

LEASE OF PREMISES AND SERVICES CONTRACT

1. LEASE AND SERVICES

1.1. Heading

This lease of premises and contract for services ("Agreement") is initiated by and between **The Metropolitan Government of Nashville and Davidson County** ("METRO") by and through **the Board of Fair Commissioners** ("Fair Board") and the **Track Enterprises** ("TE") located at PO Box 79 Macon, IL 62544. This Agreement consists of the following documents:

- *Any properly executed contract amendment (most recent with first priority),*
- *This document, including exhibits,*
 - *Exhibit A – Motorsport Event Space*

In the event of conflicting provisions, all documents shall be construed in the order listed above.

2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

2.1. Definitions

For the purposes of this Agreement and the activities authorized herein, the terms listed below shall have the specialized meanings as contained within this Agreement.

- A. "TE Motorsport Events": Competitive motorized racing events include but are not limited to stock car, ARCA, and truck series.
- B. "TE Motorsport Track Activity": Any motorized practice, test, qualifying activity, or other use of the Motorsport Event Space involving driving a racing vehicle other than a TE Motorsport Event. TE Motorsports Track Activity and TE Motorsport Events shall be referred to collectively as "TE Motorsports".
- C. "Fair Board Events": Events held, hosted by or contracted with the Fair Board including but not limited to films projected onto video screens located on the stage, circus acts, conventions, trade shows, family shows, banquets, athletic and other competitions and tournaments, examinations, rehearsals, dances, television tapings, and concerts.
- D. "Premises": The area comprising the Fairgrounds located at 401 Wingrove Street, Nashville, TN.
- E. "Motorsport Event Space": The grandstands, concourse, speedway, and the parking lot area adjoining the entrance to the tunnel that provides access to the infield in the center of the Speedway, attached hereto as Exhibit A and made a part hereto for all purposes.
- F. "Race Weekends": Dates identified for TE Motorsports in Section 2.3 of this Agreement.

2.2. Duties and Responsibilities

- A. The Fair Board agrees to provide access and use of the Premises for the purposes of conducting TE Motorsport Events and TE Motorsport Track Activities (collectively, "TE Motorsports") at the Motorsport

Event Space.

- B. TE agrees to provide TE Motorsport Events at the Motorsport Event Space.

2.3. Scope of Activities to be Performed by TE

- A. Engagement. Fair Board authorizes and otherwise engages TE to perform TE Motorsports consistent with the terms and conditions of this Agreement.
- B. Control. Fair Board, as the Premises manager, shall have control and authority over the day-to-day operations of the Premises, including the Motorsport Event Space, and TE agrees to coordinate with Fair Board in performing its TE Motorsports, consistent with the terms and conditions of this Agreement. During TE Motorsports, TE shall provide and pay for staff, security, equipment, fire and medical services and such other services that it may require.
- C. Rules and Policies. TE shall follow all policies and guidelines of Fair Board as are applicable to the Premises, including the Motorsport Event Space, including such policies and guidelines that are established or modified after the execution of this Agreement. Fair Board policies and guidelines currently in effect are deemed approved. Fair Board shall provide reasonable notice to TE in writing of any proposed amendment to its policies and guidelines.
- D. Activities to be Performed. The Fair Board agrees to lease the Motorsport Event Space on dates to be determined and agreed to by both parties for 2022.

Dates of up to 25 potential track rentals shall be submitted to the Fair Board prior to the first practice of the season. Changes to the schedule must be submitted to the Fair Board at least five days in advance.

For each Race Weekend, use of the Motorsport Event Space on Friday shall be for TE Motorsport Track Activity. Use of the Motorsport Event Space on Saturday shall be for TE Motorsport Events. Use of the Motorsport Event Space on Sunday shall only be available for use as TE Motorsports if a weather occurrence has caused a postponement on the previous day's TE Motorsport. Notwithstanding the foregoing, for the Race Weekends designated for the ARCA Event and All American 400 event, a TE Motorsport may occur on Sunday.

- E. TE Race Responsibilities. Consistent with the terms and conditions of this Agreement, TE shall perform the following duties:
 1. sell tickets for all TE Motorsport Events;
 2. collect and remit to the proper governmental authorities any taxes, including, but not limited to, sales tax, where such taxes arise out of goods or services sold by TE as part of TE Motorsport Events;
 3. negotiate, administer, and execute in TE's name any agreements reasonably necessary for the performance of TE Motorsport Events, where such agreements may include licenses, occupancy agreements, sponsorship agreements, rental agreements, booking commitments; provided, however, that such agreements are otherwise consistent with the terms of this Agreement;
 4. book talent for TE Motorsport Events to be held at the Motorsport Event Space, paying all talent and artist costs and deposits associated with such booking, consistent with the subsection below entitled

“Booking Rights”;

5. produce TE Motorsport Events and bear all costs associated with such production;
6. utilize such entities as may be under contract with Fair Board to provide services to the Motorsports Event Space, where such services may include, but are not limited to, venue food and/or beverage management; and
7. engage in such advertising, solicitation and other action reasonably necessary as TE deems necessary or appropriate in connection with the performance of TE Motorsport Events.

