

RESOLUTION NO. 2010-164

Adopted by the Sacramento City Council

April 1, 2010

CONTRACT AWARD FOR THE EXCLUSIVE TICKETING PROVIDER SERVICES FOR THE CONVENTION CENTER COMPLEX

BACKGROUND

- A. The Sacramento Convention Center Complex provides patrons with tickets for events held at the Convention Center, Memorial Auditorium, and the Community Center Theater. The Complex houses approximately 550 events a year, including many ticketed events, generating sales of over 330,000 single tickets, totaling more than \$17 million in sales for Complex events.
- B. All Complex tickets are exclusively sold through the ticketing services provider, Tickets.com, or through the Complex's on-site box office.
- C. In April of 2005 Council approved a five-year agreement with Tickets.com for the exclusive ticketing provider services at the Complex. The current contract will expire June 30, 2010.
- D. In November of 2009 a request for proposals was used to determine the best exclusive ticketing provider for the future. The selection panel selected Tickets.com as the best overall vender with regard to customer service, Complex support, and financial proposal.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Agreement with Tickets.com for the exclusive ticketing provider services at the Convention Center Complex is approved and the City Manager or his designee is authorized to execute the agreement.
- Section 2 Exhibit A is part of this Resolution.

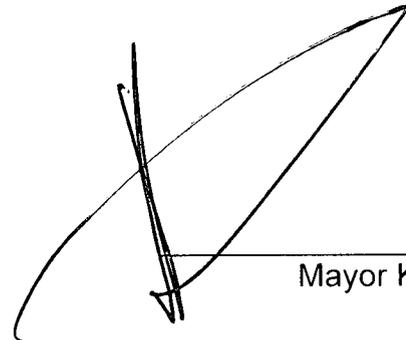
Adopted by the City of Sacramento City Council on April 1, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.

A large, stylized handwritten signature in black ink, consisting of a long, sweeping curve that loops back and ends in a sharp point, with a vertical line intersecting it.

Mayor Kevin Johnson

Attest:

for Dawn Bullwinkel
Shirley Concolino, City Clerk



EXHIBIT A

This Ticketing Services Agreement (the "Agreement") is effective as of July 1, 2010 (the "Effective Date") by and between **Tickets.com, Inc.** (hereinafter "TDC" or "CONSULTANT"), a Delaware corporation, at 555 Anton Boulevard, Costa Mesa, California 92626, (714) 327-5400 phone / (714) 327-5410 facsimile, and the **City of Sacramento**, (hereinafter "Client" or "CITY"), a municipal corporation, at 1030 15th Street, Sacramento, California 95814, 916-808-5291 phone/916-808-7687 facsimile.

In consideration of the mutual promises and covenants contained in this Agreement, the parties, intending to be legally bound, agree as follows:

1. **FACILITY:** This Agreement pertains to the facilities located at the Sacramento Convention Center Complex which include the following. All such facilities may be collectively or singularly referred to within this Agreement as (the "Complex").
 - A. **The Sacramento Convention Center, 1400 J Street, Sacramento, CA 95814**
 - B. **The Sacramento Memorial Auditorium, 1515 J Street, Sacramento, CA 95814**
 - C. **The Community Center Theater, 1301 L Street, Sacramento CA 95814.**
2. **DEFINITIONS:** For purposes of this Agreement, the following terms will have the respective meanings set forth below:

Access Control System: A computerized system using wireless handheld scanners, which interfaces with the Ticket System for the purpose of verifying the authenticity of a Ticket presented by a Customer for admission to the Complex.

Available Seats: Each and every Ticket that is offered for sale to the general public for a particular Event.

Box Office: The location(s) at the Complex where Tickets are sold.

Campaign Creator™ Service: A comprehensive third party electronic communications platform which enables Client to create, deploy and manage electronic messaging programs targeted to a designated group of recipients in the form of email marketing campaigns, website "blogs", Real Simple Syndication ("RSS") feeds, customer survey and poll creation, at the discretion of Client.

Contract Year: For purposes of this Agreement, a Contract Year shall be defined as July 1 through June 30 of each year this Agreement remains in effect.

Customer: A person, organization or other entity which purchases Tickets for Client Events, or Events held at the Complex.

Customer Service Charge: The amount charged by TDC to Customers for the use of the Ticket System.

Equipment: The equipment listed or described in Exhibit B hereto and any other equipment furnished by TDC to Client pursuant to this Agreement.

Event: Any performance, event or other entertainment activity that is scheduled to take place, be presented or performed at the Complex, for which Client has authority to sell Tickets to the general public.

Event Ticket Insurance. A service provided by and administered through a third party vendor which enables a Customer to opt-in to purchase insurance coverage, under the terms and conditions set forth

by such third party vendor, for Tickets sold to Events under this Agreement.

Facility Fee: The amount charged by Client to a Customer for each Ticket purchased for an Event.

Gross Ticket Proceeds: The total of all charges paid by a Customer, including the Ticket price, per-Ticket Customer Service Charges, Per-Order Processing Fees, taxes, per order Tickets@Home fees, and any other fee included during the sale of Tickets purchased through the Ticket System.

Inside Charges: The amount charged by TDC to Client for services rendered by TDC under this Agreement.

Internet: All sales of Tickets through the Ticket System by the Internet or any other online system whereby Customers can purchase Tickets using a credit card.

Per-Order Processing Fee: The Per-Order amount charged to a Customer for Ticket orders which are purchased through TDC Call Centers and the Internet.

Private Labeled Web Page. A page or series of pages made available online, which are developed and hosted by TDC and reside on TDC servers, and which display logos, trademarks and other trade dress of the Client, for the purposes of making specified Ticket functionality available online to authorized end-users.

Remote Administration: To remotely control a computer for the purpose of support, maintenance, and troubleshooting on the Access Control System through the use of third party software such as PCAnywhere, Terminal Services, or a similar application.

Retail Outlet: A retail location that TDC has contracted with to sell Tickets to Events through the Ticket System, (or from kiosks located at retail locations, if applicable).

Revenue Share: Collectively, all amounts due to Client hereunder as its share in revenue produced in connection with per-Ticket Customer Service Charges, Per-Order Processing Fees, Per-Order Tickets@Home Fees, and any other fees as mutually agreed by the parties and set forth in Exhibit A hereto.

TDC Call Center: The service established and managed by TDC to enable a Customer to call a designated phone number to purchase a Ticket using a credit card through a live telephone operator or an automated Interactive Voice Response system.

TDC Distribution Channels: A point of sale including but not limited to, TDC Retail Outlets, TDC Call Centers, and TDC's website (www.Tickets.com).

Ticket: Tangible evidence of the right to admission to and/or to participate in or occupy seating at an Event.

TDC Software: All software developed, owned and maintained by TDC.

