

**THIS LICENSE**, made as of \_\_\_\_\_, 2019 between and among the City of New York (the "**City**"), a municipal corporation of the State of New York, acting by and through the New York City Department of Small Business Services ("**DSBS**"), and The New York City Economic Development Corporation ("**NYCEDC**"), a New York not-for-profit corporation.

**WITNESSETH**

**WHEREAS**, DSBS is responsible for waterfront property, and has jurisdiction over City-owned property known as the South Street Seaport located along the East River in lower Manhattan, New York;

**WHEREAS**, the City desires to encourage the participation of interested organizations in providing supplemental services, including encouraging public programming within the South Street Seaport, particularly an area consisting of the demapped streets, which include sections of Fulton Street, Water Street, Front Street generally bounded by South Street, John Street, Water Street, Pearl Street and Beekman Street as shown on Exhibit A (the "**Former Streets**");

**WHEREAS**, NYCEDC, performs economic development services on behalf of the City, in accordance with the Maritime Contract between the City and NYCEDC dated on or about June 30, 2018, as amended (the "**Maritime Contract**") and the Master Contract between the City and NYCEDC dated on or about June 30, 2018, as amended (the "**Master Contract**", collectively the Maritime Contract and the Master Contract are referred to as the "**City Contracts**"), including management, improvement and maintenance of public space within the City of New York such as the South Street Seaport;

**WHEREAS**, in accordance with the Maritime Contract, and in further fulfilling its management responsibilities for the South Street Seaport, NYCEDC acts as lease administrator for two long-term leases between the City and (i) the South Street Seaport Museum (the "**Museum Lease**") and (ii) South Street Seaport Limited Partnership ("**Marketplace Lease**");

**WHEREAS**, NYCEDC desires to assist the City with respect to activating the use of the Former Streets for the public benefit, and the City desires that NYCEDC activate the use of the Former Streets;

**WHEREAS**, NYCEDC has relationships with local businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the Former Streets; and

**WHEREAS**, the Franchise and Concession Review Committee authorized DSBS to enter into a License Agreement with NYCEDC, to provide for the operation and management of events and activities at the Former Streets as specifically set forth in this License, including through sponsorships, public programs, permits and subconcession(s).

**NOW THEREFORE**, in consideration of the mutual covenants herein, the parties agree as follows:

## 1. SCOPE OF LICENSE

A. The City hereby grants to NYCEDC and NYCEDC hereby accepts from the City this non-exclusive License to operate and manage subconcessions, activities and events on the Former Streets, as specifically set forth in this License. NYCEDC may grant a permit or sublicense (“**Permit**”) for an Event (defined below in Section 3) which may occur for up to and including seven (7) days and subconcession (“**Subconcession**”) for an Event which will occur for longer than seven (7) days, to reputable organizations and entities (“**Permittee**” or “**Subconcessionaire**”, respectively, and collectively “**Permitted Users**”) for Permitted Uses (defined below in Section 3) on the Former Streets.

B. As more particularly set forth in this License, NYCEDC shall be permitted to:

- (1) manage and operate Subconcession(s) for Events pursuant to Sections 6 and 7 herein, subject to DSBS’s prior written approval; and
- (2) hold or grant Permit(s) for Events pursuant to Sections 6 and 8 herein.

C. Any revenue and/or fees received by NYCEDC from any Subconcession, Permit, activity or event on the Former Streets shall be used as more fully provided in Section 5 below.

D. NYCEDC shall, or shall require its Permitted Users to obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary for the operation and management of the Former Streets. Whenever any act, consent, approval or permission is required of the City or DSBS under this License, the same shall be valid only if it is, in each instance, in writing and signed by the DSBS Commissioner or DSBS Commissioner’s duly authorized representative, and such approval or permission shall not be unreasonably delayed. No variance, alteration, amendment, or modification of this License shall be valid or binding upon the City or DSBS, unless the same is, in each instance, in writing and duly signed by the DSBS Commissioner or DSBS Commissioner’s duly authorized representative.

E. It is expressly understood that no land, building, space, improvement, or equipment is leased to NYCEDC, but that during the term of this License, NYCEDC and its Permitted Users shall have the non-exclusive use of the Former Streets for the purposes herein provided. Except as herein provided, NYCEDC and its Permitted Users have the right to occupy and operate the Former Streets only so long as each and every term and condition in this License is properly complied with and so long as this License is not terminated by DSBS in accordance herewith.

## 2. TERM

A. The term of this License (“**Term**”) shall be one year, commencing upon written Notice to Proceed (“**Commencement Date**”). This License may be renewed for up to four additional one-year terms, to be exercised at the sole discretion of DSBS subject to termination and revocation as hereinafter provided.

B. Notwithstanding any other termination provision of this License, this License is terminable at will any time by DSBS upon twenty-five (25) days written notice to NYCEDC.

### **3. PERMITTED USES**

A. NYCEDC and its Permitted Users, may access and use the Former Streets in order to conduct, implement, effectuate and participate in events and activities on the Former Streets meant to activate the South Street Seaport, engage the public; and provide recreational, cultural and educational events, activities, and other public programming for the benefit of the public, along with revenue generating events, film shoots, and the sale of food, drink and other products from carts, stands and otherwise at designated location(s) (each an “**Event**” and collectively “**Events**” or “**Permitted Uses**”).

B. NYCEDC acknowledges that its use of the Former Streets is nonexclusive.

C. NYCEDC shall require its Permitted Users to perform the following after each Event:

(a) Dirt, litter and obstructions arising from or related to the Event shall be removed, and trash and leaves collected and removed so as to maintain the Former Streets.

(b) All walkways, sidewalks and all other amenities and facilities in the area of the Event shall be routinely cleaned.

(c) Any umbrellas, carts, stands, amenity locations, moveable tables and chairs shall be maintained.

(d) All Event facilities, structures, equipment, and subconcession structures, shall be attractive and clean.

D. The public shall have access to the Former Streets at all times.

### **4. NYCEDC’s RESPONSIBILITIES**

A. NYCEDC must require its Permitted Users to comply with all recycling regulations and to obtain any and all additional permits required by law.

B. NYCEDC shall not allow its employees, agents, contractors and Permitted Users to emit loud noise, smoke, vapor or offensive odor from the Former Streets.

C. Advertising (other than in a form identifying NYCEDC and NYCEDC projects with approval from DSBS) is strictly prohibited. Sponsor recognition may be permitted subject to DSBS approval; provided however, that there shall be no advertisements, sponsorships or branding that promotes alcohol-use permitted on the Former Streets.

D. DSBS makes no representations regarding the adequacy or availability of electric, water or other utilities currently in place at the Former Streets, or that any entity can or will make such services available. NYCEDC shall provide or cause its Permitted Users to provide at its or their sole cost and expense all lighting, electrical and water connections and other utility services at the Former Streets necessary for the conduct of any Event. NYCEDC shall cause the Permitted Users to pay all charges for sewer, water, gas, heat, electricity, cable, broadband, and telephone used by their employees, agents, and contractors at the Former Streets and shall procure at NYCEDC's and/or the Permitted Users own cost and expense all meters, permits, approvals and licenses necessary to effectuate the requirements of this Section. NYCEDC shall be responsible for the installation of all necessary water, gas, heat, electricity, cable, broadband, and telephone connections. NYCEDC shall not accept any money, commission, premium, bonus or other consideration from any person for the use or sale of utility services, except to the extent of reimbursement of costs incurred by NYCEDC or the City for utility services used in connection with this License, an Event or a Subconcession. NYCEDC shall not tap into the City's electricity without prior DSBS written approval. If generators are used, NYCEDC shall provide whatever is necessary under Federal, State, and City laws, rules, regulations, and orders for the lawful operation of its generators. In the event of a drought, NYCEDC shall comply with all City directives and restrictions.

E. NYCEDC shall prepare and provide to DSBS reports of any accidents or other incidents, if known, occurring during an Event at the Former Streets, on a regular basis and in a format reasonably acceptable to DSBS.

(1) NYCEDC and its Permitted Users shall promptly notify DSBS, in writing, of any claim for injury, death, property damage or theft which may be asserted against NYCEDC or its Permitted Users with respect to the Former Streets and the Subconcession(s) or Events.

(2) NYCEDC and its Permitted Users shall promptly notify DSBS, in writing, of any unusual conditions that may develop in the course of the operation of a Subconcession or Event, such as, but not limited to, fire, flood, casualty and substantial damage of any kind and NYCEDC shall also notify DSBS to the extent it is aware of any such unusual conditions.

(3) NYCEDC shall, with respect to the operation and management of this License designate a person to handle all claims for loss or damage including all insured claims for loss or damages. NYCEDC shall require its Permitted Users, with respect to the operation and management of a Subconcession(s) or Event, to designate a person to handle all claims for loss or damage including all insured claims for loss or damages. NYCEDC shall provide DSBS with the name, telephone number and address of each such person, within thirty (30) days of the date of this License, or Subconcession or Event and any agreement(s).

F. NYCEDC shall periodically inspect the Former Streets for hazardous conditions and shall, without delay upon learning of the condition, report and, to the extent required by the City Contracts, NYCEDC shall cause to be repaired any portion or feature of the Former Streets

for which NYCEDC has repair responsibility under this License that exhibits defects or hazardous conditions, and shall immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers. With respect to any portion or feature of the Former Streets for which NYCEDC does not have repair responsibility, NYCEDC shall, without delay upon learning of the condition, report the need for repairs to the party responsible for such repairs and immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers.

## **5. REVENUE & CONCESSION FEES**

A. NYCEDC shall account for all Revenue (defined below) collected in connection with or resulting from the rights and privileges granted to NYCEDC under this License in a manner that is acceptable to DSBS and the City's Office of Management and Budget ("**OMB**") in their reasonable discretion, and that is in accordance with all requirements of Article 8 of the Maritime Contract. Such Revenues shall include any funds collected in connection with the use of the Former Streets, not limited to the following:

1. any funds collected under a Subconcession agreement;
2. any funds collected for Events;
3. any funds collected for sponsorships; and
4. any funds collected from third-parties in connection with the Former Streets,  
(collectively referred to herein as "**Revenue**").

B. NYCEDC shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this License.

C. On or before August 1<sup>st</sup> of each year the License is in effect, and in August following the expiration or termination of this License, NYCEDC shall submit to DSBS for review and approval its annual Revenue report relating to the operation and management of the Former Streets for the immediately preceding fiscal year. For accounting purposes, the fiscal year shall run from July 1<sup>st</sup> to June 30<sup>th</sup>.

D. The annual fee for this License shall be five percent (5%) of NYCEDC's Revenues ("**Concession Fee**"). The Concession Fee shall be due annually on the 1<sup>st</sup> of November.

E. NYCEDC may use Revenue to expend for non-capital ordinary and necessary expenses directly attributable to this License, including reasonable administrative costs and operating expenses for programming, operating and managing the Former Streets or as otherwise approved in writing by DSBS. Any such use of Revenue shall be accounted for in a manner that is acceptable to DSBS and OMB in their reasonable discretion, and that is in accordance with all requirements of Article 8 entitled "Records; Audit; Reports" of the Maritime Contract.

F. NYCEDC shall provide to DSBS biannually, a schedule of the Events, Permits and Subconcessions that have occurred within the past six (6) months and that are scheduled to occur

in the next six (6) months. Such schedule shall include the following information: (i) identity of each Permitted User, (ii) scope of each Event, (iii) location of each Event or Subconcession, (iv) commencement and expiration dates, (v) charges, (vi) copies of each Permit, license or Subconcession agreement, and (vii) such other information as DSBS may reasonably request.

## 6. SUBCONCESSION(S) AND PERMIT(S)

A. Subconcessions. NYCEDC may enter into Subconcessions for Events in the Former Streets. Subconcessions shall be granted following a Request for Proposals (“**RFP**”), which shall be solicited by public advertisement in at least 10 successive issues of The City Record. The text of such RFP shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication.

B. DSBS Prior Approval. Subconcessions will be subject to DSBS’s prior written approval, which must be requested at least thirty (30) days prior to the commencement of the Subconcession, unless otherwise permitted by DSBS, in its sole discretion

C. Permits. NYCEDC may issue Permits for Events on the Former Streets.

D. Subject to Prior Agreements. Subconcessions and Permits shall be subject to the terms and conditions of this License, the Museum Lease and the Marketplace Lease. All Subconcessions and Permits issued by NYCEDC shall require the Permitted User(s) to acknowledge receipt of a copy of this License and that it is bound by same.