F. Noise Restrictions and Curfews. The Parties agree as an essential term and consideration of this Agreement that they must work in good faith to ensure that consideration is given to operate TE Motorsports in a manner that minimizes disturbances to the surrounding residential and business community. Accordingly, TE agrees to the following noise and curfew requirements:

1. TE shall ensure that all vehicles operating on the racetrack for all TE Motorsports are equipped with properly functioning mufflers. All vehicles must operate mufflers that meet the standards as agreed to by the Parties and TE must provide criteria and procedures for authenticating compliance with these standards to the Fair Board. TE shall be responsible for any failure of a vehicle to meet the muffler standards and requirements of this Agreement.
2. TE shall monitor and record all noise levels during TE Motorsports, with all results reported to the Fair Board. During the period of the Agreement, TE will make reasonable efforts to ensure that decibel levels associated with TE Motorsports as measured in the grandstand and at the property line do not exceed levels as further agreed to and specified by TE and the Fair Board.
3. No later than March 1, 2022, the Parties shall agree to terms to an Exhibit to this Agreement which shall : (i) identify specific part numbers for acceptable, required mufflers to be used by all vehicles, as well as set forth specific criteria and procedures for authenticating compliance with muffler use requirements and (ii) identify specific, agreed noise limits as called for under subsection (2) above.
4. Curfews
 - a. TE shall have the right to schedule up to 25 track rentals (“Track Rentals”) starting at 3:00 pm and must end by 7:00 pm for the purpose of TE Motorsport Track Activities.
 - b. If there is a weather delay or other emergency, as confirmed by Fair Board staff, that prevents use of the Speedway for more than twenty (20) minutes, then the Track Rental curfew may be extended until 7:30 pm.
 - c. On Fridays of Race Weekends, all TE Motorsport Track Activity shall begin no earlier than 3:00 pm if school is in session and end no later than 9:00 pm.
 - d. On Saturdays of Race Weekends, all TE Motorsports shall begin no earlier than 12:00 pm unless prior approval is granted by the Fair Board or designee.
 - e. Notwithstanding the foregoing, for the Race Weekend designated for the All American 400 event, TE Motorsports shall end on Saturday no later than 11:00 pm understanding that the target end time is 10:00 pm.
 - f. No TE Motorsport Event shall extend later than 11:00 pm.
 - g. TE Motorsport Events scheduled for Sunday, October 31, 2022 may begin by 10:00 am and must end no later than 5:00 pm unless prior approval is granted by the Fair Board or designee.
 - h. All other TE Motorsports Events scheduled for Sundays may only occur between the hours of 12:00 pm and 7:00 pm unless prior approval is granted by the Fair Board or designee.

5. TE agrees to participate in monthly meetings held March through October with the Neighborhood Impact Advisory Committee (“NIAC”), once established. Track Rentals must be booked and communicated to the Fair Board and the NIAC at least five (5) days in advance of the rental.

2.4. Access and Use of Premises

- A. Use and Access. This Agreement governs the use of and access to the Premises and Motorsport Event Space by TE. Excepted from the lease herein is the suite of office and meeting rooms located on the second floor of the Grandstand building. Additionally, space located within the Grandstand Building shall be made available to the Fair Board upon request and by mutual agreement.
- B. Ownership is retained by METRO. At all times METRO shall retain ownership of the Premises, including fixtures, control room equipment, and any furniture and decor contained therein, and the real property on which the Motorsport Event Space is situated. No real property interest is conveyed to TE under this Agreement. Including the load-in and load-out thereof, at the Premises, access to the Motorsport Event Space may be restricted by TE to include only patrons, TE staff and such others as TE may authorize. However, in all such circumstances, personnel METRO deems necessary or desirable to provide METRO services for any event shall be allowed access to the Motorsport Event Space to perform such services. The parties agree that METRO personnel shall at all times have access to every part of the Motorsport Event Space to protect METRO’s interests in public health, safety and welfare and to carry out such other governmental duties as METRO may assign them.
- C. Premises not to be used as security. TE shall not pledge or permit the Premises or Motorsport Event Space to be used as security for any loan or obligation of TE and shall not permit the filing of any lien against the Premises or Motorsport Event Space on account of any work performed by or for TE or any contract to which TE is a party. In the event a lien is filed against the Premises or any part thereof relating to any agreement made by TE, TE shall promptly cause such lien to be removed by filing an appropriate bond.

