the Alamodome General Manager to Contractor prior to any such Attractions and such temporary amendments shall be subject to Contractor's written consent, which shall not be unreasonably withheld. Contractor shall repond to any such written requests within 48 hours of receipt.

#### Compensation to City

5.5 Contractor shall provide City a one-time sign-on bonus in the amount of \$250,000 ("Signing Bonus"), not later than October 30, 2019 or within 30 days of the full execution of this Agreement (whichever is later), to be used by City, in its discretion. Contractor's agreement to provide the Signing Bonus to City is based upon Contractor's exclusive rights to sell Tickets for Attractions during the Initial Term and is contingent upon and subject to certain terms as described below. In the event that the Agreement terminates before September 30, 2024, then City shall return to Contractor, within fifteen (15) days of such termination or Attractions Termination, an amount equal to \$4,166.67 for each full month of the Initial Term remaining following such date, unless such termination is due to an event of default by Contractor or Force Majeure under Article XXXIII. Any return of any portion of the Signing Bonus by City shall be by wire transfer or certified check.

5.6 Contractor shall provide City a one-time payment in the amount of \$30,000 ("Alamodome Box Office Shade Structure Allowance"), no later than October 30, 2019 or within 30 days of the full execution of this Agreement (whichever is later), to be used by City solely for City's purchase/installation of a permanent shade structure at the Alamodome remote box office locations beyond the access points. Contractor's agreement to provide the Alamodome Box Office Shade Structure Allowance to City is based upon Contractor's exclusive rights to sell Tickets for Attractions during the Initial Term and is contingent upon and subject to certain terms as described below. In the event the permanent shade structure at the intended Alamodome location referenced above has not been purchased and fully installed by 12 months from the date of City's Alamodome Box Office Shade Structure Allowance receipt, City shall return to Contractor, within fifteen (15) days, the entire \$30,000 amount of the Alamodome Box Office Shade Structure Allowance. In the event that the Agreement terminates before September 30, 2024 for any reason, and provided that the City has not previously returned to Contractor the entire \$30,000 amount of the Alamodome Box Office Shade Structure Allowance in accordance with the immediately preceeding sentence, then City shall return to Contractor, within fifteen (15) days of such termination, an amount equal to \$500.00 for each full month of the Initial Term remaining following such date. Any return of any portion of the Alamodome Box Office Shade Structure Allowance by City shall be by wire transfer or certified check.

5.7 Contractor shall provide that certain Lila Cockrell Theatre BAA Hardware valued in

the amount of up to \$10,000 in accordance with the terms and conditions set forth in Section 4.7 of this Agreement above.

5.8 Marketing and Discretionary Use Allowance. Contractor shall pay to City \$50,000 annually (“Marketing and Discretionary Use Allowance”), less any deductions applied by Contractor at the City’s direction (i) for upgrades to technology requested by City that are not otherwise required under this Agreement, (ii) as a credit against the purchase of certain LiveAnalytics, Blue Digital, Pricemaster, or other similar Contractor services; related to such services shall be borne directly by City without application of the Marketing and Discretionary Use Allowance and/or (iii) towards the payment of any license, maintenance or other fees owing to Contractor under this Agreement (including, but not limited to, for example, any applicable Tm1 Engagement annual subscription fees in excess of the Base Plan amount waived hereunder). The annual balance of the Marketing and Discretionary Use Allowance, after such deductions, shall be paid to City no later than October 31 of each Agreement Year, beginning with October 31, 2019 or within 30 days of contract execution, whichever is later, and the entire amount of such paid balance may be used at City’s sole discretion. City may place advertisements using the Marketing and Discretionary Use Allowance, provided, any such advertisements to be placed using the Marketing and Discretionary Use Allowance shall include the Contractor’s Website address, Contractor’s logo, or other representation as solely designated by Contractor, and shall be in such media (i.e., City, Contractor or third party owned) as may be agreed to by both Parties. Proofs of each such advertisement must be furnished by City to Contractor for approval prior to its publication. However, once a proof has been approved, subsequent ads using the same manner of advertising will require verbal or email approval only. City shall furnish Contractor with copies of the actual invoices covering the costs expended by City in placing such advertisements.

5.9 Arts and Entertainment Enhancement Fund. Contractor shall provide City \$50,000 annually for the Arts and Entertainment Enhancement Fund. Such fund shall be used for investing and enhancing a wide range of entertainment opportunities. City may use such funds in any manner, in its sole discretion. Contractor shall pay City such annual amount no later than October 31, 2019 or within 30 days of the full execution of this Agreement (whichever is later) for the initial Agreement Year, and October 31 of each Agreement Year thereafter.

5.10 As provided in Exhibits A and G attached hereto, Contractor agrees to waive the annual license payments for Contractor’s Archtics and Presence platform and Base Plan Tm1 Engagement, or prevailing communication module, for the term of this Agreement. For clarity, the foregoing waiver of Contractor’s annual Archtics license and maintenance fees shall include six (6) sybase user licenses, and an annual \$1,100 per connection fee shall be charged for each additional connection requested or otherwise required by City.

## **VI. CONTRACTOR’S SYSTEM**

### **6.1 Hardware and Software.**

6.1.1 License. Contractor grants City a License in exchange for the fees set forth in this Agreement.

6.1.2 Condition. Contractor shall ensure that all Hardware and Software operates in a good, working manner for the term of this Agreement in accordance with the maintenance and support terms set forth in Section 6.3 below.

6.1.3 Use. The Hardware and Software and all related materials may only be used by City in connection with the Attractions and only with systems used, operated and owned by Contractor, and only for the purposes stated in this Agreement, and may not be utilized by or in connection with services, software, hardware or systems provided or supplied by any third party. City shall use the Hardware and Software in a careful and proper manner and shall comply 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 and Software including, but not limited to, federal, state or other laws applicable to commercial emails. City may make a single copy of Archtics only to be used for archival or backup purposes; **COPYING FOR ANY OTHER PURPOSE IS PROHIBITED.** Except as otherwise provided in the immediately preceding sentence, City hereby agrees: (i) not to permit copying or reproduction of the Hardware or 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 from or of, decompile or reverse engineer the 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 of or otherwise make available the 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 Contractor network, or otherwise attempt to circumvent or navigate outside of the borders of such Software servers in any manner whatsoever; and (vi) 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.).

6.1.4 Passwords. City agrees that use of Contractor’s System by City shall be restricted to a reasonable number of City’s personnel having passwords in the event that Contractor assigns such passwords. Such passwords shall not be transferable without the written permission of Contractor, which permission shall not be unreasonably delayed or withheld. Upon Contractor’s reasonable request, City (i) shall identify, as the case may be, the users (by name, position and site address), who use or view Contractor’s System or from where Contractor’s System is used, and (ii) shall provide to Contractor access to any database which records access to Contractor’s System.

6.1.5 TM Charge.

(i) Use and Operation of TM Charge. Contractor shall transmit data relating to Ticket sales made by City using TM Charge to Contractor’s credit card processor, provided Contractor has received City’s merchant number(s) and other necessary information for Contractor to use for the transmission of sales data. City shall be responsible for promptly

notifying Contractor and Processor, if applicable, of any changes to the information provided pursuant to this Section. Processor will then transmit such data to the applicable credit card company for payment to City, subject to City having entered into the applicable City Processor Agreements (as further described below). Contractor shall use its best efforts to ensure the accuracy and timeliness of information transferred from the Processor via TM Charge. City 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). Contractor shall provide City with daily transaction reports regarding authorized and settled transactions. City shall review, on a regular basis, all reports provided to City by Contractor. City also agrees that, for operational and monitoring purposes, the Processor may provide Contractor with processing and settlement reports related to sales of Tickets using TM Charge.

(ii) City Sales Using TM Charge. In connection with City's sales of Tickets utilizing electronic payments and authorized via TM Charge using Visa, MasterCard or Discover, Contractor shall deduct the merchant fees in an amount set forth in Exhibit C for transactions processed on a daily basis. Such fees will be paid or deducted from Ticket proceeds prior to such proceeds being remitted to the City on Friday for sales for the preceding week. The fees charged to City for use of TM Charge are subject to automatic increases equal to any actual increases in Contractor's credit card processor fees. City shall also be responsible for any and all other amounts charged to Contractor (if any) by Contractor's credit card processor for processing City's transactions, including, without limitation, downgrades, transaction fees, cross border assessment fees, international service fees, wire fees, pass-through fees, 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. In the event that City desires to process any credit or debit cards other than Visa, MasterCard or Discover utilizing TM Charge, then the fees for such service shall be mutually agreed upon by City and such credit card companies, and City shall enter into its own merchant agreement with such credit card companies. City 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).

City's Website/Interface Page. Beginning on or shortly after the execution of this Agreement, and subject to the completion of the installation of Archtics, Contractor will develop the Interface Page that will enable City's Subscribers to access their account information and conduct "real-time" transactions by linking to the Interface Page from the City's Website. The Interface Page may contain a short, related textual description of AccountManager features and shall contain Contractor's designated wording and graphic depiction thereof, currently "by Contractor."

Group Sales Restrictions. All Group Sales must comply with the definition of Group Sales hereunder. In the event that Contractor determines that a Group Sale is not a valid Group Sale, Contractor shall have the right to assess against City the amount of fees that Contractor would otherwise have been entitled to assess under this Agreement with respect to any such Tickets had they been purchased through Contractor as single Tickets, and not from City as a Group Sale.

Hosted Platform. During the Term, Contractor 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. Contractor 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. Contractor will not be responsible for power at the Facility or City's connectivity to the Internet.

TM+. Contractor shall enable its proprietary, integrated primary and secondary market ticket inventory platform and technology on the Contractor Website, which platform and technology shall enable consumers searching for Tickets to an Attraction to simultaneously view Tickets available for initial sale directly by City pursuant to the Agreement, in addition to Tickets available for resale from other consumers (collectively, "TM+"), in accordance with the terms and conditions set forth on Exhibit F attached hereto. The Parties acknowledge and agree, the terms "TM System" and "Software" as used in the Agreement shall be deemed to incorporate TM+.

