**Chilhowee Park License Agreement**

**THIS LICENSE AGREEMENT** (together with the Exhibits attached hereto, the “**Agreement**”) is dated as of the **[Day]** day of **[Month]**, **[Year]**, by and between **SMG**, a foreign general partnership registered in Tennessee and organized and existing under the laws of the State of Pennsylvania with its principal office at 1300 Conshohocken State Road, Suite 450 in West Conshohocken, Pennsylvania, 19428 (**“SMG,”** which term shall include its successors and assigns), and **The University of Tennessee**, an instrumentality of the State of Tennessee (the **“University,”)** which term shall include its successors and assigns).

**WITNESSETH:**

SMG is a party to a certain management agreement dated as of November 1, 2015 with the City of Knoxville (the “Owner”), known as City of Knoxville Contract No. C-07-0076 (the “**Management Agreement**”), whereby SMG has been retained to act as Owner’s managing agent in respect to a facility commonly known as the Chilhowee Park and Exposition Center (“Facility”), which includes the approximately 50-acre public entertainment and event venue located at 3301 East Magnolia Avenue (Parcel ID No. 070NF002), which houses the Jacob Building, the Kerr Building, the Homer Hamilton Theater and associated ticket office, the Poultry Barn, the multi-functional agriculture buildings (also known as the Livestock Pavilion), the outdoor theatre, Lake Ottosee, the Picnic Pavilion, the Park Office, the Bandstand, and multiple parking lots; the Midway and Picnic Pavilion bounded by North Beaman Street, East Magnolia Avenue, Martin Luther King Avenue, and Alice Street, excluding residential parcels not owned by the City of Knoxville at the time of the execution of this Amendment and further excluding Parcel ID No. 082CE019, owned by the Tennessee Valley Agricultural and Industrial Fair (“TVA&I”); and the Tractor Pull Arena, located at 900 Prosser Road (Parcel ID No. 070MA010) and 914 Prosser Road (Parcel ID No. 070MA01101). It is noted that Chilhowee Park and Exposition Center also includes certain property owned by TVA&I, located at 3824 Knoxville Zoo Drive (Parcel ID No. 070NF004) and 3825 Knoxville Zoo Drive (Parcel ID No. 070NF003), which the City Licenses from TVA&I for a portion of the year pursuant to City of Knoxville Contract No. C-08-0047; the City has the first right of refusal on these parcels if TVA&I chooses to sell them.

University desires to use all or a portion of the Facility, as set forth below, for the purposes stated herein. Pursuant to the Management Agreement, SMG has the express authority to enter into agreements on Owner’s behalf relating to the use of the Facility. Accordingly, SMG, as agent for Owner, desires to grant to University, and University 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:

**Article 1. LICENSE and Use of Premises.**

1. **Authorized Areas.** SMG hereby grants University, 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 University 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, University 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. The City, SMG, and their representatives, agents, employees, and concessionaires, operating within the scope of their employment, shall, at all times, have free access to the Facility.
2. **Use.** The Facility is to be used solely for the purpose of **[Name or Description of Athletic, or Other Event].** University 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 purpose not indicated on Exhibit A, or for any unlawful purpose, or in any manner so as to injure persons or property in, on, or near the Facility.
3. **Term of License.** The license granted in this Article 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 Article 9, until the date and time set forth on Exhibit A.
4. **Additional Areas or Time.** In the event University 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, University shall request from the City prior written permission to use such areas of the Facility. In the event such permission is granted, University shall pay as additional rent an amount equal to the sum of the City’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 the City to represent a fair value for use of such additional areas of the Facility during such date(s) and time(s).
5. **Common Areas.** The term “Common Areas,” as used in this Agreement, includes: all parking areas, access roads and facilities, driveways, service roads, loading facilities, sidewalks, landscaped areas, and all other areas constructed or to be constructed for use in common by the City and all other users of Chilhowee Park. The City or SMG may use or license to others any portion of Chilhowee Park not specifically reserved for University. The Common Areas will at all times be subject to the exclusive control and management of the City and SMG. The City and SMG have the right to operate and maintain the Common Areas in their sole discretion. This right to operate and maintain includes, without limitation, the right to (i) employ all operational and maintenance personnel, (ii) make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the Common Areas and facilities, (iii) close any portion of the Common Areas for the purpose of making repairs, changes or additions, (iv) change the size, area or arrangement of the parking areas or the lighting within or adjacent to the existing areas, and (v) enter into agreements with adjacent owners for cross-easements for parking, ingress, egress, delivery, and the installation of utility lines.
6. **Parking Area.** The University is granted the right to use a fair and equitable portion of the available parking in Chilhowee Park, as further enumerated and described in Exhibit A, for the use of its employees, guests, clients, customers, and invitees. There will not be any loading or unloading of vehicles except in those areas designated by SMG for such purpose. The University, for itself, its employees, and clients, agrees that the City and SMG will have the right to take, move, impound and tow off vehicles that (i) violate the City’s rules and regulations, (ii) block streets and aisles, (iii) park in unauthorized areas, or (iv) park in unauthorized spaces or otherwise parking improperly.
7. **SMG Rules.** University shall abide by and conform to all rules and regulations adopted or prescribed by SMG pursuant to a certain operating handbook titled “Event Guide.” To the extent allowed by the laws of the State of Tennessee, all provisions of SMG’s “Event Guide” dated 12/16/2015 are incorporated into this agreement by reference. If the terms of the Event Guide conflict with this Agreement, the terms of this Agreement shall prevail. Furthermore, University shall conduct business in the Facility in a dignified and orderly manner with full regard for public safety and in conformity with SMG’s rules and regulations, including fire and safety rules as required by SMG or local fire regulations, as such may exist from time to time. Without limiting the foregoing, University shall obtain prior written approval from SMG’s General Manager at the Facility for any pyrotechnic displays which University anticipates may be performed at the Facility during the term of this Agreement. University agrees that it will not allow any officer, agent, employee, University 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.
8. **Third-Party Contractors.** University acknowledges that, in connection with SMG’s management and operation of the Facility, SMG utilizes the services of certain third-party independent contractors (the “Third-Party Contractors”). University hereby agrees that SMG and the Owner shall not be responsible in any way for the acts or omissions of any Third-Party Contractor, including, but not limited to, ticket sales vendors.
9. **Event Patrons.** The University shall not admit to the University’s event a larger number of persons than the capacity of the Facility can accommodate. The City and SMG, by and through their representatives, reserves the right to enter onto the Premises and eject any objectionable person(s) from the Premises. Further, SMG will have the right to collect and have custody of articles left, lost, or checked while on the Premises by patrons attending the event given or held on the Premises. The University shall not interfere with the collection and custody of such articles.
10. **Hazardous Materials.** University 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 substance,” or “solid waste” in any applicable state or federal environmental law.
11. **Broadcasting.** University 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 monies received from such broadcast may be subject to a fee, within the sole discretion of SMG.
12. **Alcohol Use.** University 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.
13. **Equipment Use.** University shall not operate any equipment or materials belonging to SMG or the City without the prior written approval of SMG.
14. **Exits.** 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.