3. AGREEMENT TERM

3.1. Agreement Term

The Effective Date of this Agreement is the date the Agreement is approved by all required parties and filed in the Metropolitan Clerk's Office. Unless terminated earlier pursuant to the terms and conditions of this Agreement, the term of this Agreement shall be for a period of one (1) year (the “Initial Term”).

4. COMPENSATION

4.1. Lease Payments

1. Rent, Rates and Revenue.
 - a. TE agrees to remit the following Rental Fees to the Fair Board:
 1. \$3,000 per race plus an additional \$1.00 to the Fair Board for each ticket purchased in excess of 2,500 General Admission tickets sold for each local race.
 - a. The total attendance admitted with a ticket should reflect the total number of tickets issued for the purpose of this calculation.
 - b. TE shall pay the Fair Board one-half (i.e., \$1500) at least 10-days in advance of the scheduled race and the remaining balance due within 30-days of the conclusion of the

- race.
2. \$6,000 per sanctioned race.
3. Five Hundred Dollars (\$500) per month for nine months for use of offices and fixtures. Utilities, other than phone service and internet service, are included in the lease of the offices. Office rent is due on or before the first day of each month of the term. Rent for partial month occupancy of the offices will be prorated.
4. \$300 per four (4)-hour block for use of the speedway for track rentals.
5. Fifteen percent (15%) of gross sales (after taxes) as documented by cash register receipts or point of sale for all revenues received from the sale of food and beverage during TE Motorsports.

The Fair Board agrees to provide space at no charge for up to two (2) TE events to include a rules meeting and an awards banquet.

- b. Clean Up- Fee Deposits.** There is a refundable \$1000.00 clean-up fee and damage deposit due to the Fair Board at execution of this agreement. After final post-season inspection, if no clean-up is required and there are no damages to the premises, the deposit referenced in this subsection shall be returned.

4.2. Rental Fees and Revenues

- A. The Parties agree to the following revenue allocation:
 1. TE is entitled to receive, collect and retain all revenue generated from any source in connection with any TE Motorsports, with the exclusion of the parking, and, except as otherwise provided in this Agreement. TE shall bear all of its own costs and expenses associated with its performance under this Agreement. This Agreement does not guarantee any specific amount of revenue to be collected and/or retained by TE.
 2. Fair Board and TE agree to cooperate on sales of sponsorships for the Motorsport Event Space. Except as otherwise specifically provided in this Agreement, TE's license for use of the Motorsports Event Space under this Agreement shall include the right to sell, collect, and retain one hundred percent (100%) of revenues generated from sponsorships sold by TE. Sponsorship sales shall be consistent with Fair Board's prior agreements relating to the Motorsport Event Space.
 3. TE shall have the right to impose and thereafter be entitled to collect from patrons attending TE Motorsport Events a facility use fee from tickets sold in an amount determined by TE in its sole discretion. Fair Board will not impose any facility or like kind fees on any tickets sold for TE Motorsport Events.
 4. The Fair Board shall be entitled to retain one hundred percent (100%) of all revenues from parking within areas designated for use by patrons of the Premises/Motorsport Event Space if such parking areas are under the jurisdiction and control of the Fair Board.
 5. For payment of amounts due under other agreements based on sales and/or revenues to be received from a specific event, settlement of such amounts shall occur promptly, using industry standards as agreed upon between Fair Board and TE within the specific license agreement to be executed for each specific event, but not later than fifteen (15) days after the end of the calendar month in which such event occurred.

4.3. Payment Methodology

Payment in accordance with the terms and conditions of this Agreement shall constitute the entire compensation due.

4.4. General Maintenance

- A. TE Routine Maintenance and Repair. TE, at its sole cost and expense, shall perform or otherwise cause to be performed such reasonable facility maintenance services as are appropriate or necessary to maintain and operate the Motorsport Event Space in a manner consistent with applicable policies, procedures and operations of the Fair Board so as to allow TE to perform TE Motorsports. Maintenance and repair shall include, but are not limited to:
1. grass cutting and trimming inside fence line of speedway and outside white fence to ticket booths at turn 1 and turn 4;
 2. painting of speedway walls, staging, and tunnel;
 3. track striping; and
 4. pest control services.
- B. TE Service Obligations.
1. TE will provide and pay for a dumpster or roll-off designated for their sole use throughout the term of the Agreement.
 2. TE will ensure that the Concourse remains clear of vehicles and stored items, except during event days, if needed.
- C. Fair Board Routine Maintenance and Repair. Fair Board, at its sole cost and expense, shall perform or otherwise cause to be performed the following tasks under this Agreement:
1. tree and brush maintenance surrounding billboards;
 2. maintenance of scoreboard, caution lights, and scoring loop; and
 3. maintenance of Speedway public address and sound system.
- D. Joint Routine Maintenance and Repair. Fair Board and TE shall be jointly responsible for certain expenses as described below:
1. Fair Board and TE shall jointly maintain Speedway asphalt, guard rails, concrete walls, portable walls, fencing and billboards.
 2. TE agrees to properly disposal of chemicals and waste (e.g., oil, gasoline, antifreeze, tires) related to TE Motorsports and on Motorsport Event Space. For Fair Board Events at the Motorsport Event Space, the Fair Board will be responsible for proper disposal of chemicals and waste or will compensate TE for their removal and disposal.