Tm1 Engagement. Contractor shall provide City with use of an email permission marketing tool which shall be powered by a third party enterprise-level interactive software and marketing provider, and which shall be integrated with the TM System ("Tm1 Engagement") in accordance with the terms and conditions set forth in Exhibit F attached hereto. The parties acknowledge and agree that "Software" as such term is used in the Agreement shall not be deemed to incorporate tml Engagement, it being understood that tml Engagement is a third party software solution.

Platinum Tickets and VIP Packages: The terms and conditions set forth in Exhibit H attached hereto shall apply to the sale of platinum Tickets and VIP Packages.

6.1.6 Title. City covenants and agrees that the Hardware and Software and any deliverables or work product furnished 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 Contractor, and City shall have no right, title or interest therein or thereto, except as a licensed user thereof, unless purchased by City. City acknowledges and agrees that Contractor has invention rights, copyrights, and other intellectual property rights in Contractor's System and the information contained therein which prohibit copying, sale, modification and re-manufacture of Contractor's System and information regarding Contractor's System and which will be enforced. City agrees that it will, whenever reasonably requested by Contractor, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, agreements, instruments, and documents necessary or desirable, in form satisfactory to Contractor, to protect the rights and ownership of Contractor 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, City will not move the Hardware nor permit such Hardware to be moved without Contractor's prior written consent, which consent shall not be unreasonably withheld, and shall give Contractor prompt written notice of any attachment or other judicial process affecting any item of Hardware. Upon the expiration or Termination of this Agreement, City shall return the Hardware and Software to Contractor in good repair,

condition and working order, ordinary wear and tear resulting from proper use excepted, and any and all licenses and other rights to the Hardware and Software shall terminate with respect to City.

6.1.7 Annual Inventory. On an annual Agreement Year basis, Contractor shall conduct an inventory of Contractor's Hardware and Software in the Facilities and shall provide City with a comprehensive inventory and maintenance report for all Hardware and Software. This report shall include at a minimum an inventory of each individual equipment included as Hardware, as well as make and model, function, location, serial number, general operating condition, in-service date, actual original cost, and estimated repair cost, if any.

6.1.8 Manual. Contractor shall develop and maintain at its cost a master comprehensive written ticketing system operations manual in an online format, which may be used by City Facility staff.

## 6.2 Installation and Setup.

6.2.1 Hardware Installation. Contractor will install the Hardware and provide City with access to the Software. City will provide (i) connectivity and interfacing that satisfies Contractor's minimum system requirements and (ii) unless otherwise agreed to between the Parties, any type of equipment and technology necessary to assist Contractor in completing the installation of the Software and Hardware. City shall be responsible for any costs for any internal wiring or cabling (e.g., electrical, data lines, etc.) necessary for installation, operation or for proper functioning of Contractor's System at the Facilities, except for any Hardware to Hardware connections (cabling from switch to router or PC to Ethernet wall jack) customarily the responsibility of Contractor. The cost of all line connections between the central computer facility and the Facilities and all monthly line costs with respect to the operation of Contractor's System between the Facilities and the central computer facility shall be borne solely by Contractor.

6.2.2 Facilities Modifications. Any modifications to the Facilities, including the placement or relocation of telecommunications lines, must be approved in advance by Director and coordinated with City. Such modifications may be subject to charges by City.

6.2.3 Attraction Set-Up. In order to effectively utilize Contractor's distribution technologies, within a reasonable time before (but in no event less than the time period described below) the On-Sale Date, City shall furnish Contractor with 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 Contractor's System and such accessible seating Tickets shall not be released into the general pool of Tickets that are available for sale until forty-eight (48) hours before an Attraction. City must provide the Set-Up Information to Contractor at least five (5) business days prior to the On-Sale Date for new Attractions that do not utilize seating charts then existing in Contractor's System and at least three (3) business days prior to the On-Sale Date for new Attractions that utilize seating charts then existing in Contractor's System. Contractor shall have no responsibility for any and all liabilities, claims, expenses, and causes of action resulting from the inaccuracy of any Set-Up Information

furnished by City pursuant hereto.

6.2.4 Facility Box Office Will-Call Services. At all times during the Term of this Agreement, City shall maintain designated Facility Box Office location(s) for the retrieval of Tickets purchased through Internet Sales. The retrieval location shall be open during the normal hours of operation of the Facility Box Offices. City shall notify Contractor of City's will-call capabilities and will-call Facility Box Office hours. City shall verify the identity of each person retrieving Tickets at will-call via valid photo identification (government-issued) and the credit card used in the Ticket sales transaction, if applicable. City shall not release Tickets to any customer whose identity has not been so verified.

6.2.5 Supplies. Contractor shall be responsible for maintaining adequate ticket stock at the Facilities, City shall be responsible for providing consumables necessary for the operation of the Hardware and Software at the Facilities, including the toner, ink and drums.

6.2.6 Ticket Stock. City shall be responsible for the security of Ticket stock in its possession, and the risk of loss of Ticket stock shall shift to City upon the delivery thereof to City or City's authorized representative, agent or employee.

### 6.3 Maintenance and Support.

6.3.1 Hardware and Software Maintenance and Support. Contractor shall provide ordinary and routine maintenance and repair services and adequate support of the Hardware and Software at the Facilities to meet the reasonably anticipated service needs of City from time to time at no charge, provided that such maintenance, repair or support is not necessitated by the negligence or willful misconduct of City, its employees, agents or representatives. Support services will be provided, on a return call basis, during Contractor's normal business hours by personnel qualified to answer telephone inquiries by City 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. Support will be provided for off-hour critical system emergencies at no cost to City.

6.3.2 Training of City's Employees. City shall staff the Facility Box Offices with its employees for the proper operation of Contractor's System for Ticket sales made through the Facilities. Contractor shall train, at its expense, City's employees who shall be reasonably necessary for the initial staffing of the Facility Box Offices and for initial operation of Contractor's System for single Ticket sales at the Facilities. Contractor shall also provide additional training at its cost to other employees of City to the extent such training is necessary as a consequence of changes initiated by Contractor or changes in Contractor's method of operation. Additionally, at the request of the City, Contractor shall conduct a minimum of one (1) eight-hour on-site training session per Agreement Year at Contractor's cost for Facility staff and others in any and all aspects of operating Contractor's System, including any changes to processes, procedures and protocols.

6.3.3 Notification by City. In the event of any breakdown or malfunction in the operation of any of the Hardware or Software, or difficulties encountered in connection with



access to any of the Software, City agrees to promptly notify Contractor of any such breakdown, malfunction or difficulty to assist Contractor in performing its obligations under this Agreement.

6.3.4 Access to City's Equipment and Data. City shall permit Contractor, at City's discretion and upon reasonable written notice, the right at a reasonable time to inspect City's pertinent sites and equipment (Local Area Network (LAN) or other network user monitor device) for the purpose of determining compliance with the terms of the License granted under this Agreement. In order to correctly diagnose faults in the equipment and data related to the Software and Hardware, City will provide Contractor 24 hour remote access to City's installation, pertinent sites, equipment (LAN or other network user monitor device) and user data through PCAnywhere. Failure to provide such access may prohibit effective action by Contractor and render Contractor unable to proceed, and in such circumstances, Contractor shall be under no liability for failure to perform its obligations under this Agreement.

Additional Archtics Services: With respect to initial implementation of Archtics, Contractor shall also provide, at no additional cost to City, (i) on-site support from Contractor'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".)

6.4 Contractor Employees. Contractor employees shall not allow guests, family members, or other unauthorized individuals into restricted areas (areas that require specific event or Facility identification or credential or a paid Ticket) without the prior approval from the Facility Director or designee.

#### 6.5 Loss and Damage to Hardware.

6.5.1 City acknowledges that the Hardware will be used by City at the Facilities and that Contractor does not own, operate or control such location. Accordingly, City assumes and shall bear the entire risk of loss and damage (unless covered by Contractor's property insurance with regard to the Hardware that Contractor owns) to the Hardware once it is installed, ordinary wear and tear excepted, unless occasioned by the negligence or willful misconduct of Contractor, from any and every cause whatsoever, from the date of delivery of the Hardware to the Facility or City site until removal thereof following Termination of this Agreement. No such loss or damage to the Hardware shall impair any obligation of City under this Agreement. In the event of loss or damage of any kind to any Hardware, City (unless covered by Contractor's property policy with regard to the Hardware that Contractor owns), at its sole option, shall within thirty (30) days after such loss or damage:

6.5.1.1 Place the same, or replace the same with similar property, in good repair, condition and working order to the satisfaction of Contractor; or

6.5.1.2 Pay Contractor in cash the full replacement cost of the Hardware, and Contractor shall promptly install new hardware to replace the lost or damaged Hardware.

6.5.2 City shall, at its own expense, provide and maintain at all times during the Term hereof insurance, which may be by self-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 and any claims made under Section 6.5.1 shall be limited to permissible claims under such self-insurance.

## VII. ELECTRONIC PAYMENTS

7.1 City Sales Using TM Charge: In connection with City's sales of Tickets utilizing electronic payments and authorized via TM Charge using Visa or MasterCard, or Discover Contractor's, credit card processor shall deduct the merchant fees in an amount set forth in Exhibit C for transactions processed on a daily basis. Such fees will be paid or deducted from Ticket proceeds prior to such proceeds being remitted to the City on Friday for sales for the preceding week. The fees charged to City for use of TM Charge are subject to automatic increases equal to any actual increases in Contractor's credit card processor fees. City shall also be responsible for any and all other amounts charged to Contractor (if any) by Contractor's credit card processor for processing City's transactions, including, without limitation, downgrades, transaction fees, cross border assessment fees, international service fees, wire fees, pass-through fees, 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. In the event that City desires to process any credit or debit cards other than Visa, MasterCard or Discover utilizing TM Charge, then the fees for such service shall be mutually agreed upon by City and such credit card companies, and City shall enter into its own merchant agreement with such credit card companies. City 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).

