

ORIGINAL

SERVICES AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO



AND

TICKETMASTER L.L.C.

**TO PROVIDE COMPUTERIZED TICKETING SERVICES AT SAN DIEGO
COUNTY CREDIT UNION (SDCCU) STADIUM**

SERVICES AGREEMENT

This Services Agreement ("Agreement") is entered into by and between the City of San Diego, a municipal corporation ("City"), and Ticketmaster L.L.C., a Virginia limited liability company, ("Contractor" or "Ticketmaster").

RECITALS

City wishes to retain Contractor to provide computerized ticketing services ("Services") at San Diego County Credit Union Stadium ("Stadium") as further described in the Scope of Services and Contract Terms and Conditions, attached hereto as Exhibit A.

Contractor has the expertise, experience, and personnel necessary to provide the Services.

City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Services.

This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(e) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

ARTICLE I CONTRACTOR SERVICES

1.1 Scope of Services. Contractor shall provide the Services to City as described in Exhibit A, Scope of Services, which is incorporated herein by reference.

1.2 Contract Administrator. The Real Estate Assets Department ("Department") is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

SDCCU Stadium Manager
9449 Friars Road
San Diego, CA 92108
Attention: Stadium Manager/Michael McSweeney

The Contract Administrator will provide daily oversight of this Agreement to ensure compliance. The Purchasing Agent shall be responsible for all contractual matters and is the only individual authorized to make changes of any kind to the Agreement on behalf of City. The Contractor shall not rely upon any oral change from anyone, or a written request for change from someone other than the Purchasing Agent. All modifications to this Agreement must be in writing, signed by the Purchasing Agent, on behalf of City, and by an authorized officer of Ticketmaster, on behalf of Contractor.

**ARTICLE II
DURATION OF AGREEMENT**

2.1 Term. This Agreement shall be for a period of two (2) years, beginning July 1, 2019 through June 30, 2021 ("Term"). Notwithstanding the foregoing, at any time during the Term, City may elect to terminate the Agreement in the event that San Diego State University, or one of its affiliates, secures ownership or management rights for the Stadium. City may, in its sole discretion, extend this Agreement for two additional one (1) year period(s). The Term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40.

**ARTICLE III
COMPENSATION**

3.1 Amount of Compensation. Contractor's compensation for services rendered under this Agreement shall be as set forth in Exhibit A.

**ARTICLE IV
WAGE REQUIREMENTS**

By signing this Agreement, Contractor certifies that it is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

4.1 Living Wages. This Agreement is subject to the City's Living Wage Ordinance (LWO), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each Bidder to fill out and file a living wage certification with the City Manager within thirty (30) days of Award of the Contract. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, if applicable to this Agreement, Bidder agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

4.2 Exemption from Living Wage Ordinance. Pursuant to SDMC section 22.4215, this Agreement may be exempt from the LWO. For a determination on this exemption, Contractor must complete the Living Wage Ordinance Application for Exemption.

**ARTICLE V
CONTRACT DOCUMENTS**

5.1 Contract Documents. This Agreement and its Exhibit A constitute the Contract Documents. The Contract Documents completely describe the goods and services to be provided.

5.2 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

TICKETMASTER, L.L.C.

BY:  _____

CITY OF SAN DIEGO
A Municipal Corporation

BY:  _____

Print Name: Kristina Perath
Director
Purchasing & Contracting Department

DATE SIGNED

May 22, 2020

DATE SIGNED

Approved as to form this 7th day of
July, 20 20.

MARA W. ELLIOTT, City Attorney

BY:  _____

Deputy City Attorney Kathy J. Steinman

EXHIBIT A

SCOPE OF WORK AND CONTRACT TERMS AND CONDITIONS

A. SPECIFICATIONS

1. The City manages, operates and maintains the Stadium (the "Stadium") for the conduct of various events, and desires to contract with Contractor to provide ticketing services at the Stadium.

2. Contractor (referred to in this Exhibit A as "Ticketmaster") currently provides ticketing services to the San Diego State University, San Diego Bowl Game Association, Feld Entertainment, and other entities with respect to the sale of tickets for such entities' events at the Stadium pursuant to separate agreements (the "Tenant Ticketing Agreements") between such entities and Ticketmaster.

3. The City requires consistent Stadium information on ticketing policies, including policies related to accessible seating in accordance with the Americans with Disabilities Act ("ADA"), and Ticketmaster could provide such information to the Tenants and consumers requesting tickets for the events at the Stadium which are made available for sale on Ticketmaster's proprietary computerized ticketing system through its distribution network which includes internet sales, telephone sales and third party retail ticket outlet sales, pursuant to this Agreement, the Tenant Ticketing Agreements, or other third party ticketing agreements for Events.

4. City desires to promote certain City Events at the Stadium ("City Promoted Events") and Section F of Exhibit A this Agreement provides that the parties shall mutually determine consideration to Ticketmaster for such City Promoted Events.

B. DEFINITIONS

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

1.1 Accessible Seats: Seats in the Stadium such as wheelchairs and companion seats, armless aisle seats and companion seats, and semi-ambulatory (24-inch leg space) and companion seats.

1.2 City: The City of San Diego, a municipal corporation.

1.3 City Event: A sporting, entertainment, or other act or event of any kind or nature whatsoever promoted or presented by City and conducted at the Stadium.

1.4 Cancelled Event: Any Event that is cancelled, postponed, or modified for any reason.

1.5 Deficiency Amount: The difference between the amount of funds held by Ticketmaster for all Events (but specifically excluding therefrom the amount of ticket sales proceeds to which Ticketmaster is entitled to retain under this Agreement) and the amount necessary for Ticketmaster to make available to consumers entitled to refunds.

1.6 Convenience Charge: The amount charged to Ticket purchaser by Ticketmaster for the use of the TM System.

1.7 Event: All City Events and Promoter Events at the Stadium collectively, including Tenant Events wherein Tenants have entered into separate agreement(s) with Ticketmaster for use of the TM System related to an event at the Stadium.

1.8 Event Taxes: Any and all sales, amusement, admissions, and other taxes or charges, measured by reference to a charge per Ticket sold or determined based upon the purchase price of a Ticket, due to any municipality, county, state, or other governmental or quasi-governmental authorities as a result of, or in connection with, any Event.

1.9 Face Value: The face price of a ticket, which shall be inclusive of all applicable Event Taxes and facility, parking, and similar fees.

1.10 Force Majeure: Any of the following events which prevents a party from performing its obligations hereunder: any act of God, strike, lockout, or other industrial disturbance; act of public enemy, blockade, war, insurrection, or riot; epidemic; landslide; earthquake, fire; storm, flood, or washout; title dispute or other litigation; governmental restraint, either federal or state, civil or military, civil disturbance, or explosion.

1.11 Group Sales: Sales of Tickets to one person, on behalf of a group of at least fifteen (15) people to attend an Event as a group, and not to attend individually or to purchase Tickets with the intent to resell such Tickets.

