PHOENIX
CONVENTION CENTER
& VENUES

USE AGREEMENT NO.
SAMPLE USE AGREEMENT

The City of Phoenix, Arizona, through the **Phoenix Convention Center Department ("PCCD"),** as "**Licensor**," grants to **LICENSEE NAME & ADDRESS,** as "**Licensee"**, the right to use the premises described in Exhibit A (the "Licensed Premises"), on the terms in this Use Agreement entered into on this **DATE**. The Licensed Premises must be used for the purposes contemplated by Exhibit A. If Licensee wishes to use the Licensed Premises for any purpose other than those listed in Exhibit A, Licensee must obtain Licensor's written consent for such uses. The Exhibit A also sets forth the time period for which Licensee has the right to use the Licensed Premises, and the related charges.

1. **ACCESS.** Licensee will have a general right of access to the Licensed Premises through the halls and corridors not covered by its license as necessary. Licensee acquires no rights of occupancy or other use of the halls and corridors, or to any other space that is not specified in Exhibit A.
2. **CONFLICT OF INTEREST.** This Use Agreement is subject to cancellation by the Licensor pursuant to Section 38-511, Arizona Revised Statutes.
3. **NOTICE.**
   a) Any notice, or other communication ("Notice") in this Use Agreement must be in writing and either (i) delivered in person, (ii) sent by electronic mail, (iii) sent via facsimile, (iv) deposited in the United States mail, postage prepaid (registered or certified mail), return receipt requested, (v) or deposited with any commercial air courier or express service; in any case addressed as follows:
      i. If intended for Licensee:

      _____
      _____
      _____
      _____
      Telephone: ( )
      FAX: ( )

      ii. If intended for Licensor:

      Phoenix Convention Center
      100 N. 3rd Street
      Phoenix, Arizona 85004
      Telephone: (602) 262-6225
      FAX: (602) 495-3642

      iii. If an Agent on Record is authorized to act on behalf of Licensee:

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_____
_____
_____
_____
Telephone: (____) _____
FAX: (____) _____

b) Notice will be deemed received at the time it is personally served, or on the day it is sent by electronic mail or facsimile, or on the second day after its deposit with any commercial air courier or express service, or 10 days after the notice is deposited in the United States mail. Any applicable time periods will be computed from the time the notice is deemed received. Either party may change any of its contact information by notifying the other party as provided above.

4. **GOVERNING LAW.** This Use Agreement will be governed by Arizona law, notwithstanding its provisions respecting conflicts of law. Any litigation must be brought only in, and both parties' consent to the jurisdiction of state or federal courts within Maricopa County, Arizona.

5. **RULES AND REGULATIONS.**

a) Licensee will pay the prevailing rates established for labor, services and equipment contracted to support its event, and will otherwise adhere to the Operational Policies and Procedures in effect at the time of the execution of this Use Agreement. A copy of the Operational Policies and Procedures is attached as Exhibit C.

b) Space usage includes those portions of the Phoenix Convention Center specified in Exhibit A and non-exclusive use of adjacent common public lobby areas, general house lighting, reasonable heating or air conditioning, and any additional services or equipment specified herein.

c) Licensee is required to furnish in writing, 30 days prior to the first date of occupation as described in Exhibit A of Licensee's event, any information requested by the Licensor such as certificate of insurance, room set specifications, equipment requirements, etc. Failure to provide such information when required will result in additional fees assessed by the Licensor.

d) Deposits and payments are non-refundable except when Licensor is unable to deliver possession of the facilities as specified herein.

e) If Licensee exceeds the move-out time defined in this Use Agreement, prevailing hourly overtime fees will apply. Usage of facility space solely on an overtime basis is not allowed. If excessive extension of time beyond the contracted move-out time is anticipated, the Licensor reserves the right to remove and store the Licensee's property, at Licensee's sole expense, risk and liability, to ensure Licensor's other contractual space commitments are satisfied.

f) **If the Use Agreement, deposits and/or balance and insurance certificate are not received by the dates specified, this Use Agreement is subject to immediate cancellation, without notice, at the sole discretion of the Licensor.**

6. **EXCLUSIVE CONTRACTUAL SERVICES.** Licensor hereby reserves for the Phoenix Convention Center, Symphony Hall and Orpheum Theatre (collectively, the "Phoenix Convention Center and Venues") the sole and exclusive right to provide the following services in connection with Licensee's event (the "Exclusive Services"):

a) Food and beverage concessions (fixed and portable stands), and catering services.

b) Parking services for convention center garages.

c) Ticket office and ticketing services. All tickets must be sold via the Convention Center Ticket Office and our exclusive ticket provider.

d) Event security services.