Ticket System: The equipment, proprietary software, methods and processes developed, owned and maintained by TDC for the purpose of managing, selling, delivering, auditing, and controlling the sale of Tickets to Events. This Ticket System offers season and single ticketing features in one system and is account based with the ability to recall customer account information.

Tickets@Home®: Proprietary software functionality developed and owned by TDC, which enables a Ticket purchased online to be delivered to the Ticket purchaser's computer and printed on the Ticket purchaser's printer.

3. EXCLUSIVE RIGHT TO SELL TICKETS:

A. **Exclusivity.** Client hereby grants to TDC the exclusive right to sell Client's Tickets for all

Events held at the Complex, or produced or promoted by Client during the Initial Term and any Renewal Term (as hereafter defined) of this Agreement. TDC's right to sell Tickets shall be through any and all means, including, but not limited to, TDC Call Center, Retail Outlet, and Internet sales. This right is not to be limited by an allocation of Tickets, and extends to all Available Seats to the same extent that such Available Seats are available through the Box Office by subscription or otherwise. Client will not permit any other party including, without limitation, any other computerized ticketing service or agency to issue or cause to be issued Tickets for any Events, nor permit any other party to sell by allocation, voucher or otherwise Tickets for any Event. Client further warrants that, at the time of execution of this Agreement, it is not a party to any agreement with any other ticketing service, agency or software provider. Client is allowed at its discretion to issue consignment Tickets to Complex licensees. Consignment tickets shall not exceed 10% of the Available Seats.

- B. Sales by Client.** Notwithstanding Subsection A above, Client may sell Tickets at the Box Office to purchasers appearing in person, ordering by mail, or purchased by telephone through the Client's telephone room. Client reserves the right to operate its own telephone room at no cost to TDC.
 - C. Ticket Price.** Client will establish the face price of all Event Tickets. Client authorizes TDC to collect the face price of each Ticket, the Customer Service Charge, Per-Order Processing Fee, taxes, and all other agreed upon fees from each Customer.
- 4. TERM:** The initial term of this Agreement shall be 3 years, commencing on the Effective Date (the "Initial Term"). Upon the mutual written consent of TDC and the General Manager of the Complex, this Agreement may be renewed for up to two successive 1 year terms (each a "Renewal Term") following the Initial Term. Such consent shall be given, if at all, not less than 120 days prior to the end of the Initial Term or the first Renewal Term.
- 5. CHARGES PAID BY CLIENT:**
- A. Inside Charges:** TDC will be entitled to Inside Charges from Client as set forth in Exhibit A, which will be deducted from settlement.
 - B. Credit Card Fees:** Client will be charged credit card fees, as set forth in Exhibit A, based on the Gross Ticket Proceeds for all Tickets for which the TDC credit card authorization system is utilized. Such credit card fee will remain in effect for the duration of the Initial Term. TDC reserves the right to increase the credit card fee at the beginning of each Renewal Term upon not less than 120 days prior written notice to Client if any of the fees charged by a credit card company or credit card processor have been increased through no fault of TDC.
 - C. Equipment:** Client will pay a monthly fee as stated in Exhibit A to TDC for all Equipment provided by TDC and set forth in Exhibit B of this Agreement.

- D. **Data Communications:** Client will pay monthly data line fees, as set forth in Exhibit A.
- E. **Campaign Creator Service Annual Usage Fee:** Client is entitled to use the Campaign Creator Service at no additional cost for up to 600,000 emails and/or RSS feeds during each Contract Year of this Agreement. Client agrees that if, during any Contract Year of this Agreement it sends more than 600,000 emails and/or RSS feeds, then Client shall pay TDC the overage fee set forth in the attached Exhibit A.

6. **CHARGES PAID BY CUSTOMER:**

- A. **Customer Service Charges:** The per-Ticket Customer Service Charges will be solely determined by Client on an annual basis and are set forth in Exhibit A. Notwithstanding the foregoing, Client reserves the right to increase Customer Service Charges as needed per Event upon prior written notice to TDC. TDC will retain a flat fee of such Customer Service Charge in the amounts set forth in Exhibit A.
- B. **Per-Order Processing Fees:** TDC will be entitled to retain a Per-Order Processing Fee from the Customer in the amount set forth in the attached Exhibit A for all orders placed through TDC's Call Center or the Internet.
- C. **Tickets@Home Fees:** TDC will be entitled to a per-order Tickets@Home Fee from the Customer, at the point-of-purchase for all orders placed in which the Tickets@Home functionality is utilized. The per-order Tickets@Home Fees are set forth in Exhibit A.
- D. **Facility Fees:** TDC shall collect a Facility Fee from all Customers at the point of purchase for all sales executed on behalf of Client. Such Facility Fee is set forth in Exhibit A and shall be remitted in full to Client.

7. **REVENUE SHARE PAID BY TDC:** Client shall be entitled to a per-Ticket and/or per-order Revenue Share as set forth in Exhibit A.

8. **TICKET SALES PROCEDURES:**

- A. **Box Office Sales.** All Box Office Ticket sales will be exclusively through the Ticket System pursuant to the terms and conditions of this Agreement. Client will be responsible for the staffing and management of the Box Office.
- B. **TDC Distribution Channel Sales.**
 - (1) **Internet Sales.** TDC shall offer Tickets for sale via the Internet. All Internet sales will be charged to Customer's credit cards. TDC shall accept MasterCard, Visa, Discover and American Express.
 - (2) **TDC Call Centers.** TDC shall maintain TDC Call Center(s). TDC agents shall enter all telephone sales into the Ticket System. All telephone sales shall be charged to Customer's credit cards. TDC shall accept MasterCard, Visa, Discover and American Express.
 - (3) **Retail Outlet Sales.** TDC may offer Tickets for sale through Retail Outlets.
 - (4) **Fulfillment.** Subject to a Customer's election to use alternative methods of delivery such as Tickets@Home, Tickets purchased through the TDC Call Center or the Internet 10 days or more in advance of an Event shall, at Customer's request, be mailed by TDC to Customer, and TDC shall be responsible for all costs of delivering such Tickets. All Tickets not delivered to Customers will be pulled off the Ticket System by Client and held for Customers at a "will call" window at the Box Office or otherwise distributed by Client. Client will cause a "will call" window at the Box Office to be open at least 1 hour prior to the start time for each Event. TDC shall continue to take and fill all TDC Call

Center single Ticket orders up to four hours prior to the start of an Event and shall ensure delivery (through the system) of the "will call" Tickets to the Box Office no later than two hours prior to the start of the Event.

- C. **Chargebacks.** Client agrees to pay all credit card chargebacks for the unrecovered sum of all Tickets sold through the Ticket System, which sales resulted in a credit card chargeback to TDC. TDC agrees that it will use commercially reasonable efforts to contest and collect any and all credit card chargebacks initiated by Customers. If TDC is unable to collect any such chargeback, TDC will have the right to deduct the applicable chargebacks through the settlement of funds as set forth in Section 9.C of this Agreement. If settlement funds are not available to offset such chargebacks, TDC shall have the option to continue deducting chargebacks from subsequent settlement funds or invoice Client for such chargebacks. Client agrees to pay all chargeback invoices within 30 days of receipt. Client agrees that its Box Office staff will verify the identification of Customers purchasing Tickets through the Box Office against any credit card used by a Customer to purchase Tickets.