1.12 Hardware: All of that certain computer hardware, communications equipment, terminals and hook-ups listed with particularity in Section D hereof, or otherwise supplied by Ticketmaster to City at any time during the term of this Agreement.

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

1.14 Inside Charge: The amount charged to the City by Ticketmaster for printing, selling, or otherwise issuing Tickets using or through the TM System.

1.15 Intellectual Property: Each party's respective trademarks, service marks, and trade names worldwide.

1.16 Internet Sales: All sales of Tickets over the internet or any other means of interaction with Ticketmaster's internet site, currently known as "ticketmaster.com" (the "TM.com Website"), or with the TM System, using any electronic means including wireless technologies.

1.17 Outlet: A retail ticket selling agency (other than the Stadium Box Office) where Tickets for an Event are made available through the TM System and are offered for sale to the public,

it being acknowledged that Ticketmaster is under no obligation to operate any such retail ticket selling agency.

1.18 Promoter Event: A sporting, entertainment, or other act or event of any kind or nature whatsoever promoted or presented at the Stadium by third parties other than Tenants ("Promoters") that on occasion schedule events at the Stadium pursuant to short term facility use agreements with the Stadium, excluding City Events and Tenant Events.

1.19 Royalties: Ticket sales royalties payable from Ticketmaster to City described in Section F hereof.

1.20 Sale and Sell: Terms "sale", "sell" and any derivations thereof in this Agreement shall include any distribution for consideration, by any means or method (including without limitation, on the Internet or by auction) and shall include resales.

1.21 Season/Contract Tickets: Specifically designated ticket sold directly by City on an annual basis across all Events or across all of a category of Events (i.e. luxury suites, club level seats, and season tickets).

1.22 Sellable Capacity: The number of tickets that can be sold for an Event other than Season/Contract tickets.

1.23 Software: Ticketmaster's proprietary computerized ticketing software, and any updates, enhancements, or new versions thereof.

1.24 Supporting Equipment: All wiring, cabling, and telecommunication lines utilized by Ticketmaster to transmit Ticketmaster data.

1.25 Stadium: San Diego County Credit Union (SDCCU) Stadium, located in San Diego. This includes the parking lot, practice fields, conference rooms, and all areas outside of the entrance gates.

1.26 Stadium Box Office: The Ticket sales locations at the Stadium that are operated by City or by Ticketmaster as described in Section D hereof.

1.27 Telephone Sales: All sales of tickets through the TM system, by telephone, interactive voice response, television, and similar means, it being acknowledged that Ticketmaster is under no obligation to maintain a call center for such sales.

1.28 Tenant Event: A sporting, entertainment, or other act or event of any kind or nature whatsoever promoted or presented at the Stadium by third party tenants that schedule events at the Stadium pursuant to leases with the Stadium ("Tenants"), including, without limitation, the following: San Diego State University; San Diego Bowl Game Association; and Feld Entertainment.

1.29 Ticket: A printed or other type of evidence of the right to occupy space at or to enter or attend an Event or a Tenant Event, as applicable, including without limitation, tickets printed at

home or elsewhere by the purchaser thereof and any electronic ticket consisting of the right to enter or attend such event even if not evidenced by any physical manifestation of such right.

1.30 Ticketmaster: Ticketmaster L.L.C., a Virginia limited liability company.

1.31 Ticket Receipts: The Face Value of a Ticket less the applicable Inside Charge.

1.32 TM System: The Hardware, Software, related procedures and personnel, and repair and maintenance services established and maintained by Ticketmaster and its affiliates for the purpose of selling, auditing, and controlling the sale of Tickets for Events including, but not limited to Outlets, and by Internet Sales and Telephone Sales.-

C. RIGHTS GRANTED TO TICKETMASTER

1. City hereby grants to Ticketmaster, and Ticketmaster accepts from City, the exclusive right during the term of this Agreement to sell all Tickets for the Sellable Capacity for every Event, via any and all means and methods, including, without limitation, on the internet, by telephone, computer, IVR, outlets, television, clubs, auctions, VIP packages, presales, upsells, or by any other means of distribution, whether existing now or at any time in the future. City shall use best efforts to ensure that the entire Sellable Capacity for every Event shall be made available for distribution on the TM System in accordance with the terms and conditions set forth in this Agreement, except for any Events as may be mutually agreed to by the parties. All Promoters of Promoter Events will be required by City to enter into ticket sales agreements with Ticketmaster. Ticketmaster agrees to offer terms to such Promoters no less favorable than terms offered to other clients for similar events in the San Diego region. City retains the right to:

- 1.1 Sell single Tickets from the Stadium Box Office to persons present at the Stadium Box Office;
- 1.2 Sell Season/Contract Tickets;
- 1.3 Conduct Group Sales of Tickets; and
- 1.4 Provide a reasonable number of House Seats for any Event.

Notwithstanding the above, City shall not directly or indirectly from the Stadium Box Office or otherwise: (i) use, sponsor, promote, advertise, authorize, or permit the use of any Internet website other than the TM.com Website or any equipment or services of any computerized or Internet ticketing company or system other than the TM System (any such website, equipment, services, company, or system, a "Third Party Provider") in connection with the sale, resale, or issuance of Tickets; or (ii) sell or issue Tickets to any person who City believes (or has a reasonable basis to believe) will sell or issue such Tickets using a Third Party Provider, unless approved by Ticketmaster in advance.

2. Tenants or other third parties may enter into agreements with Ticketmaster for Ticketmaster to utilize the Stadium Box Office to sell tickets to Tenant Events or Promoter Events, as applicable, after receiving written approval by the City.

3. City acknowledges that Ticketmaster acts as the agent of certain third parties that may be a direct or indirect competitor of City in its capacity as manager and operator of the Stadium. City also acknowledges that Ticketmaster has entered and may in the future (including during the

term of this Agreement) enter new business relationships with other third parties, including those in the entertainment and sports industry, such as performers who perform at the Stadium, for a variety of services. City further acknowledges that any such sales or services or solicitations to provide such sales or services as contemplated under this subsection do not compete with City in its capacity as manager and operator of the Stadium, or conflict with this Agreement or Ticketmaster's rights, duties, or obligations under this Agreement.

D. RESPONSIBILITIES OF TICKETMASTER

1. Hardware and Software: City acknowledges that Ticketmaster has installed and currently maintains 32 computerized ticketing terminals in the following locations at the Stadium: 6 terminals at Gate B; 6 terminals at Gate E; 10 terminals at Gate F; and 10 terminals at Gate H (collectively, the "Hardware"). If Ticketmaster is requested to temporarily relocate the Hardware for a Tenant Event, City shall use its best efforts to provide Ticketmaster with a secure, locked location at each of the Gates set forth above to store the Hardware. The Hardware and Software shall include all software, hardware, telecommunications equipment, and any other equipment necessary to operate the TM System. Ticketmaster shall have discretion to provide system updates, enhancements, and training, as they become available.