3. TE agrees to clean and restock the Motorsport Event Space. For Fair Board Events at the Motorsports Event Space, the Fair Board will be responsible for cleaning and restocking the Motorsport Event Space.

3.5. TE Motorsports Maintenance and Operations.

- A. TE Maintenance and Operations. TE, at its sole cost and expense, shall perform or otherwise cause to be performed such reasonable facility maintenance services as are appropriate or necessary to maintain and operate TE Motorsports in a manner consistent with applicable policies, procedures and operations of the Fair Board. Maintenance and operations shall include, but are not limited to:
 1. litter and trash removal to include speedway, pit and parking lots, grandstand, tunnel and concourse;
 2. cleaning and restocking of speedway and concourse public restrooms;
 3. movement and placement of portable walls or barricades as needed;
 4. sweeping and cleaning of track after TE Motorsport Events;
 5. sign and banner placement, which must be approved by the Executive Director prior to installation, and shall not be unreasonably delayed, conditioned, or withheld; and
 6. parking and staging of race vehicles prior to a TE Motorsport Event. If space beyond the premises is utilized, the plan must be reviewed and approved by the Fairgrounds Executive Director prior to event.
- B. Joint Maintenance and Operations.
 1. TE and Fair Board agree to cooperatively perform pre- and post-event inspections for all TE and Fair Board Events at the Motorsports Event Space utilizing the Premises to document conditions. Any pre-existing damage shall be noted and signed by both Parties. The Parties agree to return to its former condition that part of the Premises used and to remove all equipment and supplies. The Parties agree to be financially responsible for the costs of repairing any damage done to the Premises caused by each or their respective contracted third-party promoter, representatives, employees, agents, vendors, TE suppliers and attendees.
 2. TE and Fair Board agree to work cooperatively when scheduling use of the Craighead parking lot (i.e., pit area) and access road in Fair Park leading to turn 1 of the speedway. It is agreed that TE will have exclusive use of the Craighead parking lot during TE Motorsports Events.
 3. Fair Board shall provide all necessary utilities within the capabilities of the equipment and systems currently installed in the Premises, or to be installed pursuant to this Agreement.

4.6. Concessions

All concessions sold on the Fairgrounds shall be sold in accordance with local, state, and federal law. TE will pay Fair Board 15% of gross sales (after taxes) as documented by cash register receipts or point of sale for all concessions revenues received.

4.7. Schedule of Payments

Office rent as described in this Agreement shall be paid by TE to METRO no later than the last day of each month from March through November. Fixed rental fees and per ticket revenue shares for non-sanctioned TE Motorsports Events shall be paid by TE to METRO within 30 days after each race weekend.

5. Termination, Notice and Expiration

5.1. Breach

Should TE fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, METRO shall identify the breach and TE shall cure the performance within thirty (30) days. If TE fails to satisfactorily provide cure, METRO shall have the right to immediately terminate this Agreement. Such termination shall not relieve TE of any liability to METRO for damages sustained by virtue of any breach by TE. If TE fails to perform its contracted duties and responsibilities in a timely and proper manner and is unable to cure such failure within such additional period of time as specified by the Fair Board, taking into consideration the gravity and nature of the default, or if TE shall violate any of the terms of this Agreement METRO shall have the right to immediately terminate this Agreement.

5.2. Lack of Funding

Should funding for this Agreement be discontinued, METRO shall have the right to terminate this Agreement immediately upon written notice to TE.

5.3. Notice of Termination

It is hereby agreed that should the Fair Board desire to terminate this agreement for any reason during the term of this Agreement, the Fair Board may terminate this Agreement, provided that the Fair Board provide TE 90 days' notice of its intent to terminate the Agreement. Upon such notice, TE agrees to Surrender the Premises as defined in this Agreement within 90 days. The Fair Board will not compensate TE for any revenues or benefits that it would have received as of the termination date or any other expenses incurred by TE as a result of this termination.