Standard chargebacks under this Agreement may occur up to 18 months from the date a Customer has purchased a Ticket through the Ticket System. Chargebacks which are the result of fraud shall have no timeframe limitation on Customer's ability to recover such charges.

- D. **Cancellations.** If an Event is cancelled or closed after Tickets have been sold, Client agrees to be responsible for refunds, exchanges, and Customer inquiries. TDC agrees to provide refunds or exchange of Tickets as directed by the Client for Ticket sales which were sold through the Ticket System. TDC agrees to provide such refunds or exchanges through the Ticket System for a period of 120 days after the originally scheduled date of the Event. Specific refund procedures will be mutually agreed to for each cancelled Event. Within 24 hours of the cancellation of an Event, Client agrees to provide adequate funds to TDC necessary to make refunds for all Tickets for which TDC has previously made settlement to Client. After such 120 day period, TDC shall remit to Client all unrefunded Ticket proceeds TDC holds for the cancelled Event, less any fees charged to Client and collected from Customers which TDC has the right to retain under this Agreement. TDC will refer Customers requesting refunds to Client. Thereafter, Client will be solely responsible for any subsequent reimbursements to Customers of Tickets to such cancelled Events. Client agrees to inform Customers of this refund policy. In the event of any cancellation, TDC will have the right to retain any charges paid by Client, and Per-Order Processing Fees or other applicable fees imposed on the sale of Tickets as though no cancellation or closing has occurred. For refunds, the credit card fee paid by the Client as identified in Exhibit A will be refunded to Client. However, a 1% credit card refund fee will be assessed to Client for any refunds processed.
- E. **Postponed/Rescheduled Events/Exchanges.** If an Event is postponed and/or rescheduled, TDC shall provide refunds and/or exchanges as directed by Client. An exchanged Ticket may be returned to the Ticket System without charge, but TDC will be entitled to keep its share of any Customer Service Charges and Per-Order Processing Fees or other applicable fees imposed on the initial sale of the exchanged Ticket. Client acknowledges and agrees that all chargebacks resulting from a postponed or rescheduled Event, regardless of refund policy, are the financial responsibility of the Client.

9. FINANCIAL CONDITIONS.

A. Account Procedures.

- (1) TDC shall be responsible for the collection and distribution of all revenues for the TDC Call Center, Retail Outlets and Internet sales and the collection and distribution of all revenues from Box Office sales paid by credit card using the TDC on-line authorization system. Client will be responsible for the collection and distribution of all other revenues from Box Office Ticket sales.
- (2) TDC and Client will make settlements and transfer funds for applicable revenues

received for each Event in accordance with the schedule set forth in Subsection B below. Charges paid by Client and Customers will be accounted for at each settlement.

- (3) TDC is authorized to offset and deduct from any remittance all charges for which Client is financially responsible.
- (4) Each payment made to Client by TDC shall be accompanied by TDC's remittance report. Such report shall form the basis for settlement between the parties, and shall be conclusive as to any amounts owed to Client by TDC unless Client submits a written objection to TDC within 10 business days after receipt of such report, setting forth in reasonable detail Client's objections to the report.
- (5) Upon Client's request, TDC shall provide to Client within ten (10) days a report of sales activity for the previous Contract Year. Such report shall summarize various revenue streams specified by type of service, and indicate revenue share due to Client.

B. Audit: The Parties agree as follows:

- (1) During the Initial Term and any Renewal Term, and for a period of three (3) years following any termination or expiration of this Agreement, TDC agrees to maintain all books and records relating to all Services performed by TDC pursuant to this Agreement (the "Records").
- (2) TDC Agrees that not more than once per calendar year and upon reasonable notice by Client, at Client's sole expense, Client may cause an audit to be made of the Records for the purpose of verifying Gross Ticket Proceeds and other fees charged to Client in accordance with this Agreement including, but not limited to, credit card fees and chargebacks which have been reported by TDC. Client agrees that any such audit (i) shall be conducted only by an independent certified public accountant retained by Client; (ii) shall be conducted during regular business hours at TDC's corporate office location where applicable financial records and information are retained (as of the Effective Date of this Agreement, such corporate office is located in Costa Mesa, California); and (iii) shall be conducted in such a manner as to not interfere with TDC's normal business activities.
- (3) In the event that any such audit identifies a discrepancy of five percent (5%) or greater between amounts due to Client and amounts actually paid to Client then, in addition to the payment of any amounts in arrears, TDC shall pay all reasonable costs incurred by Client in conducting such audit.

- C. **Settlement:** TDC shall pay Client an amount equal to the Gross Ticket Proceeds collected by TDC less the amounts TDC is entitled to retain pursuant to this Agreement. Such payment shall be made by Automatic Clearing House (ACH) or by check on or about Friday of each week with respect to sales which have occurred during Monday through Sunday of the week preceding such payment date.
- D. **Taxes.**
- (1) **Products and Services.** Client represents and warrants that it is exempt from payment of any and all use taxes which may be assessed on the products and services provided by TDC hereunder. TDC represents and warrants that it shall pay any and all taxes incurred as a result of TDC's compensation hereunder, including estimated taxes.
 - (2) **Consumer Ticket Sales.** If any governmental entity imposes a sales, excise, use, amusement, entertainment or other tax or assessment or charge on the admission, Ticket, right to occupy a seat at an Event, Client is responsible for determining any required tax or assessment, ensuring that the tax or assessment is included in the face value of the Ticket or in the full Ticket purchase price, and that such tax information is provided to TDC. Tax amounts are included in the Gross Ticket Proceeds at the time of settlement. Client shall remit any such tax to the appropriate taxing authority and make, execute, and complete any and all reports or returns required by law. If TDC is required by any tax authority to pay and does so pay any such taxes on behalf of Client, Client will promptly reimburse TDC for any and all taxes paid by TDC, including penalties and interest thereon. If TDC is held responsible for any such taxes or assessments, TDC at its sole option may terminate this Agreement on 30 days written notice unless Client agrees in writing to promptly reimburse TDC for the amount of such taxes or assessments.
 - (3) To the extent applicable, TDC acknowledges that certain taxes may be assessed for its use of Client's real property (Possessory Interest Tax). TDC shall promptly pay any and all taxes, including real property, personal property and any other possessory interest or use tax, assessed or levied on TDC's interests in or arising from this Agreement, TDC's real or personal property, and/or improvements constructed by TDC.