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e) Utility services (including, but not limited to, electricity, compressed air and/or water).

f) Telecommunications and internet services.

g) Rigging services.

h) Ushering services.

Licensee is required to procure any Exclusive Services from Licensor (or its designee) and Licensor (or its designee) alone. The sale, resale, or providing of any Exclusive Services by the Licensee or any entity other than Licensor (or its designee) is prohibited, except with the prior written consent of the Licensor.

7. **EVENT SECURITY.** Licensee is responsible, at their sole expense, for employing security and safety personnel as required and approved by Licensor's Security Systems Manager. Licensee must also comply with all applicable Phoenix Fire Department regulations concerning occupancy, exhibits and procedures as outlined in the City of Phoenix Fire Code. Licensee's event security company is responsible for developing an emergency plan for Licensee's event, safely coordinating the movement of all vehicles, including the move-in/move-out process, controlling access, investigating, and reporting incidents such as injuries or losses, and coordinating with house security to ensure the general safety and security of Licensee's show. Event security must be onsite from the beginning to the end of Licensee's contracted times. Licensee's final security plan must be submitted no later than 30 days prior to Licensee's first contracted date to the Phoenix Convention Center Security Systems Manager, who has full authority and discretion to approve or amend Licensee's security schedule. Certain events may require the presence of off-duty law enforcement personnel, use of magnetometers, or other equipment and personnel as determined by Licensor's Security Systems Manager.

8. **INSURANCE.** Licensee and all subcontractors must procure and maintain, for the duration of this Use Agreement, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Use Agreement.

The insurance requirements herein are minimum requirements for this Use Agreement and in no way limit the indemnity covenants contained in this Use Agreement. Licensor in no way warrants that the minimum limits contained herein are sufficient to protect the Licensee from liabilities that might arise out of this Use Agreement. Licensee is free to purchase additional insurance as Licensee determines necessary.

a) **Minimum Scope and Limits of Insurance:** Licensee must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met.

i. **Policy Coverage Requirements and Limits**

(1) **Commercial General Liability – Occurrence Form**

Policy must include bodily injury, property damage and contractual liability coverage.

• General Aggregate	$2,000,000
• Products – Completed Operations Aggregate	$1,000,000
• Personal and Advertising Injury	$1,000,000
• Each Occurrence	$1,000,000
• Fire Damage (Damage to Premises)	$ 100,000

The policy must name City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, independent contractors, ongoing operations, products and completed operations and liability

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assumed under an insured contract arising out of the activities performed by, or on behalf of the Permittee/Licensee related to this agreement.

(2) **Automobile Liability**

Required when vehicles or mobile equipment are used as part of the event or are associated with move-in or move-out, utilizing the loading dock and/or freight elevators.

- Combined Single Limit (CSL) $1,000,000

The policy must be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Licensee, including automobiles owned, leased, hired or borrowed by the Licensee."

If Licensee fails to provide Automobile Liability Insurance when required, access to loading docks will be denied.

b) **Additional Insurance Requirements:** The policies must include, or be endorsed to include the following provisions:

i. There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured
ii. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix will be an additional insured to the full limits of liability purchased by the Licensee even if those limits of liability are in excess of those required by this Use Agreement.
iii. The Licensee's insurance coverage will be primary insurance and non-contributory with respect to all other available sources.

c) **Notice of Cancellation**: For each insurance policy required by the insurance provisions of this Use Agreement the Licensee must provide to the Licensor, within two (2) business days of receipt, a notice if a policy is suspended, voided, or canceled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to: **Phoenix Convention Center, Attention Event Manager**.

d) **Acceptability of Insurers:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The Licensor in no way warrants that the above-required minimum insurer rating is sufficient to protect the Licensee from potential insurer insolvency.