2. Advertising on Ticket Supplies: Ticketmaster shall provide to the applicable Promoter all supplies required for operation of the TM System including all ticket sales reporting equipment, ticket stock, and ticket envelopes pursuant to the terms of the applicable ticketing agreement. Ticketmaster shall have the right to sell advertising on such ticket stock and ticket envelopes and retain any advertising revenue with respect thereto.

3. Third Party Agreements: Ticketmaster may enter into agreements with Tenant organizations, Promoters, or other third parties conducting events at the Stadium for the selling of tickets to the Tenant Events or Promoter Events, as applicable.

4. Accessible Seating Policy:

4.1 Ticketmaster shall follow City's policy regarding the sale of Tickets for Accessible Seats to people with disabilities at the Stadium.

4.2 City shall provide information to Ticketmaster on the availability and types of Accessible Seats at the Stadium. Ticketmaster shall input such information into the Ticketmaster computerized ticketing system which can then be accessed by Ticketmaster's call center agents, third party Ticketmaster Outlet locations, and by consumers accessing the TM.com Website. City shall provide input and approve Ticketmaster's training and information program.

5. System Reports: With respect to Events, Ticketmaster shall provide the City with an Event audit report and a final Event summary recap after each Event. Ticketmaster and the City shall mutually agree on the information to be provided to the City regarding the sale of Accessible Seats, based on the reporting capabilities of the TM System for Events. At a minimum, Ticketmaster shall provide the number of Accessible Seats that have been sold for an Event.

6. Responsibility and Risk Regarding Tickets: The accuracy, reliability, and functionality of all Tickets issued, sold, or exchanged by Ticketmaster for any Event at the Stadium

shall be the sole responsibility of Ticketmaster, except to the extent caused by the negligence or willful misconduct of City or any inaccurate information provided by City. Except as otherwise provided in this Agreement, and except to the extent caused by the negligence or willful misconduct of City or any inaccurate information provided by City, Ticketmaster shall bear the responsibility and risk regarding the accuracy, reliability, and functionality of all Tickets, along with responsibility and risk regarding Ticket billing accuracies and processes, including without limitation responsibility and risk regarding Ticket printing errors, overselling of Tickets to Events, or Event seating errors (provided, in each case, City has furnished Ticketmaster with accurate information), and outages, errors, and billing processes of the TM System. By this Agreement, City shall be able to reasonably rely on Ticketmaster for issuance, sales, and exchanges of accurate, reliable, and functional Tickets for all Events at the Stadium, except to the extent caused by the negligence or willful misconduct of City or any inaccurate information provided by City.

E. ACCOUNTING PROCEDURES

1. Disbursement of Promoter Event Ticket Receipts: As directed by City, Ticketmaster shall withhold funds collected by Ticketmaster with respect to sales of Tickets to Promoter Events made by Ticketmaster via Outlets, Internet Sales, Telephone Sales, and from the Stadium Box Office. Ticketmaster shall release such funds per written instructions from City and in compliance with the terms of the applicable ticketing agreement between Ticketmaster and the Promoter. Prior to each Promoter Event, City, the Promoter, and Ticketmaster shall sign a letter authorizing Ticketmaster to withhold the funds from the Promoter's settlement on behalf of City. City shall provide Ticketmaster with a letter of release with instructions on forwarding payment to various parties (e.g. City, the Promoter, etc.) after the conclusion of the applicable Promoter Event. Ticketmaster shall remit funds to City that have been withheld from the Promoter's settlement (per City's instructions and in compliance with the terms of the applicable ticketing agreement between Ticketmaster and the Promoter) and Royalties payable to City in accordance with the accounting procedures described in this Section E.

2. Disbursement of City Event Ticket Receipts: For City Events, Ticketmaster shall collect and deposit all Ticket Receipts derived from Ticket sales from Outlets and by Internet Sales and Telephone Sales in an account to be maintained by Ticketmaster. Except as otherwise provided in Section F below regarding payment of Royalties to City, withdrawals of all such Ticket Receipts to which City is entitled shall be made from such account by Ticketmaster and made available to City on Friday of each week with each weekly payment to be on account of TM System Ticket sales for City Events occurring during the period of Monday through Sunday preceding such payment date. Each weekly payment shall be accompanied by a written accounting.

3. Cancelled Events: With respect to Cancelled Events, the amount of funds held by Ticketmaster on account of Ticket sales for all Events ("Account Balance") (but specifically excluding therefrom the amount of Ticket sales proceeds to which Ticketmaster is entitled hereunder) shall be held and made available for distribution by Ticketmaster to consumers entitled to refunds. If the Account Balance is insufficient to make all refunds, City for City Events and/or the applicable Promoter for Promoter Events shall deliver the amount of such deficiency ("Deficiency Amount") to Ticketmaster no later than 72 hours after notice by Ticketmaster to City for City Events and/or the applicable Promoter for Promoter Events. Ticketmaster shall also have the right to set-off any Deficiency Amount against any amounts held by Ticketmaster on behalf of City for City Events and/or the applicable Promoter for Promoter Events. It is agreed and understood

that Ticketmaster is the Ticket selling agent of City for City Events and/or the applicable Promoter for Promoter Events and therefore Ticketmaster's agreement to make any refunds as the agent of City and/or the applicable Promoter is subject and limited to Ticketmaster holding or receiving from City and/or the applicable Promoter the full amount of funds necessary to make refunds to all consumers properly entitled to a refund. With respect to Cancelled Events, City and/or the applicable Promoter authorize Ticketmaster to refund the Ticket price at each Outlet with respect to Tickets sold at such Outlet and Stadium Box Office and by Telephone Sales, and to exchange Tickets pursuant to any exchange policy which may be adopted by City and/or the applicable Promoter and Ticketmaster. City and Ticketmaster agree that Ticketmaster shall be entitled to retain the Inside Charges and Customer Convenience Charges assessable with respect to the initial sale of Tickets to Cancelled Events although no additional compensation shall be payable, or fee assessed by Ticketmaster, with respect to the exchange of any Tickets initially purchased at any Outlet or by Telephone Sales.

4. Counterfeit Tickets: It is agreed and understood that Ticketmaster shall not be liable to City for the printing and sale of counterfeit Tickets when such action is beyond the control of Ticketmaster; provided, that Ticketmaster has previously taken reasonable efforts to prevent the printing and sale of such counterfeit Tickets by adopting adequate control procedures.

5. Chargebacks: Ticketmaster reserves the right to withhold amounts from settlement if, in Ticketmaster's reasonable opinion, there exists the likelihood of charge back or refund activity (due to events such as postponement, substitute acts, cancellation, etc.). Ticketmaster reserves the right to bill City for City Events and/or the applicable Promoter for Promoter Events for any credit card chargebacks incurred with respect to any Event, up to, but not to exceed, eighteen (18) months after the Event. Payment is due in full immediately upon receipt of such billing.

6. Inspection of Records: Ticketmaster shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon the Stadium, the use of the Stadium, and the sale and or exchange of Tickets for Events at the Stadium. The records shall be supported by source documents such as sales slips, daily cash register tapes, Ticket sale reports, purchase invoices, or other documents as necessary to allow City to easily determine the total Royalties due City per Section F herein.