10. EQUIPMENT.

- A. **Equipment Provided to Client.** Following TDC's approval of the physical facilities where the Equipment will be located, TDC shall install, at its sole expense, the Equipment listed in Exhibit B and any additional Equipment leased by Client. If TDC furnishes any Equipment to Client, in addition to the Equipment listed in Exhibit B, Client will lease that additional Equipment from TDC at rates to be mutually agreed upon by the parties.
- B. **TDC's Property.** Client acknowledges and agrees that all Equipment is and will remain TDC's sole and exclusive property. Client will acquire no ownership interest in, and will have no right to transfer, license the use of, or encumber any Equipment. TDC shall be responsible for the repair and maintenance of all Equipment.
- C. **Client's Responsibilities.** Client will provide, at its expense, an electrical connection to furnish power to the Equipment. Client will pay the cost of all electricity and other utilities consumed by the operation of the Equipment.

- D. **Training and Use of the Equipment.** TDC will provide training for Client's personnel in the use of the Ticket System, Access Control System and the care and operation of the Equipment. The amount of training will be mutually agreed upon. Only those employees of Client who have been trained by TDC, or by a TDC trained employee of Client, will use the Equipment. Client will not permit any person not employed by Client, or any untrained employee of Client, to use the Equipment.
- E. **Loss and Damage.** Client assumes and will bear the entire risk of loss and damage to the Equipment, ordinary wear and tear excepted, whether or not insured against, until the Equipment is returned to TDC. The Equipment will be used strictly in accordance with the instructions and manuals issued by TDC, and Client will not permit the Equipment to be operated with any other software or for any purpose outside the scope of this Agreement without TDC's prior written consent.
- F. **Equipment Tags.** Client will not remove, cover or alter any labels, plates or other markings identifying each item of Equipment.
- G. **Location and Right of Inspection.** Client will not move any Equipment from the location where it is installed, or make any addition or alteration without TDC's prior written consent. TDC will have the right, at any time during normal business hours and upon reasonable notice, to inspect or service the Equipment and for that purpose to have access to the Equipment.
- H. **Return of Equipment.** Upon the expiration or termination of this Agreement, Client will return all Equipment to TDC in good working condition, reasonable wear and tear excepted. TDC will be responsible for the removal of the Equipment, and will have the right to enter the Client's office and/or Box Office to take possession of the Equipment.

11. **RIGHT TO USE THE TDC SOFTWARE, THE TICKET SYSTEM, THE ACCESS CONTROL SYSTEM AND CAMPAIGN CREATOR SERVICE.**

A. **TDC Software and Ticket System.**

- (1) **Access.** Access to the TDC Software and the Ticket System is provided to Client as a licensed user only. Client's right to access and use the TDC Software provided hereunder shall extend to Clients authorized employees and designated client users who have been properly trained to use the TDC software and the Ticket System.
- (2) **License.** TDC hereby grants to Client a non-exclusive, non-transferable, limited, revocable license to (a) access and use the TDC Software for the sole and limited purpose of selling Tickets to Events presented at the Complex during the Initial Term and any Renewal Term. Client may not (i) sell, lease, license, sublicense or assign any rights granted hereunder; (ii) modify, disassemble, decompile, reverse engineer or make derivative works of the TDC Software, the Ticket System or any portion thereof; (iii) provide, disclose, divulge or make available to, or permit use of the TDC Software or the Ticket System to any third party without TDC's prior written consent or (iv) use the TDC Software or the Ticket System for any purpose except as expressly provided for in this Agreement.
- (3) **Ownership.** All TDC Software and any other software provided by TDC hereunder, either separately or embedded within the Ticket System is the property of TDC or its licensor and Client will not acquire any rights or licenses, except as expressly granted herein. Client agrees not to copy, reverse compile or reverse assemble all or any portion of such software.

B. **Access Control System.**

- (1) **Access.** Access to the Access Control System is provided to Client as a licensed user only. Client's right to access and use the Access Control System provided hereunder

shall extend to Client's authorized employees who have been properly trained to use the Access Control System.

- (2) **License.** TDC hereby grants to Client a non-exclusive, non-transferable, limited, revocable license to access and use the Access Control System as expressly provided for in this Agreement during the Initial Term and any Renewal Term. Client may not (i) sell, lease, license, sublicense or assign any rights granted hereunder; (ii) modify, disassemble, decompile, reverse engineer or make derivative works of the Access Control System or any portion thereof; (iii) provide, disclose, divulge or make available to, or permit use of the Access Control System to any third party without TDC's prior written consent or (iv) use the Access Control System for any purpose except as expressly provided for in this Agreement.
- (3) **Ownership.** All Access System Control Equipment provided by TDC hereunder is the property of TDC or its licensor and Client will not acquire any rights or licenses, except as expressly granted herein.
- (4) **Site Survey.** Prior to the installation of the Access Control System at the Complex, TDC will conduct a site survey to determine all equipment, software, labor and materials necessary to install the Access Control System and connect to the Ticket System. TDC and Client will work together during the site survey of the Complex to determine all installation locations and access points for related Access Control System hardware.
- (5) **Access Control System Data Communication.** Client will be responsible for all costs of data connectivity (including any required cabling) between the Access Control System server and Access Control System wireless access points as well as all providing the applicable power supply connections.
- (6) **Remote Administration.** Client acknowledges that TDC's ability to perform support for the Access Control System will require the use of Remote Administration on the Access Control System server. It is understood that TDC or one of its authorized partners has the right to perform Remote Administration to the Access Control System server as required.
- (7) **Service and Support.** During the Initial Term and any Renewal Term, TDC will provide all service necessary to maintain the Access Control System hardware in good working order. TDC will also provide all necessary user support to enable Client's personnel to operate the Access Control System.

C. Campaign Creator Service.

- (1) **Access to Campaign Creator Service.** Client acknowledges and agrees that access to the Campaign Creator Service is provided to Client as a registered user only. Subject to the provisions of this Agreement, TDC hereby grants to Client a nonexclusive, non-transferable, limited, revocable right to access and use the Campaign Creator Service only in connection with services provided pursuant to this Agreement.

