

EXHIBIT "A"

TERMS AND CONDITIONS GEORGE R. BROWN CONVENTION CENTER

1. Definitions. All terms defined herein shall have the same meaning in the License Agreement and Rules and Regulations. All terms capitalized herein, but not defined herein, shall have the meaning assigned to such terms in the License Agreement or Rules and Regulations.

2. Condition of the Premises.

(a) The City makes no warranty or representation to the Licensee of any kind, express or implied, regarding the suitability of the Facility, or any portion thereof, as built, for any aspect of the use the Licensee expects or intends to make of the Facility, including the Premises. The Premises is offered by the City and accepted by the Licensee in its current condition, on an "**AS IS**" basis. Licensee agrees that it has examined the Premises and is satisfied with the condition, fitness and order thereof. Commencement of the use of the Premises shall be conclusive that the Premises were in good repair and in satisfactory condition, fitness and order when such use commenced. **THE LICENSEE FURTHER AGREES THAT THE PREMISES SHALL BE DELIVERED BY THE CITY TO THE LICENSEE "AS IS", "WHERE IS" AND "WITH ANY AND ALL FAULTS" AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR THE USE THEREOF FOR ANY PARTICULAR PURPOSE.**

(b) Upon reasonable notice, either party shall be entitled to request a mutual inspection of the Premises before and/or after the License Period, together with an inspection report signed both by the Licensee and the Director or his or her designee.

(c) At the end of the License Period, the Premises shall be vacated and surrendered up to the City in the same condition found before the commencement of the License Period, excepting damage due to ordinary wear and tear, the elements, Force Majeure, or any other cause not occasioned by a negligent or intentional act or failure to act of the Licensee or an agent, employee, contractor or invitee of the Licensee. The Licensee shall promptly pay the cost of repairing damage or injury to the Premises, including its fixtures and furnishings.

(d) Should licensee fail to vacate and surrender the Premises at the end of the License Period, Licensee shall pay to the City as liquidated damages and not as a penalty (both parties hereto agreeing that damages from such a holding over are difficult to ascertain), for each day or portion thereof during which all or part of the Premises are not vacated and surrendered, an amount equal to 150% of the license fee listed on the then-current rate sheet for use and occupancy for that portion of the Premises that has not been vacated and surrendered. Further, the City may remove and store all goods and chattels at the sole expense of the Licensee and may dispose of any such property if, after the expiration of five calendar days, the Licensee has failed to remove the property from the possession of the City. The City shall not be liable to the Licensee on account of so removing, storing, or disposing of any property as provided by this Section and Licensee shall save and hold City harmless from any liability from another licensee who is prevented from occupying their licensed portion of the Facility due to the holding over of the Licensee.

3. Utilities.

(a) The Licensee shall, at its own cost and expense, pay the appropriate service provider(s) for all telecommunications, (including voice, data, and network services), audio-visual services, and temporary utilities (including electrical, compressed air, water and drainage services) used or incurred in the Facility in connection with the Event and shall save and hold the City harmless from any charge or liability therefore.

(b) The License Fee includes necessary utilities for general house lighting, heating and air conditioning during Event hours. As energy conservation is a primary concern to the City, during non-event hours, reduced light levels shall be maintained and air conditioning or heating shall only be provided at the sole

discretion of the Director; provided, however, that subject to a utility charge, the Licensee may request additional light and comfort level requirements.

(c) No interruption or malfunction of any utility services, whether such services are provided by the City or arranged for by the Licensee, shall constitute an eviction or disturbance of the use and possession of the Premises by the Licensee or breach by the City of any of its obligations hereunder or render the City liable for damages or entitle the Licensee to be relieved from any of its obligations hereunder. In the event of any such interruption of any such services, the City shall be obligated only to use reasonable diligence to restore such service.