E. Qualified Person. All Permitted Users must be a Qualified Person (as defined below). NYCEDC shall ensure that the Subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor’s Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that Subconcessionaire during the immediately preceding twelve-month period equals or exceeds \$100,000.

A “**Qualified Person**” shall be a person or entity that: (i) is not in default beyond any applicable notice, if required and upon expiration of any applicable grace period, if any, under any written agreement with the City or the NYCEDC; and/ or (ii) has not been convicted in a criminal proceeding for a felony or any crime involving moral turpitude; and/or (iii) if and as determined by the City in its reasonable discretion, is not an organized crime figure or has substantial business or other affiliations with an organized crime figure; and/or (iv) is not in default in the payment to City of real estate taxes, sewer rents or water charges after notice; and/or (v) in the five (5) year period preceding the date of such Person’s proposed Subconcession has not owned any property which, while in such ownership, was acquired by City by in rem tax foreclosure.

F. NYCEDC shall require Permitted Users to obtain all licenses and permits that may be required to operate the Event in accordance with all applicable rules, laws and regulations.

G. On or before the thirtieth (30th) day following the end of each fiscal year, NYCEDC shall require that its Subconcessionaire(s) submit a statement of revenue reporting all revenue received by Subconcessionaire(s) at the Former Streets during the preceding twelve (12) month period.

(1) NYCEDC shall also require that its Subconcessionaire(s) submit a report of all revenue for the period since the prior 12-month report on or before the thirtieth (30th) day following the termination of this License or the Subconcession agreement(s), or June 30th, whichever is sooner. The obligation to submit a final report of revenue shall survive the termination of this License or the Subconcession agreement(s). The statement of revenue reports submitted to NYCEDC by its Subconcessionaire(s) shall be provided to DSBS.

(2) NYCEDC shall require its Subconcessionaires(s) indicate on its statement of revenue whether or not these amounts are inclusive of sales tax collected.

(3) NYCEDC shall require in the Subconcession agreement(s) that revenue shall include without limitation all funds received by Subconcessionaires(s) in connection with its operations on the Former Streets, without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Subconcession(s), provided that revenue shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by Subconcessionaires(s) as against its sales. All sales made or services rendered by the Subconcessionaires(s) from the Subconcessions shall be construed as made and completed therein even though payment therefor may be made at some other place. In addition to any revenue generated in the form of monetary receipts, revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the Subconcessionaires(s) may receive in connection with its operations at the Former Streets.

(4) Revenue shall include sales made for cash or credit (credit sales shall be included in revenue as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the intention and agreement of the parties that all sums due to be received by Subconcessionaire(s) from all sources from the operation of the Subconcession(s) shall be included in revenue.

H. NYCEDC shall require its Permitted User if it is selling food to the public, to operate in such a manner as to maintain the highest New York City Department of Health and Mental Hygiene (“DOHMH”) inspection rating.

(1) NYCEDC shall require its Permitted User(s), if it is selling food to the public, to obtain any and all approvals and other permits required by Federal, State and City

laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by the Permitted User(s) to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

(2) NYCEDC shall prohibit its Permitted Users from using any polystyrene packing or food containers pursuant to Local Law 142 of 2013.

I. NYCEDC shall require that its Permitted User in operating the Event maintain the noise level of all events and activities at an appropriate and lawful level to prevent an unreasonable nuisance to neighbors living and working near the Former Streets.

(1) NYCEDC shall require that its Permitted User at its sole cost and expense, obtain sound permits and provide any lighting, which it determines may be necessary to operate the Event.

(2) As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

J. NYCEDC shall require that its Permitted Users provide access to Events to people with disabilities as required by law. This accessibility shall be clearly indicated by signs.

K. The City shall own ~~any copyrights, trademarks, logos and brands developed in association with the management and operation of the Events that include the name of the Former Streets or is directly associated with the Former Streets. However, the City shall not own:~~ all intellectual property rights in any names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that have been or will be developed by the City ("City IP"). In no way does this License convey to EDC, or any Permitted Users, any rights in or to the City IP.

~~(1) — any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or~~

~~(2) — a restaurant identifier or trade name that is not otherwise associated with the Former Streets.—~~

L. NYCEDC shall pay for, or cause Permitted Users to pay any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during its Events.

M. Any sign posted by NYCEDC or a Permitted User at the Former Streets in connection with an Event, shall be appropriately located, and shall state that the Former Streets is a New York City municipal concession operated by NYCEDC.

N. Smoking of cigarettes or any other tobacco product is strictly prohibited at the Former Streets in accordance with Local Law 11 of 2011. Using electronic cigarettes is also prohibited at the Former Streets in accordance with Local Law 152 of 2013. Using non-tobacco smoking products is also prohibited at the Former Streets in accordance with Local Law 187 of 2017.

(1) The sale of cigarettes, cigars, or any tobacco product is strictly prohibited at the Former Streets. Additionally, the sale of electronic cigarettes and non-tobacco smoking products are strictly prohibited on the Former Streets.

O. No trucks or storage containers may be stationed within the Former Streets. Additionally, NYCEDC shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind (excluding fuel for generators).

P. NYCEDC shall require its Permitted Users to maintain trash receptacles and separate receptacles for recyclable materials and comply with all recycling regulations at its sole cost and expense, arrange for the removal, by a duly licensed private carter, of all refuse relating to the Events, including but not limited to trash, boxes and trade waste.

Q. NYCEDC shall require its Permitted Users and any of their contractors, subcontractors and agents, and NYCEDC's contractors, subcontractors and agents that perform operations involving the Former Streets to obtain insurance coverage in accordance with the terms and conditions set forth in Section 11 herein

R. NYCEDC shall require its Permitted Users and any of their contractors, subcontractors and agents, and NYCEDC's contractors, subcontractors and agents to defend, indemnify and hold the City and NYCEDC, and their officials and employees harmless as set forth herein.

S. NYCEDC shall and shall require its Permitted Users to take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, contractors, and subcontractors while they are involved in the operations under this Agreement. Permitted User shall take all reasonable precautions to protect the persons and property of NYCEDC, the City or others from damage, loss, injury resulting from any and all operations under this Agreement.

T. Subconcessions may not be assigned nor any portion of the Former Street sub-subconcessed or subpermitted without the prior written approval of DSBS.

## **7. MANAGEMENT AND OPERATION OF THE SUBCONCESSION(S)**

A. NYCEDC shall provide for the operation and management of the Subconcession(s) through Subconcession agreement(s) and require its Subconcessionaire(s), at

the Subconcessionaire(s)' sole cost and expense, to operate the Subconcession(s) in such manner as provided herein and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction thereof. NYCEDC and its Subconcessionaire(s) shall accept the Former Streets in its "as-is" condition. NYCEDC shall require that its Subconcessionaire(s) provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies to operate Events on the Former Streets.

B. NYCEDC shall require its Subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for NYCEDC's approval. DSBS reserves the right to review and approve such hours of operation, menu (if applicable), and price list at its discretion.

C. NYCEDC shall or shall require its Subconcessionaire(s), at the Subconcessionaire(s)'s sole cost and expense, to obtain all licenses and permits that may be required to operate the Subconcession(s) in accordance with applicable rules, laws and regulations.

D. NYCEDC shall require its Subconcessionaire(s), at their sole cost and expense, to print, frame, and prominently display the current approved schedule of operating days, hours and prices.

E. NYCEDC shall require that its Subconcessionaire(s) employ an operations manager ("**Manager**") with appropriate qualifications to manage operations at the Subconcession(s) in a manner that is reasonably satisfactory to DSBS. The Manager must be available by telephone during all hours of operation, and NYCEDC shall continuously notify DSBS of a 24-hour cellular telephone number through which DSBS may contact the Manager in the event of an emergency. NYCEDC shall require that its Subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DSBS.

F. NYCEDC shall require that its Subconcessionaire(s), at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (1) Maintain the Subconcession(s) in accordance with this License;
- (2) Conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and
- (3) Secure the Subconcession(s).

G. Installation of additional fixed lighting or fixed sound equipment by either NYCEDC or its Subconcessionaire(s) on the Former Streets shall require the prior written approval of DSBS.

H. NYCEDC shall require its Subconcessionaire(s), at its sole cost and expense, to provide a twenty-four (24) hour per day security system at the Subconcession(s), if appropriate,

which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both. NYCEDC shall require that its Subconcessionaire(s) be responsible for securing the Subconcession(s) and any other equipment used immediately upon closing each day in a manner reasonably approved by DSBS.

I. DSBS shall have the right to reasonably approve the days and times on which deliveries to NYCEDC's Subconcessionaire(s) may be made.

J. It is expressly understood that if NYCEDC or its Subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be NYCEDC's or its Subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DSBS's prior written approval.

K. NYCEDC may permit its Subconcessionaire(s) to sell alcohol only with the appropriate license from the State Liquor Authority ("SLA"), and subject to all legal requirements, liquor license from SLA and Insurance requirements. Alcohol shall be served in recyclable cups and be consumed only within the boundaries of the Former Streets, as permitted by the SLA.

L. (1) NYCEDC, may, or may cause its Subconcessionaire(s) at its sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DSBS's prior written approval. NYCEDC shall not apply any Revenue to any such design, fabrication, construction, and installation of any Subconcession(s) and/or subconcession structure, without DSBS's prior written approval.

(2) NYCEDC shall cause its Subconcessionaire(s) to remove such items after the expiration or termination of each Event and restore the Former Streets to its original state.

(3) NYCEDC shall cause Subconcessionaire(s) to use its best efforts to minimize the extent to which the public use of the Former Streets is disrupted in connection with activities at the Former Streets.

## **8. EVENTS AND PERMITS**

A. The Former Streets may be used for short-term, no longer than seven days, Event(s), subject to the terms and conditions set forth herein: (i) event or activity that promotes, advertises or introduces a product, corporation, company or other entity or the goods or services of a corporation, company or other commercial entity to the general public, (ii) an event that is sponsored by a not-for-profit organization ~~that is open to the public, may offer free services or information to the community, and does not have a fundraising component or include the sale of goods or services~~, and (iii) artistic/cultural performances, classes, or educational gatherings.

B. NYCEDC and/or its Permittee may hold Events at the Former Streets subject to:

- (1) obtaining any necessary City authorization, approvals, permits, and compliance with other processes that may be necessary; and
- (2) all federal, state and local laws, rules, and regulations applicable to the Former Streets.

C. The City may use the Former Streets for special events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. If DSBS or any other agency of the City intends to utilize the Former Streets for any event, it shall coordinate such use with NYCEDC and shall use reasonable efforts to provide NYCEDC with thirty (30) days prior written notice of such event.

D. NYCEDC shall collect a fee from the Permittee, sponsor or holder for any commercial/promotional events (an Event that promotes, advertises or introduces a product, corporation, company or other commercial entity or the goods or services of a corporation, company or other commercial entity to the general public) held at the Former Streets, which fees shall be included as part of NYCEDC's Revenue pursuant to Section 5 of this License. NYCEDC shall charge all Permittees using the Former Streets a fee for such use, unless such entity is a not for profit corporation or a governmental entity and NYCEDC determines in its reasonable discretion that such Permittee is providing a public service and such Event is open to the public at no charge. A schedule of fees will be provided to DSBS for its reasonable approval which schedule may be amended from time to time upon mutual consent of the parties.

## **9. SPONSORSHIPS**

Subject to DSBS approval, NYCEDC may accept sponsorships solely for the benefit of the City and the Former Streets. However, under no circumstances are tobacco, e-cigarette, non-tobacco smoking products, or alcohol sponsorships permitted. Such sponsorships shall be considered Revenue.

## **10. INSPECTION AND AUDIT OF RECORDS**

A. NYCEDC agrees that it shall comply with all of the provisions set forth in this Section, and with respect to the operations of the Permitted Users it shall incorporate such provisions, appropriately modified to apply to the Permitted Users, into any agreement(s).

B. NYCEDC shall establish and maintain accurate records and accounts, in a manner satisfactory to DSBS, which sufficiently and properly reflect all Revenue and direct and indirect costs of any nature resulting from NYCEDC's operations and management of Events pursuant to this License, and set forth, in a manner satisfactory to DSBS, its expenditures in any way connected to the Subconcessions or Sublicenses and Permits under this License. Such records and accounts shall conform to generally accepted accounting principles.