- (2) **Ownership.** The Campaign Creator Service and any and all software that is or may become embedded therein is the proprietary property of the applicable third party vendor and is made available to Client exclusively through TDC. Client will not acquire any rights or licenses other than the right to use the Campaign Creator Service as expressly provided herein. Client agrees that it will not, nor will it enable or otherwise allow any other person or entity to distribute, copy, reverse engineer, reverse compile, disassemble, enhance, modify or make derivative works of the Campaign Creator Service or any portion thereof.
- (3) **Unique User Login ID.** TDC agrees to provide to Client a unique user login ID which will enable Client to access the Campaign Creator Service for the limited purposes as described herein. Client acknowledges and agrees that it will not enable itself or any other party to access the Campaign Creator Service without the use of a user login ID issued from TDC in accordance with the terms of this Agreement.
- (4) **Training.** TDC will provide training for Client's personnel in the use of the Campaign Creator Service on dates and at times as mutually agreed between the parties. The parties agree that initial training on use of the Campaign Creator Service will be provided by TDC at no cost to Client. Any additional training and associated charges will be mutually agreed between the parties prior to the commencement of any such additional training. Only those employees of Client who have been trained by TDC, or by a TDC trained employee of Client will be authorized to use the Campaign Creator Service.
- (5) **Permitted Use.** Client agrees that in its use of the Campaign Creator Service it shall remain at all times in compliance with all applicable Federal and State privacy and anti-spam legislation, including but not limited to adhering to the requests of any recipients that have opted-out from receiving any further communications distributed by Client. In addition to the foregoing, TDC reserves the right to refuse to distribute any communications distributed through the Campaign Creator Service, which in its reasonable discretion violate any applicable law or regulation, or contain malicious content or false advertising. Client acknowledges and agrees that the Campaign Creator Service is only available for use for Events for which Tickets are sold through the Ticket System.

12. Advertising.

- A. **TDC.** TDC may list Events in its promotional displays located in Retail Outlets, on the Internet, mail-out envelopes, and other advertising and promotional materials used by TDC, and may otherwise promote and advertise the Client, Complex and any Events in advertisements placed directly by TDC or in conjunction with others. In connection therewith, TDC may use the name of Client, all Events, the Complex, and the performers, artists and other persons involved in the Events.
- B. **Client.** Client agrees that in all advertising it controls or produces for Events, it will include the TDC logo, website address(es), retail outlet locations, and applicable telephone numbers. Such wording is subject to change, as appropriate, during the term of this Agreement upon written notice from TDC to Client. Client agrees to provide a link in a prominent location from Client's website to the TDC website.

13. **Other Obligations of TDC.**

- A. Central Computer Facility.** TDC shall, at its sole expense, install and maintain a central computer facility, at a location determined by TDC in its sole discretion, for the operation of a computerized ticketing system capable of serving the Client and otherwise performing TDC's obligations under this Agreement. TDC shall be solely responsible for all costs associated with the installation and maintenance of a data connection between TDC's central computer facility and each of the Client facilities set forth in Section 1 as of the Effective Date of this Agreement. In the event Client adds additional locations, Client shall be responsible for all costs related to data connectivity between such new locations and TDC's central computer facility. In addition, Client shall be solely responsible for all costs related to internal wiring within each facility at the Complex to any applicable TDC Equipment which is located at such facility.
- B. Ticket Stock.** TDC shall furnish, free of charge, all ticket stock necessary to sell Tickets through the Ticket System. All ticket stock and ticket envelopes used for the Ticket sales through the Ticket System may contain advertising sold by TDC. All revenue received from such advertisement will belong solely to TDC. Notwithstanding the foregoing, Client reserves the right to refuse to utilize any ticket stock or ticket envelopes that Client determines, in its reasonable discretion, to be objectionable, improper or otherwise not in conformity with Client's editorial policies and practices. In the event of such rejection by Client, TDC agrees to replace the ticket stock and/or ticket envelopes which have been refused with generic ticket stock and/or ticket envelopes at no additional cost to Client. In addition to the foregoing, Client retains the right, at its sole discretion and expense, to use custom ticket stock and envelopes, provided however, that any such ticket stock must conform to ticket stock specifications as provided by TDC.
- C. Software and Support.** TDC shall provide necessary software and support for Ticket System programming to be performed by Box Office personnel for Ticket sales for each Event. TDC will assign a client service representative to Client's account as set forth in Subsection D. The Client Service Representative shall serve as Client's first point of contact. TDC shall further provide a help desk that is staffed 24 hours daily.
- D. Client Service Representative.** TDC shall appoint a client service representative, responsible for the service of this Agreement acceptable to the Complex's General Manager. Such Client service representative shall be available to attend pre-sale and other meetings with Complex staff and/or clients on an as-needed basis.
- E. Professional Experience.** TDC represents that TDC personnel possess sufficient knowledge, training and experience in their respective disciplines necessary to provide the services under this Agreement in a professional and work person like manner.
- F. Emergency Contacts.** TDC shall provide emergency numbers to the Complex's personnel through which a representative of TDC may be reached at all times.
- G. No Minimum Sales.** It is understood that TDC does not guarantee (i) that any minimum or fixed number of Tickets will be sold through the Ticket System, (ii) that short term interruptions of service will not occur during the term hereof or (iii) that each person processing Ticket orders will be fully familiar with each or all of the Events.
- H. Ticket Sales.** TDC shall begin Ticket sales for each Event no earlier or later than the date and hour specified by Client.

- I. **Private Labeled Web Page.** TDC agrees to create up to four (4) Private Labeled Web Pages for Client and Complex licensees at no additional charge. The parties expressly agree that those Private Labeled Web Pages which were previously created in accordance with the Ticketing Services Agreement dated July 1, 2005 between Client and TDC shall be included as part of the four (4) pages mentioned in the immediately preceding sentence. While those existing Private Labeled Web Pages have been previously created, TDC agrees that it will provide one annual update to each such page (each update may include color, header image(s), map image(s) and/or external links) at no additional cost to Client. Additional upgrade requests may be mutually agreed to by the parties, and may be subject to TDC's then prevailing rate.
- J. **Event Ticket Insurance.** For so long as TDC maintains a relationship with a third party Event Ticket Insurance vendor (the "Ticket Insurance Vendor"), TDC agrees to provide an option on the Ticket purchase portion of Client's Private Labeled Web Page for Customers to opt-in to purchase Event Ticket Insurance. When a Customer checks the applicable "opt-in" box to purchase Event Ticket Insurance, he/she expressly authorizes TDC to forward his/her personal information, including without limitation applicable credit card information, to the Ticket Insurance Vendor. Such Customer information shall be used in accordance with the Privacy Policy of the Ticket Insurance Vendor. All payments for Event Ticket Insurance will be separately charged to a Customer's credit card by the Ticket Insurance Vendor. All purchases of Event Ticket Insurance will be subject to the terms and conditions provided by the Ticket Insurance Vendor. A link to such terms and conditions will be posted on the ticket purchase portion of Client's Private Labeled Web Page. Any and all inquiries regarding Event Ticket Insurance will be handled directly by the Ticket Insurance Vendor.
- K. **Campaign Creator Service.** As part of the Campaign Creator Service described in Section 11.C above, TDC agrees to (i) perform all required set up and configuration functions, (ii) provide training on use of the Campaign Creator Service, (iii) provide support services, (iv) assist Client in obtaining one (1) white-listed IP address, and (v) create three (3) standard templates for Client (calendar template, single event template and general information template) which shall include Client's logo. Client acknowledges and agrees that the Campaign Creator Service is licensed by TDC from a third party provider and is subject to such third party provider's regularly scheduled maintenance window of 8:00pm PST to 3am PST. TDC agrees to use commercially reasonable efforts to inform Client 24 hours in advance of any scheduled maintenance. TDC agrees that any and all patron data created and stored within the Campaign Creator Service by Client is owned by Client, and TDC will have no rights to utilize any such patron data for any purpose unless otherwise expressly agreed to by Client.
- L. **Marketing Services.** TDC shall provide Client with various marketing services during each Contract Year, the terms of which are set forth in Exhibit A.
- M. **Confidential Customer Information.** TDC shall ensure the confidentiality of information gathered for the purpose of selling Tickets. Except as otherwise provided in Section 29.J below, under no circumstances shall personal Customer information be sold or distributed by TDC, its agents, or employees, for any purpose without the written consent of Client.
- N. **Confidentiality of Client Information.** During performance of this Agreement, TDC may gain access to and use Client information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, Customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "Client Information") that are valuable, special and unique assets of the Client. TDC agrees to protect all Client Information and treat it as strictly confidential, and further agrees that TDC shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any Client Information to any third party without the prior written consent of Client. In addition, TDC shall comply with all Client policies governing the use of the Client network and technology systems, as set forth in applicable provisions of the Client of Sacramento Administrative Policy Instructions # 30. A violation by TDC of this Subsection shall be a material violation of this