7. Right to Inspect: The City, at its discretion, shall have the right upon reasonable advance written notice and during normal business hours to inspect and audit the business of Ticketmaster, its agents, sublessees, concessionaires, and licensees operating on and about the Stadium as necessary and appropriate for City to determine the amounts of Royalties due City in compliance with the requirements of this Agreement. All Ticketmaster's books of account, records, and supporting documentation related to Ticket sales for Events at the Stadium, shall be kept for at least three (3) years and made available to City in one location within the City of San Diego. The books and records shall be maintained separate from all other accounts not relating to the Stadium.

8. Audit Costs and Royalty Deficiencies:

8.1 The full cost of City's audit(s) will be borne by City unless one or both of the following conditions exists, in which case Ticketmaster shall pay City's cost of audit(s):

- (i) The audit(s) reveal an underpayment of more than eight percent (8%) or

more than Ten Thousand Dollars (\$10,000), whichever is less, between the Royalties due as reported and paid by Ticketmaster pursuant to this Agreement and the Royalties due as determined by the audit(s); or

- (ii) Ticketmaster has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this Agreement.

8.2 Ticketmaster shall pay any deficiency determined by the audit(s) within thirty (30) days of notice by City. City will credit any overpayment against incoming royalties. Any overpayment determined after the Term of this Agreement will be refunded by City within thirty (30) days of confirmation by the Stadium Manager of the audit(s) findings.

9. Default: Any failure by Ticketmaster to keep complete and accurate records by means of double-entry bookkeeping or failure to make records available for City inspection is, like all other failures to comply with this Agreement, a breach of this Agreement and cause for termination.

10. Event Royalty Statements: After each Event, Ticketmaster, without demand from City, shall send a statement to the City containing the date of Event and number of tickets sold subject to all Royalties due to be paid to City pursuant to this Agreement. The statement and all Royalties due to the City shall be received by City no later than thirty (30) days after the Event date.

F. ROYALTIES TO CITY

1. City shall not receive any Royalties with respect to Events presented at the Stadium by any Tenant or Promoter with which Ticketmaster has an executed ticket sales agreement prior to the execution of this Agreement, with the exception of the San Diego Bowl Game Association and Feld Entertainment motorsports, in which case City shall receive a Royalty from Ticketmaster for each Event Ticket sold by Ticketmaster, at the rate of \$0.50 per each Event Ticket for which Ticketmaster receives (and does not refund) any Convenience Charge during the Term of this Agreement. For all other Events for which Ticketmaster does not already have an executed ticket sales agreement prior to the execution of this Agreement, City shall receive a Royalty from Ticketmaster for each Event Ticket sold by Ticketmaster, at the rate of \$0.50 per each Event Ticket for which Ticketmaster receives (and does not refund) any Convenience Charge during the Term of this Agreement. The amount of all Royalties shall be paid promptly after the conclusion of the applicable Event, in accordance with the accounting procedures set forth in Section E herein. The Royalties may be used by City in such manner as it determines in its sole discretion.

G. RESPONSIBILITIES OF CITY

1. Maintenance: City shall maintain and clean the Stadium Box Offices used by Ticketmaster at the Stadium.

2. Electrical Power: City shall provide all electrical power to the Stadium Box Offices used by Ticketmaster at the Stadium and shall pay for the cost of electrical power.

3. Event Information: City shall provide Ticketmaster with reasonably up to date

information on all Stadium ticket policies and any changes in the seating manifest. Prior to sales of Tickets for any Event, City shall use best efforts to provide Ticketmaster with the legal seating capacity of the Stadium and all other information necessary for Ticketmaster to program the Event into the TM System. City acknowledges that any subsequent changes to such information could adversely affect Ticket sales. Furthermore, City shall be solely responsible for the accuracy of any information provided to Ticketmaster in connection with this Agreement.

4. Responsibility for Ticket Stock: City shall be responsible for the security of all Ticket stock specifically given to City for City Events only in its possession, if any, and risk of loss of such Ticket stock shall shift to City upon the delivery thereof to City (or City's representative, agent, or employee).

5. Agreements with Performers and Others: City shall not directly or indirectly authorize or permit any Tickets for any Events which are retained, purchased, controlled, or otherwise acquired or obtained by any person controlling or participating in an Event including, without limitation, its Promoter, sponsor, and the act or Event itself, as appropriate, or any of their affiliates, to be sold or distributed in any way and for any purpose using the equipment or services of any computerized or internet ticketing company or system other than Ticketmaster.

6. TM System: City shall provide Ticketmaster with a secure, locked location to store the telecommunications equipment necessary to operate the TM System at the Stadium. City agrees that the inside wiring and telecommunications lines (collectively, the "Supporting Equipment") currently utilized by Ticketmaster to operate the TM System at the Stadium shall be reserved exclusively for use by Ticketmaster, and such Supporting Equipment shall be provided and maintained by City at its sole cost and expense. City further agrees that it will not authorize or permit any party other than Ticketmaster to use or access such Supporting Equipment without the prior written consent of Ticketmaster.

H. ADVERTISING

1. City 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, Events and the availability of Tickets at the Stadium Box Office (if applicable), at all Outlets, and by Internet Sales and Telephone Sales and, in connection therewith, to use the name and logo of City, the Event, the Stadium, and all other information respecting the Event. City may, during the Term hereof, provide and place advertisements in any form of media which City shall desire to promote the availability of Tickets (except on websites or other media operated by or on behalf of third party primary or secondary ticketing companies); provided, however, that in the event City shall place any such advertisements it shall use its best efforts to cause Ticketmaster's name, logos, TM.com Website address, and charge-by-phone number to be displayed in the advertisement, as well as the address of the Stadium and, if possible, the identity of the Outlets where Tickets may be purchased. In this regard, City shall use best efforts to cause each website page featuring one or more of the Events, or Tenant Events for which Ticketmaster has a Tenant Ticketing Agreement, on its own website to deep link to the applicable page or pages within the TM.com Website where users can begin the process of purchasing Tickets to Events (thereby bypassing the earlier pages within the TM.com Website) by including, at a minimum, one "above-the-fold" link on City's website to the TM.com Website. Such link will include the TM.com Website graphic logo and a call to action such as "buy tickets".

I. TAXES ON CITY EVENT TICKETS

1. City is solely responsible for the payment and timely remittance of any and all sales, amusement, admissions and other taxes and charges incurred or assessed on City Event Ticket Receipts (including penalties and interest with respect thereto) pursuant to this Agreement. City certifies that City's United States taxpayer identification number is 95-6000776. City further certifies that its state taxpayer identification or registration number for the state in which the Stadium is located is 95-6000776.

J. PROTECTION OF HARDWARE

1. City acknowledges that the Hardware will be used at the Stadium, which location Ticketmaster does not own, operate, or control. Accordingly, the parties agree as set forth below with respect to the Hardware.

