
USE LICENSE AGREEMENT

_____ -

BY AND BETWEEN

**SMG – ALBUQUERQUE CONVENTION CENTER
AND _____**

DATED _____

USE LICENSE AGREEMENT

THIS USE LICENSE AGREEMENT (together with the Exhibits attached hereto, the “**Agreement**”) is dated as of **Friday, January 27, 2006**, by and between SMG, a Pennsylvania general partnership, with an address at 701 Market Street, 4th Floor, Philadelphia, PA 19106 (“**SMG**”), and «**ACCOUNT**», whose current address is _____ (the “**Licensee**”) for the purpose of conducting _____.

BACKGROUND

SMG is the manager of a facility commonly known as the Albuquerque Convention Center (the “**Facility**”), located at 401 2nd Street NW, Albuquerque, NM. 87102, which is owned by the City of Albuquerque (the “**Owner**”). Licensee desires to use all or a portion of the Facility, as set forth below, for the purposes stated herein. Accordingly, SMG desires to grant to Licensee, and Licensee hereby accepts from SMG, a license to use certain areas of the Facility in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants, and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Use of the Facility.

(a) SMG hereby grants Licensee, upon the terms and conditions hereinafter expressed, a license to use those areas of the Facility described on Exhibit A attached hereto (the “**Authorized Areas**”), including all improvements, furniture, fixtures, easements, rights of ingress and egress, and appurtenances thereto, during the dates and times set forth on Exhibit A (each such date and time, an “**Event**”). It is expressly understood by the parties hereto that the Facility shall be vacated by Licensee and all persons participating in or attending an Event hereunder on or prior to the end-time of the last Event listed on Exhibit A hereto (the “**Expiration Time**”) and, as such, Licensee shall arrange to have all Events and activities related thereto cease within a reasonable time prior to the Expiration Time to allow ample time for the Facility to be completely vacated on or prior to the Expiration Time.

(b) In the event Licensee desires to use the Authorized Areas or any other portion of the Facility at any time other than during the dates and times delineated on Exhibit A, Licensee shall request from SMG prior written permission to use such areas of the Facility. In the event such permission is granted, Licensee shall pay as additional rent an amount equal to the sum of SMG’s actual costs for performing its obligations under this Agreement during the date(s) and time(s) requested, and a fee in an amount determined by SMG to represent a fair value for use of such additional areas of the Facility during such date(s) and time(s).

(c) SMG shall furnish, without cost to Licensee, overhead lighting on contracted dates, normal heat or air conditioning on open show days, janitorial services consisting of cleaning of common public areas, including restroom facilities, and one standard

set-up (seating for theater, classroom, u-shape or hollow square, a riser, a podium and water service for speaker) per paid meeting room daily and banquet areas provided that Licensee complies with requirements of Section 1 (e) (ii). For complimentary meeting space, SMG shall provide one initial set-up as described herein at no charge. Changeovers shall be charged to Licensee at 50% of the prevailing rental of the meeting room. SMG shall not charge a fee for changeovers required to accommodate a catered function.

(e) **Floor Plans, Descriptions, and Set-Up.**

(i) At least eight (8) weeks prior to the first Event, Licensee shall provide to SMG, for SMG's and the City of Albuquerque Fire Marshall's approval, five (5) copies of a full and complete floor plan for the Event. Based upon a review by SMG and such Fire Marshall of the foregoing plan, SMG may request Licensee, by written notice within ten (10) days after receiving the materials, to make such changes, deletions, and/or additions as SMG may, in its reasonable discretion, deem necessary or desirable. Failure by Licensee to make any such reasonable changes, deletions, or additions within seven (7) days after receipt of written notice thereof shall constitute a breach of this Agreement.

(ii) In addition to the floor plan delivered under clause (i) above, at least eight (8) weeks prior to the first Event, Licensee shall provide to SMG, for SMG's review, five (5) copies of a full and complete description of all set-up (including, without limitation, any staging, lighting, video boards, and/or rigging from or to the physical structure of the Facility or any fixture thereto required for the Event), electrical, communications systems, and plumbing work anticipated to be needed for the Event.

(iii) At least four (4) weeks prior to the first Event, Licensee shall provide to SMG information relating to room or hall set-up(s), staging, event personnel requirements, and food and beverage requirements.

(iv) Licensee shall be solely liable for any and all Losses arising from Licensee's failure to deliver to SMG the materials described in subparagraphs (i), (ii) and (iii) of this Section 1(e) within the specified time periods, including, without limitation, overtime pay and short-notice delivery fees.

2. **Purpose.**

(a) The Facility is to be used solely for the purpose of _____. Licensee shall not use the Facility, or permit the Facility to be used by any of its officers, directors, agents, employees, licensees, or invitees, for any unlawful or immoral purpose or in any manner so as to injure persons or property in, on, or near the Facility.

(b) Licensee shall be solely liable for any and all losses, liabilities, claims, damages and expenses (including reasonable costs of investigation and attorneys' fees) (collectively, the "Losses") occurring at the Facility (whether within or without an Authorized Area) caused to SMG, Owner and/or persons and/or property in, on, or near the Facility before, during, or after an Event, by (i) Licensee's failure to comply with any and all federal, state,

foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the “**Laws**”) applicable to Licensee’s performance of this Agreement and/or activities at the Facility, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iii) the negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iv) the material breach or default by Licensee or its officers, directors, agents, or employees of any provisions of this Agreement, including, without limitation, the provisions of Section 13(m) hereof (relating to intellectual property matters), Section 14 hereof (relating to the Civil Rights Act), and Section 15 hereof (relating to the Americans with Disabilities Act), and (v) any and all rigging from or to the physical structure of the Facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the Event.