Agreement and shall justify legal and/or equitable relief.

14. Other Obligations of Client.

- A. Access.** Client will give TDC reasonable access to the Client's offices, the Complex and the Box Office to provide training, maintenance, repair, assistance or other related services for the purpose of effectuating this Agreement and performing TDC's duties hereunder.
- B. Insurance.** Client will maintain throughout the term hereof, at its expense, primary insurance coverage, insuring the Equipment provided by TDC to Client against loss or damage by fire, theft and all other risks embraced by extended coverage. Such insurance policy will provide full replacement value coverage and will include a specific endorsement to the effect that TDC will receive at least 30 days prior written notice of the modification or cancellation thereof. Client will furnish to TDC a certificate of insurance from the insurer evidencing the insurance coverage required by this Subsection or evidence of self-insurance.
- C. Box Office.** Client agrees to maintain only one location serving as the Box Office where Customers who appear in person may purchase Tickets to Events without payment of a Customer Service Charge, in addition to Box Offices located at each of the Complex venues which are open prior to an Event. Client agrees to use ticket stock and envelopes provided by TDC for all Box Office sales, or to place the TDC logo on customized ticket stock and envelopes at the sole cost of the Client.
- D. Compliance.** Client warrants that it has all necessary rights to authorize the sale of Tickets for all Events and that the number of seats put on sale for an Event does not exceed the legal, fire or other limits or restrictions of capacity at the Complex.
- E. Ticket Availability.** Client agrees that all Available Seats will be open for sale through the Ticket System and that no Tickets will be pre-pulled for the Box Office or any other ticket agency, except as stated in Section 3.A. of this Agreement. Tickets will go on sale to the general public through the Ticket System at the same time they are first available at the Box Office. Client agrees that it will honor or cause to be honored all Tickets properly issued by the Ticket System for all Events.
- F. Use of Client's Hardware.** Client assumes all risks of damage or loss to its own equipment, data or software resulting from such use.

- 15. Event Set-Up.** No less than 3 business days prior to the time when Tickets for an Event are to go on sale, Client will provide TDC, in writing, all necessary information with respect to the Event, including seating layout, Ticket price structure, discounts, Ticket header information, entry information, and any other information necessary for the proper sale of such Tickets at the Box Office, through the TDC Call Center, Retail Outlets and by the Internet. Client accepts all responsibility for the accuracy of such information after the Client has verified it.

16. **Reports.** TDC shall provide Client with standard reports detailing patron information and Ticket sales information. Client may request custom reports from TDC on Customer and sale information. TDC requires 10 business days to fulfill custom report requests and may on occasion depending on frequency and complexity of requests, charge Client a reasonable programming fee, with prior authorization from Client.
17. **Unauthorized Ticket Sales.** TDC acknowledges and agrees that the scope of services contemplated herein is limited to the sale of primary Tickets to Complex Events. Accordingly, TDC agrees:
- A. It shall not allow any offers or solicitations regarding the sale of Tickets to Complex Events by any secondary market ticket seller or other unauthorized ticket seller to be displayed on the TDC business-to-consumer website (<http://www.tickets.com>).
 - B. It will not list, advertise, or allow links to any secondary market ticket seller or other unauthorized ticket seller to appear on Client's Private Labeled Web Pages. Client acknowledges and agrees that TDC does not have any control over secondary market ticket sellers or other unauthorized ticket sellers that operate independently of and outside the environments of the TDC business-to-consumer website and/or the Client Private Label Web Pages.
 - C. Notwithstanding the provisions set forth in Section 20 ("Default") below, TDC shall cure any breach of its obligations set forth in this Section 17 immediately, but in any event not later than one business day following receipt of notice from Client. TDC acknowledges that upon any subsequent breach by TDC of its obligations set forth in this Section 17, Client may, upon 30 days written notice to TDC, terminate this Agreement without further obligation to TDC other than the payment of all fees and costs due and payable as of the date of any such termination.
18. **Indemnification.**
- A. **Client.** Client shall indemnify and hold TDC harmless from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by TDC's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities") arising from personal injury or death, damage to personal, real or intellectual property, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of, or the failure to perform this Agreement by Client, its officers or employees, to the extent any such Liabilities arise from the sole negligence or willful misconduct of Client, its officers or employees. TDC shall make reasonable efforts to notify Client not later than ten (10) days after TDC is served with any claim, action, lawsuit or other proceeding hereunder and shall furnish Client with all relevant facts in its possession or under its control.
 - B. **TDC.** TDC shall defend, hold harmless and indemnify Client, its officers and employees, and each and every one of them (the "Indemnified Parties"), from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by Client's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities") arising from personal injury or death, damage to personal, real or intellectual property, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of, or the failure to perform this Agreement by TDC, any owner, officer, director, subcontractor, or agent or TDC, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense arising from personal injury or death, damage to personal, real or intellectual property,

contractual or other economic damages, or regulatory penalties to the extent any such damages arise from the sole negligence or willful misconduct of an Indemnified Party. In addition to the foregoing, TDC shall fully defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by TDC pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. Client shall make reasonable efforts to notify TDC not later than ten (10) days after Client is served with any claim, action, lawsuit or other proceeding hereunder, and shall furnish Client with all relevant facts in its possession or under its control, and shall cooperate fully with TDC in the defense of any matter covered by this indemnification.

C. **Survival.** The respective indemnification rights and obligations set forth herein will continue in full force and effect notwithstanding the expiration or termination of this Agreement.

19. **Insurance Requirements.** During the entire term of this Agreement, TDC shall maintain the insurance coverage described in this Section 19.