**Article 2. Fees and Other Charges.**

1. **Generally.** In consideration of the grant of the license in Section 1 above, University 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.
2. **License Fee.** **[For Ticketed Events]** University shall pay a license fee (the “**License Fee**”) equal to (i) **[Dollar Amount Written Out]** ($**[Dollar Amount in Numbers]**), or (ii) **[Percentage Written Out]** (**[Percentage in Numbers]**%) of gross ticket revenue generated in connection with the Event, whichever sum is greater. **[For Non-Ticketed Events]** University shall pay a license fee (the “**License Fee**”) equal to **[Dollar Amount Written Out]** ($**[Dollar Amount in Numbers]**).
3. **Merchandising Fee.** University shall pay a merchandising fee (the “**Merchandising Fee**”) equal to **[Percentage Written Out]** (**[Percentage in Numbers]**%) of gross novelty and merchandising revenue, less all applicable taxes, generated in connection with the Event.
4. **Broadcast Fee.** SMG shall retain all television, film, radio and/or recording rights to any Events which take place in or at the Facility. University may purchase such rights from SMG for a broadcast fee (the “**Broadcast Fee**”) equal to the greater of (i) **[Dollar Amount Written Out]** ($**[Dollar Amount in Numbers]**), or (ii) in the event that University desires to sell such rights to a third party after purchasing them from SMG pursuant to this clause (c), **[Percentage Written Out]** (**[Percentage in Numbers]**%) of all amounts received by University from such third party under the applicable written contract between University and such third party. 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 University 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 University shall receive any additional monies for such rights.
5. **Reimbursable Service Expenses**.
6. SMG shall provide, as required for each Event, the following services (collectively, the “**Services**”), the expenditures for which are reimbursable by University to SMG (“**Reimbursable Service Expenses**”): ticket takers, box office services, ticket seller labor, ushers, supervisors, and receptionists; medical services for Event attendees, which services shall include ambulances and paramedics; food and beverage services; security personnel; utilities, including electricity, gas, lighting, water, heating, ventilating, air conditioning, hot and cold water facilities, and waste removal services; electricians and mechanical plant staff; custodial services; scoreboard operations; audio services; and special facilities, equipment and materials, or extra services furnished by SMG at the request of University (which are set forth on Exhibit B).
7. SMG shall determine the level of staffing for such Services at each Event after consultation with, and input from, University. University acknowledges and understands that many of the Services are contracted services, the costs of which are subject to change. University shall reimburse SMG for actual costs incurred by SMG in connection with the Services as provided in Article 4.
	1. **[For Ticketed Events Only**] **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:
8. *SMG.* SMG shall be entitled to **[Number of Tickets Written Out]** (**[Number of Tickets in Numbers]**) tickets at no charge.
9. *University.* University shall be entitled to **[Number of Tickets Written Out]** (**[Number of Tickets in Numbers]**) tickets at no charge.

**Article 3. Condition of Facility.**

1. **As-Is Condition.** University acknowledges that University has inspected the Facility and that University is satisfied with and has accepted the Facility in its present condition. The failure of the University to do any of the above does not relieve the University of any obligations pursuant to this Agreement. The University accepts the Premises in its present condition and acknowledges that it is suitable for the University’s intended use.
2. **Provision of Labor.** The University, at its sole cost and expense, shall furnish all necessary labor required for the University’s use of the Facility, including, but not limited to, ticket sellers, ticket takers, security, and safety personnel. A security plan for the event must be submitted to the Chilhowee Park manager for approval at least 15 days prior to the start of the event. The total number and identity of the individual(s) to be used in these capacities must be approved by the Chilhowee Park manager prior to the start of the University’s event. Nothing in this Agreement will be construed as granting any concession rights or catering rights to the University.
3. **Maintenance Responsibilities.** At all times during the term of this Agreement, the University shall, at the University’s sole cost and expense, keep the Facility in good order, condition and repair and clean, sanitary and safe, ordinary wear and tear excepted. The University shall comply with all federal, state and local requirements of law by statute, rule, ordinance or otherwise, affecting the Facility. The City will not be required to make any repairs to the Facility occasioned by the act or neglect of the University, its agents, employees or invitees. The University will not allow any nuisance(s) to exist with respect to the Facility.
4. **Alterations.** University 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 University to or on the Facility, except movable trade fixtures, shall, at the option of SMG, (i) be removed by University, at University’s expense, immediately upon the conclusion of the Event, or (ii) become the property of SMG or the City of Knoxville.SMG may, at its election, accept delivery of property addressed to University only as a service to University. SMG and Owner assume no responsibility whatsoever for any property placed in the Facility.
5. **Surrender of Facility.** At the termination or expiration of this Agreement, the University shall deliver the Facility to the City in the same condition as the University received it when the term of this Agreement began, reasonable wear and tear excepted. The University will promptly remove all its fixtures, and to the extent required by the City by written notice, any other installation, alterations, or improvements, before surrendering the Facility. The City reserves the right to remove from the Facility, at the sole expense of the University, any and all effects remaining on the Facility after the period of occupancy has expired. The City may store such effects at the sole expense of the University and without any liability on the part of the City.