4. Release. THE LICENSEE AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

5. Indemnification. THE LICENSEE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, BY REASON OF COPYRIGHT INFRINGEMENT, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY, SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- I. THE LICENSEE'S AND/OR ITS AGENTS', SERVANTS', EMPLOYEES', CONTRACTORS', SUBCONTRACTORS', PATRONS', GUESTS', LICENSEES', OR INVITEES' OR OF ANY OTHER PERSON ENTERING UPON THE PREMISES WITH THE EXPRESSED OR IMPLIED INVITATION OR PERMISSION OF THE LICENSEE, (COLLECTIVELY, "LICENSEE") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- II. THE CITY'S AND THE LICENSEE'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER THE LICENSEE IS IMMUNE FROM LIABILITY OR NOT; AND**
- III. THE CITY'S AND THE LICENSEE'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER THE LICENSEE IS IMMUNE FROM LIABILITY OR NOT.**

THE LICENSEE SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE LICENSE PERIOD AND FOR FOUR YEARS AFTER THE EXPIRATION OF THE LICENSE AGREEMENT. THE LICENSEE'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. THE LICENSEE SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

THE LICENSEE SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EFFECT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

6. Indemnification Procedures.

(a) Notice of Claims. If the City or the Licensee receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within thirty (30) calendar days. The notice must include the following:

- I. A description of the indemnification event in reasonable detail,

- II. The basis on which indemnification may be due, and
- III. The anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the thirty (30) calendar day period, it does not waive any right to indemnification except to the extent that the Licensee is prejudiced, suffers loss, or incurs expense because of the delay.

(b) Defense of Claims

(i) Assumption of Defense. The Licensee may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. The Licensee shall then control the defense and any negotiations to settle the claim. Within ten (10) calendar days after receiving written notice of the indemnification request, the Licensee must advise the City as to whether or not it will defend the claim. If the Licensee does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(ii) Continued Participation. If the Licensee elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. The Licensee may settle the claim without the consent or agreement of the City, unless it (1) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (2) would require the City to pay amounts that the Licensee does not fund in full, (3) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

7. Copyright Law Compliance.

(a) The Licensee warrants that no music, artistic works, or other property protected by copyright will be performed, produced, exhibited or used, nor will the name of any entity protected by trademark be reproduced, exhibited or used during the License Period, unless duly licensed or authorized by the copyright or trademark owners or their representatives. The Licensee covenants to strictly comply with all laws respecting copyright and trademarks and warrants that it will not infringe on any related statutory, common law, or other rights of any person or entity during the License Period. The Licensee is solely responsible for remitting payment to the appropriate agencies for the use of any copyrighted materials.

(b) Licensee shall not advertise, promote, or conduct a live musical performance at the Facility through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing musical artist or group and the original recording artist or group in violation of Tex. Bus. & Comm. Code §17.902.

8. Use and Preparation of the Premises.

(a) The Licensee shall not use the Premises or permit any part of the Facility to be used for any purpose other than the Event and shall not permit its use for lodging, in conflict with any law, ordinance, rule or regulation of any governmental authority, in any manner which would violate the provisions of insurance coverage on or related to the Facility, or increase the rate of insurance, in any manner which constitutes waste or nuisance, or in any manner which causes or threatens to cause damage or injury to the Facility or alteration to all or any portion of the Facility.

(b) With the exception of the exclusive services set forth in the License Agreement, the Licensee shall, subject to the approval of the Director, provide and install all other equipment, furniture and effects of every description and provide such personnel, labor and materials as is necessary or appropriate for use of the Premises by the Licensee. Approval by the Director of the Licensee's personnel, labor, equipment or material shall constitute a license authorizing the Licensee to permit such labor, personnel, materials or equipment to enter the Facility; however, the continued effectiveness of such license is conditioned upon Licensee's personnel and labor working in accord with and not interfering with the personnel and labor of the City and is further conditioned upon the Licensee's compliance with the terms and provisions of this

Agreement. Accordingly, if at any time the Licensee's personnel or labor shall cause discord or interfere with another event or shall violate the terms and provisions of this Agreement, then the license to allow such labor, personnel, materials and equipment in the Facility may be withdrawn by the Director and Licensee shall cause all such personnel, labor, material and equipment to which the Director objects to be promptly removed from the Facility.

9. Sharing of Facility and Services.

(a) The Licensee acknowledges that the Facility may or will be used for the installation, holding or presentation and removal of other events and activities. The Licensee further acknowledges that, in order for the Facility to operate as efficiently as practicable, it may be necessary to schedule or share certain Facility services and equipment including, but not limited to, entrances, exits, truck ramps, receiving areas, marshaling areas, storage areas, passenger and freight elevators, lobbies, parking lots, canopies (for banners), and concession areas. The Licensee agrees to work cooperatively with other licensees at the Facility, including their employees, agents, and contractors, but, in the event of a conflict, the Director shall have final authority to establish the schedules for the use and availability of such services and equipment and to determine when, and the extent to which, the sharing of any such services and equipment is necessary or desirable.