(c) Licensee shall conduct business in the Facility in a dignified and orderly manner with full regard for public safety and in conformity with SMG’s General Rules and Regulations, including fire and safety rules as required by SMG and/or local fire regulations, as such may exist from time to time. Without limiting the foregoing, Licensee shall obtain prior written approval from SMG’s General Manager at the Facility for any pyrotechnic displays which Licensee anticipates may be performed at the Facility during the term of this Agreement. Licensee agrees that it will not allow any officer, agent, employee, licensee or invitee at, in or about the Facility who shall, upon reasonable grounds, be objected to by SMG and such person’s right to use the Facility may be revoked immediately by SMG.

3. **Condition of Facility.**

(a) Licensee acknowledges that Licensee has inspected the Facility, and that Licensee is satisfied with and has accepted the Facility in its present condition.

(b) SMG shall have the continuing obligation and responsibility to maintain and keep the Facility in good order and repair, normal wear and tear excepted; provided, however, that (i) the failure by SMG to accomplish the foregoing, said failure resulting from circumstances beyond the control of SMG, shall not be considered a breach of this Agreement by SMG, and (ii) any damages to the Facility and its appurtenances caused by Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees shall be paid for by Licensee at the actual or estimated cost of repair, as elected by SMG.

(c) Licensee shall not make any alterations or improvements to the Facility without the prior written consent of SMG. Any alterations or improvements of whatever nature made or placed by Licensee to or on the Facility, except movable trade fixtures, shall, at the option of SMG, (i) be removed by Licensee, at Licensee’s expense, immediately upon the conclusion of the Event, or (ii) become the property of SMG. SMG may, at its election, accept delivery of property addressed to Licensee only as a service to Licensee, and Licensee will indemnify, defend, and hold harmless SMG for any loss or damage to such property in the receipt, handling, care, and custody of such property at any time. SMG assumes no responsibility whatsoever for any property placed in the Facility. Notwithstanding anything to the contrary set forth herein, Licensee shall be solely responsible and liable for any and all

Losses arising out of any and all rigging from or to the physical structure of the Facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the Event.

4. **Term of License.** The license granted in Section 1 above will be effective as of the date and time set forth on Exhibit A and will continue in effect, unless earlier terminated as set forth in Section 11, until the date and time set forth on Exhibit A.

5. **License Fee, Merchandising Fee, Broadcast Fee, and Reimbursable Service Expenses and Complimentary Tickets.** In consideration of the grant of the license in Section 1 above, Licensee shall pay to SMG a license fee, merchandising fee, broadcast fee, and shall reimburse SMG for certain service expenditures, all as calculated in accordance with the provisions set forth below and in accordance with generally accepted accounting principles, consistently applied:

(a) **License Fee.** Licensee shall pay a license fee (the “**License Fee**”) equal to the amount set forth on Exhibit A.

(b) **Merchandising Fee.** Licensee shall pay a merchandising fee (the “**Merchandising Fee**”) equal to twenty-five (25%) of gross novelty and merchandising revenue, less all applicable taxes and fees, generated in connection with the Event. SMG reserves the right to sell said merchandise.

(c) **Broadcast Fee.** SMG shall retain all television, film, radio and/or recording rights to any Events, which take place in or at the Facility. Licensee may purchase such rights from SMG for a broadcast fee (the “**Broadcast Fee**”) equal to an amount determined by SMG General Manager, when such recording is broadcast and/or distributed for commercial purposes. Said contract shall be delivered to SMG not less than 24 hours prior to the commencement of any such television, broadcast, film or recording activity of any Event in or at the Facility, and shall be accompanied by a written and signed statement by Licensee that no other agreement, express or implied, written or oral, has, to its knowledge, been reached or is in the process of being reached wherein Licensee shall receive any additional monies for such rights.

(d) **Reimbursable Service Expenses.**

(i) SMG shall provide, as required for each Event, the following services (collectively, the “**Services**”), the expenditures for which may be reimbursable by Licensee to SMG or SMG’s contractor (“**Reimbursable Service Expenses**”): food and beverage services; utilities, including electricity, gas, lighting, water, heating, ventilating, air conditioning, hot and cold water facilities, and waste removal services; electricians; and special facilities, equipment and materials, audio/visual, telecommunications, Internet/networking or extra services furnished by SMG at the request of Licensee.

(ii) SMG shall determine the level of police, fire and/or peer group security staffing for such Services at each Event after consultation with, and input from,

Licensee. Licensee acknowledges and understands that many of the Services are contracted services, the costs of which are subject to change. Licensee shall reimburse SMG for actual costs incurred by SMG in connection with the Services as provided in Section 6 below.

(e) **Complimentary Tickets.** In addition to the License Fee, Merchandising Fee, Broadcast Fee and Reimbursable Service Expenses, complimentary tickets for promotional purposes shall be available as follows:

(i) SMG shall be entitled to thirty two (32) tickets, per performance and/or per event day at no charge

(ii) Said tickets for events held in the Kiva Auditorium shall consist of sixteen (16) tickets in section 3, row D, seats 1-16 and sixteen (16) general admission tickets, in groups of four (4), located in sections two (2) through four (4).

6. **Payment Terms.**

(a) **License Fee, Merchandising Fee, and Broadcast Fee.** The License Fee, Merchandising Fee, and Broadcast Fee set forth in Sections 5(a), (b), and (c) of this Agreement shall be paid by Licensee.