C. NYCEDC shall require its Permitted User(s) to retain all books, records, documents and other evidence relevant to this License for six (6) years after the expiration or termination of this License. City, State and federal auditors shall have full access to and the right to examine any of said materials during this period. In addition, if any litigation, claim, or audit

concerning this License has commenced before the expiration of such six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim or audit. Any books, records, documents or other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, NYCEDC shall require its Permitted User(s) to agree to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

D. Notwithstanding anything else to the contrary contained in this License, the parties acknowledge and agree that the powers, duties and obligations of the Comptroller, pursuant to the provisions of the New York City Charter, shall not be diminished, compromised or abridged in any way.

E. This Section shall survive the expiration or earlier termination of this License.

## **11. INSURANCE**

A. Upon written Notice to Proceed through the date of expiration or termination of this License:

- (1) NYCEDC shall comply with the insurance obligations imposed herein; and
- (2) NYCEDC shall require the Permitted User(s) to ensure that the types of insurance indicated in Exhibit C hereto are obtained and maintained in force, and that such insurance adheres to all requirements therein. Permitted Users may only use the Former Streets for Events during the period that all of the insurance coverages required by this License are in full force and effect.

B. NYCEDC shall require its Permitted Users and any of Permitted Users’ contractors, subcontractors and agents, and NYCEDC’s contractors, subcontractors and agents that perform operations and/or otherwise participate or support Events involving the Former Streets to obtain insurance coverage in accordance with the terms and conditions set forth on Exhibit C.

## **12. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION**

### **A. NYCEDC Responsibilities**

(1) NYCEDC shall require the Permitted Users pursuant to their Subconcessions or Permits to take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, subconcessionaire(s), contractors, and subcontractors while they are involved in the operations under this License.

(2) NYCEDC shall require the Permitted Users pursuant to the Subconcession or Permit to take all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

(3) NYCEDC shall require the Permitted Users pursuant to the Subconcession or Permit to use the Former Streets in compliance with, and shall not cause or permit the Former Streets to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the NYCEDC or the Former Streets (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, NYCEDC shall not cause or permit, or allow any of the NYCEDC’s personnel and or Permitted User personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Former Streets. As used herein, “Hazardous Materials” means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

### **B. NYCEDC’s Obligation Regarding Indemnification**

(1) Notwithstanding any other provisions of this License, the maximum amount for which the NYCEDC is liable per policy year for personal injury, third party bodily injury (including death) and property damage caused by the NYCEDC’s operations under this License shall not exceed the greater of (i) Commercial General Liability limits required in Exhibit C, or (ii) the limits provided to NYCEDC under all primary, excess and umbrella policies covering operations under this License as required in Exhibit C (“Limitation of Liability”). The Limitation of Liability shall not apply to NYCEDC’s contractors, subcontractors or agents or Permitted User(s) or any of Permitted User(s)’s contractors, subcontractors or agents.

(2) Subject to the Limitation of Liability but notwithstanding any other provisions of this License, NYCEDC shall require the Permitted Users pursuant to the Subconcession or Permit to indemnify, defend and hold harmless the City and NYCEDC and their officials, officers, members, agents, and employees as set forth below.

C. Permitted Users(s) Indemnity Obligation. NYCEDC shall set forth in each Subconcession and Permit, or other agreement the requirement that to the fullest extent permitted by law:

(1) the Permitted User shall forever defend, indemnify and hold harmless the City and NYCEDC, and their respective members, directors, officials, officers, agents, representatives and employees (individually, an “**Indemnitee**” and collectively, the “**Indemnitees**”) from and against any and all liabilities, claims, demands, penalties, fines, liens, settlements, judgments, damages, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise (including, without limitation, attorneys' fees, court costs, and disbursements) arising out of, in whole or in part, the applicable Permit or Subconcession, the Event(s), Permitted User’s use of the Former Streets or any part thereof, or any act(s) or omission(s) of such Permitted Users, or of any of their employees, officers, officials, guests, invitees, volunteers, contractors, subcontractors, representatives or agents occurring on the Former Streets or in connection with the applicable Permit or Subconcession agreement;

(2) a Permitted User(s)’s obligation to defend, indemnify and hold the Indemnitees harmless shall not be (i) limited in any way by the Permitted User(s)’s obligations to obtain and maintain insurance under the applicable Subconcession or Permit, nor (ii) adversely affected by any failure on the part of the Indemnitees to avail themselves of the benefits of such insurance; and

(3) insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by Permitted User(s), the Indemnitees shall be partially indemnified by Permitted User(s) to the fullest extent permitted by law.

D. The provisions of this Section 12 shall survive the expiration or termination of this License and the applicable Permit or Subconcession agreement.

### **13. ASSIGNMENT**

~~A.~~—No assignment, sale, mortgage or transfer of any interest of this License by NYCEDC, in whole or in part, will be effective unless it is agreed to, in writing, by DSBS and signed by the DSBS Commissioner, or his/her designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to NYCEDC.

### **14. INTENTIONALLY OMITTED**

### **15. INTENTIONALLY OMITTED**

### **16. PERSONNEL**

A. All persons who are employed by NYCEDC and all NYCEDC’s Permitted User(s) and all of their subcontractor(s) (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this License and/or any Subconcession are neither employees of the City nor under contract with the City. NYCEDC and/or the Permitted User, as applicable, and not the City, is responsible for their work, direction, compensation, and personal conduct while NYCEDC and/or the Permitted User, as applicable, is engaged under this License and/or an applicable Subconcession. Nothing in this License, and no entity or person’s performance pursuant to or in connection with this License, (1)

shall create any relationship between the City and NYCEDC's employees, agents, Permitted User(s), or Permitted User(s) employees or agents subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of NYCEDC, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement), its Permitted User(s), or its Permitted User(s) employees or agents; or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of NYCEDC or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit), and (2) NYCEDC and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of NYCEDC, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of NYCEDC or any other entity. Except as specifically stated in this License nothing in the License and no performance pursuant to or in connection with the License shall impose any liability or duty on the City to any person or entity whatsoever.

B. NYCEDC shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. NYCEDC shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

## **17. INVESTIGATIONS CLAUSE**

A. The parties to this License, agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a Federal, State of New York ("State") or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, or license that is the subject of the investigation, audit or inquiry.

B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York or New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

(2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City; then

C. (1) DSBS or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(2) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subparagraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(2) The cancellation or termination of all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, with the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subparagraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:

(1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits, or licenses with the City.

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subparagraph D above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in subparagraph C (1) above gives notice and proves that such interest previously was acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

#### F. Definition of Terms

(1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

G. In addition to and notwithstanding any other provisions of this License, the

Commissioner or agency head may in his or her sole discretion terminate this License upon not less than three days written notice in the event NYCEDC fails promptly to report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License by NYCEDC, or affecting the performance of this contract.

## **18. NOTICES**

Except as otherwise stated in this License, all notices from NYCEDC to the City shall be in writing and delivered to the attention of the Deputy Commissioner, New York City Department of Small Business Services, One Liberty Plaza, 165 Broadway, New York, New York 10006, or such other address as DSBS may designate, with copies sent to DSBS's General Counsel at same address. All notices from DSBS to NYCEDC shall be dispatched in the same manner, and delivered to NYCEDC to the attention of Executive Vice President Asset Management Operations, One Liberty Plaza, 165 Broadway, New York, New York 10006 or such other address as NYCEDC may designate, with copies sent to NYCEDC's General Counsel at same address.

## **19. TERMINATION**

A. NYCEDC shall have the right to terminate this License upon twenty-five (25) days' prior written notice to the City.

B. The City shall have the right to terminate this License:

(1) Under any right to terminate as specified in any Section of this License.

(2) If DSBS determines that NYCEDC or any of its Permitted User(s) fail to comply with any of the terms and conditions of this License, including NYCEDC's or Permitted User(s)' failure to perform at the required standards set forth in Sections 1, 3, 6, 7, and 8 of this License.

(3) Upon the commencement of any proceeding under the Bankruptcy Act, by or against NYCEDC or its Permitted User(s), either voluntary or involuntary.

(4) Upon DSBS's determination that this License should be terminated without cause.

C. The City shall give NYCEDC written notice of any termination of the License specifying therein the applicable provisions of subsection B of this Section and the effective date thereof, which shall not be less than twenty-five (25) days from the date of receipt of written notice by NYCEDC.

D. With regard to paragraph B(2) of this Section, DSBS shall first give written notice to NYCEDC outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by NYCEDC within a reasonable time (if no time is specified), or in the time specified in DSBS's notice, either of which shall in no event be less than ten (10) days except in cases of emergency (as determined by DSBS), the failure to cure the deficiencies shall result in immediate termination of this License.

E. With regard to paragraph B(4) of this Section, DSBS shall provide written notice of such termination to NYCEDC, and this License shall terminate effective twenty-five (25) days from the date such notice is received by NYCEDC.

F. Upon expiration or sooner termination of this License by DSBS, all rights of NYCEDC herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the City, except as provided herein.

G. Upon such termination NYCEDC shall quit the Former Streets and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted and except to the extent as otherwise permitted or required by other agreements between the City and NYCEDC.

H. NYCEDC agrees that upon expiration, or sooner termination of this License, it shall immediately cease all operations under this License, and cause any Permitted User(s) to cease all operations pursuant to this License and shall vacate and cause any Permitted User(s) to vacate the Former Streets, without any further notice by the City and without resort to any judicial proceeding by the City.

I. NYCEDC shall, or shall cause its Permitted User(s), on or prior to the expiration or sooner termination of this License, remove all personal possessions from the Former Streets except to the extent as otherwise permitted or required by other agreements between the City and NYCEDC. Except to the extent as otherwise permitted or required by other agreements between the City and NYCEDC, NYCEDC acknowledges that any personal property remaining on the Former Streets after the expiration, or sooner termination of this License, is intended by NYCEDC to be abandoned. NYCEDC shall remain liable to the City for any damages, including the cost of removal or disposal of property, should NYCEDC and/or its Subconcessionaire(s) fail to remove all possessions from the Former Streets on or before the expiration or termination date. NYCEDC shall pay any damages promptly upon the City's demand.

J. Upon termination of this License, except to the extent otherwise permitted, NYCEDC shall, (i) turn over to DSBS or its designees all books, records, documents and materials specifically relating to this License; and (ii) submit, within ninety (90) days, a final statement and report relating to the License, which report shall be made by a certified public accountant or a licensed public accountant.

K. NYCEDC expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by DSBS sooner than the fixed term because the Former Streets is required for any

public purpose, or because the License was terminated or revoked for any reason as provided herein.

L. This License may be suspended for any reason with written notice from DSBS. Such suspension shall be immediately effective upon the mailing, e-mail or hand delivery thereof. In the event of such notice of suspension, NYCEDC and its Permitted User shall not operate.

M. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this License. In addition, nothing contained in this Section shall be deemed or imply or be construed to represent an exclusive enumeration of circumstances under which DSBS may terminate this License.

## **20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

A. NYCEDC shall faithfully perform and carry out the provisions of this License and cause its Permitted User(s), agents, employees, and invitees to perform and carry out the provisions of this License. NYCEDC shall comply with and shall cause its Permitted User(s) to comply with all federal, state, and local laws, rules, regulations, and DSBS specifications, standards, and policies applicable to the Former Streets and NYCEDC's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

B. NYCEDC shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Concession Rider set forth in Exhibit D.

C. Neither NYCEDC nor its Permitted Users shall unlawfully discriminate against any person because of actual or perceived age, religion, creed, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. NYCEDC shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

D. This License is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. NYCEDC shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this License. This includes providing safe and accessible opportunities for everyone. To the extent possible, NYCEDC is encouraged to exceed all applicable accessibility requirements for people with disabilities.

## 21. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. NYCEDC makes the following representations and warranties:

(1) NYCEDC is a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of New York, and has all requisite power and authority to execute, deliver and perform this License.

(2) This License has been duly authorized by all necessary corporate action on the part of NYCEDC has been duly executed and delivered by NYCEDC, and assuming due execution and delivery by DSBS, constitutes a legal, valid, binding and enforceable obligation of NYCEDC.

(3) The execution and delivery of this License, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under NYCEDC's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust or other License or instrument to which NYCEDC is bound, or, to the knowledge of NYCEDC, any order, rule or regulation of any court, governmental agency or body having jurisdiction over NYCEDC or any of its activities or properties.

(4) NYCEDC has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this License.

(5) NYCEDC represents and warrants that, with respect to securing or soliciting this License, NYCEDC is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). NYCEDC makes such representation and warranty to induce the City to enter into this License and the City relies upon such representation and warranty in the execution of this License. For any breach or violation of the representation and warranty set forth in this paragraph, the Commissioner shall have the right to annul this License without liability; and NYCEDC shall not make claim for, or be entitled to recover, any sum or sums due under this License. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by law or under this License.