Full compensation for all premiums that TDC is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by TDC under this Agreement. No additional compensation will be provided for TDC's insurance premiums.

It is understood and agreed by the TDC that its liability to the Client shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the TDC in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

(1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the TDC.

No automobile liability insurance shall be required if TDC completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (TDC initials)

(3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the Client by selecting the option below:

_____ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the TDC.

No Workers' Compensation insurance shall be required if TDC completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone.

I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (TDC initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The Client, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of TDC, products and completed operations of TDC, and premises owned, leased or used by TDC. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the Client by selecting the option below:

_____ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The Client, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, TDC's insurance coverage shall be primary insurance as respects Client, its officials, employees and volunteers. Any insurance or self-insurance maintained by Client, its officials, employees or volunteers shall be in excess of TDC's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Client, its officials, employees or volunteers.
- (3) Coverage shall state that TDC's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) The carrier will endeavor to provide the Client with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 19 must be declared to and approved by the Client Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) TDC shall furnish Client with certificates and required endorsements evidencing the insurance required. Copies of policies shall be delivered to the Client on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

- (2) The Client may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The Client may withhold payments to TDC and/or cancel the Agreement if the insurance is canceled or TDC otherwise ceases to be insured as required herein.

F. Subcontractors.

TDC shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in Subsection A, above.

20. **Default.** If either party fails to perform any of its obligations contained herein and such failure continues for a period of 30 days after the defaulting party has received written notice thereof, then that party will be deemed in default. Thereafter, the non-defaulting party will have all the remedies available at law or in equity and, in addition, may terminate this Agreement immediately upon notice to the defaulting party.
21. **Disclaimer of Warranties.** TDC DISCLAIMS AND EXCLUDES ANY AND ALL WARRANTIES, EXCEPT FOR THOSE EXPRESSLY SET FORTH HEREIN, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE TICKET SYSTEM, EQUIPMENT AND SERVICES PROVIDED BY TDC PURSUANT TO THIS AGREEMENT.
22. **Independent Contractors.** Both parties are independent contractors. Nothing in this Agreement will be deemed to create an agency, partnership, joint venture, or employer/employee relationship. Neither party will be liable for the debts or obligations of the other.
23. **Licenses; Permits, Etc.**
- A. **Client.** Client represents and warrants that it has all required licenses, permits and approvals of whatsoever nature that are legally required for the presentation of Events at the Complex. In addition, Client agrees that it shall at all times comply with all laws, regulations, statutes and ordinances applicable to the presentation of Events at the Complex.
- B. **TDC.** TDC represents and warrants that TDC has all licenses, permits, City of Sacramento Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for TDC to practice its profession or provide any services under this Agreement. TDC represents and warrants that TDC shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for TDC to practice its profession or provide such services. Without limiting the generality of the foregoing, if TDC is an out-of-state corporation, TDC warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
24. **Limitation of Liability.** In the event of any breach of this Agreement by either party, the non-breaching party will be entitled to actual damages according to proof. In no event will TDC or Client be liable for lost profits, incidental, consequential or special damages arising out of, or relating to this Agreement.
25. **Objectionable Events.** TDC reserves the right, at its sole discretion, to refuse to sell Tickets or otherwise provide services under this Agreement for any Event which is in any way unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable.
26. **Assignment.**

Neither party may assign any right or obligation pursuant to this Agreement without the written consent of the other party. Any attempted or purported assignment without the other party's written consent shall be void and of no effect.

Subject to the foregoing provisions, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assignees.

27. **Force Majeure.** Except for the payment of any amount due for the sale of Tickets, neither party shall be liable to the other for damages in the event of any loss, damage, claim, delay or default arising by reason of Acts of God, storm, fire, flood, earthquake, labor disturbance (including strikes, boycotts, lockouts, etc.), war or terrorism, vandalism to TDC's computer system, civil commotion, shortages or unavailability of labor, present or future governmental law, ordinance, rule, or regulation, disruption of postal, banking, electrical, telephone or other utility service, or other cause beyond the control of the party sought to be charged.
28. **Bankruptcy.** If either party is adjudged bankrupt, makes an assignment for the benefit of creditors, files a petition for reorganization, arrangement or other relief under any bankruptcy or insolvency law, or if a receiver, custodian, or trustee is appointed for either party, such party will give the other party prompt written notice thereof. In the event of any of the foregoing, this Agreement will not be deemed an asset of such party and the other party may terminate this Agreement immediately upon written notice to such party. If Client is the party involved in those proceedings, none of the Equipment will be deemed an asset of Client.
29. **Miscellaneous.**
 - A. **Notices.** Any notice or other communication to TDC or to Client will be deemed properly given if such notice or communication is in writing and is sent by first class mail, postage pre-paid, return receipt requested, or by traceable courier service (such as UPS or FedEx) to the address set forth herein or such other address as each party may designate by notice given in accordance with this Section.
 - B. **Severability.** If any one or more of the provisions of this Agreement or the application of any such provision to a specific situation will be held invalid or unenforceable, such provision will be modified to the minimum extent necessary to make it or its application valid, and the enforceability of all other provision of this Agreement and all other applications of such provision will not be affected thereby.
 - C. **No Waiver.** Unless specifically agreed to the contrary in writing, (i) the failure by either party at any time to require performance by the other of any provision of this Agreement will not affect such party's right thereafter to enforce such provision; (ii) no waiver by either party of any subsequent default; and (iii) no extension of time granted by either party for the performance of any obligation of the other will be deemed to be an extension of the time for performance of any other obligation hereunder.
 - D. **Applicable Law.** This agreement is governed by, and construed in accordance with, the laws of the state of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
 - E. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements, written or oral, relating to the subject matter hereof. This Agreement may not be altered or amended in any manner except by a written instrument signed by the party against whom the enforcement of such change is sought. The headings contained in this Agreement are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope or intent of this Agreement.
 - F. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed, will be an original and all of which together will constitute one and the same agreement.

- G. Confidentiality.** Client agrees that the terms of this Agreement will be confidential and will not be disclosed to any third party, unless required by law, without the prior written approval of TDC.
- H. TDC Information.** All proprietary and other tangible information received from TDC by Client, whether received in connection with TDC's proposal to Client or in connection with any services performed by TDC, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to Client, Client shall give notice to TDC of any request for the disclosure of such information. TDC shall then have five (5) business days from the date it receives such notice to enter into an agreement with the Client, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by Client in any legal action to compel the disclosure of such information under the California Public Records Act. TDC shall have sole responsibility for defense of the actual "trade secret" designation of such information.

The parties understand and agree that any failure by TDC to respond to the notice provided by Client and/or to enter into an agreement with Client, in accordance with the provisions of this paragraph shall constitute a complete waiver by TDC of any rights regarding the information designated "trade secret" by TDC, and such information shall be disclosed by Client pursuant to applicable procedures required by the Public Records Act.