e) **Verification of Coverage:** Licensee will furnish the Licensor with certificates of insurance (ACORD form or equivalent approved by the Licensor) as required by the Use Agreement at least thirty days prior to the event. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the Licensor before the Use Agreement commences. Each insurance policy required by this Use Agreement must be in effect at or prior to commencement of this Use Agreement and remain in effect for the duration of the Use Agreement. Failure to maintain the insurance policies as required by this Use Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Use Agreement must be sent directly to the **Phoenix Convention Center Department, Attention Event Manager, 100 N. 3rd Street, Phoenix, AZ 85004**. The City Department, Use Agreement number and location description are to be noted on the certificate of insurance. The Licensor reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Use Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

f) **Subcontractors:** Licensee's certificate(s) shall include all contractors and subcontractors as additional insureds under its policies **or** Licensee shall furnish to the City separate certificates and

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endorsements for each contractor or subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above. Licensee assumes liability for all subcontractors and/or vendors with respect to this Use Agreement.

9. DAMAGE TO BUILDINGS AND CONTENTS.

a) Licensee will compensate Licensor for the full amount of any damage to the buildings, furnishings, fixtures or equipment caused by the Licensee or Licensee's exhibitors, guests or contractors, except for ordinary wear and tear. At Licensee's request, Licensee (and/or its service contractor) and Licensor will conduct a joint inspection of the facility prior to move-in for the purpose of noting existing damage, if any. At the conclusion of the event, the Licensee and/or its service contractor will, together with the Licensor, jointly inspect the facility for event-related damage. Failure of Licensee or its service contractor to participate in such inspection will be considered a waiver of Licensee's right to participate and Licensor alone will make the inspection. The Licensor will notify Licensee within a reasonable time as to the extent of damage and cost of repair.

b) No decorative or other materials may be attached to any part of the building in a manner that may damage the building. All decorative or other materials must be of a noncombustible type or be suitably treated with a flame retardant approved by the Licensor. No person may bring, exhibit or set off fireworks or explosives in the facility or other City property without the prior written consent of the Licensor and a permit from the City of Phoenix Fire Department. Damages to the facility will be repaired at the sole cost and expense of the Licensee. Users may be required to make suitable arrangements with the Director for the protection of the Licensor's property.

10. INDEMNITY. Licensee ("Indemnitor") must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or contractors ("Indemnitor's Agents") arising out of or related to Lessee's occupancy and use of the Leased Premises. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amounts arising out of or recovered under any state's Workers' Compensation Law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration for the use and occupancy of the Leased Premises, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from or related to the use, occupancy or condition of the Leased Premises. The obligations of Indemnitor under this provision survive the termination or expiration of this Lease.

11. ASSIGNABILITY, SUBLICENSE. Licensee may not assign or sublicense the Licensed Premises, any part thereof, any area therein, or any rights under this Use Agreement; except to exhibitors as contemplated by this Use Agreement.

12. CONDITION OF LICENSED PREMISES. Licensor will provide the Licensed Premises in a clean, habitable condition and in the basic configuration for which Licensee has contracted. In the event Licensee finds it necessary to remove or change the location of any stage, rigging or equipment, such changes will be made at Licensee's expense, and Licensee must change all equipment, stages and rigging back to the condition in which it was found. Licensee may not make any permanent changes or

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alterations to any Licensor facilities or property without the prior written approval of the Licensor. At the termination of this Use Agreement, Licensee must at once surrender possession of the Licensed Premises with all equipment and materials removed. Licensee shall return the Licensed Premises to Licensor in the same condition Licensee received the Licensed Premises. Should Licensee fail to do so and if Licensor is required to obtain cleaning services to return the Licensed Premises to the condition it was provided to Licensee, such expenses shall be charged to Licensee and Licensee hereby agrees to pay for such cleaning fees.

13. **APPROPRIATE CONDUCT.** Any use of the Phoenix Convention Center and Venues (including the Licensed Premises) that is contrary to public policy, or is illegal, will be a violation of this Use Agreement and will be grounds for immediate revocation of this Use Agreement. Licensee and any of its owners, officers, directors, members, managers, agents, employees or contractors must maintain the utmost standards of personal integrity, truthfulness, honesty and fairness in carrying out their obligations pursuant to this Agreement, comply with all applicable laws, and never use their relationship with the Licensor for improper personal gain. Should Licensor determine that Licensee or any of its owners, officers, directors, members, managers, agents, employees, contractors or attendees engage in conduct that is disorderly or disruptive to the use of the facilities, or is illegal, may be refused entrance or may be immediately ejected. The Licensee will indemnify, defend, and hold harmless the Licensor from any Claims resulting from such action.