**Article 4. Payment Terms.**

1. **License Fee, Merchandising Fee, and Broadcast Fee.** University will pay SMG the Fees specified in Article 3 within 45 days of receipt of the final invoice by ACH, ePayables, or University check.
2. **Reimbursable Service Expenses.** Unless otherwise agreed upon, within **[Number of Days Written Out]** (**[Number of Days in Numbers]**)days after SMG’s receipt of University’s report delivered to SMG pursuant to Section 3.5. above, SMG shall deliver to University 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 **[Number of Days Written Out]** (**[Number of Days in Numbers]**) days of University’s receipt of such Expense Report Estimate, University shall pay to SMG the total estimated expenses for the Services reflected in the Expense Report Estimate. Within **[Number of Days Written Out]** (**[Number of Days in Numbers]**) days after the conclusion of an Event, SMG shall deliver to University 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, University shall pay to SMG the amount of the excess within ten (10) business days. 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 University 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 University’s obligation to pay any amounts due hereunder.
3. **Late Charges.** If University fails to pay any amounts when due under this Agreement, any interest on the unpaid balance will not exceed the rate allowable under the Tennessee Prompt Pay Act, Tenn. Code Ann. §§ 12-4-701 et. seq., which is currently 1.5% per month.
4. **Liquidated Damages**. To the extent allowed by the laws of the State of Tennessee, if University cancels any event or significantly reduces the space reservation covered by this agreement, University agrees to pay to 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:
	1. If University cancels more than one year before the first scheduled day of the event, 25% of space rental rate shall be payable to SMG as liquidated damages.
	2. If University cancels more than 6 months before the first scheduled day of the event, 50% of space rental rate shall be payable to SMG as liquidated damages.
	3. If University cancels less than 6 months before the first scheduled day of the event, or enters into any default as described in Paragraph 15, 70% of space rental rate shall be payable to SMG as liquidated damages.

In the event University cancels any event or significantly reduces the space reservation covered in this agreement, SMG will make a reasonable attempt to re-sell space. The amount of liquidated damages will be reduced to the extent that SMG re-sells space.

1. **Responsibility for Other Costs.** SMG shall retain one hundred percent (100%) of all revenues generated in connection with parking lot fees and the sale of food and beverages at the Facility. In addition to payment of fees above, University shall bear all expenses incurred by University 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.

**Article 5. Records, Reports, and Audits.**

1. **Records.** University shall maintain accurate books and records with respect to its activities at the Facility, including, but not limited to, the costs and revenues of each Event. University shall keep and preserve such books and records at all times during the term of this Agreement and for at least three (3) years following the expiration or termination hereof.
2. **Reports.** No later than **[Amount of Days Written Out]** (**[Amount of Days in Numbers]**)days after the date of a revenue-generating Event, University shall deliver to SMG a detailed written notice of the amounts claimed to be due to SMG pursuant to Article 2 of this Agreement (each a “**Statement**”). Each Statement shall detail (i) with respect to ticket sales, all tickets sold and all amounts collected by University, with all deductions (sales tax, etc.) therefrom, (ii) with respect to novelty and merchandizing revenue, all items sold and all amounts collected by University, with all deductions (sales tax, etc.) therefrom, and (iii) with respect to broadcast revenues, a detail of all broadcast revenues collected by University, with all deductions (sales tax, etc.) therefrom. Statements shall be deemed incontestable unless objected to by SMG, in writing, specifying the nature of and reasons for such objection, within twelve (12) months after receipt by SMG.
3. **Audits.** University shall give SMG and its representatives access to the books and records that University maintains pursuant to this Section upon reasonable notice when so requested by SMG. University shall also provide, at University’s own expense, a copy of any such book or record upon request. To the extent that any Statement prepared by University is contested, SMG shall have the right to cause nationally recognized independent auditors to audit all of the books and records of University relating to such Statement. Any liability of University arising from an audit hereunder will be governed by the Tennessee Claims Commission Act, Tenn. Code Ann. §§ 9-8-301 et seq.