(b) **Reimbursable Service Expenses.** On or about fourteen (14) days prior to the first Event, SMG shall deliver to Licensee an expense report estimate (“**Expense Report Estimate**”), setting forth SMG’s estimate of all expenses which SMG will incur in connection with the Services. Within seven (7) days of Licensee’s receipt of such Expense Report Estimate, Licensee shall pay to SMG the total estimated expenses for the Services reflected in the Expense Report Estimate. On or about fourteen (14) days after the conclusion of an Event, SMG shall deliver to Licensee an expense report setting forth the expenses actually incurred by SMG for the Services (“**Actual Expense Report**”). In the event the amount reflected in the Actual Expense Report exceeds the amount reflected in the Expense Report Estimate, Licensee shall promptly pay to SMG the amount of the excess. In the event the amount reflected in the Expense Report Estimate exceeds the amount reflected in the Actual Expense Report, SMG will promptly pay to Licensee the amount of such excess. Notwithstanding anything to the contrary set forth in this Agreement, SMG’s failure to deliver either the Expense Report Estimate or the Actual Expense Report shall not excuse Licensee’s obligation to pay any amounts due hereunder.

(c) **Late Charges.** If Licensee fails to pay any amounts when due under this Agreement, Licensee shall pay to SMG a late charge of 1.5% per month on the unpaid balance.

7. **Revenues and Costs.** SMG shall retain one hundred percent (100%) of all revenues generated in connection with the sale of food and beverages at the Facility. In addition to payment of the Reimbursable Service Expenses above, Licensee shall bear all expenses incurred by Licensee in connection with the holding of an Event at the Facility, including, but not limited to, all costs arising from the use of patented, trademarked or copyrighted materials, equipment, devices, processes or dramatic rights used on or incorporated in the conduct of an Event.

8. **Taxes.** SMG shall not be liable for the payment of taxes, late charges, or penalties of any nature relating to any Event or any revenue received by, or payments made to, Licensee in respect of any Event, except as otherwise provided by law. Licensee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, damages, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Agreement or any other improvements now or hereafter owned by Licensee.

9. **Insurance.**

(a) Licensee shall, at its own expense, secure and deliver to SMG not less than thirty (30) days prior to the first Event set forth on Exhibit A and shall keep in force at all times during the term of this Agreement:

(i) a comprehensive general liability insurance policy in form acceptable to SMG, including public liability and property damage, covering its activities hereunder, in an amount not less than One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage, including blanket contractual liability, independent contractors, and products and completed operations. The foregoing general liability insurance policy shall not contain exclusions from coverage relating to the following participants, legal liability activities or issues related to the Event hereunder: sporting events, high risk events (including, without limitation, rap concerts), performers, volunteers, animals, off-premise activities, and fireworks or other pyrotechnical devices;

(ii) comprehensive automotive bodily injury and property damage insurance in form acceptable to SMG for business use covering all vehicles operated by Licensee, its officers, directors, agents and employees in connection with its activities hereunder, whether owned by Licensee, SMG, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000) (including an extension of hired and non-owned coverage); and

(iii) applicable workers compensation insurance for Licensee's employees, as required by applicable law.

(b) The following shall apply to the insurance policies described in clauses (i) and (ii) above:

(i) "The City of Albuquerque, SMG, its officers, agents and employees" shall be named as additional insureds thereunder. Not less than thirty (30) days prior to the first Event set forth on Exhibit A, Licensee shall deliver to SMG certificates of insurance evidencing the existence thereof, all in such form as SMG may reasonably require. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice

thereof to each of SMG, Risk Management Director, 701 Market Street, 4th Floor, Philadelphia, PA, 19106, and 401 2nd Street NW, Albuquerque, NM. 87102.” If any of the insurance policies covered by the foregoing certificates of insurance will expire prior to or during the time of an Event, Licensee shall deliver to SMG at least thirty (30) days prior to such expiration a certificate of insurance evidencing the renewal of such policy or policies.

(ii) The coverage provided under such policies shall be occurrence-based, not claims made.

(iii) The coverage limits contained on such policies shall be on a per-occurrence basis only.

(iv) Licensee hereby acknowledges that the coverage limits contained in any policy, whether such limits are per occurrence or in the aggregate, shall in no way limit the liabilities or obligations of Licensee under this Agreement, including, without limitation, Licensee’s indemnification obligations under Section 10 below.

(c) The terms of all insurance policies referred to in this Section 10 shall preclude subrogation claims against SMG and Owner and their respective officers, directors, employees, and agents.

(d) The failure of the Licensee to provide insurance in accordance with this Section 9 shall be a breach of this Agreement and shall, notwithstanding any cure period set forth in Section 11 below, preclude the Event from taking place.

10. **Indemnification.**

(a) Licensee shall indemnify, defend, and hold harmless SMG, Owner, and their respective officers, directors, agents, and employees (the “Indemnitees”) from and against any and all Losses arising from (i) the matters described in Section 1(e)(i - iii) hereof, (ii) the matters described in Section 2(b) hereof, and/or (iii) personal or bodily injury to or death of persons or damage to the property of SMG or Owner to the extent caused by the negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees.

(b) The provisions set forth in subparagraph (a) above shall survive termination or expiration of this Agreement.