7.2 Sales by Contractor via Internet Sales. With respect to Tickets purchased from Contractor with credit cards, debit cards, gift cards or any other methods of payment, Electronic Payment Fees shall be passed on to City at the rates set forth in Exhibit C, which percentage rates shall be deducted by Contractor from the Ticket sales proceeds, or, at City's option, upon notice to Contractor, the Convenience Charge may be adjusted to include City's portion of such Electronic Payment Fees, provided that the Convenience Charge will be rounded up to the nearest \$0.05. Notwithstanding the above, with respect to any Feld Attractions, City agrees that City shall be obligated to pay for the Electronic Payment Fees for Tickets to Feld Attractions, or shall obtain the agreement of Feld Entertainment to adjust the Convenience Charge to include the amount of such Electronic Payment Fees; in any such event Contractor shall not be obligated to absorb the Electronic Payment Fees with respect to the Face Value of Tickets to any Feld Attractions.

7.3 PCI DSS Compliance. Contractor shall comply with Payment Card Industry (PCI) Data Security Standards (DSS) and demonstrate compliance by:

- 7.3.1 a listing as a compliant service provider on Visa's CISP Website ([usa.visa.com/download/merchants/cisp\\_list\\_of\\_cisp\\_compliant\\_service\\_providers.pdf](http://usa.visa.com/download/merchants/cisp_list_of_cisp_compliant_service_providers.pdf)), or;

7.3.2 providing a third party assessment of compliance with PCI DSS.

## **VIII. PURCHASER DATA**

8.1 City and Contractor each has rights to Purchaser Data, subject to the terms of this Agreement. Each Party agrees to use the Purchaser Data only in compliance with all applicable laws and administrative rulings and in accordance with such Party's own posted privacy policies. City agrees that if any portion of the Purchaser Data includes a person's name and that person's (i) social security number; (ii) driver's license or government identification number; or (iii) password and account identification, then City shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Purchaser Data to protect the Purchaser Data from unauthorized access, destruction, use, modification or disclosure. City also agrees that if any portion of the Purchaser Data includes credit or debit card numbers and related information, City shall comply with payment card industry standards. City shall also include in any email communications that City may make based on the Purchaser Data, a mechanism to provide the recipient with the right to "opt-out" from receiving further communications from City and City shall honor such opt-out preferences.

## **IX. CONFIDENTIAL INFORMATION**

9.1 The Parties acknowledge that by reason of their relationship, they may from time to time disclose Confidential Information.

9.2 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) is required to be turned over pursuant to federal or state law or court ruling, (iv) was within the receiving Party's possession prior to it being furnished to the receiving Party by or on behalf of the disclosing Party, or (v) is received from a source other than the disclosing Party; provided that, in the case of (iv) and (v) 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.

9.3 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 confidentiality 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.

9.4 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 Article XVI. Notice 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.

## X. INTELLECTUAL PROPERTY

10.1 Intellectual Property. Each Party shall retain all right, title and interest in and to its respective 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. 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.

10.2 Copyrighted Usage. Contractor agrees to obtain all necessary licenses and take all other necessary steps to insure that all use of copyrighted materials in the Facilities by Contractor or its designee or provided by Contractor to City during the term of the this Agreement complies with United States and any other applicable copyright law.

10.3 Indemnification. **CONTRACTOR agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, at its own expense City, and its officials, agents and employees from any and all liability arising from copyright infringement and/or damages that others may suffer as a result of the use by Contractor or its designee of copyrighted materials in the Facilities during the term of this Agreement or the use of copyrighted materials by City which were provided by Contractor during the term of this Agreement; except to the extent that any such damages are caused by the gross negligence or willful misconduct of City.**

## XI. ADVERTISING AND BRANDING

11.1 Advertising on Tickets Fulfilled at Facility Box Offices. For Tickets fulfilled by City at the Facility Box Offices, City shall either (i) provide, or pay Contractor to provide, its own blank custom Ticket stock and Ticket envelopes in which case City shall have the right to sell advertising on such Ticket stock and Ticket envelopes, or (ii) have Contractor provide Contractor's standard Ticket stock and Ticket envelopes in which case Contractor shall have the

right to sell advertising on such Ticket stock and Ticket envelopes.

11.2 Contractor Advertisements. City grants to Contractor the right, in Contractor's sole discretion, to advertise, in any medium determined by Contractor, including on the Contractor's Website or affiliated websites, Attractions and the availability of Tickets at the Facility Box Offices, and by Internet Sales and the availability of the Software and, in connection therewith, to use the name and logo of City, the Attraction, the Facility and all other information respecting the Attractions.

11.3 City Advertisements. City may, during the Term hereof, provide and place advertisements in any form of media which City shall desire to promote the availability of Tickets, the Contractor's Website and the Attractions (except on websites or other media operated by, or on behalf of, third parties that promote, engage in or facilitate the sale, resale or issuance of tickets); provided, however, that in the event City shall place any such advertisements, it shall use its best efforts to cause Contractor's name, logos and if the advertisement relates to the availability of Tickets, the applicable Contractor's Website address where Tickets may be purchased, to be displayed in the advertisement, as well as the address of the Facility. City shall cause City's Website to deep link to specified web page(s) within the applicable Contractor's Website where Ticket buyers can begin the process of purchasing Tickets to Attractions. City agrees to promote the availability of Tickets on Contractor's Website by including, at a minimum, one "above-the-fold" graphic Contractor branded link to Contractor's Website on each web page featuring one or more of the Attractions on City's Website. Such link will include Contractor's Website graphic logo and a call to action such as "buy tickets."

11.4 Contractor Approval. The look and feel of any and all links from City's Website to Contractor's Website are subject to Contractor's prior approval.

11.5 Advertising Revenue. Contractor and City shall separately receive and retain their respective income derived from advertising which each is entitled to sell under Sections 11.1, 11.2 and 11.3 above.

#### 11.6 City Placements.

##### 11.6.1 Intentionally left blank

11.6.2 City Placements on Contractor's Website. City shall have the right to put City Placements on the Confirmation Pages for Attractions on Contractor's Website in the spaces designated by Contractor and the Confirmation Pages shall not contain any other third party placements, provided that such City Placements comply with the Advertising Restrictions. City may change City Placements on Confirmation Pages one (1) time each month upon three (3) weeks prior notice to Contractor.

11.6.3 Advertising Restrictions. All City Placements on remotely printed Tickets and on Confirmation Pages, are subject to the prior consent of Contractor, which will not be withheld provided the requirements described in this subsection ("Advertising Restrictions") are met. First, all City Placements are subject to any hardware or software limitations, technical requirements and Contractor's standard space and text limitations. Second, no City Placements

can (i) relate to any products or services of Contractor's competitors (e.g., Ticket sellers, brokers and resellers), the competitors Contractor's controlled affiliates or sister companies or the competitors of Contractor's principal sponsors including, but not limited to its current principal sponsors, (ii) include any "prohibited" content (e.g., pornography, gambling, hard liquor), or (iii) contain any links to any of the foregoing. Third, City may not broker, resell, or use as barter, any of its placement rights to any third parties. Any changes to City Placements are subject to Contractor's reasonable lead times which will vary depending on the complexity of the request.

11.7 Branding on Contractor's Website. Contractor will "paint" Custom Pages on Contractor's Website which are presented to users who access Contractor's Website by linking directly from City's Website with City's branding and "look and feel", subject to co-existing and prominent top bar Contractor branding on each of the Custom Pages and each Party's reasonable approval of the "look and feel" thereof. For avoidance of doubt, whenever the term "look and feel" is used above, it means the coloring of the background modules and lettering on the Custom Pages and City's branding on the top bar of the Custom Pages. It does not mean the functionality or the layout on Custom Pages, as these must remain the same in order for the Software to function without extensive revisions. In addition, the Attraction Detail Pages for Attractions shall have one (1) space where City can include additional branding related to the Facilities. Contractor will make changes to the Custom Pages' look and feel at City's request not more than once every six (6) months. Such changes will be subject to Contractor's approval, which will not be unreasonably withheld, and Contractor will require sufficient time to implement changes from a technical point of view. Contractor will drop any branding provided to City pursuant to this Section when a user leaves the Custom Pages in deference to the rights of Contractor's other clients.

11.8 No Other Advertising. Contractor shall not advertise or permit advertising in any manner other than as described in this Agreement and shall have no right to directly or indirectly use the trademarks, symbols or trade name or names of City or Facilities in connection with any production, promotion, service or publication not located in the Facilities, without the prior written approval of City.

11.9 Facilities Advertising. For advertising locations inside the public areas of the Convention Center and Alamodome Facilities, including the seating area of the Alamodome Facility, Contractor is required to lease that additional advertising through City.

## **XII. CLIENT LISTINGS**

12.1 City's execution of this Agreement indicates approval for City to be listed as a Contractor client in monthly newsletters for distribution to event industry clients, in product boiler plate information, and in future releases about Contractor products and Services for distribution to trade and consumer media. At any time, City may, in its sole discretion, direct Contractor to stop using City's name for the purposes listed in this Section by sending notice to Contractor as required under Article XVI.

### **XIII. ACCOUNTING, RECORDS AND AUDITING**

13.1 Payments by Contractor. Upon execution of this Agreement, City hereby authorizes Contractor to deposit all settlement funds payable to City hereunder in an account (“Account”). Contractor agrees that the Account information will be provided to Contractor upon execution of the Agreement.