B. NYCEDC covenants and agrees that for so long as this License is in effect it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

C. The City hereby represents and warrants that this License has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by NYCEDC, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

D. NYCEDC shall ensure that Permitted Users comply and cooperate in all respects with the requirements of this License.

## **22. CONFLICT OF INTEREST**

NYCEDC represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. NYCEDC further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

## **23. NO LEASE**

It is expressly understood that the City has title to the Former Streets and that no land, building, space, or equipment is leased to NYCEDC, but that during the term of this License, NYCEDC shall be allowed the use of the Former Streets only as herein provided.

## **24. INTENTIONALLY OMITTED**

## **25. RESERVATION OF RIGHTS AND INTERESTS**

A. The parties to this License will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License.

B. NYCEDC will conspicuously acknowledge the involvement of DSBS in any such statement or release. If DSBS finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Former Streets is incorrect or unacceptable, NYCEDC and DSBS agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

C. If NYCEDC publishes a work discussing any aspect of this License, NYCEDC will acknowledge therein the involvement, if any, of the City, when appropriate, and the City will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use such publication.

## **26. WAIVER OF JURY TRIAL**

NYCEDC hereby expressly waives all rights to trial by jury in any lawsuit or summary proceeding hereafter instituted by the City against NYCEDC or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this License with regard to any matter whatsoever in any way connected with this License. This provision relating

to the waiver of jury trial rights shall survive the expiration or termination of this License or any terms hereof.

## **27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE**

A. This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of NYCEDC and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against the City arising under this License or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License and intent, it is understood that:

(1) If the City initiates any action arising out of this License against NYCEDC in Federal Court or in New York State Court, service of process may be made on NYCEDC either by personal service upon an officer or authorized agent of NYCEDC, wherever NYCEDC may be found, or by registered mail addressed to NYCEDC at the address set forth in this License, or to such other address as NYCEDC may provide to DSBS or the City in writing; and

(2) With respect to any action arising out of this License between the City and NYCEDC in New York State Courts, NYCEDC expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of forum non conveniens, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County.

(3) With respect to any action arising out of this License between the City and NYCEDC in Federal Court located in New York City, NYCEDC expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City.

(4) If NYCEDC commences any action arising out of this License against the City in a court located other than in the County, City and State of New York, upon request of the City, NYCEDC shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, NYCEDC shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

B. All disputes arising out of this License shall be interpreted and decided in accordance with the laws of the State of New York.

## **28. CLAIMS AND ACTIONS THEREON**

A. No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License or arising out of this License or in any way connected

with this License unless NYCEDC shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against the City by NYCEDC upon any claims based upon this License unless such action shall be commenced (i) within six months of the termination or conclusion of this License, or (ii) within six months after the accrual of the cause of action, whichever first occurs.

C. In the event any claim is made or any action brought in any way relating to the License herein, NYCEDC shall diligently render to the City without additional compensation any and all assistance which the City may require of NYCEDC.

## **29. CLAIM AGAINST OFFICERS OR EMPLOYEES**

No claim whatsoever shall be made by NYCEDC against any officer, agent, employee or volunteer of the City for, or on account of, anything done or omitted in connection with this License.

## **30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

A. NYCEDC agrees that neither NYCEDC nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of NYCEDC or a substantially-owned affiliated company thereof, or participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render, forfeit and void this License.

C. NYCEDC shall comply in all respects, with the provisions of §6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

## **31. TRADEMARK**

The City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If NYCEDC or its Permitted User(s) sells merchandise that uses the City's trademarks, they shall purchase such merchandise from authorized licensees of the City of New York. The knowing sale of counterfeit or unlicensed merchandise at the Former Streets will result in the immediate termination of this License.

### **32. INFRINGEMENTS**

NYCEDC and/or Permitted Users shall be liable to the City, and NYCEDC hereby agrees to provide in any Subconcession or Permit, the obligation that Permitted User shall indemnify and hold the City harmless for any damage or loss or expense sustained by the City from any infringement by Permitted User or NYCEDC of any intellectual property, including without limitation, any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by NYCEDC or Permitted User in the performance of this License.

### **33. ANTI-TRUST**

NYCEDC hereby assigns, sells, and transfers to the City all right title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular services purchased or procured by the City under this License.

### **34. EMINENT DOMAIN AND PUBLIC USE**

In the event that the Former Streets or any part thereof is required for a public use or condemned for a public use, whether by DSBS or any other agency of government, NYCEDC waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DSBS may, in its sole discretion and upon NYCEDC's request, use reasonable efforts to provide NYCEDC with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to NYCEDC's business. In such case, the License term shall begin to run again as soon as the public work is completed and NYCEDC is able to resume its business.

### **35. INTENTIONALLY OMITTED.**

### **36. SEVERABILITY**

If any provision(s) of this License is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

### **37. ALL LEGAL PROVISIONS DEEMED INCLUDED**

It is the intent and understanding of the parties to this License that each and every provision of law required to be inserted in the License shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall forthwith upon the application of either party be amended

by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

**38. MODIFICATION**

No waiver or modification of any provision of this License will be effective unless it is in writing and signed by duly authorized representatives of DSBS and NYCEDC.

**39. ENTIRE AGREEMENT**

This License contains all the terms and conditions agreed upon by the parties hereto and no other agreement, oral or otherwise, regarding the subject matter of this License shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein.

**40. COUNTERPARTS**

This License may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

**NO FURTHER TEXT ON THIS PAGE**

**IN WITNESS WHEREOF**, the parties have duly executed this License as of the date first written above.

LICENSOR:  
THE CITY OF NEW YORK

LICENSEE:  
NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Andrew Schwartz  
Deputy Commissioner for  
Legal & Regulatory Affairs  
Department of Small Business Services

By: \_\_\_\_\_  
Name:  
Title  
Asset Management  
New York City Economic Development  
Corporation  
EIN: \_\_\_\_\_

Approved as to Form and  
Certified as to Legal Authority

\_\_\_\_\_  
Acting Corporation Counsel

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this            day of            , 20\_\_ before me personally came Andrew Schwartz to me known, and known to be the Deputy Commissioner, New York City Department of Small Business Services, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this            day of            , 20\_\_ before me personally came \_\_\_\_\_ who, being duly sworn by me did depose and say that s/he is the Executive Vice President of the Asset Management NYCEDC, the corporation described in and who executed the foregoing instrument and s/he acknowledged that s/he executed the same in his/her official capacity and for the purposes mentioned therein.

\_\_\_\_\_  
Notary Public

Exhibit A  
Map of Former Streets

Exhibit B

Intentionally Omitted

## EXHIBIT C

### INSURANCE REQUIREMENTS FOR PERMITS AND SUBCONCESSIONS

(a) **Required Insurance:**

- i. Commercial General Liability Insurance. Permitted User shall be required to obtain and maintain Commercial General Liability (“CGL”) insurance coverage in the minimum amounts indicated in Table A and Table B as follows with coverage for personal and advertising injury and property damage in the same amounts as the per occurrence limit, and products-completed operations in the same amount as the general aggregate limit. All general aggregate coverage specified in Table A and Table B shall apply on a per-location basis applicable to the Former Streets. In addition, Permitted Users and, as indicated, third party(ies), shall obtain and maintain the additional insurance coverages as indicated in Table C as follows.

**Table A: CGL Insurance Coverages and Minimum Limits Required:**

<b>Personal and Advertising Injury, Damage to Rented Premises, and Per Occurrence Limits:</b>	<b>Products-Completed Operations Aggregate and General Aggregate Limits:</b>	<b>Applicable Level Required [mark one]:</b>
\$1,000,000	\$2,000,000	
\$2,000,000	\$3,000,000	
\$3,000,000	\$4,000,000	
\$5,000,000	\$6,000,000	
\$10,000,000	\$11,000,000	

**Table B: Additional CGL Insurance Coverages and Minimum Limits Required:** The following additional CGL requirements shall apply (if marked “Yes” under “Applicable”):

<b>Specific Requirements</b>	<b>Insured Party</b>	<b>Applicable</b>	<b>Coverage [Revise limits as needed to reflect higher risk, consult with AVP of Insurance and Risk Management]</b>
<b>Food Concessions</b>	Each third party food concession vendor	YES NO	CGL insurance with minimum limits of coverage of at least \$1,000,000 per occurrence, and \$2,000,000 general aggregate.
<b>Pyrotechnics or Special Effects</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for pyrotechnics, fireworks or special effects (including smoke machines).
	Each party conducting pyrotechnics	YES NO	CGL insurance covering pyrotechnics, fireworks, or special effects (including smoke machines) with minimum limits of coverage of at least \$5,000,000 per occurrence, and \$6,000,000 general aggregate.
<b>Stunts</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for stunts.
<b>Animals</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for animals.
<b>Temporary Structures</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for temporary structures, seating, tents, stages and collapse.

<b>including Seating, Tents, Stages, Displays</b>	Each third party vendor	YES NO	CGL insurance covering all temporary structures, seating, tents, stages, and collapse with minimum limits of coverage of at least \$5,000,000 per occurrence, and \$6,000,000 general aggregate.
<b>Performers or Entertainers</b>	Each third party	YES NO	CGL insurance with minimum limits of coverage of at least \$1,000,000 per occurrence, and \$2,000,000 general aggregate and products-completed operations.
<b>Drone / UAV *All parties must have received NYC Permit*</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for drone or unmanned aircraft.
	Third party operator	YES NO	CGL insurance with no exclusion for drone or unmanned aircraft with minimum limits of coverage of at least \$1,000,000 per occurrence, and \$2,000,000 general aggregate.
<b>Events involving Minors</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for abuse and molestation or assault.
<b>Athletic Events and/or Open to Public</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for athletic activities, sports, physical activities (including games, gymnastics, trampolines, inflatable devices, mechanical rides), or participants.
<b>Security (Unarmed)</b>	The Permitted User and/or Each third party vendor	YES NO	CGL insurance with no exclusion for assault and battery and covering false arrest/invasion of privacy (which can be provided through a separate professional liability policy) with minimum limits of coverage of at least \$1,000,000 per occurrence, and \$2,000,000 general aggregate.
<b>Security (Armed)</b>	The Permitted User and/or Each third party vendor	YES NO	CGL insurance with no exclusion for armed operations or assault and battery and covering false arrest/invasion of privacy (which can be provided through a separate professional liability policy) with minimum limits of coverage of at least \$6,000,000 per occurrence, and \$7,000,000 general aggregate
<b>Alcoholic Beverages on the Premises:</b>	The Permitted User	YES NO	Host Liquor Liability insurance to cover alcoholic beverages served at the Premises.
	Permitted User and each third party engaged in serving, distributing or selling of alcohol at the Premises	YES NO	Liquor Legal Liability insurance, including, without limitation, coverage against any claim for loss of means of support with minimum limits of \$3,000,000 per occurrence and \$4,000,000 general aggregate.

Table C: Additional Insurance Coverages and Minimum Limits Required

<b>Filming At the Premises</b>	The Permitted User	YES NO	Media Liability / Errors & Omissions insurance providing coverage for defamation, invasion of privacy, copyright, trademark, title, slogan, misappropriation, plagiarism, breach of the Permit or Subconcession; and include coverage for the acquisition and gathering of matter and actual publication, broadcast or any other form of dissemination; independent contractors and freelancers furnishing matter or services; and contractual liability with limits of at least \$1,000,000 per claim and aggregate. Coverage must be in place prior to the Commencement Date of the Permit or Subconcession and for three years after the termination.
<b>Premises in the Care, Custody, and Control of the Permitted User</b>	The Permitted User	YES NO	Third Party Property Damage insurance including loss of use to cover damage to Premises of at least \$1,000,000 each occurrence.
<b>Autos Used at the Premises:</b>	The Permitted User	YES NO	Commercial Automobile Liability insurance with coverage at least as broad as the most recently issued ISO Form CA 00 01 in the amount of at least \$1,000,000 each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned, rented or hired vehicles including while loading and unloading. Permitted User may also be covered by a private Automobile Liability policy if the policy covers the commercial use of the vehicle, including while loading and unloading.
<b>Auto Liability for transport of Hazardous Materials:</b>	The Permitted User	YES NO	Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Workers' Compensation, Employers' Liability, and Disability Benefits Insurance.

The Permitted User shall obtain and maintain Workers' Compensation insurance, Employers' Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees and volunteers involved in the Permitted User's operations under the applicable Permit and Subconcession according to the laws of the State of New York and with limits as required by statute.