5.4. Surrender of Premises.

At the expiration of the term of this Agreement, TE must peaceably yield up to Fair Board the Motorsport Event Space in good repair in all respects, reasonable use, wear and tear and damage by fire or other casualty or by condemnation excepted.

5.5. Holding Over.

There shall be no holding over.

6. NONDISCRIMINATION

6.1. METRO's Nondiscrimination Policy

It is the policy of METRO not to discriminate on the basis of race, creed, color, national origin, age, sex, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services,

and activities.

6.2. Nondiscrimination Requirement

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of race, creed, color, national origin, age, sex, disability, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's contractors. **TE certifies and warrants that it will comply with this nondiscrimination requirement.** Accordingly, all offerors entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

6.3. Procurement Nondiscrimination Program Requirement

The consideration and contact of minority-owned and/or woman-owned business enterprises is required for a responsive offer to most solicitations. The provision of the Procurement Nondiscrimination Program documents shall be part of each applicable solicitation response and incorporated herein by reference. TE agrees to comply with the Procurement Nondiscrimination Program, if applicable, in the execution of this Agreement.

6.4. Covenant of Nondiscrimination

All offerors have committed to the Covenant of Nondiscrimination when registering with METRO to do business. To review this document, go to METRO's website.

6.5. Americans with Disabilities Act (ADA)

TE assures METRO that all services provided shall be completed in full compliance with the Americans with Disabilities Act ("ADA") 2010 ADA Standards for Accessible Design, enacted by law March 15, 2012, as has been adopted by METRO. TE will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

7. INSURANCE

7.1. Risk of Loss and Insurance.

- A. All property of any kind that may at any time be used, left or placed on the Premises during the term of this Lease shall be at the sole risk of the TE, and Fair Board will not provide any insurance coverage for same. TE must 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 Liability Insurance; occurrence version commercial general liability insurance or

equivalent form with a limit of not less than \$5,000,000 each occurrence. Such insurance must include Metro, its officials, officers, and employees as insureds with respect to performance of services. The coverage may not contain any special limitations on the scope of its protection afforded to the above-listed insureds. Insurance will be primary with respect to any insurance or self-insurance programs covering Metro, its officials, officers, employees, and volunteers.

2. Automobile Liability Insurance; including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$5,000,000 each accident. Such insurance must include coverage for loading and unloading hazards. Insurance must contain or be endorsed to contain a provision that includes Metro, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of TE.
3. Property Insurance. TE must purchase property insurance against all risks of loss to any tenant improvements or betterments. Insurance will be for full replacement cost with no coinsurance penalty provision.
4. Worker's Compensation. TE must 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 \$100,000.
5. Liquor Liability. TE must provide Liquor Liability insurance as contemplated by Section 4.6 of this Agreement.

B. TE must:

1. Prior to commencement of Agreement, furnish Metro with properly executed certificates of insurance which must clearly evidence all insurance required in this section and provide that such insurance will not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to Metro's Law Department, P.O. Box 196300, Nashville, TN 37219-6300. The proof of coverage is to be received and approved by Metro Law Department before the Agreement commences.
2. Provide certified copies of endorsements and policies if requested by Metro in lieu of or in addition to certificates of insurance.
3. Replace certificates, policies, and endorsements for any such insurance expiring prior to expiration of Agreement.
4. Maintain such insurance from the time Agreement commences until Agreement is terminated. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by Metro as a material breach of Agreement.
5. Place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-.

7.2. Other Insurance Requirements

Prior to commencement of services, TE shall:

- A. Furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

**DEPARTMENT OF LAW
INSURANCE AND RISK MANAGEMENT
METROPOLITAN COURTHOUSE, SUITE 108
PO BOX 196300
NASHVILLE, TN 37219-6300
PROCUREMENTCOI@NASHVILLE.GOV (PREFERRED METHOD)**

- B. Provide certified copies of endorsements and policies if requested by METRO in lieu of or in addition to certificates of insurance.
- C. Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.
- D. Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage and to provide evidence of renewal may be treated by METRO as a material breach of this Agreement.
- E. Said insurance shall be with an insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.
- F. Require all subcontractors to maintain during the term of this Agreement, Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by TE's insurance) in the same manner as specified for TE. TE shall require subcontractor's to have all necessary insurance and maintain the subcontractor's certificates of insurance.
- G. Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO prior to the commencement of services.
- H. If TE has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies.

8. General Terms and Conditions

8.1. Taxes

METRO shall not be responsible for any taxes that are imposed on TE. Furthermore, TE understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.

8.3. Software License

TE warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a

license to use any software provided for the purposes for which the software was obtained or proprietary material set forth in METRO's solicitation and/or TE's response to the solicitation.