11. **Default, Termination and Other Remedies.**

(a) **Default.** Licensee shall be in default under this Agreement if any of the following occur: (i) Licensee fails (A) to pay any amount due hereunder (including, without limitation, the Licensee Fee or the Reimbursable Service Expenses) when the same are required to be paid hereunder or (B) to provide the security required under Section 5(d)(ii) hereof by the date when due, (ii) Licensee or any of its officers, directors, employees or agents fails to perform or fulfill any other term, covenant, or condition contained in this Agreement and Licensee fails to

commence a cure thereof within five (5) business days after Licensee has been served with written notice of such default, or (iii) Licensee makes a general assignment for the benefit of creditors. SMG shall be in default under this Agreement if SMG fails to perform or fulfill any term, covenant, or condition contained in this Agreement and SMG fails to commence a cure thereof within five (5) business days after SMG has been served with written notice of such default. Nothing herein shall be construed as excusing either party from diligently commencing and pursuing a cure within a lesser time if reasonably possible. Notwithstanding clause (ii) above, if the breach by Licensee or any of its officers, directors, employees, or agents of such other term, covenant, or condition is such that it threatens the health, welfare, or safety of any person or property, then SMG may, in its discretion, require that such breach be cured in less than five (5) business days or immediately.

(b) **Termination by Reason of Default.** Upon a default pursuant to Section 11(a) hereof, the nonbreaching party may, at its option, upon written notice or demand upon the other party, cancel and terminate the license granted in Section 1 hereof and the obligations of the parties with respect thereto. In addition to the foregoing, if Licensee fails to comply with any of the provisions of this Agreement, SMG may, in its sole discretion, delay and/or withhold payment and/or settlement of all accounts and funds related to monies collected or received by SMG for the benefit of Licensee hereunder until the completion of an investigation relating to such violation.

(c) **Termination by Reason of Labor Dispute.** In addition to the remedies provided elsewhere in this Agreement, SMG shall have the right to terminate this Agreement in the event that a dispute occurs between Licensee and its employees or between Licensee and any union or group of employees by reason of the union affiliation or lack of union affiliation of persons employed by Licensee or any one with whom Licensee contracts.

(d) **Injunctive Relief.** In addition to any other remedy available at law, equity, or otherwise, SMG shall have the right to seek to enjoin any breach or threatened breach and/or obtain specific performance of this Agreement by Licensee upon meeting its burden of proof of such breach or threatened breach as required by applicable statute or rule of law.

(e) **Unique Qualities.** The parties agree and acknowledge that the Licensee is a unique entity and, therefore, the rights and benefits that will accrue to SMG by reason of this Agreement are unique and that SMG may not be adequately compensated in money damages for Licensee's failure to comply with the material obligations of Licensee under this Agreement and that therefore SMG, at its option, shall have the right to pursue any remedy available at law, equity, or otherwise, including the recovery of money damages and/or the right to seek equitable relief (whether it be injunctive relief, specific performance or otherwise) in the event that Licensee violates its obligation to hold an Event at the Facility, or to provide evidence of fulfillment of its obligations under Section 13(m) of this Agreement.

(f) **Liquidated Damages.** If Licensee cancels any event covered by this agreement, Licensee agrees to pay SMG the following amounts as liquidated damages and not as

a penalty, and the parties agree that such amounts constitute reasonable provision for liquidated damages:

i. If Licensee cancels more than one (1) year before the first scheduled day of occupancy, twenty-five percent (25%) of the minimum fee shown in Exhibit A shall be payable to SMG as liquidated damages within ten (10) days of invoice.

ii. If Licensee cancels more than six (6) months before the first scheduled day of the event, but less than one (1) year before the first scheduled day of the event, sixty percent (60%) of the minimum fee shown in Exhibit A shall be payable to SMG as liquidated damages within ten (10) days of invoice.

iii. If Licensee cancels less than six (6) months before the first scheduled day of the event, one hundred percent (100%) of the minimum fee shown in Exhibit A shall be payable to SMG as liquidated damages within ten (10) day of invoice.

12. **Representations and Warranties.** Each party hereby represents and warrants to the other party, and agrees as follows:

(a) It has the full power and authority to enter into this Agreement and perform each of its obligations hereunder;

(b) It is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement; and

(c) No litigation or pending or threatened claims of litigation exist which do or might adversely affect its ability to fully perform its obligations hereunder or the rights granted by it to the other party under this Agreement.

13. **Covenants.** Licensee hereby covenants as follows:

(a) Licensee shall not occupy or use the Facility except as provided in this Agreement.

(b) Licensee shall comply with all legal requirements that arise in respect of the Facility and the use and occupation thereof.

(c) Licensee shall not cause or permit any Hazardous Material to be used, stored, or generated on, or transported to and from the Facility. “**Hazardous Material**” shall mean, without limitation, those substances included within the definitions of “hazardous substances”, “hazardous materials”, “toxic substances”, or “solid waste” in any applicable state or federal environmental law.

(d) Licensee shall not advertise, paint, post, or exhibit, nor allow to be advertised, painted, posted, or exhibited, signs, advertisements, show bills, lithographs, posters,

or cards of any description inside or outside or on any part of the Facility except upon written permission of SMG.

(e) Licensee shall not broadcast by television or radio any Event scheduled to be presented in the Facility under the terms of this Agreement without the prior written approval of SMG. If approval is granted by SMG, then all monies received from such broadcast will be considered as broadcast revenues for the purpose of determining the Broadcast Fee due to SMG.

(f) Licensee shall not cause or permit beer, wine, or liquors of any kind to be sold, given away, or used upon the Facility except upon prior written permission of SMG and the exclusive food & beverage sub-contractor.