13.1.1 Contractor shall collect all Ticket Receipts derived from Ticket sales made by Contractor and shall initiate payment of Ticket Receipts to which City is entitled on Friday of each week with each weekly payment to be on account of Contractor’s System Ticket sales made for Attractions by Contractor during Monday through Sunday of the week preceding such payment date. Initiation of the settlement payment via direct deposit shall constitute full performance by Contractor of its obligation to make such settlement payment to City or to any person whatsoever. If funds to which City is not entitled are deposited into City’s Account, City shall, as soon as practicable, return said funds. City hereby releases Contractor from liability for delays or errors beyond Contractor’s reasonable control, including but not limited to any errors resulting from any inaccurate or outdated Account information provided by City or bank processing delays, or for any related damages. City acknowledges and agrees that direct deposit of such funds may require up to two (2) business days for bank processing. Each weekly settlement payment shall be accompanied by a written accounting. City shall designate an email address for delivery of such accounting and information regarding Attractions and Ticket sales, and shall promptly notify Contractor of any changes to such email address. The direct deposit authorization provided herein shall remain in full force and effect until Contractor has received written notification from City of its termination in such time and such manner as to afford Contractor a reasonable opportunity to act upon it.

13.1.2 Alternatively, with respect to Carver Community Cultural Center Attractions, Contractor shall, if requested by City, collect all Ticket Receipts derived from Ticket sales made by Contractor prior to the Attractions and shall initiate payment of all collected Ticket Receipts to which City is entitled on Friday of the week following the Attraction date. Additionally, with respect to these same Attractions, City reserves the right to require Contractor to provide payment to the City in the form of a check rather than by direct deposit.

13.2 Cancelled Attractions and Refunds. In the event that any Attraction for which Contractor sold Tickets 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 Contractor to Ticket buyers entitled to refunds for Tickets for Cancelled Attractions purchased from Contractor. For purposes of this Agreement, the term “Account Balance” shall mean the amount of funds held at any time by Contractor on account of Ticket sales for all Attractions, less the amount of Ticket sales proceeds which Contractor is entitled to retain hereunder. City authorizes Contractor to refund the Ticket price at the original point of purchase (e.g., by Internet Sales) in such manner (e.g. by crediting the consumer’s credit card) and at such time (e.g. before or after the scheduled date of the performance of such Attraction) as Contractor, in its sole discretion, determines and to exchange Tickets pursuant to any exchange policy that may be adopted by City and Contractor. It is agreed and understood that Contractor

is the Ticket selling agent of City and therefore Contractor's agreement to make any refunds as the agent of City is subject and limited to Contractor holding or receiving from City the full amount of funds necessary to make refunds to all Ticket buyers properly entitled to a refund. . City shall be responsible for all refunds and exchanges of Tickets initially purchased from the Facility Box Offices.

13.3 Chargebacks. Contractor reserves the right to deduct from City's settlement, portions of any Chargebacks that Contractor is assessed by its merchant bank related to the Face Value, Processing Fee, Electronic Payment Fees, and any other amounts due from Contractor to City for up to eighteen (18) months after the occurrence of an Attraction. Contractor shall be responsible for the remaining portions of any Chargebacks, except to the extent caused by City's failure to obtain signatures, swipe credit cards, or follow any procedures provided by Contractor or the merchant bank with respect to acceptance of credit cards, including, but not limited to, cardholder verification instructions for will-call and other alternative Ticket delivery/pick-up services.

13.4 Counterfeit Tickets. It is agreed and understood that Contractor shall not be liable to City for the printing and sale of counterfeit Tickets, unless such Tickets are printed or sold by an employee of Contractor. .

13.5 Audit of Sales. At all times during the Term of this Agreement, (i) City shall have the right at its own expense to audit Ticket sales for Attractions by Contractor to assure Contractor's compliance with the terms of this Agreement, and (ii) Contractor shall have the right at its own expense to audit Ticket sales for Attractions made by City to assure their compliance with the terms of this Agreement.

13.6 License and Maintenance Fees. Any initial or one time license or maintenance fees set forth in Exhibit F shall be due and payable upon the execution of this Agreement following the receipt of an invoice from Contractor. Thereafter, installments of license or maintenance fees set forth in Exhibit F shall be invoiced no later than September 1 of each preceding Agreement Year (beginning September 1, 2020) and payable on the first day of each subsequent Agreement Year during the Term. Contractor shall deliver to City an invoice for the amount of the supplemental license fee for any other approved modules then due and payable, if any, from time to time as Contractor determines, but not less frequently than on an annual basis.

### 13.7 Records Retention.

13.7.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all Documents or Documentation, and shall make such materials available to the City at their respective offices, at all reasonable times and upon reasonable prior written notice from City to Contractor during the Agreement period, including any extension or renewal hereof, and the record Retention Period established in this Agreement, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

13.7.2 Contractor shall retain any and all Documents produced as a result of Services



provided for the Retention Period. If, at the end of the Retention Period, there is litigation or other questions arising from, involving or concerning this Documentation or the Services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such Documents at all times, as deemed reasonably necessary by City and upon reasonable prior written notice from City to Contractor, during said Retention Period. City may, at its election, require Contractor to return said Documents to City prior to or at the conclusion of said Retention Period.

13.7.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the Documentation and records referenced in this Agreement. Contractor understands and agrees that City will process and handle all such requests.

13.7.4 Deficiency Amounts. If at any time, the Account Balance is not sufficient to pay for anticipated refunds or Chargebacks, City shall deliver the amount of such deficiency (“Deficiency Amount”) to Contractor no later than twenty-four (24) hours after notice by Contractor to City. Contractor shall have the right to setoff any Deficiency Amount against any amounts held by Contractor on behalf of City. In the event City has not paid any Deficiency Amount when due, Contractor shall have the option to suspend payment of Ticket Receipts in advance of the occurrence of Attractions and instead deliver Ticket Receipts to which City 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).

#### **XIV. TAXES**

Taxes on Hardware. City shall keep the Hardware free and clear of all levies, liens and encumbrances which are caused by City or under City’s control and shall promptly reimburse Contractor 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 Contractor’s net income.

14.1 Attraction Taxes. City shall notify Contractor of the correct rates for calculating City Taxes to be assessed on all amounts received by City under this Agreement and shall monitor City’s Ticket sales audit reports to ensure that such City Taxes have been properly calculated. Contractor shall be responsible for collecting any and all such City Taxes at the rates so designated by City (and if City has failed to so designate, Contractor shall use its good faith efforts to determine the applicable tax rate and shall use such rate to calculate and collect such City Taxes, subject to City’s payment obligations as set forth below), for preparing and timely filing any and all tax returns or reports required to be filed in respect of any City Taxes and for timely remitting City Taxes to the appropriate taxing authority. Contractor will collect and turn over to City the amounts to which it is entitled. In the event that Contractor has to pay any City Taxes on behalf of City that are caused by the inaccuracy of information provided by City or by

City's failure to provide the correct tax rate to Contractor or by City's failure to provide Contractor with the required writing or documentation of any City tax exemptions pursuant to Section 14.3 below, City shall promptly reimburse Contractor for any and all City Taxes paid by Contractor, including penalties and interest assessed with respect thereto (other than City Taxes, penalties and interest that Contractor pays directly out of City's Ticket Receipts), and shall also promptly reimburse Contractor for any and all expenses (including reasonable attorneys' fees) or damages that result from the failure by City to timely reimburse Contractor for any and all City Taxes, interest and penalties as provided above. Contractor shall be responsible for calculating any and all Contractor Taxes, for preparing and timely filing any and all tax returns or reports required to be filed in respect of any such Contractor Taxes, and for timely remitting such Contractor Taxes to the appropriate taxing authority.

14.2 City's Taxpayer ID Number. City's federal taxpayer identification number (FEIN or SSN) and its state taxpayer identification or registration number will be provided to Contractor upon execution of the Agreement.

14.3 City's Tax Exemptions. City shall notify Contractor in writing of any and all City tax exemptions (if applicable) and provide Contractor with reasonable proof of City's tax exemptions upon execution of the Agreement.

14.4 Additional Taxes. Contractor shall promptly pay any and all taxes, including those on personal property and any other tax, assessed or levied under law on Contractor, during the term of this Agreement and any renewal or extension hereof.

14.5 Taxes on License and Maintenance Fees: The license and maintenance fees set forth on **Exhibit F** are exclusive of any sales, use, value added, excise or other taxes, and City shall be responsible for paying all such taxes, if applicable.

## **XV. TERMINATION**

15.1 For purposes of this Agreement, "Termination" of this Agreement or "Terminate" shall mean Termination by, or Terminate the, expiration of the Agreement Term, respectively, as stated in Article II. Term, or earlier Termination pursuant to any of the provisions of this Agreement.

15.2 Termination For Cause. Should Contractor fail to fulfill in a timely and proper manner its material obligations under this Agreement, violate any of the material terms of this Agreement, or file for bankruptcy or sell substantially all of its assets, City shall have the right to Terminate the Agreement, in whole or in part, after providing Contractor with written notice of such default and thirty (30) business days to cure such default. Notice of Termination shall be provided in writing to Contractor, effective upon the date set forth in the notice. Such Termination shall not relieve Contractor of any liability to City for damages sustained by virtue of any breach by Contractor. Should City materially breach its obligations under this Agreement, violate any of the material terms of this Agreement, or file for bankruptcy or sell substantially all of its assets, Contractor shall have the right to Terminate the Agreement, in whole or in part, after providing City with written notice of such default and thirty (30) business days to cure such

default. Notice of Termination shall be provided in writing to City, effective upon the date set forth in the notice. Such Termination shall not relieve City of any liability to the Contractor for damages sustained by virtue of any breach by City.

15.3 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties under this Agreement, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically Terminate as of the effective date of such prohibition.