14. **CONTROL OF PREMISES.** Nothing within this Agreement shall limit Licensor's control of the Licensed Premises. Rather, Licensee acknowledges that although Licensee has been granted use rights pursuant to this Agreement, such rights are subject to Licensor's control of the Licensed Premises which may be exercised by Licensor with appropriate notice provided to Licensee.

15. **FORCE MAJEURE.** Should events or circumstances beyond the reasonable control of the Licensee or Licensor, including but not limited to fire, casualty, or unforeseen occurrence such as acts of God; acts of the government; local or national emergency; war within the United States; acts of terror or threats of terror directed toward the Phoenix metropolitan area; natural disaster or hazardous weather; civil disorder; labor restrictions, strikes, or specific threats of strikes, picketing, work slowdown, or stoppage; pandemic or national epidemic as declared by the World Health Organization or Centers for Disease Control, or any other cause, event, or circumstance not within the reasonable control of the parties, that makes hosting Licensee's event at the Licensed Premises illegal or impossible, this Use Agreement and related obligations of the parties will terminate. Each party waives any claim against the other party for damages by reason of termination under this paragraph. Any unearned portion of the rent due will abate or, if previously paid, will be promptly refunded to Licensee within a reasonable time following termination of the Use Agreement under this paragraph.

16. **LIABILITY FOR LICENSEE'S PROPERTY.** The Licensor does not, and shall be under no obligation to, receive or handle deliveries of any kind for or on behalf of the Licensee. Property may not be received until Licensee has made proper arrangements for receiving, handling, and storage of such materials. Notwithstanding the foregoing, neither the Licensor nor its officials, agents, employees, or contractors will be liable for any loss, damage or injury to property of any kind that is shipped to, delivered to, received by, or handled by the Licensor, its officials, agents, employees, or contractors or stored in or on the Licensed Premises.

17. **PERMITS, LICENSES AND TAXES.**

    a) Licensee is responsible for obtaining all applicable permits and licenses required by Federal, State, County, or City law(s), and may be subject to inspection by appropriate government agencies.

    b) Licensee (and/or its exhibitors) may be subject to PLT under the City of Phoenix Tax Code for certain taxable activities such as Commercial Rental/Leasing/Licensing, Admissions/Amusements and Retail Sales. For complete information on licensing and applicable PLT, Licensee should contact the City of Phoenix Finance Department, Tax Division at (602) 262-6785, option 4.

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c) A Life Safety Fee will be assessed to review floor plans and conduct inspections for approval by the Licensor and City of Phoenix Fire Departments' Fire Prevention Division for events with exhibits, as well as for some special events.

18. **OBSERVANCE OF LAW.** Licensee must comply with all applicable federal, state and local laws and ordinances, and any rules promulgated by Licensor. Violations of such laws, ordinances, or rules by the Licensee may result in cancellation of the Use Agreement and discontinuance of Licensee's use of the facilities unless satisfactory compliance is assured. Without limiting the foregoing, the Licensor reserves the rights to (i) provide notice regarding any component of Licensee's program of which Licensor is aware that may violate any laws, ordinances, rules and regulations (a "Violation") and (ii) require Licensee to cease and/or avoid such Violation.

19. **INTELLECTUAL PROPERTY.** Licensee accepts total responsibility for the use of any composition, work or other material covered by copyright, trademark, patent or other intellectual property rights and will indemnify, defend, save and hold harmless the City and its officers, agents, volunteers, contractors, and employees from all Claims arising or alleged to have arisen from Licensee's use of any material subject to intellectual property rights.

20. **SOLICITATIONS.** No collections or donations, whether for charity or otherwise, may be made, attempted or announced on the Licensed Premises without prior written approval of the Licensor, unless the collection or donation is a freewill offering in conjunction with a religious service.