2. Loss and Damage: To the extent caused by the sole negligence of City, City 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, from the date of delivery of the Hardware to the Stadium until removal thereof following termination of this Agreement. No loss or damage to the Hardware shall impair any obligation of City under this Agreement. In the event of any loss or damage to any Hardware occasioned by the sole negligence of City, City, 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 shall promptly install new hardware to replace the lost or damaged Hardware.

3. Hardware and Software is Personal Property: City covenants and agrees that the Hardware and Software is, and shall always be and remain, personal property which shall, always, remain the sole and exclusive property of Ticketmaster and City shall have no right, title, or interest therein or thereto. If requested by Ticketmaster, City will obtain a certificate in form satisfactory to Ticketmaster from all parties with a real property interest in the premises wherein the Hardware may be located, waiving any claim with respect to the Hardware. Except as may be necessary to prevent damage to or destruction of the Hardware, City will not move the Hardware nor permit such Hardware to be moved without 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. Ticketmaster shall be responsible for the repair and maintenance of all the Hardware, except to the extent caused by City's sole negligence.

4. Use: City shall comply with and conform to all federal, state, municipal, and other laws, ordinances, and regulations in any way relating to the possession or maintenance of the Hardware. Neither the City, nor its employees, agents, servants, or representatives, shall alter, modify, copy, or add to the Hardware or Software without the prior written consent of Ticketmaster.

K. CITY'S REPRESENTATIONS AND WARRANTIES; ACKNOWLEDGMENTS

1. City represents and warrants to Ticketmaster that:
 - 1.1 This Agreement has been duly authorized, executed, and delivered by City and constitutes the valid, legal, and binding agreement of City, enforceable in accordance with its terms;
 - 1.2 City has exclusive rights to promote and present the Events at the Stadium, and is duly authorized in either capacity to execute and deliver this Agreement;
 - 1.3 The entering into and performance of this Agreement will not result in any breach of, or constitute a default under, any other agreement to which City is a party;
 - 1.4 There is no existing agreement or understanding between City, except as otherwise provided in this Agreement, and any third party (including, without limitation, the act or the event which is the subject of an Event), on the other hand, respecting the sale or other disposition of tickets for any Event held at the Stadium; and
 - 1.5 City has experience advertising, marketing, and otherwise promoting similar Events, and acknowledges the risks inherent in doing so. City denies relying on Ticketmaster for anything other than ticket distribution services as expressly provided hereunder.

2. City acknowledges that Ticketmaster's services under this Agreement are limited to distribution of Tickets, and that Ticketmaster does not guarantee (i) that any minimum or fixed number of Tickets will be sold through the TM System, (ii) that short term interruptions of service will not occur during the Term hereof, (iii) that each person processing Ticket orders will be fully familiar with each or all of the Events, or (iv) that persons calling Ticketmaster charge-by-phone numbers will not be placed on hold.

3. City further acknowledges and agrees that Ticketmaster may have many other events on the TM System concurrently with any Event and Ticketmaster has no responsibility whatsoever for the marketing or promotion of any Event or success of the ticket sales for any Event, all of which is City's sole responsibility and obligation.

L. CONFIDENTIALITY AND PROPRIETARY INFORMATION

1. Ticketmaster acknowledges that this agreement is subject to disclosure under the California Public Records Act (Section 6250 et. seq. of the Government Code). If such disclosure is sought by subpoena, document request, notice of deposition, or other legal proceeding, City agrees to notify Ticketmaster, pursuant to the notice requirements hereof, within forty-eight (48) hours after receipt of such legal document.

2. City recognizes and acknowledges that the TM System as it now exists, including the Hardware and Software associated with the TM System and all Ticketmaster improvements in the state of the art relative thereto, represents a valuable, special, and unique asset of Ticketmaster. To the extent permitted under the law, City consents and agrees that it will not, during or after the Term of this Agreement, disclose any information, design specifications, programs, listings, documentation or other supporting or related materials, or information of any nature or description whatsoever relating to the TM System, the Hardware or the Software, or applications, adaptations, and modifications thereof, whether now existing or developed in the future (collectively, the "Proprietary Information"), to any person, firm, corporation, association, or entity for any reason or purpose whatsoever; provided, however, that this covenant shall not apply with respect to any information which becomes a matter of general knowledge within the public domain or if City is obligated to disclose such information by reason of any State or federal law, court order, rule, or regulation applicable to the conduct of its business. Ticketmaster shall assume all responsibility and costs relating thereto, for defending and prosecuting such Propriety Information. City does further agree and acknowledge that any remedy at law for any breach or threatened breach of the provisions of this Section and the covenants set forth herein will be inadequate and, accordingly, City grants to Ticketmaster the right and entitlement to seek injunctive relief, without the posting of bond, for any such breach or threatened breach of the provisions and covenants in this Section in addition to, and not in limitation of, any and all other remedies at law or in equity otherwise available to Ticketmaster.

3. Subject to applicable law and the TM.com Website privacy policy in effect from time to time, Ticketmaster will exercise all rights of ownership over information provided by users of the TM.com Website, including without limitation information provided in the process of Internet Sales and Telephone Sales.

4. The expiration of this Agreement, or the termination of this Agreement by either party, shall not terminate the continuing confidentiality obligations imposed on City by the terms of this Agreement.

M. INTELLECTUAL PROPERTY/LIMITED LICENSE

1. Each party shall retain all right, title, and interest in and to its respective Intellectual Property subject to a limited nonexclusive, non-transferable license necessary to perform this Agreement. Each party grants the other a royalty-free, non-exclusive, non-transferable license, during the Term, to include such party's pre-approved Intellectual Property solely for sales and distribution of Tickets contemplated hereunder.

2. 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 the 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. Any references to a party's Intellectual Property shall contain the appropriate trademark, copyright, or other legal notice provided from time to time by the owning party.

3. Neither party may alter or remove any proprietary notices from the other's Intellectual Property. Any goodwill accruing from the use of such Intellectual Property shall inure to the licensor of such Intellectual Property hereunder.

4. Each party expressly reserves all rights not granted to the other party herein.

5. 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.

N. POSTING OF MATERIALS

1. Ticketmaster shall not install any signage on the Stadium premises without receiving the prior written approval of City.

O. TERMINATION

1. Should Ticketmaster default in the fulfillment of any covenant or condition herein required to be performed or fulfilled by Ticketmaster and shall fail to cure such default within thirty (30) calendar days following the service on Ticketmaster of a written notice from City specifying the default; then City may, at its option, without written notice or demand upon Ticketmaster, immediately terminate this Agreement.

2. Should City default in the fulfillment of any covenant or condition herein required to be performed or fulfilled by City and shall fail to cure such default within thirty (30) calendar days following the service on City of a written notice from Ticketmaster specifying the default, then Ticketmaster may, at its option, without written notice or demand upon City, immediately terminate this Agreement.

3. Should the venue currently known as SDCCU Stadium no longer exist during the Term of this Agreement, the City stop operating the Stadium during the Term of this Agreement, or the City transfers its ownership interest and/or management rights in the Stadium to San Diego State University, or one of its affiliates, then this Agreement shall terminate and City shall assume no costs or liability incurred by Ticketmaster.