Property Insurance. If Third Party Property Damage coverage is expressly determined to be appropriate in NYCEDC's discretion to be required to be marked off in Table C above, then the Permitted User shall obtain and maintain all-risk, special causes of loss form property insurance on a replacement cost basis with no coinsurance requirement for the Premises. No property insurance shall provide for any deductible or self-insured retention in excess of ten thousand dollars (\$10,000) per occurrence. NYCEDC and the City of New York shall be named

as loss payees as their respective interests may appear.

Additional Waterfront Insurance Coverage. The following additional coverage shall be obtained and maintained (if marked “Yes” under “Applicable”):

<i>Specific Requirements</i>	<i>Insured Party</i>	<i>Applicable</i>	<i>Coverage</i>
<b>U.S. Longshoremen and Harbor Workers’ Act Insurance:</b>	The Permitted User	If required by federal law	U.S. Longshoremen and Harbor Workers’ Act Insurance in accordance with federal statutory limits and as required by federal law.
	Each third party employer of personnel working on or near navigable waters while acting in the scope of their employment	If required by federal law	
<b>Marine Protection and Indemnity Insurance:</b>	The Permitted User	YES NO	Marine Protection and Indemnity Insurance with a limit of not less than \$5,000,000 per occurrence if the vessel(s) have passenger capacity of less than 150 people, or not less than \$10,000,000 per occurrence if any vessel(s) has a passenger capacity of more than 150 people.
	Each third party owner or operator of a vessel	YES NO	
<b>Jones Act Insurance:</b>	The Permitted User	If required by federal law	Jones Act coverage for each vessel’s captain and crew in accordance with federal statutory limits and as required by federal law.
	Each third party owner or operator of a vessel	If required by federal law	

(b) **Requirements for Liability Policies.** The following requirements shall apply to all policies required to be obtained and maintained under (a), above.

All liability insurance (including Marine Protection and Indemnity, if applicable), whether held by the Permitted User or by a third party, shall name the City of New York and NYCEDC, together with their respective members, officials, officers, directors and employees (the “Additional Insureds”), as additional insureds on a primary and non-contributory basis. For CGL, such coverage must be at least as broad as the most recent edition of Insurance Services Office (“ISO”) Form CG 20 26, CG 20 12, and CG 20 37. For any insurance provided by any third party other than the Permitted User, the Additional Insureds shall be added without regard to privity of contract and must be specifically added as additional insureds by endorsement; blanket additional insured endorsements are not accepted. The Permitted User shall provide to NYCEDC a copy of any endorsements providing coverage to the Additional Insureds.

All liability insurance shall protect the insureds from claims for property damage and/or bodily injury, including death that may arise from any of the operations under the Permit or Subconcession, as applicable. CGL and excess/umbrella liability coverages shall be at least as broad as that provided by the most recently issued ISO Form CG 00 01 and shall be “occurrence” based rather than “claims-made.” By way of example and not limitation, no CGL and excess/umbrella policy delivered hereunder shall limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:

1. personal and advertising injury and products/completed operations coverage;
2. contractual liability coverage insuring the contractual obligations of the insureds;
3. employers' liability coverage for liability assumed by the Permitted User under an "insured contract";
4. coverage for claims arising under New York Labor Law; and
5. the applicability of CGL coverage to the Additional Insureds in respect of liability arising out of any of the following claims: (A) claims against the Additional Insureds by employees of a the Permitted User or employees of the entity required to maintain the insurance hereunder, or (B) claims against the City or NYCEDC, together with their respective members, officials, officers, directors and employees, by any general contractor, construction manager, contractor, architect or engineer or by the employees of any of the foregoing, or (C) claims against the City or NYCEDC, together with their respective members, officials, officers, directors and employees arising out of any work performed by a general contractor, construction manager, contractor, architect or engineer.

The Permitted User or, where specified, a third party may satisfy its liability insurance obligations through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

**(c) Proof of Insurance.**

Proof of insurance for all insurance required in this Exhibit must be submitted to and accepted by the New York City Department of Small Business Services ("DSBS") and/or NYCEDC prior to or upon execution of the Permit or Subconcession. Such proof shall include a certificate of insurance, certification of insurance broker or agent (in the form attached), and any required additional insured endorsements (or policy provisions). Upon request, the Permitted User shall also provide a list of the Declarations and Endorsements.

For all insurance required under the applicable Permit or Subconcession other than Workers' Compensation, Employers' Liability, and Disability Benefits, the Permitted User and applicable third party shall submit one or more Certificates of Insurance. If the Certificate in question evidences liability coverage, such Certificate shall include the City of New York and NYCEDC, together with their respective members, officials, officers, directors and employees, as additional insureds in the description of operations box in the following manner:

***"The City of New York and the New York City Economic Development Corporation, together with their respective members, officials, officers, directors and employees, are additional insureds on a primary and non-contributory basis under Commercial General Liability and Umbrella/Excess<sup>1</sup> policies for [Fill in Location] on [Fill in Dates] without regard to privity of contract. Such policy(ies) include a waiver of subrogation in favor of the City of New York and the New York City Economic Development Corporation, together with their respective members, officials, officers, directors and employees, and no policies may contain any limitations / exclusions for New York Labor Law claims."***

As required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Permitted User shall submit proof of the Permitted User's workers' compensation insurance, disability benefits insurance, and the payment of family leave benefits (or proof of a legal exemption) to the DSBS and/or NYCEDC in a form acceptable to the New York State Workers'

<sup>1</sup> Delete "Umbrella/Excess policies" if License only requires \$1M/\$2M in General Liability limits.

Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, Certificate of Workers' Compensation Insurance;
2. Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Form SI-12, Certificate of Workers' Compensation Self-Insurance;
4. Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;
5. Form DB-120.1, Certificate of Disability Benefits Insurance;
6. Form DB-155, Certificate of Disability Benefits Self-Insurance;
7. Form CE-200 – Affidavit of Exemption;
8. Other forms approved by the New York State Workers' Compensation Board; or
9. Other proof of insurance in a form acceptable to DSBS.

For such forms that include a place to designate the certificate holder, the certificate holders shall be listed as:

The City of New York, c/o New York City Department of Small Business Services, One Liberty Plaza, 165 Broadway, New York, New York 10006

and

New York City Economic Development Corporation, One Liberty Plaza, 165 Broadway, New York, New York 10006.

Proof of insurance confirming renewals of insurance shall be submitted to DSBS and NYCEDC prior to the expiration date of coverage of all policies required pursuant to this Exhibit C under this License. Such proof of insurance shall comply with subsections (i) and (ii) directly above.

Acceptance or approval by DSBS or NYCEDC of proof of insurance or any other matter does not waive the Permitted User's obligation to ensure that insurance fully consistent with the requirements of this Exhibit are maintained nor does it waive the Permitted User's liability for its failure to do so.

The Permitted User shall be obligated to provide in the Permit or Subconcession DSBS and NYCEDC with a copy of any policy of insurance required under this Exhibit upon request by the DSBS Commissioner, NYCEDC, or the New York City Law Department.

**(d) General Requirements for Insurance Coverage and Policies.**

All insurance required under this Exhibit (other than Disability Benefits) shall include a waiver of the right of subrogation against the City and NYCEDC, together with their respective members, officials, officers, directors and employees. In addition, all insurance required to be provided by third parties under this Exhibit (other than Disability Benefits) shall include a waiver of the right of subrogation against the City and NYCEDC, together with their respective members, officials, officers, directors and employees.

There shall be no self-insurance program, including a self-insured retention exceeding \$10,000, with regard to any insurance required under this Exhibit unless approved in writing by the DSBS Commissioner and NYCEDC. The Permitted User shall ensure that any such self-insurance program provides the Additional Insureds with all rights that would be provided by traditional insurance under this Exhibit, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

Policies of insurance required under this Exhibit shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.

The limits of coverage for all types of insurance required under this Exhibit shall be the greater of (A) the minimum limits set forth in this Exhibit or (B) the limits provided to the Permitted User under all primary, excess and umbrella policies covering operations under the applicable Permit or Subconcession.

The Permitted User, shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the Additional Insureds are each an insured under the policy.

All property and liability insurance shall contain a provision that no act or omission of the City and/or NYCEDC shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by the City and/or NYCEDC.

The Permitted User waives all rights against the City and NYCEDC including their respective members, officials, officers, directors and employees, for any damages or losses that are covered under any insurance required under this Exhibit (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Permitted User or any their respective employees, agents, or servants or those of the Permitted User's contractors or subcontractors.

The Permitted User's failure to secure and maintain insurance in complete conformity with this Exhibit, or to give the insurance carrier timely notice on behalf of the City and/or NYCEDC, or to do anything else required by this License, which requirements shall be incorporated in the applicable Permit or Subconcession, shall constitute a material breach of the

applicable Permit or Subconcession. Such breach shall not be waived or otherwise excused except by written consent from DSBS, and shall not be excused by any inaction by DSBS or NYCEDC at any time.

Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Exhibit, the Permitted User shall be required to notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under the applicable Permit or Subconcession (including notice to Commercial General Liability insurance carriers for events relating to the Permitted User's own employees) in the time required by the policy but no later than twenty (20) days after such event. For any policy where the Additional Insureds are additional insureds, such notice shall expressly specify that "this notice is being given on behalf of the City of New York and New York City Economic Development Corporation, including their respective members, officials, officers, directors and employees, as Additional Insureds as well as the Named Insured." Such notice shall also contain the following information to the extent known: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Permitted User, shall simultaneously send copies of such notice to the (1) City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007, (2) New York City Economic Development Corporation, attn: General Counsel, One Liberty Plaza, 165 Broadway, New York, New York 10006, and (3) New York City Department of Small Business Services, One Liberty Plaza, 165 Broadway, 11<sup>th</sup> Floor, New York, New York 10006, Attn: Deputy Commissioner for Legal & Regulatory Affairs.

In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Exhibit, the Permitted User shall at all times fully cooperate with the City and NYCEDC with regard to such potential or actual claim.

In the event the Permitted User receives notice, from an insurance company or other person, that any insurance policy required under this Exhibit shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Permitted User, shall immediately forward a copy of such notice to (1) the DSBS Commissioner, New York City Department of Small Business Services, One Liberty Plaza, 165 Broadway, New York, New York 10006, (2) New York City Economic Development Corporation, attn: Executive Vice President, Asset Management, and the General Counsel, One Liberty Plaza, 165 Broadway, New York, New York 10006, and (3) New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Permitted User shall ensure that there is no interruption in any of the insurance coverage required under this Exhibit.

Insurance coverage in the minimum amounts provided for in this Exhibit shall not relieve the Permitted User of any liability under this License, the applicable Permit, the applicable Subconcession, nor shall it preclude the City and/or NYCEDC from exercising any rights or taking such other actions as are available to any or all of them under any other provisions of this License, the applicable Permit, the applicable Subconcession, or the law.

Notwithstanding any other provision of this Exhibit or elsewhere in this License and/or applicable Permit or Subconcession, the Permitted User shall be, continue and remain liable for any uninsured destruction, loss or damage to the Premises during the Event. In the event of any such loss or damage for which the Permitted User becomes liable as aforesaid, the Permitted User shall, at its/their sole cost and expense, promptly repair or replace the property so lost or damaged in accordance with plans and specifications approved by the City or, at the discretion of the City, pay in cash the value of repairs or rebuilding, such value to be determined by the City, in lieu of performance of such repairs to or rebuilding of the Premises.

The Permitted User shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Exhibit, and the Permitted User shall perform, satisfy and comply with or cause to be performed, satisfied or complied with all conditions, provisions, and requirements of all such insurance policies.

## **CERTIFICATES OF INSURANCE**

### Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR

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- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

**CITY OF NEW YORK**  
**CERTIFICATION BY INSURANCE BROKER OR AGENT**

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of .....)

) s.:

County of .....)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_

## **Exhibit D**

### **Paid Sick Leave Law Concession Rider**

#### **Introduction and General Provisions**

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>2</sup> Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

The NYCEDC agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this License. The NYCEDC further acknowledges that such compliance is a material term of this License and that failure to comply with the PSLL in performance of this License may result in its termination.

The NYCEDC must notify DSBS’s General Counsel in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this License. Additionally, the NYCEDC must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of the NYCEDC.

The NYCEDC is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the NYCEDC can get more information about how to comply with the PSLL. The NYCEDC acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

#### **Applicability, Accrual, and Use**

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the

<sup>2</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

- such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSLL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

### Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under Section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is permitted by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under Section 336-c of the New York State Social Services Law.

### Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

### Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

## Records

An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

## Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

## More Generous Policies and Other Legal Requirements

Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

Document comparison by Workshare Professional on Friday, November 08, 2019 4:31:35 PM

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**THIS LICENSE**, made as of \_\_\_\_\_, 2019 between and among the City of New York (the "**City**"), a municipal corporation of the State of New York, acting by and through the New York City Department of Small Business Services ("**DSBS**"), and The New York City Economic Development Corporation ("**NYCEDC**"), a New York not-for-profit corporation.

**WITNESSETH**

**WHEREAS**, DSBS is responsible for waterfront property, and has jurisdiction over City-owned property known as the South Street Seaport located along the East River in lower Manhattan, New York;

**WHEREAS**, the City desires to encourage the participation of interested organizations in providing supplemental services, including encouraging public programming within the South Street Seaport, particularly an area consisting of the demapped streets, which include sections of Fulton Street, Water Street, Front Street generally bounded by South Street, John Street, Water Street, Pearl Street and Beekman Street as shown on Exhibit A (the "**Former Streets**");

**WHEREAS**, NYCEDC, performs economic development services on behalf of the City, in accordance with the Maritime Contract between the City and NYCEDC dated on or about June 30, 2018, as amended (the "**Maritime Contract**") and the Master Contract between the City and NYCEDC dated on or about June 30, 2018, as amended (the "**Master Contract**", collectively the Maritime Contract and the Master Contract are referred to as the "**City Contracts**"), including management, improvement and maintenance of public space within the City of New York such as the South Street Seaport;

**WHEREAS**, in accordance with the Maritime Contract, and in further fulfilling its management responsibilities for the South Street Seaport, NYCEDC acts as lease administrator for two long-term leases between the City and (i) the South Street Seaport Museum (the "**Museum Lease**") and (ii) South Street Seaport Limited Partnership ("**Marketplace Lease**");

**WHEREAS**, NYCEDC desires to assist the City with respect to activating the use of the Former Streets for the public benefit, and the City desires that NYCEDC activate the use of the Former Streets;

**WHEREAS**, NYCEDC has relationships with local businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the Former Streets; and

**WHEREAS**, the Franchise and Concession Review Committee authorized DSBS to enter into a License Agreement with NYCEDC, to provide for the operation and management of events and activities at the Former Streets as specifically set forth in this License, including through sponsorships, public programs, permits and subconcession(s).

**NOW THEREFORE**, in consideration of the mutual covenants herein, the parties agree as follows:

## 1. SCOPE OF LICENSE

A. The City hereby grants to NYCEDC and NYCEDC hereby accepts from the City this non-exclusive License to operate and manage subconcessions, activities and events on the Former Streets, as specifically set forth in this License. NYCEDC may grant a permit or sublicense (“**Permit**”) for an Event (defined below in Section 3) which may occur for up to and including seven (7) days and subconcession (“**Subconcession**”) for an Event which will occur for longer than seven (7) days, to reputable organizations and entities (“**Permittee**” or “**Subconcessionaire**”, respectively, and collectively “**Permitted Users**”) for Permitted Uses (defined below in Section 3) on the Former Streets.

B. As more particularly set forth in this License, NYCEDC shall be permitted to:

- (1) manage and operate Subconcession(s) for Events pursuant to Sections 6 and 7 herein, subject to DSBS’s prior written approval; and
- (2) hold or grant Permit(s) for Events pursuant to Sections 6 and 8 herein.

C. Any revenue and/or fees received by NYCEDC from any Subconcession, Permit, activity or event on the Former Streets shall be used as more fully provided in Section 5 below.

D. NYCEDC shall, or shall require its Permitted Users to obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary for the operation and management of the Former Streets. Whenever any act, consent, approval or permission is required of the City or DSBS under this License, the same shall be valid only if it is, in each instance, in writing and signed by the DSBS Commissioner or DSBS Commissioner’s duly authorized representative, and such approval or permission shall not be unreasonably delayed. No variance, alteration, amendment, or modification of this License shall be valid or binding upon the City or DSBS, unless the same is, in each instance, in writing and duly signed by the DSBS Commissioner or DSBS Commissioner’s duly authorized representative.

E. It is expressly understood that no land, building, space, improvement, or equipment is leased to NYCEDC, but that during the term of this License, NYCEDC and its Permitted Users shall have the non-exclusive use of the Former Streets for the purposes herein provided. Except as herein provided, NYCEDC and its Permitted Users have the right to occupy and operate the Former Streets only so long as each and every term and condition in this License is properly complied with and so long as this License is not terminated by DSBS in accordance herewith.

## 2. TERM

A. The term of this License (“**Term**”) shall be one year, commencing upon written Notice to Proceed (“**Commencement Date**”). This License may be renewed for up to four additional one-year terms, to be exercised at the sole discretion of DSBS subject to termination and revocation as hereinafter provided.

B. Notwithstanding any other termination provision of this License, this License is terminable at will any time by DSBS upon twenty-five (25) days written notice to NYCEDC.

### **3. PERMITTED USES**

A. NYCEDC and its Permitted Users, may access and use the Former Streets in order to conduct, implement, effectuate and participate in events and activities on the Former Streets meant to activate the South Street Seaport, engage the public; and provide recreational, cultural and educational events, activities, and other public programming for the benefit of the public, along with revenue generating events, film shoots, and the sale of food, drink and other products from carts, stands and otherwise at designated location(s) (each an “**Event**” and collectively “**Events**” or “**Permitted Uses**”).

B. NYCEDC acknowledges that its use of the Former Streets is nonexclusive.

C. NYCEDC shall require its Permitted Users to perform the following after each Event:

(a) Dirt, litter and obstructions arising from or related to the Event shall be removed, and trash and leaves collected and removed so as to maintain the Former Streets.

(b) All walkways, sidewalks and all other amenities and facilities in the area of the Event shall be routinely cleaned.

(c) Any umbrellas, carts, stands, amenity locations, moveable tables and chairs shall be maintained.

(d) All Event facilities, structures, equipment, and subconcession structures, shall be attractive and clean.

D. The public shall have access to the Former Streets at all times.

### **4. NYCEDC’s RESPONSIBILITIES**

A. NYCEDC must require its Permitted Users to comply with all recycling regulations and to obtain any and all additional permits required by law.

B. NYCEDC shall not allow its employees, agents, contractors and Permitted Users to emit loud noise, smoke, vapor or offensive odor from the Former Streets.

C. Advertising (other than in a form identifying NYCEDC and NYCEDC projects with approval from DSBS) is strictly prohibited. Sponsor recognition may be permitted subject to DSBS approval; provided however, that there shall be no advertisements, sponsorships or branding that promotes alcohol-use permitted on the Former Streets.

D. DSBS makes no representations regarding the adequacy or availability of electric, water or other utilities currently in place at the Former Streets, or that any entity can or will make such services available. NYCEDC shall provide or cause its Permitted Users to provide at its or their sole cost and expense all lighting, electrical and water connections and other utility services at the Former Streets necessary for the conduct of any Event. NYCEDC shall cause the Permitted Users to pay all charges for sewer, water, gas, heat, electricity, cable, broadband, and telephone used by their employees, agents, and contractors at the Former Streets and shall procure at NYCEDC's and/or the Permitted Users own cost and expense all meters, permits, approvals and licenses necessary to effectuate the requirements of this Section. NYCEDC shall be responsible for the installation of all necessary water, gas, heat, electricity, cable, broadband, and telephone connections. NYCEDC shall not accept any money, commission, premium, bonus or other consideration from any person for the use or sale of utility services, except to the extent of reimbursement of costs incurred by NYCEDC or the City for utility services used in connection with this License, an Event or a Subconcession. NYCEDC shall not tap into the City's electricity without prior DSBS written approval. If generators are used, NYCEDC shall provide whatever is necessary under Federal, State, and City laws, rules, regulations, and orders for the lawful operation of its generators. In the event of a drought, NYCEDC shall comply with all City directives and restrictions.

E. NYCEDC shall prepare and provide to DSBS reports of any accidents or other incidents, if known, occurring during an Event at the Former Streets, on a regular basis and in a format reasonably acceptable to DSBS.

(1) NYCEDC and its Permitted Users shall promptly notify DSBS, in writing, of any claim for injury, death, property damage or theft which may be asserted against NYCEDC or its Permitted Users with respect to the Former Streets and the Subconcession(s) or Events.

(2) NYCEDC and its Permitted Users shall promptly notify DSBS, in writing, of any unusual conditions that may develop in the course of the operation of a Subconcession or Event, such as, but not limited to, fire, flood, casualty and substantial damage of any kind and NYCEDC shall also notify DSBS to the extent it is aware of any such unusual conditions.

(3) NYCEDC shall, with respect to the operation and management of this License designate a person to handle all claims for loss or damage including all insured claims for loss or damages. NYCEDC shall require its Permitted Users, with respect to the operation and management of a Subconcession(s) or Event, to designate a person to handle all claims for loss or damage including all insured claims for loss or damages. NYCEDC shall provide DSBS with the name, telephone number and address of each such person, within thirty (30) days of the date of this License, or Subconcession or Event and any agreement(s).

F. NYCEDC shall periodically inspect the Former Streets for hazardous conditions and shall, without delay upon learning of the condition, report and, to the extent required by the City Contracts, NYCEDC shall cause to be repaired any portion or feature of the Former Streets

for which NYCEDC has repair responsibility under this License that exhibits defects or hazardous conditions, and shall immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers. With respect to any portion or feature of the Former Streets for which NYCEDC does not have repair responsibility, NYCEDC shall, without delay upon learning of the condition, report the need for repairs to the party responsible for such repairs and immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers.

## **5. REVENUE & CONCESSION FEES**

A. NYCEDC shall account for all Revenue (defined below) collected in connection with or resulting from the rights and privileges granted to NYCEDC under this License in a manner that is acceptable to DSBS and the City's Office of Management and Budget ("**OMB**") in their reasonable discretion, and that is in accordance with all requirements of Article 8 of the Maritime Contract. Such Revenues shall include any funds collected in connection with the use of the Former Streets, not limited to the following:

1. any funds collected under a Subconcession agreement;
2. any funds collected for Events;
3. any funds collected for sponsorships; and
4. any funds collected from third-parties in connection with the Former Streets,  
(collectively referred to herein as "**Revenue**").

B. NYCEDC shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this License.

C. On or before August 1<sup>st</sup> of each year the License is in effect, and in August following the expiration or termination of this License, NYCEDC shall submit to DSBS for review and approval its annual Revenue report relating to the operation and management of the Former Streets for the immediately preceding fiscal year. For accounting purposes, the fiscal year shall run from July 1<sup>st</sup> to June 30<sup>th</sup>.

D. The annual fee for this License shall be five percent (5%) of NYCEDC's Revenues ("**Concession Fee**"). The Concession Fee shall be due annually on the 1<sup>st</sup> of November.

E. NYCEDC may use Revenue to expend for non-capital ordinary and necessary expenses directly attributable to this License, including reasonable administrative costs and operating expenses for programming, operating and managing the Former Streets or as otherwise approved in writing by DSBS. Any such use of Revenue shall be accounted for in a manner that is acceptable to DSBS and OMB in their reasonable discretion, and that is in accordance with all requirements of Article 8 entitled "Records; Audit; Reports" of the Maritime Contract.

F. NYCEDC shall provide to DSBS biannually, a schedule of the Events, Permits and Subconcessions that have occurred within the past six (6) months and that are scheduled to occur

in the next six (6) months. Such schedule shall include the following information: (i) identity of each Permitted User, (ii) scope of each Event, (iii) location of each Event or Subconcession, (iv) commencement and expiration dates, (v) charges, (vi) copies of each Permit, license or Subconcession agreement, and (vii) such other information as DSBS may reasonably request.

## 6. SUBCONCESSION(S) AND PERMIT(S)

A. Subconcessions. NYCEDC may enter into Subconcessions for Events in the Former Streets. Subconcessions shall be granted following a Request for Proposals (“**RFP**”), which shall be solicited by public advertisement in at least 10 successive issues of The City Record. The text of such RFP shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication.

B. DSBS Prior Approval. Subconcessions will be subject to DSBS’s prior written approval, which must be requested at least thirty (30) days prior to the commencement of the Subconcession, unless otherwise permitted by DSBS, in its sole discretion

C. Permits. NYCEDC may issue Permits for Events on the Former Streets.

D. Subject to Prior Agreements. Subconcessions and Permits shall be subject to the terms and conditions of this License, the Museum Lease and the Marketplace Lease. All Subconcessions and Permits issued by NYCEDC shall require the Permitted User(s) to acknowledge receipt of a copy of this License and that it is bound by same.