I. Authority. Each party represents and warrants that it has full right and authority to enter into and perform this Agreement in accordance with the terms hereof.

J. Compliance with Privacy Laws. Each party represents and warrants that it will comply with all privacy laws with respect to the personal information of Customers that is collected in accordance with the terms of this Agreement. The parties expressly agree that when a Customer opts-in to purchase Event Ticket Insurance and has checked the appropriate "opt-in" box, TDC may share applicable personal information relating to a Customer with the Ticket Insurance Vendor. TDC represents and warrants that all personal information of Customers will be encrypted and transferred to the Ticket Insurance Vendor in a secure manner.

IN WITNESS WHEREOF, TDC and Client have each executed this Agreement on the date set forth below.

CITY OF SACRAMENTO

TICKETS.COM, INC.

Authorized Signature

Authorized Signature

Name (Type or Print)

Name (Type or Print)

Title (Type or Print)

Title (Type or Print)

City of Sacramento Business
Op. Tax Cert. Number: 132973

Sales Contact: Marshall Pred

Federal I.D. Number: 06-1424841

California Corp. Number: 1970860

TYPE OF BUSINESS ENTITY (*check one*):

____ Individual/Sole Proprietor

____ Partnership

Corporation

____ Limited Liability Company

____ Other (*please specify*: _____)

APPROVED TO AS FORM:

Deputy City Attorney

ATTEST:

City Clerk

**EXHIBIT A
PRICING PROVISIONS**

Pursuant to the terms and conditions of the Agreement, this Exhibit A is incorporated into and made a part hereof:

1. CHARGES PAID BY CLIENT:

A. Inside Charges: Inside fees charged to Client by TDC, which will be deducted from settlement.

TDC Retail Outlet Sales Fee:	No applicable charges
TDC Call Center/Internet Sales:	No applicable charges
Box Office Sales Per Ticket Fee:	No applicable charges
Setup Fee:	No applicable charges

B. Credit Card Fees: Client will pay TDC a credit card fee of 2.50% of the Gross Ticket Proceeds. Such credit card fee will be deducted from weekly settlement.

C. Equipment: Client will pay TDC no monthly fees for Equipment.

D. Data Communications: Client will pay TDC no monthly fees for data lines.

E. Campaign Creator Annual Usage Fee: Client is entitled to use the Campaign Creator Service free of charge for up to 600,000 emails and/or RSS feeds during each Contract Year. In the event Client sends more than 600,000 emails and/or RSS feeds during any Contract Year, Client agrees to pay TDC the amount of \$6.25 for each 1,000 emails and/or RSS feeds sent per Contract Year which exceed the allotted 600,000. Any amount due to TDC in accordance with this provision will be due and payable by Client within 45 days of receipt of TDC's invoice.

2. CHARGES PAID BY CUSTOMER:

A. Customer Service Charges: Subject to the provisions set forth in Section 6.A of the Agreement, the following Customer Service Charges will be applicable to all single Tickets sold through TDC Distribution Channels. TDC shall not be entitled to any Customer Service Charges on Tickets sold through Client's Box Office.

Single Ticket Price	Per Ticket Customer Service Charge	Flat Fee of Customer Service Charge to be retained by TDC
0- \$14.99	\$3.75	\$3.00
\$15.00 - \$24.99	\$4.75	\$3.50
\$25.00 - \$34.99	\$5.75	\$3.50
\$35.00 - \$44.99	\$6.75	\$3.50
\$45.00 - \$54.99	\$7.75	\$3.50
\$55.00 - \$64.99	\$9.00	\$3.50
\$65.00 - \$74.99	\$10.00	\$3.50
\$75.00 - \$84.99	\$10.50	\$3.50
\$85.00 - \$99.99	\$11.00	\$3.75
\$100.00 - \$149.99	\$12.00	\$3.75
\$150.00 - \$249.99	\$15.00	\$5.00
\$250.00 - \$349.99	\$17.00	\$6.00
\$350.00 - \$449.99	\$19.00	\$7.00
\$450.00 and up	\$21.00	\$8.50

B. Per-Order Processing Fee: \$3.50.

C. Per-Order Tickets@Home Fee: \$2.50

D. Facility Fee: \$3.00

4. Revenue Share Due To Client.

Ticket Price	Revenue Share due to Client on Per-Order Processing Fees – Internet Sales	Revenue Share due to Client on Per-Order Processing Fees – TDC Call Center Sales	Revenue Share due to Client on Per-Order Tickets@Home Fees	Revenue Share due to Client on per-Ticket Facility Fee
All Ticket Prices	\$1.75	\$1.50	\$1.50	\$3.00

5. **Marketing Services.** TDC agrees to provide Client with marketing services during each Contract Year of this Agreement. Such marketing services shall have a value of up to fifty thousand dollars (\$50,000.00) and may include, but not be limited to, email marketing; TDC social media site inclusion, and TDC business to consumer website placement as appropriate. Such services shall be accounted for based on the following rates:

Email Marketing	Description	Cost
Email Campaign to TDC Database	Sending emails to TDC's opt-in subscribers	\$100 / CPM
Email Creative Development	Email copywriting, promotion development, email coding	\$125 / Hour
TDC Homepage Feature	Inclusion of event on http://www.tickets.com	\$100 / Day
Social Media Promotion	Promoting events using blog, Facebook, Twitter	\$125 / Item

**EXHIBIT B
EQUIPMENT**

The following items of Equipment are provided to Client pursuant to the terms and conditions of the Agreement. TDC reserves the right to substitute or replace, at its expense, any or all of such items.

TICKETING/DATACOMM EQUIPMENT	QUANTITY	CLIENT COST
Data Communication Equipment	As needed	\$0.00
PC's w/Terminal Emulation Software*	20*	\$0.00
Ticket Printer	19	\$0.00
Report Printer	3	\$0.00
ACCESS CONTROL SYSTEM EQUIPMENT	QUANTITY	CLIENT COST
GateLink Software	1	\$0.00
Wireless Access Points	3	\$0.00
Handheld Scanners	Up to 13	\$0.00
Remote Charger	Up to 6	\$0.00

* This equipment includes 17 PC's with terminal Emulation Software, including gui interface, and three additional PC's and software for local arts organization's use at the discretion of the Client.

In addition to the Equipment set forth above, TDC agrees to provide Client with a mobile Access Control System for temporary use at the Complex up to four (4) times per Contract Year (the "Temporary AC System"). The specific Equipment to be included in the Temporary AC System, along with dates of use will be mutually determined by the parties and are subject to Temporary AC System availability. Client acknowledges and agrees that the Temporary AC System (including all associated Equipment) shall be subject to the terms of Section 10 and Section 11.B of the Agreement. TDC agrees that there will be no rental fees associated with the Temporary AC System. However, Client will be responsible for all actual costs related to shipping and handling of the Temporary AC System to and from the Complex.