P. INSURANCE

1. At Ticketmaster's sole cost and expense, Ticketmaster shall take out and maintain at all times during the term of this Agreement the following policies of insurance:

- (i) All applicable insurance for personal injury, bodily injury, and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of one million dollars (\$1,000,000) for general liability, completed operations, and personal injury, other than bodily injury and;
- (ii) Worker's Compensation insurance for all Ticketmaster's employees who are subject to this Agreement, to the extent required by the State of California, providing coverage for combined single limit of at least one million dollars

(\$1,000,000) per occurrence.

2. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given an "A-" rating by AM Best, licensed to do business in the State of California and that have been approved by the City.

3. The policies required shall expressly provide that: the City of San Diego, SDCCU Stadium Advisory Board, Public Facilities Financing Authority, and their officers, agents, and employees, are named as additional insureds; the insurer waives the right of subrogation against the City and the SDCCU Stadium Advisory Board and its respective elected officials, officers, employees, agents, and representatives; the policies are primary and contributing to any insurance that may be carried by the City or the SDCCU Stadium Advisory Board; and Ticketmaster shall provide thirty (30) calendar days written notice to the City by certified mail of any cancellation or material change to such policies.

4. Except as expressly provided in paragraph 2 above, all insurance provided and maintained by the City shall be in such amounts, under such forms of policies, upon such terms, for such periods and written by such companies as Ticketmaster and City shall agree upon, and in all cases such insurance policies shall provide for the waiver of the insurer's right of subrogation against City and Ticketmaster. All policies of insurance shall include Ticketmaster as an additional named insured and shall provide for at least ten (10) days prior written notice of cancellation or non-renewal to Ticketmaster. City shall furnish Ticketmaster with certificates of such insurance or other evidence satisfactory to Ticketmaster as to its compliance with the provisions of this Section.

Q. INDEMNIFICATION

1. Ticketmaster agrees to defend, indemnify, protect, and hold the City, and the SDCCU Stadium Advisory Board, and all of their officers, agents, and employees harmless from any and all actions, suits, proceedings, claims, demands, or liabilities (individually and collectively, "Liabilities") for damages or injuries to any person, including injury to Ticketmaster officers, agents, and employees, and any and all claims and liabilities which arise from, or which are directly connected with or attributed to Ticketmaster, including its officers, agents, and employees, in its use and occupancy of the Stadium, or its negligence, willful misconduct, or failure to perform services or other obligations of this Agreement, or which are caused or claim to be caused by the negligence, willful misconduct, or failure to perform services or other obligations of this Agreement by Ticketmaster, its officers, agents, or employees, and all expenses of investigating and defending against same. Provided, however, that this indemnification and duty to defend and hold harmless shall not include any Liabilities arising from the established sole negligence or willful misconduct of the City or the SDCCU Stadium Advisory Board, or their officers, agents, or employees.

2. City agrees to release and hold Ticketmaster, its parent, subsidiaries, and affiliates, and all of their officers, agents, and employees harmless from any and all actions, suits, proceedings, liabilities, claims, or demands for damages or injuries to any person, including injury to City officers, agents, and employees, and any and all claims which arise from, or which are directly connected with or attributed to City, including its officers, agents, and employees, in its use and operation of the Stadium, or its negligence, willful misconduct, or failure to perform services or other obligations of this Agreement, or which are caused or claim to be caused by the negligence, willful misconduct, or failure to perform services or other obligations of this Agreement by City, its officers, agents, or

employees. Provided, however, that this release and duty to hold harmless shall not include any claim arising from, or to the extent of, the sole negligence or willful misconduct of Ticketmaster, its officers, agents, or employees.

R. NOTICES

1. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed:

To Ticketmaster at: Ticketmaster L.L.C.
7060 Hollywood Blvd
Los Angeles, CA 90028
Attn: Geoff Carns

And to City at: SCCCU Stadium
9449 Friars Road
San Diego, CA 92108
Attention: Stadium Manager

S. COMPLIANCE WITH LAW

1. At Ticketmaster's sole cost and expense, Ticketmaster shall at all times in the maintenance, occupancy, and operation at the Stadium comply with all applicable laws, statutes, ordinances, and regulations of the City, County, State, and Federal governments. In addition, Ticketmaster shall comply with any and all notices issued by the City Mayor or his authorized representative to Ticketmaster under the authority of any such law, statute, ordinance, or regulation.

T. CITY APPROVAL

1. The approval or consent of the City, wherever required in this Agreement, shall mean the written approval or consent of the Stadium Manager unless otherwise specified, without need for further resolution by the City Council.

U. NONDISCRIMINATION

1. Ticketmaster shall not discriminate on the basis of race, color, gender, gender identity, gender expression, religion, national origin, ethnicity, sexual orientation, age, marital status, ancestry, familial status, or disability in the solicitation, selection, hiring, or treatment of employees, Subconsultants (if applicable), vendors or suppliers. Ticketmaster shall provide equal opportunity for Subconsultants (if applicable) to participate in Subconsulting opportunities. Ticketmaster understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between Ticketmaster and any Subconsultants. At this time, Ticketmaster does not intend to subcontract any work under this Agreement.

V. CITY EMPLOYEE PARTICIPATION POLICY

1. It is the policy of the City that all City contracts, agreements, or leases with consultants, vendors, or lessees shall include a condition that the contract, agreement, or lease may, at the sole option of City, be unilaterally and immediately terminated by City if the contractor or lessee employs an individual who, within the twelve months immediately preceding such employment, did in their capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council or City Mayor in connection with the selection of the contractor or lessee. It is not the intent of this policy that these provisions apply to members of the City Council.

W. DRUG-FREE WORKPLACE

1. Ticketmaster shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

1.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited at the Stadium and specifying the actions that will be taken against employees for violations of the prohibition.

1.2 Establish a drug-free awareness program to inform employees about all of the following:

- (i) The dangers of drug abuse in the workplace;
- (ii) Ticketmaster's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employees assistance programs; and
- (iv) The penalties that may be imposed upon employees' for drug abuse violations.

1.3 Ticketmaster shall include in any subcontract language that indicates the subcontractor agrees to abide by the provisions of a drug-free workplace. Ticketmaster and any subcontractor shall be individually responsible for their own drug-free workplace programs.

X. DISABLED ACCESS COMPLIANCE

1. Ticketmaster agrees to comply with California Government Code Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); Title 24 of the California Code of Regulations (i.e. the "Building Code") and any other applicable state and federal laws, rules, and regulations of disabilities. When a conflict exists between any applicable federal or state accessibility requirements, Ticketmaster shall follow the most restrictive accessibility requirement (i.e., that which provides the most access). Ticketmaster's compliance shall include, but not necessarily be limited to, the following:

1.1 Ticketmaster shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

1.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of services, programs, or activities of Ticketmaster.