E. Qualified Person. All Permitted Users must be a Qualified Person (as defined below). NYCEDC shall ensure that the Subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor’s Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that Subconcessionaire during the immediately preceding twelve-month period equals or exceeds \$100,000.

A “**Qualified Person**” shall be a person or entity that: (i) is not in default beyond any applicable notice, if required and upon expiration of any applicable grace period, if any, under any written agreement with the City or the NYCEDC; and/ or (ii) has not been convicted in a criminal proceeding for a felony or any crime involving moral turpitude; and/or (iii) if and as determined by the City in its reasonable discretion, is not an organized crime figure or has substantial business or other affiliations with an organized crime figure; and/or (iv) is not in default in the payment to City of real estate taxes, sewer rents or water charges after notice; and/or (v) in the five (5) year period preceding the date of such Person’s proposed Subconcession has not owned any property which, while in such ownership, was acquired by City by in rem tax foreclosure.

F. NYCEDC shall require Permitted Users to obtain all licenses and permits that may be required to operate the Event in accordance with all applicable rules, laws and regulations.

G. On or before the thirtieth (30th) day following the end of each fiscal year, NYCEDC shall require that its Subconcessionaire(s) submit a statement of revenue reporting all revenue received by Subconcessionaire(s) at the Former Streets during the preceding twelve (12) month period.

(1) NYCEDC shall also require that its Subconcessionaire(s) submit a report of all revenue for the period since the prior 12-month report on or before the thirtieth (30th) day following the termination of this License or the Subconcession agreement(s), or June 30th, whichever is sooner. The obligation to submit a final report of revenue shall survive the termination of this License or the Subconcession agreement(s). The statement of revenue reports submitted to NYCEDC by its Subconcessionaire(s) shall be provided to DSBS.

(2) NYCEDC shall require its Subconcessionaires(s) indicate on its statement of revenue whether or not these amounts are inclusive of sales tax collected.

(3) NYCEDC shall require in the Subconcession agreement(s) that revenue shall include without limitation all funds received by Subconcessionaires(s) in connection with its operations on the Former Streets, without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Subconcession(s), provided that revenue shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by Subconcessionaires(s) as against its sales. All sales made or services rendered by the Subconcessionaires(s) from the Subconcessions shall be construed as made and completed therein even though payment therefor may be made at some other place. In addition to any revenue generated in the form of monetary receipts, revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the Subconcessionaires(s) may receive in connection with its operations at the Former Streets.

(4) Revenue shall include sales made for cash or credit (credit sales shall be included in revenue as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the intention and agreement of the parties that all sums due to be received by Subconcessionaire(s) from all sources from the operation of the Subconcession(s) shall be included in revenue.

H. NYCEDC shall require its Permitted User if it is selling food to the public, to operate in such a manner as to maintain the highest New York City Department of Health and Mental Hygiene (“**DOHMH**”) inspection rating.

(1) NYCEDC shall require its Permitted User(s), if it is selling food to the public, to obtain any and all approvals and other permits required by Federal, State and City

laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by the Permitted User(s) to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

(2) NYCEDC shall prohibit its Permitted Users from using any polystyrene packing or food containers pursuant to Local Law 142 of 2013.

I. NYCEDC shall require that its Permitted User in operating the Event maintain the noise level of all events and activities at an appropriate and lawful level to prevent an unreasonable nuisance to neighbors living and working near the Former Streets.

(1) NYCEDC shall require that its Permitted User at its sole cost and expense, obtain sound permits and provide any lighting, which it determines may be necessary to operate the Event.

(2) As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

J. NYCEDC shall require that its Permitted Users provide access to Events to people with disabilities as required by law. This accessibility shall be clearly indicated by signs.

K. The City shall own all intellectual property rights in any names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that have been or will be developed by the City ("City IP"). In no way does this License convey to EDC, or any Permitted Users, any rights in or to the City IP.

L. NYCEDC shall pay for, or cause Permitted Users to pay any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during its Events.

M. Any sign posted by NYCEDC or a Permitted User at the Former Streets in connection with an Event, shall be appropriately located, and shall state that the Former Streets is a New York City municipal concession operated by NYCEDC.

N. Smoking of cigarettes or any other tobacco product is strictly prohibited at the Former Streets in accordance with Local Law 11 of 2011. Using electronic cigarettes is also prohibited at the Former Streets in accordance with Local Law 152 of 2013. Using non-tobacco

smoking products is also prohibited at the Former Streets in accordance with Local Law 187 of 2017.

(1) The sale of cigarettes, cigars, or any tobacco product is strictly prohibited at the Former Streets. Additionally, the sale of electronic cigarettes and non-tobacco smoking products are strictly prohibited on the Former Streets.

O. No trucks or storage containers may be stationed within the Former Streets. Additionally, NYCEDC shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind (excluding fuel for generators).

P. NYCEDC shall require its Permitted Users to maintain trash receptacles and separate receptacles for recyclable materials and comply with all recycling regulations at its sole cost and expense, arrange for the removal, by a duly licensed private carter, of all refuse relating to the Events, including but not limited to trash, boxes and trade waste.

Q. NYCEDC shall require its Permitted Users and any of their contractors, subcontractors and agents, and NYCEDC's contractors, subcontractors and agents that perform operations involving the Former Streets to obtain insurance coverage in accordance with the terms and conditions set forth in Section 11 herein

R. NYCEDC shall require its Permitted Users and any of their contractors, subcontractors and agents, and NYCEDC's contractors, subcontractors and agents to defend, indemnify and hold the City and NYCEDC, and their officials and employees harmless as set forth herein.

S. NYCEDC shall and shall require its Permitted Users to take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, contractors, and subcontractors while they are involved in the operations under this Agreement. Permitted User shall take all reasonable precautions to protect the persons and property of NYCEDC, the City or others from damage, loss, injury resulting from any and all operations under this Agreement.

T. Subconcessions may not be assigned nor any portion of the Former Street sub-subconcessions or subpermitted without the prior written approval of DSBS.

## **7. MANAGEMENT AND OPERATION OF THE SUBCONCESSION(S)**

A. NYCEDC shall provide for the operation and management of the Subconcession(s) through Subconcession agreement(s) and require its Subconcessionaire(s), at the Subconcessionaire(s)' sole cost and expense, to operate the Subconcession(s) in such manner as provided herein and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction thereof. NYCEDC and its Subconcessionaire(s) shall accept the Former Streets in its "as-is" condition. NYCEDC shall require that its Subconcessionaire(s) provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies to operate Events on the Former Streets.

B. NYCEDC shall require its Subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for NYCEDC's approval. DSBS reserves the right to review and approve such hours of operation, menu (if applicable), and price list at its discretion.

C. NYCEDC shall or shall require its Subconcessionaire(s), at the Subconcessionaire(s)'s sole cost and expense, to obtain all licenses and permits that may be required to operate the Subconcession(s) in accordance with applicable rules, laws and regulations.

D. NYCEDC shall require its Subconcessionaire(s), at their sole cost and expense, to print, frame, and prominently display the current approved schedule of operating days, hours and prices.

E. NYCEDC shall require that its Subconcessionaire(s) employ an operations manager ("**Manager**") with appropriate qualifications to manage operations at the Subconcession(s) in a manner that is reasonably satisfactory to DSBS. The Manager must be available by telephone during all hours of operation, and NYCEDC shall continuously notify DSBS of a 24-hour cellular telephone number through which DSBS may contact the Manager in the event of an emergency. NYCEDC shall require that its Subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DSBS.

F. NYCEDC shall require that its Subconcessionaire(s), at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (1) Maintain the Subconcession(s) in accordance with this License;
- (2) Conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and
- (3) Secure the Subconcession(s).

G. Installation of additional fixed lighting or fixed sound equipment by either NYCEDC or its Subconcessionaire(s) on the Former Streets shall require the prior written approval of DSBS.

H. NYCEDC shall require its Subconcessionaire(s), at its sole cost and expense, to provide a twenty-four (24) hour per day security system at the Subconcession(s), if appropriate, which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both. NYCEDC shall require that its Subconcessionaire(s) be responsible for securing the Subconcession(s) and any other equipment used immediately upon closing each day in a manner reasonably approved by DSBS.

I. DSBS shall have the right to reasonably approve the days and times on which deliveries to NYCEDC's Subconcessionaire(s) may be made.

J. It is expressly understood that if NYCEDC or its Subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be NYCEDC's or its Subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DSBS's prior written approval.

K. NYCEDC may permit its Subconcessionaire(s) to sell alcohol only with the appropriate license from the State Liquor Authority ("SLA"), and subject to all legal requirements, liquor license from SLA and Insurance requirements. Alcohol shall be served in recyclable cups and be consumed only within the boundaries of the Former Streets, as permitted by the SLA.

L. (1) NYCEDC, may, or may cause its Subconcessionaire(s) at its sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DSBS's prior written approval. NYCEDC shall not apply any Revenue to any such design, fabrication, construction, and installation of any Subconcession(s) and/or subconcession structure, without DSBS's prior written approval.

(2) NYCEDC shall cause its Subconcessionaire(s) to remove such items after the expiration or termination of each Event and restore the Former Streets to its original state.

(3) NYCEDC shall cause Subconcessionaire(s) to use its best efforts to minimize the extent to which the public use of the Former Streets is disrupted in connection with activities at the Former Streets.

## **8. EVENTS AND PERMITS**

A. The Former Streets may be used for short-term, no longer than seven days, Event(s), subject to the terms and conditions set forth herein: (i) event or activity that promotes, advertises or introduces a product, corporation, company or other entity or the goods or services of a corporation, company or other commercial entity to the general public, (ii) an event that is sponsored by a not-for-profit organization, and (iii) artistic/cultural performances, classes, or educational gatherings.

B. NYCEDC and/or its Permittee may hold Events at the Former Streets subject to:

- (1) obtaining any necessary City authorization, approvals, permits, and compliance with other processes that may be necessary; and
- (2) all federal, state and local laws, rules, and regulations applicable to the Former Streets.

C. The City may use the Former Streets for special events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. If DSBS or any other agency of the City intends to utilize the Former Streets for any event, it shall coordinate such use

with NYCEDC and shall use reasonable efforts to provide NYCEDC with thirty (30) days prior written notice of such event.

D. NYCEDC shall collect a fee from the Permittee, sponsor or holder for any commercial/promotional events (an Event that promotes, advertises or introduces a product, corporation, company or other commercial entity or the goods or services of a corporation, company or other commercial entity to the general public) held at the Former Streets, which fees shall be included as part of NYCEDC's Revenue pursuant to Section 5 of this License. NYCEDC shall charge all Permittees using the Former Streets a fee for such use, unless such entity is a not for profit corporation or a governmental entity and NYCEDC determines in its reasonable discretion that such Permittee is providing a public service and such Event is open to the public at no charge. A schedule of fees will be provided to DSBS for its reasonable approval which schedule may be amended from time to time upon mutual consent of the parties.

## **9. SPONSORSHIPS**

Subject to DSBS approval, NYCEDC may accept sponsorships solely for the benefit of the City and the Former Streets. However, under no circumstances are tobacco, e-cigarette, non-tobacco smoking products, or alcohol sponsorships permitted. Such sponsorships shall be considered Revenue.

## **10. INSPECTION AND AUDIT OF RECORDS**

A. NYCEDC agrees that it shall comply with all of the provisions set forth in this Section, and with respect to the operations of the Permitted Users it shall incorporate such provisions, appropriately modified to apply to the Permitted Users, into any agreement(s).

B. NYCEDC shall establish and maintain accurate records and accounts, in a manner satisfactory to DSBS, which sufficiently and properly reflect all Revenue and direct and indirect costs of any nature resulting from NYCEDC's operations and management of Events pursuant to this License, and set forth, in a manner satisfactory to DSBS, its expenditures in any way connected to the Subconcessions or Sublicenses and Permits under this License. Such records and accounts shall conform to generally accepted accounting principles.

C. NYCEDC shall require its Permitted User(s) to retain all books, records, documents and other evidence relevant to this License for six (6) years after the expiration or termination of this License. City, State and federal auditors shall have full access to and the right to examine any of said materials during this period. In addition, if any litigation, claim, or audit concerning this License has commenced before the expiration of such six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim or audit. Any books, records, documents or other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, NYCEDC shall require its

Permitted User(s) to agree to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

D. Notwithstanding anything else to the contrary contained in this License, the parties acknowledge and agree that the powers, duties and obligations of the Comptroller, pursuant to the provisions of the New York City Charter, shall not be diminished, compromised or abridged in any way.