(b) The Licensee acknowledges and agrees that if the sound or vibration generated by the Event materially and adversely affects another event in the Facility as determined by the Facility Manager in his or her sole discretion, then the Licensee shall promptly make any sound, volume or other adjustments deemed necessary to resolve the interference by the Facility Manager in his or her sole discretion.

10. Announcements and Advertisements. The City reserves and retains the right to use and may use the sound system for announcements and may display advertisements in the Facility in any manner, which in the conclusive opinion of the Director is desirable or appropriate, provided that such announcements, advertisements and use do not substantially disrupt or interfere with the Event.

11. Ancillary Rights. The City reserves and retains to itself and its assignees, licensees and designees the privilege of using such parts of the Facility as in its opinion, which shall be conclusive, are necessary for or to the operation of the City and of its concessionaires.

12. Right of Entry. The City, its officers, directors, servants, employees, agents, concessionaires and their servants, employees and agents, shall at all times have free access to the Facility and shall have the right at any time to enter any portion of the Premises or the Facility for any purpose whatsoever.

13. Right of Removal. The City reserves the right to control all individuals in the Premises and Facility, including, but not limited to, any employee, agent, contractor, or invitee of the Licensee. The Director may remove from the Premises any such individual and reserves the right to eject any objectionable individual from the Premises and the Facility and the Licensee hereby waives any and all claims for damages against City on account thereof.

14. Force Majeure.

(a) The term "Force Majeure" shall include, but not be limited to, acts of God, acts of the public enemy, war, blockades, insurrections, riots, epidemics in the City, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, and other occurrences or conditions of like nature. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an occurrence that merely makes performance more difficult, impractical, or expensive.

(b) Either party may terminate this Agreement or suspend its obligations hereunder due to Force Majeure to the extent that such occurrence is beyond the reasonable control of the party whose performance is affected on such affected party's giving notice and full particulars to the other party of such Force Majeure as soon as practicable, but no later than seven (7) calendar days after the occurrence of the cause relied upon.

(c) If Force Majeure causes the License Period to be terminated in whole or in part, then the Licensee shall owe the City a portion of the License Fee based on the time period, if any, during which the Licensee had reasonable commercial use of the Premises; provided, however, that any such portion over and above that amount previously paid by the Licensee shall be refunded.

(d) The License Period shall not be extended in the event of Force Majeure without a written amendment to this Agreement signed by the City and the Licensee and the City shall not be obligated to license the Premises or any part of the Facility in substitution for the Force Majeure period.

15. Default.

(a) The Licensee shall be in default under this Agreement if any of the following occur:

- i. The Licensee fails to observe any term of this Agreement, including, but not limited to payment of any amount due hereunder or the furnishing of documentation evidencing insurance coverage.
- ii. The Licensee does not use and occupy the Premises for the purpose described in this Agreement.
- iii. The Licensee assigns this Agreement, in whole or in part, without the prior written consent of the Director.
- iv. The Licensee declares bankruptcy or ceases doing business.

(b) If the Licensee is in default, then the City shall have the right, without further notice, to invoke any or all of the following remedies:

- i. Terminate this Agreement and revoke the License granted hereunder.
- ii. Enter and take exclusive possession of the Premises and remove all persons and property.
- iii. Institute legal proceedings against the Licensee to recover any amount due under this Agreement and any damages sustained by the City.
- iv. Retain the License Fee and Deposit prepaid by the Licensee as liquidated damages and not as a penalty (both parties hereto agreeing that damages from such a default are difficult to ascertain and that such amount is a reasonable forecast of just compensation for the harm to the City resulting from such default by the Licensee).
- v. Deduct from the License Fee and Deposit any fee, charge, or expense incurred by the Licensee up to and including the date of termination and demand any remainder be paid with the Invoice.
- vi. Exercise any and all rights available at law or in equity.