15.4 Regardless of how this Agreement is Terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, except as required below, all completed or partially completed Documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the Services rendered by Contractor, or provided to Contractor under this Agreement, excluding Contractor's proprietary information, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article XIII. Accounting, Records and Auditing. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense, except for those record transfers necessitated by Termination due to City's material breach of this Agreement. In such instances caused by City's material breach of this Agreement, City shall be solely responsible for all costs and expenses associated with such record transfer. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such Documents, if requested.

15.5 Within ninety (90) calendar days of the effective date of completion, or Termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for any monies owed by City. Failure by Contractor to submit such claims for monies owed within said ninety (90) calendar days shall negate any liability on the part of City for such monies owed by City to Contractor constitute a **Waiver** by Contractor of any such claims.

15.6 Upon the effective date of expiration or Termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

15.7 Termination not sole remedy. In no event shall either Party's action of Terminating this Agreement, whether for cause or otherwise, be deemed an election of such Party's remedies, nor shall such Termination limit, in any way, at law or at equity, such Party's right to seek damages from or otherwise pursue the other Party for any default or other action.

## **XVI. NOTICE**

16.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt

when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to:

City of San Antonio  
Attn: Director  
Convention and Sports Facilities  
900 E. Market St.  
San Antonio, Texas 78205

If intended for Contractor, to:

Ticketmaster  
Attn: Client Development Director- Venues and Promoters  
2000 West Loop South Ste 1300  
Houston, Texas, 77027

*With a copy to:*

Ticketmaster  
Attn: SVP, Venues and Promoters  
7060 Hollywood Blvd.  
Hollywood, CA 90028

*And with a copy to:*

Ticketmaster  
Attn: General Counsel  
7060 Hollywood Blvd.  
Hollywood, CA 90028

## **XVII. INSURANCE**

17.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Convention and Sports Facilities Department, which shall be clearly labeled "**AUTOMATED TICKETING SYSTEM**" in the Description of Operations block of the Certificate. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed or emailed, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this contract until such certificate and endorsements have been received and approved by the City's Convention and Sports Facilities Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

15.8 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement, and any extension or renewal hereof, and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk

Manager based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will City allow modification whereby City may incur increased risk.

17.2 Intentionally omitted.

17.3 A contractor’s financial integrity is of interest to the City; therefore, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. <u>Workers' Compensation</u>	<u>Statutory</u>
2. <u>Employers' Liability</u>	<u>\$1,000,000/\$1,000,000/\$1,000,000</u>
3. <u>Commercial General Liability Insurance to include coverage for the following:</u> <u>a. Premises/Operations</u> <u>b. Products/Completed Operations</u> <u>c. Personal/Advertising Injury</u> <u>d. Contractual Liability</u> <u>e. Child Molestation/Sexual Abuse</u>	<u>Combined Single Limit For Bodily Injury and Property Damage of \$1,000,000 per occurrence;</u> <u>\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</u>
4. <u>Business Automobile Liability</u> <u>a. Owned/leased vehicles</u> <u>b. Non-owned vehicles</u> <u>c. Hired Vehicles</u>	<u>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</u>

17.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services obtain the same insurance coverages required of Contractor and provide a certificate of insurance and endorsement that names Contractor and City as additional insureds. Contractor shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City’s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City’s Risk Manager, which shall become a part of the Agreement for all purposes.

17.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any such policies). Contractor shall be

required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

17.5 Intentionally omitted.

City of San Antonio  
Attn: Convention & Sports Facilities  
900 E. Market  
San Antonio, Texas 78205

17.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability, and automobile liability policies will provide a waiver of subrogation in favor of City;
- Endeavor to provide advance written notice directly to City of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

17.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

17.8 Intentionally omitted.

17.9 In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor until Contractor demonstrates compliance with these requirements.

17.10 Nothing contained in this Agreement shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

17.11 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by City for liability arising out of operations under this Agreement.

17.12 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

17.13 Contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

## **XVIII. INDEMNIFICATION**

**18.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The INDEMNITY provided for in this Article shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage.**

18.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Either Party shall advise the other in writing within 24 hours of any claim or demand against CITY or CONTRACTOR known to that Party related to or arising out of CONTRACTOR'S activities under this Agreement and CONTRACTOR shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving

CONTRACTOR of any of its obligations under this Article.

18.3 Defense Counsel - CITY shall have the right to reasonably approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONTRACTOR shall retain CITY's reasonably approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Agreement. If CONTRACTOR fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

18.4 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

## **XIX. ASSIGNMENT AND SUBCONTRACTING**

19.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

19.2 It is City's understanding and this Agreement is made in reliance thereon, that Contractor does not intend to use subcontractors in the performance of this Agreement. In the event Contractor requests to use any subcontractors in the performance of this Agreement, such subcontractors shall be approved by City Council, as evidenced by passage of an ordinance, prior to the provision of any Services by said subcontractor.

19.3 Any work or Services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of Services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City.

19.4 Except as otherwise stated in this Agreement, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties under this Agreement, by transfer, by subcontracting or any other means, except in the event of an assignment to any parent, subsidiary or affiliate, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the Services outlined in this



Agreement in the event of default by the successor contractor, assignee, transferee or subcontractor.

19.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and Terminate, in accordance with Article XV. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

## **XX. INDEPENDENT CONTRACTOR**

20.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and contractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing in this Agreement shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The Parties understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the Services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind City.

## **XXI. CONFLICT OF INTEREST**

21.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns
  - (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

21.2 Contractor warrants and certifies as follows:

- (i) Contractor and its officers, employees and agents are neither officers nor employees of City.
- (ii) Contractor has tendered to City a Contracts Disclosure Statement in compliance with City's Ethics Code.

21.3 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

## **XXII. AMENDMENTS**

22.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms shall be effected by amendment, in writing, executed by both City and Contractor. The City Manager, or her designee, shall have the authority to amend this Agreement without additional action by the City Council; however, any amendments that reduce funds payable to City by Contractor or require the additional appropriation of funds by City shall be subject to approval by the City Council, as evidenced by passage of an ordinance.

## **XXIII. SEVERABILITY**

23.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained; it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XXIV. LICENSES/CERTIFICATIONS**

24.1 Contractor warrants and certifies that Contractor and any other person designated to provide Services has the requisite training, license and/or certification to provide said Services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the Services to be provided.

24.2 Contractor shall obtain, at Contractor's sole cost, all licenses and permits required for the provision of the work required under this Agreement.

## **XXV. COMPLIANCE**

25.1 Contractor shall provide and perform all Services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

25.2 Occupational Health & Safety. The Parties agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety & Health Act relating in any way to this Agreement, to the extent permitted by law.

25.3 Non-Discrimination. As a party to this Agreement, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established in this Agreement.

25.4 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

25.5 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

25.6 "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

25.7 By submitting an offer to or executing contract documents with City, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of the Agreement. City relies on Contractor's verification. If found to be false, City may terminate this Agreement for material breach, without providing an opportunity to cure under Section 15.2.

## **XXVI. NONWAIVER OF PERFORMANCE**

26.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved as described in Article XXII. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Agreement or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved.

## **XXVII. LAW APPLICABLE**

**27.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

27.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **XXVIII. LEGAL AUTHORITY**

28.1 The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of its terms, conditions, provisions and obligations.

## **XXIX. PARTIES BOUND**

29.1 This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for.

## **XXX. CAPTIONS**

30. The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## **XXXI. INCORPORATION OF EXHIBITS**

31.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be interpreted in the order of priority as

appears below, with this Agreement document taking precedence over all Exhibits:

Exhibit A – Contractor’s Proposal in Response to City’s RFP for Automated Ticket System

Exhibit B – City’s RFP for Automated Ticket System

Exhibit C– Compensation

Exhibit D – Hardware

Exhibit E- TM+ Terms and Conditions

Exhibit F- TM1 Engagement Terms and Conditions

Exhibit G - Platinum Tickets and VIP Packages

**XXXII. ENTIRE AGREEMENT**

32.1 This Agreement, together with its Exhibits, constitute the final and entire agreement between the Parties and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties, unless same be in writing, dated subsequent to the effective date of this Agreement, and duly executed by the Parties, in accordance with Article XXII. Amendments.

**XXXIII. FORCE MAJUERE**

33.1 In the event that the performance by either Party of any of its obligations or undertakings under this Agreement shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either Party, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party or privy to this Agreement, then such Party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each Party shall bear the cost of any expense it may incur due to the occurrence.

**CITY OF SAN ANTONIO**

**CONTRACTOR**

\_\_\_\_\_  
Erik Walsh  
City Manager

\_\_\_\_\_  
*Name*  
*Title*

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

---

City Attorney

**EXHIBIT A**

Contractor's Proposal in Response to City's RFP for Automated Ticket System

**EXHIBIT B**

City's RFP for Automated Ticket System





**EXHIBIT C**  
**COMPENSATION**

**FORM 15A**

Customer Charges and Processing Fees will be determined by City of San Antonio; the City can raise or lower the fees at any point in the contract. Ticketmaster will retain a per ticket and per order fee, as provided below. The schedules below include the same customer charge for all ticket types. Just for the purposes of completing Form 15B, City Revenue, the annual increase for the customer charge and order fee was set at the same amount that the Ticketmaster fee will increase; the City will control the actual increases to the customer charges and order fees.