1.3 Ticketmaster shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

1.4 The City shall include language in each of its subcontracts with Tenants which indicates the Tenants' agreement to abide by the foregoing provisions. Ticketmaster and the Tenants shall be individually responsible for their own ADA employment programs. Ticketmaster understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Agreement.

1.5 Ticketmaster's failure to comply with the requirements of this section and/or submitting false information in response to these accessibility requirements shall constitute a default under this Agreement.

Y. TICKETMASTER'S EMPLOYEES

1. Ticketmaster agrees that Ticketmaster employees, associates, or sub-contractors shall not be deemed to be employees of the City for any purpose.

2. The City shall have no obligation or responsibility for resolving any labor disputes or grievances which may arise between Ticketmaster and its associates, workers, or sub-contractors.

3. Ticketmaster agrees to provide sufficient personnel to perform all services required by the Agreement.

4. Ticketmaster shall provide all required Federal, State, and local reports, records, and payments in connection with social security, unemployment insurance, and other charges and taxes. The City shall have no responsibility for providing any of the above reports, records, and payments. Ticketmaster shall withhold from its payroll such amounts for insurance and taxes as may be required by Federal, State, or local governments with respect to all persons employed by Ticketmaster.

Z. FORCE MAJEURE

1. Should either party hereto be delayed in, or prevented in whole or in part, from performing any obligation or condition hereunder or from exercising its rights by reason of or as a result of any Force Majeure event, such party shall be excused from performing such obligations or conditions and the term of this Agreement shall be extended and continued while such party is so delayed or prevented.

AA. CONSTRUCTION OF AGREEMENT

1. This Agreement constitutes the sole and entire Agreement between the parties hereto. There are no terms, obligations, covenants, or conditions between the parties hereto, other than as contained herein. No alteration, amendment, or modification hereof shall be valid unless executed by an instrument in writing by the parties. Neither this Agreement nor any term hereof, can be changed, modified, or abandoned in whole or in part, except by such instrument in writing, and no subsequent oral agreement shall have any validity whatsoever. All provisions of this Agreement expressed as either covenants or conditions shall be deemed to be both covenants and conditions.

2. Both parties agree that changes may occur in the circumstances surrounding the Agreement and modifications may be required to this Agreement. Therefore, to the extent legally permissible, from time to time "operating memoranda" may be entered into between City and Ticketmaster, which shall be binding upon the parties.

3. The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to define, limit, or describe the scope of intent of this Agreement or the particular sections hereof to which they refer.

4. This Agreement shall be deemed to be made and shall be construed in accordance with the laws of the State of California. The City and Ticketmaster covenant and agree to submit to the personal jurisdiction of the State courts in San Diego County or the District Court for the Southern District of California for any dispute, claim, or matter arising out of or related to this Agreement.

5. Nothing contained in this Agreement shall be construed as a limitation upon powers of the City as a chartered City of the State of California.

BB. ASSIGNMENT OF CONTRACT

1. A part of the consideration for granting this Agreement is the qualifications and abilities of Ticketmaster. Ticketmaster therefore shall not assign this Agreement or any rights hereunder without the prior written consent of the City, except to any parent, subsidiary, affiliate, or successor in interest. In the event this Agreement is assigned to another party, with the concurrence of the City, this Agreement shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties.

CC. REMEDIES OF PARTIES

1. Upon the violation of any term or condition of this Agreement by either party, and the failure to remedy the same after written notice from the other party to do so, in accordance with Section Q of this Agreement, then at the option of the first party, the Agreement shall forthwith cease and terminate, and all rights hereunder of the other party shall terminate. A party's failure to take advantage of any default or breach or covenant on the part of the other party shall not be construed to be a waiver thereof. A waiver by a party of a particular breach or default shall not be deemed to be a waiver of the same for any other subsequent breach or default. The remedies provided herein shall not be exclusive, but shall be cumulative and in addition to all remedies now or hereafter allowed by law.

DD. NO PARTNERSHIP

1. Nothing contained herein shall make, or be construed to make, the City or Ticketmaster a partner of one another, no shall this Agreement be construed to create a partnership or joint venture between any of the parties hereto.

2. Any agreements entered into between Ticketmaster and any Tenant using the Stadium are strictly agreements between such parties and City has no liability or legal obligation to enforce any provisions of those agreements.

EE. COMPLIANCE INVESTIGATIONS

1. If applicable due to any subcontract Ticketmaster may enter into related to this Agreement, Ticketmaster agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance* (Municipal Code Sections 22.3501 – 22.3517, as may be amended from time to time.) Ticketmaster understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against Ticketmaster up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Ticketmaster further understands and agrees that the procedures, remedies, and sanctions provided for in the *Nondiscrimination Ordinance* apply only to violations of said *Nondiscrimination Ordinance*.

FF. CONFLICT OF INTEREST

1. Ticketmaster is subject to all Federal, State and Local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et seq. and 81000, et. seq. The City may determine that a conflict of interest code requires Ticketmaster to complete one or more statements of economic interest disclosing relevant financial interests. Upon the City's request, Ticketmaster shall submit the necessary documentation to the City.

2. Ticketmaster shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

3. Pursuant to San Diego City Charter section 225, Contractor shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved or interested in this Agreement, and in any subcontract or assignment, and the precise nature of all interests of all such persons. Every person or entity proposed to have an interest in this Agreement must be reviewed and approved by CITY, in its sole discretion.

4. If Ticketmaster violates any conflict of interest laws or any of these provisions in this Section, the violation shall be grounds for immediate termination of this Agreement.

GG. PRODUCT ENDORSEMENT

1. Ticketmaster acknowledges and agrees to comply with the provisions of the City's Administrative Regulation 95-65, concerning product endorsement. Any advertisement identifying or referring to the City as the City of a product or service requires the prior written approval of the City.

HH. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

1. Ticketmaster shall abide by the City's Equal Employment Opportunity laws as contained in Municipal Code Sections 22.2701-22.2707 (as may be amended from time to time).

II. CITY EVENTS FEES

1. Convenience Charge (Per Ticket): In consideration for Ticketmaster's services provided in connection with sales of Tickets for City Events, Ticketmaster shall be entitled to assess against consumers the Convenience Charge in the amounts set forth below:

Face Value of Ticket	Convenience Charge per Ticket
\$0.00 to \$4.99	\$3.00
\$5.00 to \$9.99	\$3.50
\$10.00 to \$14.99	\$5.25
\$15.00 to \$19.99	\$5.85
\$20.00 to \$29.99	\$6.85
\$30.00 to \$39.99	\$7.75
\$40.00 to \$49.99	\$8.70
\$50.00 to \$59.99	\$9.70
\$60.00 to \$69.99	\$10.70
\$70.00 to \$79.99	\$11.55
\$80.00 to \$89.99	\$12.55
\$90.00 to \$99.99	\$13.55
\$100.00 to \$124.99	\$14.85
\$125.00 to \$149.99	\$16.10
\$150.00 and above	-To Be Mutually Determined-

On each subsequent anniversary of the effective date of this Agreement during the Term, the Convenience Charges set forth above shall be automatically increased by the greater of \$0.25 per Ticket or 5% of the previous year's Convenience Charge.