(g) Licensee shall not operate any equipment or materials belonging to SMG without the prior written approval of SMG.

(h) Licensee, its officers, directors, employees, agents, members, or other representatives shall not “scalp” tickets for an Event, to the extent applicable. Licensee and its representatives shall provide assistance to SMG in its efforts to control and prevent such ticket “scalping”.

(i) No portion of any passageway or exit shall be blocked or obstructed in any manner whatsoever, and no exit door or any exit shall be locked, blocked, or bolted while the Facility is in use. Moreover, all designated exitways shall be maintained in such manner as to be visible at all times.

(j) If the Licensee Fee includes a percentage of revenue generated from an Event, then no collections, whether for charity or otherwise, shall be made, attempted, or announced at the Facility, without first having made a written request and received the prior written consent of SMG. In such event, donations or collections are granted by SMG in lieu of an admission ticket, then all such monies received from such collections or donations will be considered as ticket revenues for the purpose of determining the License Fee due to SMG.

(k) Licensee shall abide by and conform to all rules and regulations adopted or prescribed by SMG pursuant to a certain operating handbook titled Event Planning Guide and the attached Rules and Regulations, a copy of which has been provided to Licensee and the terms of which are incorporated by reference herein.

(l) Licensee shall not encumber, hypothecate, or otherwise use as security its interests in this Agreement for any purpose whatsoever without the express written consent of SMG.

(m) With respect to any Event at the Facility, Licensee shall comply fully with any and all local, state, and federal laws, regulations, rules, constitutional provisions, common laws, and rights of others applicable to the reproduction or performance of proprietary or copyrighted materials and works of third parties (the “**Works**”), and to the protection of the intellectual property rights associated with such Works. The fees payable by Licensee under this

Agreement do not include royalty, copyright or other payments which may be payable on behalf of third party owners of such Works, and Licensee agrees hereby to make any and all such payments to third parties and/or clearinghouse agencies as may be necessary to lawfully perform, publish or reproduce any such Works. Licensee specifically agrees, undertakes, and assumes the responsibility to make any and all reports to such agencies and/or parties, including specifically by way of example only (and not by way of limitation) ASCAP, BMI, SAG, SESAC and other similar agencies. Licensee agrees hereby to produce evidence of such reports and payments to SMG, including evidence of compliance with the requirements of this paragraph to be provided to SMG in advance of any such Event. Provision of such evidence is a material condition of this Agreement. Licensee agrees to indemnify, defend, protect and hold harmless SMG and all other Indemnitees (as defined in this Agreement) of and from all and all manner of Losses arising in any way from the use by Licensee of proprietary intellectual property of third parties (whether such claims are actual or threatened) under the copyright or other laws of the United States. The foregoing indemnity shall apply regardless of the means of publication or performance by Licensee, and shall include specifically and without limitation the use of recordings, audio broadcasts, video broadcasts, Works on other magnetic media, sounds or images transmitted via the worldwide web, chat rooms, webcast, or on-line service providers, satellite or cable, and all other publication or performance means whatsoever, whether now known or developed after the date of this Agreement.

(n) Licensee shall not engage in the sale and/or distribution of food and/or beverages at the Facility.

(o) Licensee shall use the Facility's logo (the "**Facility Logo**") in all advertising controlled by or done on behalf of Licensee relating to an Event, including, but not limited to, television, internet, newspaper, magazine, and outdoor advertising. Licensee's right to use the Facility Logo shall be limited to the specific, express purpose set forth in the foregoing sentence and/or as otherwise authorized by SMG in writing prior to the use thereof. In connection with Licensee's use of the Facility Logo as permitted in this Section 13(o), Licensee shall use only the form of the Facility Logo as provided by SMG to Licensee in any artwork or other depiction thereof.

14. **Civil Rights Act.** During the performance of this Agreement, Licensee shall comply fully with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all other regulations promulgated thereunder, in addition to all applicable state and local ordinances concerning Civil Rights.

15. **Americans With Disabilities Act.** With respect to any Event at the Facility, Licensee recognizes that it is subject to the provisions of Title III of the Americans With Disabilities Act, as amended, and all similar applicable state and local laws (collectively, the "**ADA**"). Licensee represents that it has viewed or otherwise apprised itself of the access into the Facility, together with the common areas inside, and accepts such access, common areas, and other conditions of the Facility as adequate for Licensee's responsibilities under the ADA. Licensee shall be responsible for ensuring that the Facility complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration insofar as Licensee modifies, rearranges or sets up in the Facility in order to accommodate Licensee's

usage. Licensee shall be responsible for any violations of the ADA, including, without limitation, those that arise from Licensee's reconfiguration of the seating areas or modification of other portions of the Facility in order to accommodate Licensee's usage. Licensee shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices, and procedures it applies in connection with an Event are in compliance with the ADA.

16. **Use of Information.** Licensee hereby acknowledges and agrees that SMG shall have the right to disclose to recognized industry sources that track event activity information relating to any Event, including, without limitation, the identity of performers or other participants of the Event, attendance figures, and gross ticket revenue for the Event.

17. **Construction of this Agreement**

(a) **Choice of Law.** This Agreement shall be deemed to be made, governed by, and construed in accordance with the laws of the City of Albuquerque and the State of New Mexico, without giving effect to the conflict of law principles thereof.