**Fees Retained by Ticketmaster; City to determine the Convenience and Processing Fee paid by the consumer on primary tickets sold through Ticketmaster distribution channels.**

Fee	10/01/19-9/30/2020	10/01/20-9/30/2021	10/01/21-9/30/2022	10/01/22-9/30/2023	10/01/23-9/30/2024	10/01/24-9/30/2025	10/01/25-9/30/2026	10/01/26-9/30/2027	10/01/27-9/30/2028	10/01/28-9/30/2029
Per Ticket (i)	\$3.25	\$3.25	\$3.35	\$3.35	\$3.45	\$3.45	\$3.55	\$3.55	\$3.65	\$3.65
Order Fee	\$2.40	\$2.40	\$2.60	\$2.50	\$2.60	\$2.60	\$2.70	\$2.70	\$2.80	\$2.80

(i) In addition to the per ticket fee, customer charge over \$15.00 per ticket will be split 50/50

**Customer Charge (\$ Per Ticket) – Concerts, actual fees will be determined by City and can be increased or decreased from the amounts in the following table**

Face Value of Ticket	10/01/19-9/30/2020	10/01/20-9/30/2021	10/01/21-9/30/2022	10/01/22-9/30/2023	10/01/23-9/30/2024	10/01/24-9/30/2025	10/01/25-9/30/2026	10/01/26-9/30/2027	10/01/27-9/30/2028	10/01/28-9/30/2029
Under \$20.00	\$5.75	\$5.85	\$5.95	\$6.05	\$6.15	\$6.25	\$6.35	\$6.45	\$6.55	\$6.65
\$20.01 to \$40.00	\$7.25	\$7.35	\$7.45	\$7.55	\$7.65	\$7.75	\$7.85	\$7.95	\$8.05	\$8.15
\$40.01 to \$60.00	\$8.75	\$8.85	\$8.95	\$9.05	\$9.15	\$9.25	\$9.35	\$9.45	\$9.55	\$9.65
\$60.01 to \$99.99	\$10.25	\$10.35	\$10.45	\$10.55	\$10.65	\$10.75	\$10.85	\$10.95	\$11.05	\$11.15
\$100.00 and above	10.25% of ticket price	10.35% of ticket price	10.45% of ticket price	10.55% of ticket price	10.65% of ticket price	10.75% of ticket price	10.85% of ticket price	10.95% of ticket price	11.05% of ticket price	11.15% of ticket price

**Customer Charge (\$ Per Ticket) – Professional Sports, actual fees will be determined by City and can be increased or decreased from the amounts in the following table**

Face Value of Ticket	10/01/19-9/30/2020	10/01/20-9/30/2021	10/01/21-9/30/2022	10/01/22-9/30/2023	10/01/23-9/30/2024	10/01/24-9/30/2025	10/01/25-9/30/2026	10/01/26-9/30/2027	10/01/27-9/30/2028	10/01/28-9/30/2029
Under \$20.00	\$5.75	\$5.85	\$5.95	\$6.05	\$6.15	\$6.25	\$6.35	\$6.45	\$6.55	\$6.65
\$20.01 to \$40.00	\$7.25	\$7.35	\$7.45	\$7.55	\$7.65	\$7.75	\$7.85	\$7.95	\$8.05	\$8.15
\$40.01 to \$60.00	\$8.75	\$8.85	\$8.95	\$9.05	\$9.15	\$9.25	\$9.35	\$9.45	\$9.55	\$9.65
\$60.01 to \$99.99	\$10.25	\$10.35	\$10.45	\$10.55	\$10.65	\$10.75	\$10.85	\$10.95	\$11.05	\$11.15
\$100.00 and above	10.25% of ticket price	10.35% of ticket price	10.45% of ticket price	10.55% of ticket price	10.65% of ticket price	10.75% of ticket price	10.85% of ticket price	10.95% of ticket price	11.05% of ticket price	11.15% of ticket price

**Customer Charge (\$ Per Ticket) – Family Shows, actual fees will be determined by City and can be increased or decreased from the amounts in the following table**

Face Value of Ticket	10/01/19-9/30/2020	10/01/20-9/30/2021	10/01/21-9/30/2022	10/01/22-9/30/2023	10/01/23-9/30/2024	10/01/24-9/30/2025	10/01/25-9/30/2026	10/01/26-9/30/2027	10/01/27-9/30/2028	10/01/28-9/30/2029
Under \$20.00	\$5.75	\$5.85	\$5.95	\$6.05	\$6.15	\$6.25	\$6.35	\$6.45	\$6.55	\$6.65
\$20.01 to \$40.00	\$7.25	\$7.35	\$7.45	\$7.55	\$7.65	\$7.75	\$7.85	\$7.95	\$8.05	\$8.15
\$40.01 to \$60.00	\$8.75	\$8.85	\$8.95	\$9.05	\$9.15	\$9.25	\$9.35	\$9.45	\$9.55	\$9.65
\$60.01 to \$99.99	\$10.25	\$10.35	\$10.45	\$10.55	\$10.65	\$10.75	\$10.85	\$10.95	\$11.05	\$11.15
\$100.00 and above	10.25% of ticket price	10.35% of ticket price	10.45% of ticket price	10.55% of ticket price	10.65% of ticket price	10.75% of ticket price	10.85% of ticket price	10.95% of ticket price	11.05% of ticket price	11.15% of ticket price

**Order Charge (\$ per Order), actual fees will be determined by City and can be increased or decreased from the amounts in the following table**

Type of Sale	10/01/19-9/30/2020	10/01/20-9/30/2021	10/01/21-9/30/2022	10/01/22-9/30/2023	10/01/23-9/30/2024	10/01/24-9/30/2025	10/01/25-9/30/2026	10/01/26-9/30/2027	10/01/27-9/30/2028	10/01/28-9/30/2029
Retail Outlet	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Telephone	\$6.25	\$6.25	\$6.35	\$6.35	\$6.45	\$6.45	\$6.55	\$6.55	\$6.65	\$6.65
Internet	\$6.25	\$6.25	\$6.35	\$6.35	\$6.45	\$6.45	\$6.55	\$6.55	\$6.65	\$6.65
Kiosk (if applicable)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
US Mail Order	\$5.00	\$5.00	\$5.25	\$5.25	\$5.50	\$5.50	\$5.75	\$5.75	\$6.00	\$6.00
Seat Change Fee, per ticket	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00

**City Charge (\$ per Ticket, or % of Gross Sales or Electronic Payment Fees) (ii)**

Type of Sale	10/01/19-9/30/2020	10/01/20-9/30/2021	10/01/21-9/30/2022	10/01/22-9/30/2023	10/01/23-9/30/2024	10/01/24-9/30/2025	10/01/25-9/30/2026	10/01/26-9/30/2027	10/01/27-9/30/2028	10/01/28-9/30/2029
Retail Outlet										
S - or - %	2.63%	2.63%	2.63%	2.63%	2.63%	2.63%	2.63%	2.63%	2.63%	2.63%
Mobile, Internet, Phone										
S - or - % (i)	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%
Facility Ticket Office										
S - or - %	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%
Other Ticket Types (i.e. comp) Printed by or on Behalf of City	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

(ii) electronic payment fees on tickets sold through Ticketmaster distribution channels can be added to the ticket purchase and paid by the consumer.

**Ticket Resale (expected fees, consumer fees are determined by Ticketmaster and could change)**

Fee	10/01/19-9/30/2020	10/01/20-9/30/2021	10/01/21-9/30/2022	10/01/22-9/30/2023	10/01/23-9/30/2024	10/01/24-9/30/2025	10/01/25-9/30/2026	10/01/26-9/30/2027	10/01/27-9/30/2028	10/01/28-9/30/2029
Seller Fee (of Posting Price per Ticket) (i)	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%	12.0%
Buyer Fee (of Posting Price per Ticket) (i)	17.5%	17.5%	17.5%	17.5%	17.5%	17.5%	17.5%	17.5%	17.5%	17.5%
Credit Card Fee (of Gross Transaction Value)	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%

(i) Seller Fee and Buyer Fee on resale transactions are determined by Ticketmaster and may change.

**Auction, Platinum and VIP Fee (Platinum and VIP fee paid by consumer, consumer fee determined by Ticketmaster)**

Fee	10/01/19-9/30/2020	10/01/20-9/30/2021	10/01/21-9/30/2022	10/01/22-9/30/2023	10/01/23-9/30/2024	10/01/24-9/30/2025	10/01/25-9/30/2026	10/01/26-9/30/2027	10/01/27-9/30/2028	10/01/28-9/30/2029
Auction Fee	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Platinum Fee paid by Consumer	14.80%	14.80%	14.80%	14.80%	14.80%	14.80%	14.80%	14.80%	14.80%	14.80%
Platinum Processing Fee	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
VIP Fee Paid by Consumer	14.80%	14.80%	14.80%	14.80%	14.80%	14.80%	14.80%	14.80%	14.80%	14.80%

**FORM 15B**

**City Revenue (\$): projected annual net revenue paid to the City, the revenue assumptions are provided below the table.**

Fee	10/01/19-9/30/2020	10/01/20-9/30/2021	10/01/21-9/30/2022	10/01/22-9/30/2023	10/01/23-9/30/2024	10/01/24-9/30/2025	10/01/25-9/30/2026	10/01/26-9/30/2027	10/01/27-9/30/2028	10/01/28-9/30/2029
Customer Charge, w/Feld Attractions (a) (c)	\$1,020,000	\$1,020,000	\$1,020,000	\$1,020,000	\$1,020,000	\$1,020,000	\$1,020,000	\$1,020,000	\$1,020,000	\$1,020,000
Order Charge (Will-Call & Mail), w/Feld (b) (c)	\$265,000	\$265,000	\$265,000	\$265,000	\$265,000	\$265,000	\$265,000	\$265,000	\$265,000	\$265,000
Auction Fee	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Platinum & VIP Fee (d)	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
Ticket Resale Seller Fee (e)	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000
Ticket Resale Buyer Fee (e)	\$9,000	\$9,000	\$9,000	\$9,000	\$9,000	\$9,000	\$9,000	\$9,000	\$9,000	\$9,000
Annual Marketing Fund	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Entertainment Enhancement Fund	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Signing Bonus	\$250,000									
Archtics License, paid by City	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Messenger Fee, Paid by City	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**City Revenue Assumptions**

- (a) Customer charge revenue in the above table was based on a projected ticket count and average ticket price, multiplied by the corresponding customer consumer fee, less the per ticket fees retained by Ticketmaster. The customer charges paid by the consumer are determined by the City. Ticket sales were based on the ticket count provided by the City, three year average. As customer prices and ticket sales increase or decrease over the course of the contract, the associated revenue will increase or decrease from the amounts included in the above table.
- (b) Order Fee revenue was based on the per order fees paid by the consumer (Form 15A), multiplied by the projected order count, less the per order fee retained by Ticketmaster. The per order fees paid by the consumer are determined by the City.
- (c) Customer Charge revenue and Order Fee revenue includes revenue from Feld Entertainment events, assuming the City wants Feld Entertainment settled under the City deal. If the City would prefer to settle Feld Entertainment events consistent with past terms, revenue from Feld Entertainment events will be paid directly to Feld Entertainment and the revenue paid to the City will be less than the amount provided above.
- (d) 50% royalty on VIP and Platinum net fees
- (e) 10% royalty on net resale revenue

**EXHIBIT D**

**HARDWARE**

<b>Quantity</b>	<b>Description</b>
40	Point of Sale thin clients
40	Monitors
40	Credit Card Swipers
88	Handheld Scanners
21	Access Points
6	Switches
22	4-bay Charging Stations
40	Boca Printers

## EXHIBIT E

### TM+ Terms and Conditions

Contractor shall enable TM+ for all Attractions in accordance with the settlement terms set forth in this Exhibit F below.