**Article 6. LIABILITY AND Indemnification.**

1. **Liability.** Any liability of University to SMG and third parties for claims, damages, losses, or costs arising out of or related to acts or omissions of University or its employees under this Agreement will be governed by the Tennessee Claims Commission Act, Tenn. Code Ann. §§ 9-8-301, et. seq.

**6.2. Indemnification.** Intentionally omitted.

**6.3. City Not Liable.** To the extent allowed by the laws of the State of Tennessee, University agrees that neither the City nor any of its officers, agents, contractors or employees shall have any liability to University arising from any breach of this agreement or from or out of the occupancy or use by University, its agents, servants, employees, contractors, patrons, guests, or invitees of the Premises. University waives any such claims against the City, and their officers, agents, contractors and employees, and agrees that University's sole recourse on any such claim shall be against SMG. The parties agree that the City is not, and will not be deemed, a third-party beneficiary of this Agreement.

**Article 7. 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, University in respect of any Event, except as otherwise provided by law. To the extent allowed or required by Tennessee law, University shall pay and discharge as they become due, promptly and before delinquency, all applicable 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 License or any other improvements now or hereafter owned by University.

**ARTICLE 8. Insurance.**

1. **Insurance Required.** University is self-insured under the Tennessee Claims Commission Act, Tenn. Code Ann. §§ 9-8-301, *et seq*., which covers certain tort liability for actual damages of up to $300,000 per claimant and $1,000,000 per occurrence. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by SMG.
2. **Breach.** The failure of the University to maintain its self-insured retention in accordance with this Article shall be a breach of this Agreement and, notwithstanding any cure period provided in this Agreement, shall preclude the Event from taking place.
3. **Insurance of Subcontractors**. Any subcontractor of the University shall at its sole expense obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement.
	1. Commercial General and Umbrella Liability Insurance; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than $2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than $3,000,000.
	2. Automobile Liability Insurance; including vehicles owned, hired, and non-owned, with a combined single limit of not less than $1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards
	3. Workers’ Compensation Insurance. To the extent applicable, subcontractors shall maintain workers’ compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers’ liability insurance with limits of not less than $500,000.

**Article 9. Default, Termination and Other Remedies.**

1. **Default.** University shall be in default under this Agreement if any of the following occur: (i) University fails to pay any amount due hereunder (including, without limitation, the University Fee or the Reimbursable Service Expenses) when the same are required to be paid hereunder, (ii) University 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 University fails to commence a cure thereof within five (5) business days after University has been served with written notice of such default, (iii) University 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, or (iv) University wholly or partially abandons the Facility. 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 University or any of its employees 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.
2. **Termination by Reason of Default.** Upon a default pursuant to this Article, 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 University 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 University hereunder until the completion of an investigation relating to such violation.
3. **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 University and its employees or between University and any union or group of employees by reason of the union affiliation or lack of union affiliation of persons employed by University or any one with whom University contracts.

**Article 10. Non-Discrimination & Ethical Standards.**

The University: (i) will not discriminate against any employee or applicant for employment because of race, age, color, religion, national origin, sex or disability; (ii) will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, age, color, religion, national origin, sex or disability; (iii) will, in all solicitations or advertisements for employees placed by or on behalf of it, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, national origin, sex or disability; and (iv) will include these provisions in every subcontract or sublicense let by or for it. The University is not in violation of, or has not participated, and will not participate, in the violation of any of the ethical standards prescribed by the Knoxville City Code.

**Article 11. Civil Rights Act.**

During the performance of this Agreement, University 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.