(b) **Paragraph Headings.** The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

(c) **Entire Agreement; Amendments.** This Agreement (including all Exhibits and other documents and matters annexed hereto or made a part hereof by reference) contains all of the representations, warranties, covenants, agreements, terms, provisions, and conditions relating to the rights and obligations of SMG and Licensee with respect to the Facility and the Event. No alterations, amendments, or modifications hereof shall be valid unless executed by an instrument in writing by the parties hereto. **WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT NO OFFICER, DIRECTOR, EMPLOYEE, AGENT, REPRESENTATIVE, OR SALES PERSON OF EITHER PARTY HERETO, OR OF THE OWNER OR ANY THIRD PARTY HAS THE AUTHORITY TO MAKE, HAS MADE, OR WILL BE DEEMED TO HAVE MADE, ANY REPRESENTATION, WARRANTY, COVENANT, AGREEMENT, GUARANTEE, OR PROMISE WITH RESPECT TO THE FINANCIAL SUCCESS OR PERFORMANCE, AND/OR OTHER SUCCESS, OF THE EVENT. THE LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT ANY ASSESSMENT OF THE FINANCIAL SUCCESS OR PERFORMANCE, AND/OR OTHER SUCCESS, OF THE EVENT IS SOLELY THAT OF THE LICENSEE'S OWN DETERMINATION AND JUDGMENT.**

(d) **Severability.** If any provision or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.

(e) **Time.** Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.

(f) **Successors.** This Agreement shall be binding upon, and shall inure to, the benefit of the successors and assigns of SMG, and to such successors and assigns of Licensee as are permitted to succeed to the Licensee's right upon and subject to the terms hereof.

(g) **Independent Contractor; No Partnership.** SMG and Licensee shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, SMG or Licensee a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between and of the parties hereto or referred to herein.

(h) **Singular and Plural.** Whenever the context shall so require, the singular shall include the plural, and the plural shall include the singular.

18. **Miscellaneous.**

(a) **Waiver.** The failure of any party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights, or elections will not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.

(b) **Assignment.** Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred in any manner whatsoever by Licensee without the prior written consent of SMG. SMG shall be entitled to assign its rights and obligations hereunder to Owner or to any other management company retained by Owner to manage the Facility, and in such event, SMG shall have no further liability to Licensee hereunder for the performance of any obligations or duties arising after the date of such assignment.

(c) **Notices.** Any notice, consent, or other communication given pursuant to this Agreement shall be in writing and shall be effective either (i) when delivered personally to the party for whom intended, (ii) upon delivery by an overnight courier services that is generally recognized as reliable, and the written records maintained by the courier shall be prima facie evidence of delivery, or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid, as of the date shown by the return receipt; in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

If to SMG: SMG – Albuquerque Convention Center
401 2nd Street NW
Albuquerque, NM. 87102
Attention: General Manager

with a copy to: SMG
Independence Center
701 Market Street, 4th Floor
Philadelphia, PA 19106
Attention: Director of Risk Management

If to Licensee: «ACCOUNT»
«ACC_ADDR1»
«ACC_ADDR2»
«ACC_ADDR3»
«ACC_CITY», «ACC_STATE», «ACC_POSTL»
Attention: «CNTCT_NAME»

(d) **Non-Exclusive Use.** SMG shall have the right, in its sole discretion, to use or permit the use of any portion of the Facility other than the Authorized Areas to any person, firm or other entity regardless of the nature of the use of such other space.

(e) **Force Majeure.** If the Facility is damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of SMG, including, without limitation, acts of God, fires, floods, epidemics, quarantine restrictions, terrorist acts, strikes, labor disputes, failure of public utilities, or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, SMG is hereby released by Licensee from any damage so caused thereby.

(f) **Acts and Omissions of Third Parties.** SMG shall not be liable in any way for any acts and/or omissions of any third party to this Agreement, including, without limitation, any ticket agency used by SMG in connection with the sale of tickets for any Event.

(g) **Right of Entry.** In permitting the use of the Authorized Areas, SMG does not relinquish and does hereby retain the right to enforce all rules for the management and operation of such space. Representatives of SMG and the City may enter the Authorized Areas at any time and on any occasion without any restrictions whatsoever. All space at the Center shall at all times be subject to SMG's right to control.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first written above.

SMG

By: _____

Name: Thomas Morton

Title: General Manager

Date: _____

«ACCOUNT»

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A TO USE LICENSE AGREEMENT

1. **Authorized Areas and Term.** SMG grants to Licensee permission to use the following described Authorized Areas at the Center, including corridors for ingress and egress, during the dates and times indicated. SMG reserves the right to control all Lobby or Common Areas. SMG will permit Licensee to use those areas of the Lobby, as it deems appropriate.

LISTING OF SPACE CONTRACTED & HOURS OF USE

The Licensee agrees to pay the following basic fee for the Reserved Space:

2. Fees. For the use of the Authorized Areas, Licensee shall pay to Operator the greater of A, B or C:

(A) Minimum fee of: **AMOUNT IN WORDS**

OR (B) Exhibit Space Square Footage Fee: \$.___ per net square foot utilized (sold and/or unsold) per event day. This not inclusive of applicable meeting room fees or fees for move-in/move-out days.

OR (C) A percentage of: 10% of total adjusted gross receipts (“adjusted gross receipts” means the total gross sales based on the accrual method of accounting from all sales of ticket and other admission fees for the event less any applicable gross receipts, sales or use taxes. Admission fees include all amounts paid for access to the Facility or the Event.) A \$1.00 per ticket facility fee applies to ticketed events held in the Kiva Auditorium and ticketed, seated events in the exhibition halls.