8.4. Confidentiality

Tennessee Code Annotated §10-7-504(i) specifies that information which would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. "Government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. Such records include: (A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property; (B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and (C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

The foregoing listing is not intended to be comprehensive, and any information which METRO marks or otherwise designates as anything other than "Public Information" will be deemed and treated as sensitive information, which is defined as any information not specifically labeled as "Public Information". Information which qualifies as "sensitive information" may be presented in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as sensitive information.

TE, and its Agents, for METRO, may have access to sensitive information. TE, and its Agents, are required to maintain such information in a manner appropriate to its level of sensitivity. All sensitive information must be secured at all times including, but not limited to, the secured destruction of any written or electronic information no longer needed. The unauthorized access, modification, deletion, or disclosure of any METRO information may compromise the integrity and security of METRO, violate individual rights of privacy, and/or constitute a criminal act.

Upon the request of METRO, TE shall return all information in whatever form. In the event of any disclosure or threatened disclosure of METRO information, METRO is further authorized and entitled to immediately seek and obtain injunctive or other similar relief against TE, including but not limited to emergency and ex parte relief where available.

8.5. Information Ownership

All METRO information is and shall be the sole property of METRO. TE hereby waives any and all statutory and common law liens it may now or hereafter have with respect to METRO information. Nothing in this Agreement or any other agreement between METRO and TE shall operate as an obstacle to such METRO's right to retrieve any and all METRO information from TE or its agents or to retrieve such information or place such information with a third party for provision of services to METRO, including without limitation, any outstanding payments, overdue payments and/or disputes, pending legal action, or arbitration. Upon METRO's request, TE shall supply METRO with an inventory of METRO information that TE stores and/or backs up.

8.6. Information Security Breach Notification

In addition to the notification requirements in any Business Associate Agreement with METRO, when applicable, TE shall notify METRO of any data breach within 24 hours of TE's knowledge or reasonable belief (whichever is

earlier) that such breach has occurred ("Breach Notice") by contacting the METRO ITS Help Desk. The Breach Notice should describe the nature of the breach, the scope of the information compromised, the date the breach occurred, and the identities of the individuals affected or potentially affected by the breach as well as specific information about the data compromised so that METRO can properly notify those individuals whose information was compromised. TE shall periodically update the information contained in the Breach Notice to METRO and reasonably cooperate with METRO in connection with METRO's efforts to mitigate the damage or harm of such breach.

8.7. Representations

- A. Each of the parties hereto represents and warrants that it has full power and authority to enter into this Agreement and to assume and perform all of its obligations under this Agreement, that it has obtained any and all approvals that may be required before it can execute and perform this Agreement, including approvals required by any loan documents, bond authorization, corporate articles and bylaws, Metro charter or state statute, regulation or court order, and that the persons executing this Agreement on its behalf have been duly authorized and are empowered to bind it to this Agreement, that the execution of this Agreement, and the performance by it of the actions anticipated by this Agreement neither breaches any contract with any third party, or constitutes any event, which, with the passage of time, or the giving of notice, or both, will breach any contract with any third party, and that this Agreement executed by it are or when fully delivered will be duly authorized, executed and delivered by it and will be valid, binding and enforceable obligations of it.
- B. TE represents and warrants that Products and/or Services, or any media upon which the Products and/or Services are stored, do not have, nor shall TE or its Agents otherwise introduce into METRO's systems, network, or infrastructure, any type of software routines or element which is designed to or capable of unauthorized access to or intrusion upon, disabling, deactivating, deleting, or otherwise damaging or interfering with any system, equipment, software, data, or the METRO network. In the event of a breach of this representation and warranty, TE shall compensate METRO for any and all harm, injury, damages, costs, and expenses incurred by METRO resulting from the breach.

For TE-managed systems, TE shall install and maintain ICSA Labs certified or AV-Test approved Antivirus Software and, to the extent possible, use real time protection features. TE shall maintain the Anti-virus Software in accordance with the Antivirus Software provider's recommended practices.

8.8. Copyright, Trademark, Service Mark, or Patent Infringement

- A. TE shall, at its own expense, be entitled to and shall have the duty to defend any suit that may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a Copyright, Trademark, Service Mark, or Patent. TE shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide TE immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable TE to do so. No costs or expenses shall be incurred for the account of TE without its written consent. METRO reserves the right to participate in the defense of any such action. TE shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing TE's obligation to satisfy the final award, TE may at its option and expense:

1. procure for METRO the right to continue using the products or services;
 2. replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing; and
 4. remove the products or discontinue the services and cancel any future charges pertaining thereto, provided, however, that TE will not exercise the Remove option above until TE and METRO have determined that the Procure and/or Replace options are impractical. TE shall have no liability to METRO; however, if any such infringement or claim thereof is based upon or arises out of:
 - i. the use of the products or services in combination with apparatus or devices not supplied or else approved by TE;
 - ii. the use of the products or services in a manner for which the products or services were neither designated nor contemplated; or
 - iii. the claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.
- B. TE shall require in its contracts with persons holding or promoting events at the Premises that such persons shall obtain all necessary approvals for or arising from the use of patented and/or copyrighted materials, equipment, devices, processes, or dramatic rights used on or incorporated in the conduct of any events which TE books at the Premises. TE shall indemnify and hold Metro and the Fair Board harmless from any breach of patent or copyright rights or patent or copyright infringements or violations of patent or copyright laws.

