

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

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

(g) **Ticketmaster MailManager:**

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **Advertising.**

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

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

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

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

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

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

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

13. **Accounting Procedures; Reports.**

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

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

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

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

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

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

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

#### 14. **Taxes**.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

18. **Termination.**

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

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

(ii) terminate this Agreement.

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

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

(ii) terminate this Agreement.

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

19. **Miscellaneous.**

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

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

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

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

(e) **MacBride Principles:**

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

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

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

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

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

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

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

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

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

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

By: [Signature]  
Title: SVP  
Date: 8/31/10

By: [Signature]  
Title: Gen. Mgr.  
Date: 9/1/10

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

Address: 51 South Pearl Street  
Albany, NY 12207  
Attn: Bob Belber

**With a copy to:**

**With a copy to:**

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

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

**and with a copy to:**

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

COUNTY OF ALBANY, NEW YORK  
By: [Signature]  
Name: Michael Ferrin  
Title: Deputy County Exec.  
Date: 9/1/10  
Address: County of Albany  
112 State Street  
Albany, NY 12207  
Attn: County Executive

## EXHIBIT A

### STANDARD TERMS AND CONDITIONS

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

1. **Definitions.**

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

2. **Intellectual Property/Limited License.**

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

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

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

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

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

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

6. **Representations and Warranties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

## 7. Disclaimer of Warranty.

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

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



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

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

9. **Indemnification.**

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

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

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

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

#### 10. Termination.

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

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

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

#### 11. Confidential Information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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