#### **TM+ Settlement Terms**

- For any primary market ticket inventory sold through TM+, Contractor shall continue to sell such tickets and settle the proceeds of such sales with City in accordance with the terms and conditions for such transactions as set forth in the Agreement.
- For any secondary market ticket inventory sold through TM+, Contractor shall assess its standard fees against the buyers and sellers of such tickets in amounts as determined by Contractor, which amounts currently include: (i) a seller fee generally in an amount of up to twelve percent (12%) of the ticket posting price (i.e., the price set by the seller upon posting such ticket for sale), and (ii) a buyer fee generally in an amount of up to seventeen and five-tenths percent (17.5%) of the ticket listing price (i.e., the posting price plus the seller fee), with a \$5.00 minimum.
- **TM+ Revenue Share:**
  - City shall be entitled to receive from Contractor ten percent (10%) of the Net Resale Fees collected (and not refunded or subject to chargeback) by Contractor on account of secondary market ticket sales through TM+ (the “TM+ Revenue Share”).
  - For purposes of this Exhibit F, “Net Resale Fees” shall be defined as the gross amount collected from the new purchaser of a secondary market inventory ticket via TM+ less (i) the proceeds paid to the ticket seller, (ii) an amount equal to 3.5% of the gross amount collected from the new purchaser (to cover credit card processing fees), (iii) any applicable sales, admission or similar tax, and (iv) amount equal to 3.5% of the gross amount collected from the purchaser of any Ticket purchased via TM+ (to cover certain customer acquisition costs incurred by Contractor).
- The TM+ Revenue Share will be paid to City on a quarterly basis for all such sales occurring in any calendar quarter, on or before the thirtieth (30<sup>th</sup>) day of the month following each calendar quarter. In the event that any Attraction for which Contractor has made any TM+ Revenue Share payment to City becomes a Cancelled Attraction, City shall promptly repay to Contractor the amount of such TM+ Revenue Share payments in respect of such Cancelled Attraction.
- Each settlement relating to the TM+ Revenue Share pursuant to this Exhibit F shall be accompanied by a report of the applicable transactions during such settlement period.

## EXHIBIT F

### TM1 ENGAGEMENT TERMS AND CONDITIONS

The Parties acknowledge and agree that City is selecting the **Plan 1** annual subscription plan. During the Term of the Agreement, City shall have the opportunity to upgrade City's current plan to a higher one, or downgrade to any lower plan, upon written notice to Contractor and payment of the new annual subscription fee; provided, that such new plan shall not take effect until the beginning of the next Agreement Year. For the avoidance of doubt, any unsent emails comprising the annual sent messages threshold and any unused Contractor professional services hours for City's plan during each Agreement Year shall expire at the conclusion of each such Agreement Year, and no Tm1 Engagement credit of any kind shall be provided to City in connection with such unsent emails and/or unused hours.

Notwithstanding anything to the contrary set forth in Schedule 1 attached hereto, Contractor agrees to waive the **Base** annual subscription fee; provided however, the number of Contractor professional service hours included for no charge shall be 0 hours. In the event City exceeds the applicable email threshold for City's current plan in any Agreement Year, or in the event City elects to upgrade City's current plan to a higher one, Contractor shall invoice City at that time for the incremental amount of the annual subscription fee applicable to such higher volume of emails sent.

In the event City elects to purchase additional City user licenses and/or additional Contractor professional services hours, in each case, for any given Agreement Year to supplement the number of user licenses and professional services hours currently included in City's subscription plan for such Agreement Year as set forth in Schedule 1 attached hereto, Contractor shall invoice City for the additional fees applicable in connection therewith at the time of such election. In the event City elects to activate Contractor's Premium Automation Package in accordance with the terms set forth in Schedule 1 attached hereto, Contractor shall invoice City for the additional annual fee applicable in connection therewith at the time of such election and at the beginning of each Agreement Year during the Term of the Agreement thereafter, it being understood that any activation of Contractor's Premium Automation Package shall be for the remaining Term of the Agreement (and not just for the remainder of the then-current Agreement Year).

City may elect to apply the available unused amount of Marketing is Discretionary Use Allowance towards payment of any Tm1 Engagement related invoice by notifying Contractor in writing of such election and the applicable amount to be so applied towards any particular invoices, it being understood that City shall remain responsible for payment of the remaining balance (if any) of any such invoices that are not fully paid for using City's Marketing is Discretionary Use Allowance. In the event City fails to pay (or fails to elect to apply City's Marketing is Discretionary Use Allowance to pay) any Tm1 Engagement related invoice in full within thirty (30) days of issuance, Contractor may deduct the unpaid amount of such invoice from the settlements otherwise due and owing to City under the Agreement, or Contractor may elect to terminate the provision of Tm1 Engagement services.

Contractor shall provide all necessary maintenance and service support with respect to the use of Tm1 Engagement, as described in Schedule 2 attached hereto. Contractor agrees to absorb all fees and other amounts due to any third party in connection with the use of Tm1 Engagement, and support costs with respect thereto.

City agrees to use Tm1 Engagement only in compliance with all applicable laws and administrative rulings and in accordance with Contractor's posted privacy policies. City shall also include in any non-transactional email communications that City may make using Tm1 Engagement a mechanism to provide the recipient with the right to "opt-out" from receiving further non-transactional email communications from City and City shall honor such opt-out preferences.

**Schedule 1 to Exhibit F**

<b>Plan</b>	<b>Annual Sent Messages</b>			<b>Annual Subscription Fee*</b>	<b># of City User Licenses Included**</b>	<b># of Contractor Professional Services Hours Included***</b>	<b>Contractor's Premium Automation Package****</b>
Base	0	to	1,000,000	\$3,500	2	1 hour (Q&A call)	NOT INCLUDED
Plan 1	1,000,001	to	2,000,000	\$5,500	2	5 hours/ year	
Plan 2	2,000,001	to	4,000,000	\$10,500	3	10 hours/year	
Plan 3	4,000,001	to	6,000,000	\$14,000	3	15 hours/year	
Plan 4	6,000,001	to	12,000,000	\$21,000	3	20 hours/year	
Plan 5	12,000,001	to	18,000,000	\$28,000	3	25 hours/year	
Plan 6	18,000,001	to	30,000,000	\$35,000	4	30 hours/year	
Plan 7	30,000,001	to	48,000,000	\$42,000	4	35 hours/year	
Plan 8	48,000,001	or	More	Custom Pricing	Custom	Custom	

\*The annual subscription fees for each plan set forth in the schedule above shall be subject to automatic increase on the first day of the second Agreement Year and on the first day of each Agreement Year thereafter during the Term in the amount of 5% of the previous Agreement Year's annual subscription fee for each such plan.

\*\*Additional user licenses may be purchased by City for \$600 per additional user license/ per Agreement Year, and such \$600 per additional user license/ per Agreement Year fee shall not be pro-rated for any partial Agreement Year except to the extent explicitly provided otherwise in the Exhibit to which this Schedule 1 is attached. City shall notify Contractor of its election to purchase additional user licenses during each Agreement Year for which City intends to use such additional user licenses, and City's election to purchase additional user licenses during any particular Agreement Year shall not carry forward into the continued use of such additional user licenses during any subsequent Agreement Years.

\*\*\*Except to the extent explicitly provided otherwise in the Exhibit to which this Schedule 1 is attached, notwithstanding the chart above, the number of Contractor professional service hours included in any annual subscription plan for which Contractor has waived or has otherwise provided a credit or discount towards City's annual subscription fee shall be 0.

\*\*\*The amount of any unused Contractor professional service hours included for any Agreement Year shall expire at the conclusion such Agreement Year, or upon the termination or expiration of the Agreement, whichever is earlier. For the avoidance of doubt, any unused Contractor professional service hours included for any Agreement Year shall not be rolled forward for use in any subsequent Agreement Year.

\*\*\*Additional Contractor professional service hours may be purchased by City at the rate of \$250 per additional hour, or at the bulk discount rate of \$225 per additional hour where City purchases 50 or more hours in a single transaction, it being understood any such hours (including any of those purchased in bulk), consistent with the terms set forth above, shall expire at the conclusion of the Agreement Year in which they were purchased, or upon the termination or expiration of the Agreement, whichever is earlier.

\*\*\*\*City may elect to activate Contractor's Premium Automation Package as an optional add-on for \$1,200 per Agreement Year, and such \$1,200 per Agreement Year fee shall not be pro-rated for any partial Agreement Year except to the extent explicitly provided otherwise in the Exhibit to which this Schedule 1 is attached. For clarity, standard two-touch welcome automations are included with each City subscription plan and do not require activation of Contractor's Premium Automation Package. Any activation of Contractor's Premium Automation Package shall be for the remainder Term of the Agreement (and not just for the remainder of the then-current Agreement Year).