3. Payment of License Fee:

(a) Fixed License Fee: The fixed License Fee set forth in Section 1 above shall be paid in accordance with the following schedule:

Amount Payable

Payment Due Date

5 %

Upon signing this Use License Agreement

20 %

Eighteen (18) months prior to start of the Event

35 %

Twelve (12) months prior to start of the Event

40 %

Six (6) months prior to start of the Event

ALBUQUERQUE CONVENTION CENTER

GENERAL RULES AND REGULATIONS

PLEASE RETAIN THIS DOCUMENT FOR YOUR RECORDS

1. **Licenses or Permits.** If any governmental license or permit is required for the proper and lawful conduct of Licensee's business or other activity carried on, in or at the Authorized Areas or if failure to obtain such a license or permit might in any way affect the operations of the Facilities, then Licensee, at its own expense, shall obtain and maintain such license or permit and submit the same to inspection by Operator. Licensee, at its sole cost and expense, shall at all times comply with the requirements of each such license or permit.
 - a. **Licensing:** A New Mexico business license is required for any Licensee doing business at the Center. To acquire a business license, please do the following:
 - i. Contact the State of New Mexico Taxation and Revenue Department at PO Box 8485, Albuquerque, NM. 87198 or phone at 505-841-6200 or fax at 505-841-6326.
 - b. A State representative will determine if there is a need for a temporary or permanent State of New Mexico identification number.
 - i. **Permanent Identification Procedures:** Licensee must request a Tax ID number application. Licensee will be considered permanent if Licensee is conducting more than one event in the space in a calendar year.
 - ii. **Temporary Identification Procedures:** If Licensee is conducting one event in a calendar year, Licensee is considered temporary. Licensee must contact the Compliance Revenue Agent at the above number for additional information
 - c. After Licensee's status has been determined, with either a permanent or temporary tax identification number, Licensee must acquire a City business registration.
 - i. City business registrations are available through the Treasury Division, Department of Finance and Management, City of Albuquerque, PO Box 17, Albuquerque, NM. 87103. Phone 505-768-4611 and fax 505-768-3447.
 - d. **Taxation:** All goods and services are taxable in the State of New Mexico.
 - i. **Local Sales Tax:** the prevailing sales tax rate will apply.
 - ii. **Business and Individual Tax:** For information regarding business taxes, please contact the Taxation and Revenue Department at 505-841-6200.
2. **Compliance with Laws.** Licensee shall, at its own expense, promptly comply and cause its employees, agents, contractors, exhibitors, patrons and invitees to comply with all laws, ordinances, orders, rules, regulations and requirements of all federal, state, municipal and local governments, departments, commissions, boards and officers and to conform in all respects with the City of Albuquerque Fire Department Management Plan for the facilities as in effect from time to time, with particular reference to such Plan's Exhibition Guidelines.

- 3. Failure to Vacate/Removal of Property.** Upon the expiration or sooner termination of the agreement hereof, Licensee shall immediately remove all goods, wares, merchandise, property and debris owned by Licensee or which Licensee has placed or permitted to be placed on or at the Facilities. Any such property not so removed shall be considered abandoned and, at Operator's option, be removed and stored by Operator at Licensee's expense or disposed of in any manner Operator deems expedient. Licensee hereby waives all claims for damage resulting from such removal, storage and disposal of such property and indemnifies Operator from any damages or costs including reasonable attorney's fees resulting from such storage and disposal.
- 4. Protection of Facilities.** Licensee will not permit anyone to drive any nails, hooks, tacks or screws in any part of the Facilities or to alter the Facilities in any respect. Without limiting the above, Licensee will not permit anyone to affix any material to the walls, floors, doors or ceilings or to alter the Facilities in any respect without prior written approval by Operator. If, with or without Operator's approval, Licensee damages the Facilities it will pay Operator the cost of repair or replacement.
- 5. Property of Operator.** Licensee may not use or transport any equipment, furnishings or other property belonging to Operator, or the City of Albuquerque, to any place outside the Facility itself.
- 6. Attendance Capacity.** In no event shall attendance be permitted in excess of the established capacity of the Authorized Areas. Licensee shall not admit a larger number of persons than can safely and freely move about in the Authorized Areas; the decision of the Operator and/or the Albuquerque Fire Department in this respect shall be final.
- 7. Evacuation of Facility.** If it becomes appropriate in the judgment of Operator to evacuate the premises because of a bomb threat or for other reasons of public safety, then, after such evacuation, the Licensee may continue to use the premises for sufficient time to complete presentation of the event without additional fees providing such time does not interfere with another Licensee. If it is not possible to complete presentation of the event, fees shall be prorated or adjusted at the discretion of the Operator and the Licensee hereby waives any claim for damages or compensation from the Operator.
- 8. Designated Entrances.** All persons, articles, exhibits, fixtures, displays and property of every kind shall be brought into and out of the Facilities only at designated and approved entrances and exits. All such entrances and exits shall be subject to Operator's control.
- 9. Crate Storage.** All crates and related materials shall, at Licensee's expense, be removed from the Authorized Areas before the opening day of Licensee's scheduled event.
- 10. Flammable Materials.** No flammable materials, such as bunting, tissue paper, crepe papers, etc., will be permitted to be used for decorations and all materials used for decorative purposes must be treated with flame-proofing and be in accordance with the Operator's Fire and Safety Rules and Regulations.

11. Public Safety. Licensee agrees not to bring onto the premises any material, substance, equipment or object which is likely to endanger the life of, or to cause bodily injury to, any person on the premises or which is likely to constitute a hazard to property thereon without the prior approval of the Operator. The Operator shall have the right to refuse any such material, substance, equipment or object to be brought onto the premises and the further right to require its immediate removal therefrom if found thereon.