2. Processing Fee (Per Order): Ticketmaster shall assess a per order processing fee against purchasers of Tickets to City Events sold by Ticketmaster in an amount consistent with Ticketmaster's processing fee for similar events at similar facilities in the San Diego market. The

processing fee is subject to automatic increase equal to any increase (rounded up to the nearest \$0.05) to the postal service rates.

3. Electronic Payments:

- (i) Sales by Ticketmaster via Telephone Sales (if any) and Internet Sales: Payment authorization and processing fees with respect to Tickets for City Events purchased with credit cards, debit cards, gift cards, or any other electronic methods of payment (“Electronic Payment Fees”) shall be passed on to City at the rate of 2.5%, which percentage rate shall be deducted by Ticketmaster from the Ticket sales proceeds, or, at City’s option, upon notice to Ticketmaster, the Convenience Charge may be adjusted to include City’s portion of such Electronic Payment Fees, provided that the Convenience Charge will be rounded up to the nearest \$0.05.
- (ii) Sales at Outlets: With respect to all purchases at Outlets, if any, Electronic Payment Fees shall be passed on to the Ticket purchaser at the rate of 2.63% by increasing the applicable Convenience Charge set forth above by the amount of such Electronic Payment Fees, provided that the Convenience Charge will be rounded up to the nearest \$0.05.

5. Royalties on City Events: City shall be provided with and retain all net proceeds of all Ticket Sales for City Events, less all fees and charges payable to Ticketmaster as provided under this Agreement. Notwithstanding anything to the contrary set forth in the Agreement, City shall also receive royalty payments from Ticketmaster in the amounts set forth below solely for Tickets to City Events (collectively, the “Promoter Royalties”). City reserves the right in its sole discretion to charge a facility fee of a minimum of \$2.00 per Event Ticket. Royalties payable to City for all other Events (i.e., non-City Events) Tickets shall continue to be governed by the terms set forth in Section F of the Agreement. The Promoter Royalties shall be payable only to the extent the corresponding Convenience Charge is received (and not later refunded) by Ticketmaster. Notwithstanding the above, Electronic Payment Fees related to any Convenience Charges, increases in interbank rates, increases to postal rates, and taxes related to any Convenience Charges shall be deducted from the applicable Convenience Charges before the Promoter Royalties are calculated.

Face Value	Promoter Royalty
\$0.00 to \$4.99	\$0.00
\$5.00 to \$9.99	\$0.00
\$10.00 to \$14.99	\$0.50
\$15.00 to \$19.99	\$0.50
\$20.00 to \$29.99	\$0.50
\$30.00 to \$39.99	\$0.50
\$40.00 to \$49.99	\$0.50
\$50.00 to \$59.99	\$1.00
\$60.00 to \$69.99	\$1.00
\$70.00 to \$79.99	\$1.00

\$80.00 to \$89.99	\$1.00
\$90.00 to \$99.99	\$1.00
\$100.00 to \$124.99	\$1.00
\$125.00 and above	\$1.00

JJ. EQUAL BENEFITS

1. Effective January 1, 2011, certain City contracts are subject to the City’s Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code (“SDMC”). This Agreement is subject to the EBO.

- 1.1 In accordance with the EBO, Ticketmaster must certify Ticketmaster will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract. SDMC §22.4304(f). Failure to maintain equal benefits is a material breach of the contract. SDMC §22.4304(e)]. Ticketmaster must notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:
- 1.2 During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.
- 1.3 Ticketmaster also must give the City access to documents and records sufficient for the City to verify Ticketmaster is providing equal benefits and otherwise complying with EBO requirements.
- 1.4 Full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City’s website at www.sandiego.gov/purchasing/, or can be requested from the Equal Benefits Program at (619) 533-3948.

KK. PCI DSS COMPLIANCE.

1. **Ticketmaster Certification.** Ticketmaster certifies that it will implement and at all times comply with the most current Payment Card Industry Data Security Standards (PCI DSS) regarding data security. Upon request, Ticketmaster will provide written annual confirmation of PCI DSS compliance from the credit card types used by the City (i.e. VISA, MasterCard, Discover, and American Express). Ticketmaster will promptly notify the City if it undergoes, or has reason to believe that it will undergo, an adverse change resulting in the loss of compliance with the PCI DSS standards and/or other material payment card industry standards. In addition, Ticketmaster shall provide an approved third-party PCI compliance auditor (such as Trust Wave) required access to the Ticketmaster's facilities and all pertinent records to verify Ticketmaster's compliance with the PCI DSS requirements.

2. **Data Security.** Ticketmaster acknowledges responsibility for the security of cardholder data as defined within PCI DSS standards. Ticketmaster shall undergo independent third party quarterly system scans that audit for all known methods hackers use to access private information, in addition to vulnerabilities that would allow malicious software (i.e., viruses and worms) to gain access to or disrupt network devices. Upon request, Ticketmaster will provide the City's Chief Information Security Officer with copies of Ticketmaster's annual PCI certification. Ticketmaster will provide reasonable care and efforts to detect fraudulent credit card activity in connection with credit card transactions processed during the performance of this Agreement.

3. **Use of Data.** Ticketmaster acknowledges and agrees that Ticketmaster may only use cardholder data relating to card transactions for Event(s) for completing the work as described in the Agreement, specifications consistent with PCI DSS standards or applicable law. Ticketmaster shall maintain and protect in accordance with all applicable laws and PCI DSS standards the security of all cardholder data when performing the Services.

4. **Notification Requirements.** Ticketmaster shall, as soon as reasonably practicable (or within 72 hours), notify the City's Chief Information Security Officer of any breach, intrusion, or unauthorized card access relating to card transactions for any Event(s), to allow the proper PCI DSS breach notification process to commence. Ticketmaster agrees to assume responsibility for informing all affected individuals in accordance with applicable law. All notifications and required compliance documents regarding PCI DSS shall be sent to:

Chief Information Security Officer
1010 2nd Avenue, Suite 500
San Diego, CA 92101
Cybersecurity@sandiego.gov
619-533-4840

5. **Indemnity.** Ticketmaster shall indemnify and hold harmless the City, its officers, and employees from and against any claims, loss, damages, or other harm related to a data security breach involving card transactions for any Event(s) or Ticketmaster's failure to maintain PCI DSS compliance standards, except, in each case to the extent caused by the sole negligence or willful misconduct of City.

LL. EQUAL PAY

1. Unless an exception applies, Ticketmaster shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Agreement, Ticketmaster certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term. Ticketmaster must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

MM. NO PARTNERSHIP

1. Nothing contained herein shall make, or be construed to make, the City or Ticketmaster a partner of one another, no shall this Agreement be construed to create a partnership or joint venture between any of the parties hereto.
2. Any agreements entered into between Ticketmaster and any Tenant using the Stadium are strictly agreements between such parties and City has no liability or legal obligation to enforce any provisions of those agreement