16. Cancellation by the Licensee.

(a) If the Licensee cancels this Agreement, its use of some portion of the Premises, or some portion of the License Period prior to the commencement of the License Period, then the Licensee shall owe the City a portion of the License Fee as provided herein.

(b) The Licensee and the City agree that cancellation of this Agreement, some portion of the Premises, or some portion of the License Period will cause damages to the City and that the actual damages from the harm are difficult to estimate accurately. Therefore, in lieu of the remedies listed under Section 15(b), the Licensee and the City agree that the Licensee shall be liable for and shall pay to the City an amount, as calculated below, as liquidated damages and that such amount is a reasonable forecast of just compensation for the harm to the City resulting from such cancellation by the Licensee.

In the following formula, "X" shall represent the number of calendar days from the date the City received notice of cancellation from the Licensee to the first day of the License Period and "Y" shall represent the percentage of the License Fee owed to the City by the Licensee:

If "X" equals 1,096 or more calendar days, then "Y" equals 25%;

If "X" equals 366 to 1,095 calendar days, then "Y" equals 50%;

If "X" equals 365 or less calendar days, then "Y" equals 100%.

(c) The City is authorized to retain all or a portion of the License Fee and Deposit to reimburse the City the sum owed pursuant to this Section and the Licensee shall pay the balance of such sum owed to the City, if any, within thirty (30) calendar days of issuance of written notice; provided, however, that any such portion over and above the amount of liquidated damages previously paid by the Licensee shall be refunded.

17. American with Disabilities Act ("ADA"). The Licensee acknowledges that it is responsible for non-permanent accessibility requirements such as, but not limited to, seating accessibility, and auxiliary aids and services for the visually impaired, hearing impaired and mobility impaired. **THE LICENSEE SHALL NOT MOVE OR INTERFERE IN ANY WAY WITH ACCESSIBILITY TO ADA FACILITIES (SUCH AS, BUT NOT LIMITED TO, WHEELCHAIR SEATING). THE LICENSEE SHALL INDEMNIFY THE CITY FOR ANY AND ALL CLAIMS AND LIABILITIES ARISING OUT OF SATISFACTION OF SAME REQUIREMENTS BY THE LICENSEE. THE LICENSEE SHALL NOT SELL TICKETS FOR ADA SEATING TO PERSONS WHO DO NOT REQUIRE ADA ACCOMMODATIONS.**

18. Construction. The City will notify the Licensee in writing of any material construction or renovation planned to take place in the Premises during the License Period (routine maintenance and upkeep excepted) and will use commercially reasonable efforts to minimize any material interference with or disruption of the Event due to such construction or renovation.

19. Laws, Permits, and Licenses.

(a) The Licensee shall strictly comply with all applicable laws, rules and regulations including applicable provisions of the City's Code of Ordinances, as may be amended from time to time. This Agreement shall be construed in accordance with the laws of the State of Texas and is to be performed in Harris County, Texas.

(b) The Licensee shall comply with and acquire any and all applicable federal, state and/or municipal permits or licenses required for the Event and shall pay all taxes of whatever nature becoming due by reason of its use of the Facility.

20. Notices. All notices to either party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

21. Survival. Notwithstanding the acceptance of the License Fee by the City and the expiration of the License Period, the Licensee shall remain obligated to the City under all clauses of this Agreement that expressly or by implication survive such acceptance and the expiration of the License Period, including but not limited to the indemnification provisions in the Agreement.

22. Assignment and Sublicensing. The Licensee shall not assign this Agreement in whole or in part, nor sublicense any portion of the Premises without the prior written consent of the Director.

23. Enforcement. The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. The Licensee shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining compliance by

the Licensee with this Agreement, with the exception of those documents made confidential by federal or state law or regulation.

24. Non-Waiver. Failure of the City to insist upon strict performance of any of the terms and conditions in this Agreement or failure or delay to exercise any rights or remedies provided in this Agreement or by law, or failure of the City to notify the Licensee properly in the event of default, or the acceptance of late payment or other performance shall not release the Licensee from any or all of its obligations under this Agreement, and shall not be deemed a waiver of any right of the City to insist on strict performance hereof or any of its rights or remedies as to prior or subsequent default hereunder.

25. Multiple Parties. If more than one licensee is named under this Agreement, then the obligation of each licensee shall be joint and several.

26. Severability. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.