**Schedule 2 to Exhibit F**

<b>Plan</b>		<b>Annual Sent Messages</b>		<b>TM1 Engagement Contractor Support</b>
Base	0	to	1,000,000	<ul style="list-style-type: none"> <li>• Unlimited issue resolution technical support via Contractor product support</li> <li>• Implementation Services</li> <li>• Industry-specific web-based training</li> <li>• Industry-specific user guides</li> <li>• Industry-specific best practices documentation and webinars</li> <li>• Deliverability Support</li> </ul>
Plan 1	1,000,001	to	2,000,000	
Plan 2	2,000,001	to	4,000,000	
Plan 3	4,000,001	to	6,000,000	
Plan 4	6,000,001	to	12,000,000	
Plan 5	12,000,001	to	18,000,000	
Plan 6	18,000,001	to	30,000,000	
Plan 7	30,000,001	to	48,000,000	
Plan 8	48,000,001	or	More	

## EXHIBIT G

### PLATINUM TICKETS AND VIP PACKAGES

#### 1. Platinum Tickets and VIP Packages

##### (a) Definitions.

“Platinum Ticket” means any dynamically-priced Ticket that represents the most select category of seats for an Attraction resulting from proximity to stage or other superior amenities as mutually determined by City and Contractor, which is sold by Contractor on behalf of City.

“Platinum Ticket Fee” means a fee assessed by Contractor against each Platinum Ticket purchaser in an amount equal to 14.8% (which incorporates Electronic Payment Fees in the same percentage amount as set forth in the Agreement with respect to standard Ticket sales) of the Platinum Ticket Price (excluding any applicable delivery and processing fees) for each Platinum Ticket sold by Contractor via the TM.com Website. Additionally, Contractor shall charge City a "Platform Fee" in the amount of five percent (5%) of the Platinum Ticket Price (excluding any applicable delivery and processing fees), which shall be deducted from the Platinum Proceeds as an Inside Charge prior to settlement. The Platinum Ticket Fee and the Platform Fee payable to Contractor in connection with each sale of a Platinum Ticket shall be in lieu of any per Ticket Convenience Charge or Inside Charge otherwise due Contractor under this Agreement in respect of standard Ticket sales.

“Platinum Ticket Price” means the total price a purchaser pays for a Platinum Ticket sold via the TM.com Website, inclusive of applicable taxes, but exclusive of the Platinum Ticket Fee. The Platinum Ticket Price shall initially be established by City in consultation with Contractor, and any subsequent adjustments to the Platinum Ticket Price shall be administered in accordance with parameters accepted by City in advance.

“Platinum Proceeds” means the Platinum Ticket Price collected by Contractor, which, for the avoidance of doubt, shall not include the Platinum Ticket Fee.

“VIP Package(s)” means Ticket packages which entitle the purchaser of the Ticket to additional benefits to be fulfilled solely by City (and not, for the avoidance of doubt, the artist or performing act of any Attraction), including but not limited to, access to unique experiences surrounding the Attraction and/or unique merchandise.

“VIP Package Fee” means a fee assessed by Contractor in the amount of 14.8% (which incorporates Electronic Payment Fee in the same percentage amount as set forth in the Agreement with respect to standard Ticket sales) of the VIP Package Price, which amount shall be charged to the VIP Package purchaser in addition to the VIP Package Price.

“VIP Package Price” means the total price of the VIP Package paid by the purchaser as set by City, inclusive of the Face Value of the Ticket and applicable taxes.

"VIP Package Proceeds" means the VIP Package Price, which, for the avoidance of doubt shall not include the VIP Package Fee.

(b) **Platinum Tickets.**

(i) **Platinum Ticket Set-Up Information.** City will provide Contractor with notice of its desire to have Contractor enable a Platinum Ticket offer for any applicable Attraction, and shall provide Contractor with required Set-Up Information in respect of such offer so that Contractor may set up the offer for sale through the TM.com Website.

(ii) **Platinum Ticket Fulfillment.** Contractor shall fulfill Platinum Ticket orders in the same manner as standard Tickets through Contractor's ordinary distribution channels as requested by the purchaser.

(iii) **Platinum Ticket Settlement.** Contractor shall pay City the Platinum Proceeds, less the Platform Fee, for each Platinum Ticket sold by Contractor during a calendar week along with settlement of Ticket Receipts for the applicable week. City shall be responsible for remitting any applicable taxes on the Platinum Ticket Price, and Contractor shall be responsible for remitting any applicable taxes on the Platinum Ticket Fee. Notwithstanding the foregoing, in the event that Contractor is ever required by applicable law to remit taxes on the Platinum Ticket Price directly on behalf of City, Contractor shall have the right to do so upon notice to City. Except as provided otherwise above, settlements of Platinum Proceeds shall be made in accordance with and subject to the accounting and refund procedures set forth in this Agreement.

(3) **Platinum Ticket Fee Royalty.** City shall be entitled to receive from Contractor a royalty in the percentage amount of: fifty percent (50%) with respect to each Platinum Ticket Fee received (and not refunded or subject to chargeback) by Contractor. Notwithstanding the above, Electronic Payment Fees, delivery fees, processing fees, and taxes (in each case, if any) related to any Platinum Ticket Fee shall be deducted from the Platinum Ticket Fees before the Platinum Ticket Fee royalties are calculated. Neither party makes any representation that any specific number of Platinum Tickets nor any amount of Platinum Ticket Fee royalties shall be available in connection with any Attraction for which the sale of Platinum Tickets has been enabled. Platinum Ticket Fee royalties shall be paid to City during a calendar week along with the settlement of Ticket Receipts for the applicable week.

I **VIP Packages.**

(4) **VIP Package Offer Information.** City will provide Contractor with reasonable advance written notice of its desire to have Contractor enable a VIP Package, which notice shall include an accurate and complete description of the VIP Package content, applicable dates for the sales campaign, and any other information reasonably requested by Contractor (the "Offer Information"). Notwithstanding anything to the contrary, Contractor shall not be obligated to offer a VIP Package for

an Attraction if, in the reasonable discretion of Contractor, the VIP Package is not appropriate for sale via the TM.com Website. Contractor and City will work together to develop appropriate messaging appearing on the TM.com Website to inform all purchasers of VIP Package elements and benefits. Contractor shall have final control over any and all messaging on the TM.com Website, and reserves the right to reject any messaging proposed by City for any reason, including, without limitation, size constraints. Notwithstanding the foregoing, Contractor shall have no responsibility or liability in the event that information (including Offer Information) provided to Contractor by City relating to the VIP Package, is incorrect or incomplete.

(ii) VIP Package Fulfillment.

- (5) Contractor Responsibilities. Contractor will control access to the VIP Package by distributing to each applicable purchaser a unique barcode which will allow the purchaser to redeem the VIP Package elements from City at the Attraction. Contractor shall be responsible solely for enabling a barcode for each Purchaser to use to redeem the VIP Package elements, together with instructions for redemption (including (i) that City is the party responsible for fulfilling the VIP Package elements, (ii) the time frames during which redeeming purchasers may redeem the VIP Package elements, and (iii) the relevant City customer service contact information for purposes of handling customer support issues relating to such redemption). Contractor shall be responsible for customer service inquiries relating solely to enabling the barcode.
- (6) City Responsibilities. City shall allow purchasers to redeem the VIP Package elements at the Facility. City shall be responsible for performing all fulfillment, redemption and delivery obligations, and customer service related to all fulfillment and delivery of VIP Package elements, and all costs associated therewith.
- (7) VIP Package Settlement.
- (8) Contractor shall pay City the VIP Package Proceeds for each VIP Package sold by Contractor during a calendar week along with settlement of Ticket Receipts for the applicable week. Notwithstanding anything to the contrary, City shall not receive any payment, nor shall a sale be deemed to have been made, if any VIP Package is the subject of a chargeback or for which Contractor refunds the Ticket portion of the VIP Package.
- (9) City agrees that it shall be responsible for all refunds related to the VIP Package elements, and to the extent Contractor receives any VIP Package element refund requests, Contractor shall refer the purchaser to a customer service number provided by City to Contractor for such customer service issues. In no event shall Contractor be liable for a refund of the VIP Package elements. In addition, City shall be responsible for all Chargebacks related to the VIP Packages, and Contractor shall have the right to deduct amounts due for Chargebacks from the VIP Package

Proceeds otherwise payable by Contractor to City. In the event such VIP Package Proceeds are inadequate to cover actual Chargebacks, City shall be responsible for, and shall refund to Contractor within ten (10) days of Contractor's written notice all amounts related to all Chargebacks of VIP Packages sold by Contractor.

- (10) City shall be responsible for remitting any applicable taxes on the VIP Package Price, and Contractor shall be responsible for remitting any applicable taxes on the VIP Package Fee. Notwithstanding the foregoing, in the event that Contractor is ever required by applicable law to remit taxes on the VIP Package Price directly on behalf of City, Contractor shall have the right to do so upon notice to City.

(iv) VIP Package Fee Royalty. City shall be entitled to receive from Contractor a royalty in the percentage amount of: fifty percent (50%) with respect to each VIP Package Fee received (and not refunded or subject to chargeback) by Contractor. Notwithstanding the above, Electronic Payment Fees, and taxes (in each case, if any) related to any related to any VIP Package Fee shall be deducted from the VIP Package Fees before the VIP Package Fee royalties are calculated. Neither party makes any representation that any specific number of VIP Packages nor any amount of VIP Package Fee royalties shall be available in connection with any Attraction for which the sale of VIP Packages has been enabled. VIP Package Fee royalties shall be paid to City during a calendar week along with settlement of Ticket Receipts for the applicable week.