8.9. Maintenance of Records and Audits

- A. TE shall provide to Fair Board monthly statements detailing revenues received in connection with the exercise of its rights under this Agreement for which Fair Board is to receive a portion of the revenues therefrom. TE shall keep and preserve for at least three (3) years sufficient records to perform an audit of such revenues and expenses for such period.
- B. Fair Board shall provide to TE monthly statements detailing revenues received in connection with its performance of any activity for which TE is to receive a portion of the revenues therefrom. Fair Board shall keep and preserve for at least three (3) years sufficient records to perform an audit of such revenues and expenses for such period related to those activities.
- C. Records created and maintained by TE in connection with the services under this Agreement shall be provided without delay at Fair Board's reasonable request.
- D. TE shall maintain documentation for all charges in relation to this Agreement. The books, records, and documents of TE, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit,

at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Agreement.

- E. All documents and supporting materials related in any manner whatsoever to this Agreement or any designated portion thereof, which are in the possession of TE or any subcontractor or subconsultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the procurement and/or performance of this Agreement. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of TE and subcontractors.

8.10. Monitoring

- A. TE's activities conducted and records maintained pursuant to this Agreement shall be subject to monitoring and evaluation by the Fair Board, METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.
- B. METRO shall have the option of reviewing and performing a security assessment of the information security management practices of TE. METRO shall have the right, at its expense, during normal business hours and with reasonable advance notice, to evaluate, test, and review TE's products and services compliance with the terms and conditions of this Agreement. METRO shall have the right to conduct such audits by use of its own employees and internal audit staff, or by use of outside consultants and auditors.

8.11. METRO Property

Any METRO property, including but not limited to books, records, and equipment that is in TE's possession shall be maintained by TE in good condition and repair, and shall be returned to METRO by TE upon termination of this Agreement. All goods, documents, records, trademarks and copyrighted materials, and other work product and property produced during the performance of this Agreement are deemed to be METRO property. METRO property includes, but is not limited to, all documents which make up this Agreement; all other documents furnished by METRO; all conceptual drawings, design documents, closeout documents, and other submittals by TE; and, all other original works of authorship, whether created by METRO or TE embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two (2) dimensional works, and three (3) dimensional works.

Contracts involving sensitive information, TE may keep one (1) copy of the aforementioned documents upon completion of this Agreement; provided, however, that in no event shall TE use, or permit to be used, any portion of the documents on other projects without METRO's prior written authorization. TE shall maintain sensitive information securely and if required by METRO, provide secured destruction of said information. Distribution and/or reproduction of METRO sensitive information outside of the intended and approved use are strictly prohibited unless permission in writing is first received from the METRO Chief Information Security Officer. The storage of METRO sensitive information to third-party hosted network storage areas, such as Microsoft Skydrive, Google Docs, Dropbox, or other cloud storage mechanisms, shall not be allowed without first receiving permission

in writing from the METRO Chief Information Security Officer.

8.12. Modification of Agreement

This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

8.13. Partnership/Joint Venture

This Agreement shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No Party shall become liable for any representation, act, or omission of any other Party contrary to the terms of this Contract.

8.14. Waiver

No waiver of any provision of this Agreement shall affect the right of any Party to enforce such provision or to exercise any right or remedy available to it.

8.15. Employment

TE shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

TE shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this Contract.

Violation of either of these Agreement provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

8.16. Compliance with Laws

TE agrees to comply with all applicable federal, state and local laws, regulations, and policies/including those regulations and policies of the Fair Board.

8.17 Limitations on Legal Requirements

Notwithstanding anything to the contrary contained herein, TE acknowledges and agrees that the power and authority to adopt, rescind, or amend laws for the Metropolitan Government of Nashville and Davidson County resides with the Metropolitan Council and that nothing contained herein shall in any way obligate the Metropolitan Council to adopt, rescind, or amend applicable law, or subject Fair Board to any liability on account of the Metropolitan Council's failure to adopt, rescind or amend any applicable law.

8.18. Iran Divestment Act

In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., TE certifies that to the

best of its knowledge and belief, neither TE nor any of its subcontractors are on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a TE or subcontractors under METRO contracts/agreements.