12. Utility Connections. Operator maintains the exclusive right for the installation of electricity, plumbing or other utility services. All such connections and related work will be at the expense of the Licensee and/or the Licensees exhibitors.

13. Lost Articles. Operator shall have the sole right to collect and have the custody of articles left in the premises by persons attending any performance, exhibition or entertainment event given or held in the Facilities, and the Licensee or any person in Licensee's employ shall neither collect nor interfere with the collection or custody of such articles.

14. Tours. Operator reserves the right to conduct public tours of the Facilities during the period of occupancy in such a manner that the tours do not interfere with Licensee's event.

15. Announcements. Operator reserves the right to make such announcements as Operator deems necessary at any time in the interest of public safety.

16. Advance Deliveries. Operator shall not be obligated to accept delivery of Licensee's property addressed to Licensee at the Facilities except upon prior approval of Operator. Operator shall not be liable for damage to such property and Licensee shall indemnify and hold harmless Operator for and against any loss of or damage to such property and to any damage caused by such property to other persons or property.

17. Signs and Posters. The use, distribution and location of all signs, cards and posters are subject to Operator's review and control.

18. Banners, Flags and Flagpoles. The use of banners on the exterior of the Facilities is at the discretion of the Operator.

19. Advertising. All advertising of Licensee's event shall be accurate and true in all respects. All advertising space in the Facilities is the exclusive property of Operator. Advertising of events by Licensee in Facilities publications, readerboards or other advertising media under the control of Operator shall be provided as availability permits with no guarantee that such advertising space shall be available. The content of all advertising by Licensee is subject to approval by Operator in writing. All in-house publications and advertising in such publications are the exclusive property of Operator. Operator reserves the right to distribute its in-house publications to attendees within the Facilities.

20. Copyrights and Proprietary Material. Licensee shall obtain all necessary licenses and shall pay all costs and fees arising from the use of copyrighted music or dramatic materials, or any other property subject to any trademark, patent or other proprietary right, which is used or

incorporated in the event. Licensee shall indemnify, defend and hold Operator and all other indemnittees designated in Paragraph 8 of the License Agreement harmless from any liability, claims or costs, including attorney's fees, arising from the use of any such materials or any claims of infringement or violation of the rights of the owner.

21. Solicitations. No collections or donations, whether for charity or otherwise, shall be made, attempted or announced on the premises without prior written approval of Operator.

22. Opening Hours. Licensee shall open doors for an event in accordance with advertised times.

23. References. Reference in these Rules and Regulations to "Operator" means SMG; to "City" refers to the City of Albuquerque; and, to the "Agreement" or "License Agreement" refers to Operator's License Agreement for Albuquerque Convention Center executed by Licensee. "Facility" refers to the facilities described in that Agreement. Other terms are defined in such License Agreement.

24. Booth Cleaning.

Licensee will retain responsibility for booth and aisle carpet cleaning services. The premises are turned over to the Licensee under a "clean hall to clean hall" policy. Licensee will be responsible for the cleaning of areas including, but not limited to, areas utilized for purposes of offices or registration, loading dock(s), any Exhibit Hall floor space that is utilized, trash left in aisles or placed in receptacles located on the show floor, etc. If Licensee fails to return the premises in a "clean hall" manner, including the removal of tape, Operator will perform the necessary services and it will be Licensee's responsibility to reimburse Operator for the costs that were incurred to provide such services.

Operator will maintain and clean all meeting rooms areas, rest rooms, lobby space and concession areas throughout the term of the License Agreement at no additional cost to Licensee.

25. Show Badges. Licensee agrees to provide ten (10) all access badges per day to Operator for each event or performance covered by this agreement. Such complimentary badges shall be of Operator's choice and supplied to Operator at its office at least ten (10) working days before the first day of the event.

26. Non-Smoking Facility. Licensee agrees to uphold the "Non-Smoking" policy as per the Albuquerque City Ordinance No. 14-2003 and 0-51, smoking is prohibited within the facility and will be held responsible for notifying its Exhibitors and Invitees.

27. Novelty/Merchandising Fee. Applies to any merchandise sold. Licensee shall pay a merchandising fee equal to twenty-five (25%) of gross novelty and merchandising revenue, less all applicable taxes and fees, generated in connection with the Event. SMG reserves the right to sell said merchandise.

- 28. Audio Visual.** Operator's preferred, in-house Audio Visual contractor is the exclusive provider of in-house sound systems.
- 29. Shipping and Receiving.** Licensee is to make arrangements with an outside company to receive, store and deliver to Licensee's leased space. Operator does not have a shipping and receiving department. Any materials sent to Operator prior to Licensee's occupying of leased space will not be accepted and will be returned to point of origin.
- 30. Food and Beverage.** Aramark is the exclusive food and beverage provider for both concessions and catering at the Albuquerque Convention Center. SMG reserves the right to sell, at its discretion, food and beverage, including alcohol, in any unused space within the facility for this purpose.
- 31. Balloons, Glitter & Other Decorations.** The use of helium balloons, glitter, and/or confetti is not permitted without the prior approval of the Center. Costs associated with the clean-up are the responsibility of the Licensee.
- 32. Lobby Use.** SMG reserves the right to control all Lobby or Common Areas. SMG will permit Licensee to use those areas of the Lobby, as it deems appropriate.

Revised: 2/1/05