**Article 12. Americans With Disabilities Act**.

With respect to any Event at the Facility, University 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”). University 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 University’s responsibilities under the ADA. University 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 University modifies, rearranges or sets up in the Facility in order to accommodate University’s usage. University shall be responsible for any violations of the ADA, including, without limitation, those that arise from University’s reconfiguration of the seating areas or modification of other portions of the Facility in order to accommodate University’s usage. University 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.

**Article 13. Use of Information**.

University 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.

**Article 14. Construction of this Agreement**

1. **Choice of Law.** This Agreement shall be deemed to be made, governed by, and construed in accordance with the laws of the State of Tennessee, without giving effect to the conflict of law principles thereof.
2. **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.
3. **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 University 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 authorized officials of the parties hereto. The Office of Finance maintains an accurate and comprehensive list of all authorized officials here: <https://procurement.tennessee.edu/contracts/>. **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 University 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 University’s own determination and judgment**.

1. **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.
2. **Time.** Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.
3. **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 University as are permitted to succeed to the University’s right upon and subject to the terms hereof.
4. **Independent Contractor; No Partnership**. SMG and University 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 University 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. Moreover, the University it nor its employees shall be considered employees, partners or agents of the City, nor shall it or its employees be entitled to any benefits, insurance, pension, or workers’ compensation as an employee of the City.
5. **Singular and Plural.** Whenever the context shall so require, the singular shall include the plural, and the plural shall include the singular.

**Article 15. Miscellaneous.**

1. **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.
2. **Assignment.** Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred in any manner whatsoever by University 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 University hereunder for the performance of any obligations or duties arising after the date of such assignment.
3. **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