8.19. Taxes and Licensure

TE shall have all applicable licenses and be current on its payment of all applicable gross receipt taxes and personal property taxes.

8.20. Ethical Standards

TE hereby represents that TE has not been retained or retained any persons to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractors under METRO contracts.

TE shall indemnify and hold harmless METRO, The Fair Board, its officers, agents, and employees from:

- A. any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of TE, its officers, employees, and/or agents, including its sub or independent TEs, in connection with the performance of the Agreement; and
- B. any claims, damages, penalties, costs, and attorney fees arising from any failure of TE, its officers, employees, and/or agents, including its sub or independent TEs, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws;

In any and all claims against METRO, The Fair Board, its officers, agents, or employees, by any employee of TE, any subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for TE or any subcontractor under workers' compensation acts, disability acts, or other employee benefit acts.

METRO will not indemnify, defend, or hold harmless in any fashion TE from any claims arising from any failure, regardless of any language in any attachment or other document that TE may provide.

TE shall pay METRO any expenses incurred as a result of TE's failure to fulfill any obligation in a professional and timely manner under this Agreement.

8.21. Indemnification, Hold Harmless, and Enforcement of the Agreement

TE shall indemnify and hold harmless METRO, its officers, agents and employees from: (a) Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of TE, its officers, employees, agents, licensees and invitees in connection with the performance of this

Agreement; and (b) Any claims, damages, penalties, costs and attorney fees arising from any failure of TE, its officers, employees, agents, licensees and invitees to observe applicable laws.

TE agrees that in the event either party takes legal action to enforce any provision of this Agreement or to obtain a remedy for any breach of this Agreement, and in the event METRO prevails in such action, TE shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.

Each party agrees to give the other party immediate notice in writing of any action or suit filed related in any way to this Agreement, and of any claim made against it by any entity which may result in litigation related in any way to this Agreement.

8.22. Assignment--Consent Required

The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Neither this Agreement nor any of the rights and obligations of TE hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO and The Fair Board. Any such assignment or transfer shall not release TE from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO TE UNDER THIS AGREEMENT MUST BE SENT TO THE ATTENTION OF:

**METRO'S CHIEF ACCOUNTANT
DIVISION OF ACCOUNTS
DEPARTMENT OF FINANCE
PO BOX 196300
NASHVILLE, TN 37219-6300**

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for METRO to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, METRO has the discretion to approve or deny a Funds Assignment Request.

8.23. Entire Agreement

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties. Each of the parties to this Agreement, however, without further consideration, shall execute and deliver such additional documents and shall take other actions as may be reasonably required in order to fully effectuate all of the terms and provision of this Agreement.

8.24. Force Majeure

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

8.25. Governing Law

The validity, construction, and effect of this Agreement and any and all extensions, modifications, or amendments thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that TE may provide.

8.26. Venue

Any action between the Parties arising from this Agreement shall be maintained in the courts of Davidson County, Tennessee.

8.27. Severability

Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.

8.28 Captions.

The headings and captions contained in this Agreement are for reference purposes only and shall not limit or extend the meaning or terms of any paragraph or section contained herein

8.29 Non-Liability of Agents and Employees.

No member, officer, agent, commissioner, or employee of the Fair Board or the Metropolitan Government may be charged personally or held contractually liable by or to TE under the terms or provisions of this Agreement or because of any breach.

8.30 Notice.

Any notice or request which may or shall be given under the terms of this Agreement shall be in writing and shall be delivered by hand or overnight delivery by a recognized national carrier to the following: As of the effective date, the addresses for the parties are as follows:

Notices to Metro shall be sent to:

Metropolitan Board of Fair Commissioners
Attn: Laura Womack
PO Box 40208
Nashville, TN 37204

Notices to TE shall be sent to:

Track Enterprises
Attn: Bob Sargent
PO Box 79
Macon, IL 62544

Notice shall be deemed given when delivered. Such addresses may be changed from time to time by either party giving notice as provided above.

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DRAFT

IN WITNESS THEREOF, the parties have executed their signatures as of the date first above written.

LICENSOR:
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY,
TENNESSEE BY AND THROUGH
THE BOARD OF FAIR COMMISSIONERS

LICENSEE:

Licensee: _____

By: _____

Title: _____

Executive Director

APPROVED AS TO AVAILABILITY
OF FUNDS:

Kelly Flannery
Director of Finance

APPROVED AS TO INSURANCE
REQUIREMENTS:

Director of Insurance

APPROVED AS TO FORM AND
LEGALITY:

Metropolitan Attorney

Filed with the Metropolitan Clerk: _____

Metropolitan Clerk

Exhibit A - Premise Boundary