21. **ADDITIONAL OR UNSPECIFIED ITEMS.** The Licensor reserves the right to impose any additional rules, regulations, or use arrangements, whether expressly provided herein, which are necessary for the operation of the Phoenix Convention Center and Venues to (i) ensure compliance with federal, state, or local law, or (ii) mitigate or avert an imminent risk of personal injury or property damage. Licensee agrees to comply with any such additional rules, regulations, or use arrangements.

22. **GOOD FAITH NEGOTIATION.** The Parties agree to first attempt in good faith to settle any claim or dispute arising out of this Use Agreement through negotiation.

23. **DEFAULT.** If Licensee fails to perform any of its obligations, Licensor may give Licensee notice of default allowing a reasonable time to cure or remedy the default. If the default is not remedied to the satisfaction of Licensor within the time specified by Licensor, then Licensee may be declared in default, and its contract rights may be immediately terminated. At the direction of Licensor, Licensee must promptly vacate the Licensed Premises and will have no further right to remain and will forfeit all rights to any money due or paid Licensor in the form of fees, deposits or insurance.

24. **SAFETY.** It is the responsibility of Licensee to familiarize exhibitors and employees with the safety procedures and regulations governing the facility used by Licensee. Licensee will instruct exhibitors and employees on the building evacuation plan in the event of fire or other disaster and formulate a specific plan to evacuate any person with a disability among them.

25. **DISCRIMINATION.** Licensee may not discriminate against any person, or directly or indirectly display, circulate, publicize or mail any advertisement, notice or communication which states or implies that any facility or service will be refused or restricted because of sex, race, color, religion, ancestry, national origin or disability or that any person, because of sex, race, color, religion, ancestry, national origin or disability would be unwelcome, objectionable, unacceptable, undesirable or not solicited.

26. **AMERICANS WITH DISABILITIES ACT (ADA).** Licensor warrants that the Phoenix Convention Center and Venues, as places of "Public Accommodation," comply with ADA facility requirements. Licensee will comply with ADA requirements in its use of the Licensed Premises. If Licensee's use of the Licensed Premises violates any provision of the ADA, Licensee will hold Licensor harmless and indemnify Licensor for all claims, judgments, damages, penalties, fines, costs, liabilities and causes of action caused by Licensee's violation of the ADA.

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27. **SEVERABILITY.** If any provision of this Use Agreement is declared invalid or unenforceable, the remainder of the provisions will continue in full force and effect to the fullest extent permitted by law.

28. **OTHER EVENTS.** At the request of the Licensee, the Licensor will provide complete disclosure of contracted events in the facility over the same or overlapping dates of the Licensee's event at the time of Use Agreement negotiations and thereafter.

29. **EXHIBITS.** By signing this Use Agreement, Licensee acknowledges that it has received and read the following Exhibits which are attached to and made a part of this Use Agreement:

    a) Exhibit A – Schedule of Events

    b) Exhibit B – Additional Terms and Conditions

    c) Exhibit C – Operational Policies and Procedures

30. **ENTIRE AGREEMENT.** This Agreement integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Licensor or Licensee, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of the Parties hereto.

31. **USE AGREEMENT CONTINGENCIES.** This Use Agreement is not binding until it has been signed by Licensee and sent to Licensor via electronic signature, electronic mail, facsimile transmission, or U.S. mail, or been hand delivered, and countersigned by the Director AND the required deposit is received. For security reasons, any sums received for this event will be immediately deposited. In the absence of the Director's signature to this Use Agreement, the depositing of funds alone does not create a binding contract.

32. **ORGANIZATIONAL EMPLOYMENT DISCLAIMER.** This agreement establishes only a license to use certain Licensor-owned premises. It is for the mutual benefit of the parties and not for the benefit of any other person or entity. This agreement does not establish any relationship of agency, employment, or independent contractor between Licensor and Licensee.

[Signature page to follow]

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In consideration of the foregoing, this Use Agreement has been processed in Phoenix, Arizona, on this **DATE**, on behalf of **Phoenix Convention Center Department**.

Licensee Name (Licensee)	**City of Phoenix** (Licensor)
By: _____	**By:** _____
Licensee Name **Licensee Title** **Licensee Address** **City, State, Zip**	**Jerry Harper** **Director** **Phoenix Convention Center**
_____	_____
Date Signed	**Date Contract Executed**

Sales Manager: _____

Reviewed by: x _____

Approved by: x _____

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Deposit Received _____