 701 Henley Street,

Knoxville, TN 37902

Attention: General Manager

 with a copy to: SMG

 300 Conshohocken State Rd., Suite 770
 West Conshohocken, PA 19428

 Attention: Director of Risk Management

 If to University: The University of Tennessee

 5723 Middlebrook Pike

 Knoxville, TN 37921

 ATTN: Contracts

 Fax: 865-974-2701

 Email: breagan@tennessee.edu

1. **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.
2. **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 University from any damage so caused thereby. Furthermore, SMG may extinguish all lights in the licensed premises, cease operation of the air conditioning system, terminate service of any other utilities upon the premises, order evacuation of all or any portion of the licensed premises, or cause to be removed therefrom any person or group or persons, any materials, equipment or other items if, in his judgment, circumstances of a dangerous or unusual nature have occurred, or he reasonably believes are about to occur, and such action is necessary to secure the safety and welfare of persons and/or property.
3. **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.
4. **Illegal Immigrants.** In compliance with the requirements of Tenn. Code Ann. § 12-3-309, SMG hereby attests that it shall not knowingly utilize the services of an illegal immigrant in the United States in the performance of this Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of this Agreement.
5. **Tax Registration.** SMG has registered with, or received an exemption from, the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this agreement. SMG shall comply, and shall require any subcontractor to comply, with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by SMG, or SMG’s subcontractor.
6. **Iran Divestment Act**. SMG certifies, under penalty of perjury, that to the best of its knowledge and belief SMG is not on the list created pursuant to Tenn. Code Ann. § 12-12-106. SMG further certifies that it shall not utilize any subcontractor that is on the list created pursuant to Tenn. Code Ann. § 12-12-106.
7. **Delay of Possession:** If SMG is unable to tender possession of the Premises because of the unauthorized holding over of any tenant, delays in construction, or any other reason, SMG shall provide equivalent space of approximately the same dimensions and size or procure equivalent space of approximately the same dimensions, size, and quality at another venue at SMG’s expense. If the equivalent space of approximately the same dimensions, size, and quality cannot be provided or procured by SMG and the parties cannot agree on damages, the University may seek damages for breach of contract.
8. **Copyright and Intellectual Property.** With respect to any Event at the Facility, University 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, display, 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 University 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 University agrees hereby to make any and all such payments to third parties and/or clearinghouse agencies as may be necessary to lawfully perform, publish, display or reproduce any such Works. University 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, Copyright Clearance Center, and other similar agencies. University agrees hereby to obtain and maintain evidence of such reports and any necessary payments, including evidence of compliance with the requirements of this paragraph. University further agrees hereby to provide to SMG any such compliance evidence as may be requested by SMG in advance of or after any such Event. University agrees that the obtaining and maintaining of such evidence by University is a material condition of this Agreement.
9. **Facility Logo.** University shall use the Facility’s logo (the “Facility Logo”) in all advertising controlled by or done on behalf of University relating to an Event, including, but not limited to, television, internet, newspaper, magazine, and outdoor advertising. University’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 University’s use of the Facility Logo as permitted in this Section, University shall use only the form of the Facility Logo as provided by SMG to University in any artwork or other depiction thereof.
10. **Encumbering Interests.** University 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 and City.
11. **Exits.** 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.
12. **Hazardous Materials.** University 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.
13. **Relocation of University’s Event.** SMG reserves the right to relocate University from the Premises to another space of SMG's choosing of approximately the same dimensions and size. If University is relocated to other space that is leasing at a rent less than that of the Premises, University's rent shall be reduced to the lesser rent.
14. **Laws, Ordinances and Regulations.** University shall comply with all applicable laws, statutes and ordinances and all rules, regulations and requirements of all federal, state and local governmental authorities. University shall not admit to the Premises a larger number of persons than designated by the SMG.
15. **Signs.** University, its agents, exhibitors, and any person connected with University’s event, may post signs on convention center property only as permitted by SMG.
16. **Third-Party Contractors.** University acknowledges that, in connection with SMG’s management and operation of the Facility, SMG utilizes the services of certain third-party independent contractors (the “Third-Party Contractors”).
17. **Representations and Warranties.** Each party hereto hereby represents and warrants to the other party that it has the full power and authority to enter into this agreement and perform each of its obligations hereunder; it is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery and performance of this agreement; and no litigation or claims exist which might adversely affect its liability to fully perform its obligations. University expressly acknowledges that neither SMG, nor the City, nor anyone acting on behalf of either of them has made any representation guarantee, or promise with respect to the financial success or other success of University’s event.
18. **Maximum Liability.** The maximum amount that University will pay for goods and/or services under this contract is **$ [AMOUNT]**.

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

SMG KNOXVILLE THE UNIVERSITY OF TENNESSEE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Chilhowee Park General Manager

P.O. Box 14182

Knoxville, TN 37914-1182

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Date Date

**EXHIBIT A TO LICENSE AGREEMENT**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Authorized Area | Day | Date | Time of Use | Purpose |
|  |  |  |  |  |
| [AREA, OFFICE SPACE, STORAGE ROOM, LOCKER ROOM, PARKING LOT, ETC.] | [MONDAY, TUESDAY, ETC.] | [MONTH/DAY/YEAR] |  | [MOVE IN, MOVE OUT, PRACTICE SESSION, EVENT, ETC.] |

**EXHIBIT B TO LICENSE AGREEMENT**

**Chilhowee Park and Exposition Center**

1. Additional Reimbursable Service Expenses. At the request of University, the following special facilities, equipment, materials, and extra services will be furnished by SMG for the Event:

2. Payment of License Fee, Merchandising Fee, and Broadcast Fee.

 (a) Fixed License Fee: The fixed License Fee set forth in Article 2 above shall be paid in accordance with the following schedule:

Percentage Payable Payment Due Date

\_\_\_\_\_\_\_\_\_\_\_% Upon signing this Use License Agreement

\_\_\_\_\_\_\_\_\_\_\_% \_\_\_\_ months prior to start of the Event

\_\_\_\_\_\_\_\_\_\_\_% \_\_\_\_ months prior to start of the Event

\_\_\_\_\_\_\_\_\_\_\_% \_\_\_\_ days prior to start of the Event

 (b) Percentage Fee. The percentage University Fee set forth in Article 2 above shall be paid no later than **[Insert Appropriate Description of the Time Frame].**