E. This Section shall survive the expiration or earlier termination of this License.

## **11. INSURANCE**

A. Upon written Notice to Proceed through the date of expiration or termination of this License:

- (1) NYCEDC shall comply with the insurance obligations imposed herein; and
- (2) NYCEDC shall require the Permitted User(s) to ensure that the types of insurance indicated in Exhibit C hereto are obtained and maintained in force, and that such insurance adheres to all requirements therein. Permitted Users may only use the Former Streets for Events during the period that all of the insurance coverages required by this License are in full force and effect.

B. NYCEDC shall require its Permitted Users and any of Permitted Users' contractors, subcontractors and agents, and NYCEDC's contractors, subcontractors and agents that perform operations and/or otherwise participate or support Events involving the Former Streets to obtain insurance coverage in accordance with the terms and conditions set forth on Exhibit C.

## **12. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION**

### **A. NYCEDC Responsibilities**

(1) NYCEDC shall require the Permitted Users pursuant to their Subconcessions or Permits to take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, subconcessionaire(s), contractors, and subcontractors while they are involved in the operations under this License.

(2) NYCEDC shall require the Permitted Users pursuant to the Subconcession or Permit to take all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

(3) NYCEDC shall require the Permitted Users pursuant to the Subconcession or Permit to use the Former Streets in compliance with, and shall not cause or permit the Former Streets to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the NYCEDC or the Former Streets (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, NYCEDC shall not cause or permit, or allow any of the NYCEDC’s personnel and or Permitted User personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Former Streets. As used herein, “Hazardous Materials” means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

### **B. NYCEDC’s Obligation Regarding Indemnification**

(1) Notwithstanding any other provisions of this License, the maximum amount for which the NYCEDC is liable per policy year for personal injury, third party bodily injury (including death) and property damage caused by the NYCEDC’s operations under this License shall not exceed the greater of (i) Commercial General Liability limits required in Exhibit C, or (ii) the limits provided to NYCEDC under all primary, excess and umbrella policies covering operations under this License as required in Exhibit C (“Limitation of Liability”). The Limitation of Liability shall not apply to NYCEDC’s contractors, subcontractors or agents or Permitted User(s) or any of Permitted User(s)’s contractors, subcontractors or agents.

(2) Subject to the Limitation of Liability but notwithstanding any other provisions of this License, NYCEDC shall require the Permitted Users pursuant to the Subconcession or Permit to indemnify, defend and hold harmless the City and NYCEDC and their officials, officers, members, agents, and employees as set forth below.

**C. Permitted Users(s) Indemnity Obligation.** NYCEDC shall set forth in each Subconcession and Permit, or other agreement the requirement that to the fullest extent permitted by law:

(1) the Permitted User shall forever defend, indemnify and hold harmless the City

and NYCEDC, and their respective members, directors, officials, officers, agents, representatives and employees (individually, an “**Indemnitee**” and collectively, the “**Indemnitees**”) from and against any and all liabilities, claims, demands, penalties, fines, liens, settlements, judgments, damages, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise (including, without limitation, attorneys' fees, court costs, and disbursements) arising out of, in whole or in part, the applicable Permit or Subconcession, the Event(s), Permitted User's use of the Former Streets or any part thereof, or any act(s) or omission(s) of such Permitted Users, or of any of their employees, officers, officials, guests, invitees, volunteers, contractors, subcontractors, representatives or agents occurring on the Former Streets or in connection with the applicable Permit or Subconcession agreement;

(2) a Permitted User(s)'s obligation to defend, indemnify and hold the Indemnitees harmless shall not be (i) limited in any way by the Permitted User(s)'s obligations to obtain and maintain insurance under the applicable Subconcession or Permit, nor (ii) adversely affected by any failure on the part of the Indemnitees to avail themselves of the benefits of such insurance; and

(3) insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by Permitted User(s), the Indemnitees shall be partially indemnified by Permitted User(s) to the fullest extent permitted by law.

D. The provisions of this Section 12 shall survive the expiration or termination of this License and the applicable Permit or Subconcession agreement.

### **13. ASSIGNMENT**

No assignment, sale, mortgage or transfer of any interest of this License by NYCEDC, in whole or in part, will be effective unless it is agreed to, in writing, by DSBS and signed by the DSBS Commissioner, or his/her designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to NYCEDC.

### **14. INTENTIONALLY OMITTED**

### **15. INTENTIONALLY OMITTED**

### **16. PERSONNEL**

A. All persons who are employed by NYCEDC and all NYCEDC's Permitted User(s) and all of their subcontractor(s) (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this License and/or any Subconcession are neither employees of the City nor under contract with the City. NYCEDC and/or the Permitted User, as applicable, and not the City, is responsible for their work, direction, compensation, and personal conduct while NYCEDC and/or the Permitted User, as applicable, is engaged under this License and/or an applicable Subconcession. Nothing in this License, and no entity or person's performance pursuant to or in connection with this License, (1) shall create any relationship between the City and NYCEDC's employees, agents, Permitted User(s), or Permitted User(s) employees or agents subcontractors, or subcontractor's employees

or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of NYCEDC, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement), its Permitted User(s), or its Permitted User(s) employees or agents; or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of NYCEDC or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit), and (2) NYCEDC and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of NYCEDC, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of NYCEDC or any other entity. Except as specifically stated in this License nothing in the License and no performance pursuant to or in connection with the License shall impose any liability or duty on the City to any person or entity whatsoever.

B. NYCEDC shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. NYCEDC shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

## **17. INVESTIGATIONS CLAUSE**

A. The parties to this License, agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a Federal, State of New York ("State") or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, or license that is the subject of the investigation, audit or inquiry.

B. (1) If any person who has been advised that his or her statement, and any

information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York or New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

(2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City; then

C. (1) DSBS or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(2) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subparagraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(2) The cancellation or termination of all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, with the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subparagraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:

(1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits, or licenses with the City.

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subparagraph D above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in subparagraph C (1) above gives notice and proves that such interest previously was acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

#### F. Definition of Terms

(1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

G. In addition to and notwithstanding any other provisions of this License, the Commissioner or agency head may in his or her sole discretion terminate this License upon not less than three days written notice in the event NYCEDC fails promptly to report in writing to

the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License by NYCEDC, or affecting the performance of this contract.

## **18. NOTICES**

Except as otherwise stated in this License, all notices from NYCEDC to the City shall be in writing and delivered to the attention of the Deputy Commissioner, New York City Department of Small Business Services, One Liberty Plaza, 165 Broadway, New York, New York 10006, or such other address as DSBS may designate, with copies sent to DSBS's General Counsel at same address. All notices from DSBS to NYCEDC shall be dispatched in the same manner, and delivered to NYCEDC to the attention of Executive Vice President Asset Management Operations, One Liberty Plaza, 165 Broadway, New York, New York 10006 or such other address as NYCEDC may designate, with copies sent to NYCEDC's General Counsel at same address.

## **19. TERMINATION**

A. NYCEDC shall have the right to terminate this License upon twenty-five (25) days' prior written notice to the City.

B. The City shall have the right to terminate this License:

(1) Under any right to terminate as specified in any Section of this License.

(2) If DSBS determines that NYCEDC or any of its Permitted User(s) fail to comply with any of the terms and conditions of this License, including NYCEDC's or Permitted User(s)' failure to perform at the required standards set forth in Sections 1, 3, 6, 7, and 8 of this License.

(3) Upon the commencement of any proceeding under the Bankruptcy Act, by or against NYCEDC or its Permitted User(s), either voluntary or involuntary.

(4) Upon DSBS's determination that this License should be terminated without cause.

C. The City shall give NYCEDC written notice of any termination of the License specifying therein the applicable provisions of subsection B of this Section and the effective date thereof, which shall not be less than twenty-five (25) days from the date of receipt of written notice by NYCEDC.

D. With regard to paragraph B(2) of this Section, DSBS shall first give written notice to NYCEDC outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by NYCEDC within a reasonable time (if no time is specified), or in the time specified in

DSBS's notice, either of which shall in no event be less than ten (10) days except in cases of emergency (as determined by DSBS), the failure to cure the deficiencies shall result in immediate termination of this License.

E. With regard to paragraph B(4) of this Section, DSBS shall provide written notice of such termination to NYCEDC, and this License shall terminate effective twenty-five (25) days from the date such notice is received by NYCEDC.

F. Upon expiration or sooner termination of this License by DSBS, all rights of NYCEDC herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the City, except as provided herein.

G. Upon such termination NYCEDC shall quit the Former Streets and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted and except to the extent as otherwise permitted or required by other agreements between the City and NYCEDC.

H. NYCEDC agrees that upon expiration, or sooner termination of this License, it shall immediately cease all operations under this License, and cause any Permitted User(s) to cease all operations pursuant to this License and shall vacate and cause any Permitted User(s) to vacate the Former Streets, without any further notice by the City and without resort to any judicial proceeding by the City.

I. NYCEDC shall, or shall cause its Permitted User(s), on or prior to the expiration or sooner termination of this License, remove all personal possessions from the Former Streets except to the extent as otherwise permitted or required by other agreements between the City and NYCEDC. Except to the extent as otherwise permitted or required by other agreements between the City and NYCEDC, NYCEDC acknowledges that any personal property remaining on the Former Streets after the expiration, or sooner termination of this License, is intended by NYCEDC to be abandoned. NYCEDC shall remain liable to the City for any damages, including the cost of removal or disposal of property, should NYCEDC and/or its Subconcessionaire(s) fail to remove all possessions from the Former Streets on or before the expiration or termination date. NYCEDC shall pay any damages promptly upon the City's demand.

J. Upon termination of this License, except to the extent otherwise permitted, NYCEDC shall, (i) turn over to DSBS or its designees all books, records, documents and materials specifically relating to this License; and (ii) submit, within ninety (90) days, a final statement and report relating to the License, which report shall be made by a certified public accountant or a licensed public accountant.

K. NYCEDC expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by DSBS sooner than the fixed term because the Former Streets is required for any public purpose, or because the License was terminated or revoked for any reason as provided herein.

L. This License may be suspended for any reason with written notice from DSBS. Such suspension shall be immediately effective upon the mailing, e-mail or hand delivery thereof. In the event of such notice of suspension, NYCEDC and its Permitted User shall not operate.

M. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this License. In addition, nothing contained in this Section shall be deemed or imply or be construed to represent an exclusive enumeration of circumstances under which DSBS may terminate this License.

## **20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

A. NYCEDC shall faithfully perform and carry out the provisions of this License and cause its Permitted User(s), agents, employees, and invitees to perform and carry out the provisions of this License. NYCEDC shall comply with and shall cause its Permitted User(s) to comply with all federal, state, and local laws, rules, regulations, and DSBS specifications, standards, and policies applicable to the Former Streets and NYCEDC's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

B. NYCEDC shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Concession Rider set forth in Exhibit D.

C. Neither NYCEDC nor its Permitted Users shall unlawfully discriminate against any person because of actual or perceived age, religion, creed, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. NYCEDC shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

D. This License is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. NYCEDC shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this License. This includes providing safe and accessible opportunities for everyone. To the extent possible, NYCEDC is encouraged to exceed all applicable accessibility requirements for people with disabilities.

## 21. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. NYCEDC makes the following representations and warranties:

(1) NYCEDC is a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of New York, and has all requisite power and authority to execute, deliver and perform this License.

(2) This License has been duly authorized by all necessary corporate action on the part of NYCEDC has been duly executed and delivered by NYCEDC, and assuming due execution and delivery by DSBS, constitutes a legal, valid, binding and enforceable obligation of NYCEDC.

(3) The execution and delivery of this License, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under NYCEDC's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust or other License or instrument to which NYCEDC is bound, or, to the knowledge of NYCEDC, any order, rule or regulation of any court, governmental agency or body having jurisdiction over NYCEDC or any of its activities or properties.

(4) NYCEDC has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this License.

(5) NYCEDC represents and warrants that, with respect to securing or soliciting this License, NYCEDC is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). NYCEDC makes such representation and warranty to induce the City to enter into this License and the City relies upon such representation and warranty in the execution of this License. For any breach or violation of the representation and warranty set forth in this paragraph, the Commissioner shall have the right to annul this License without liability; and NYCEDC shall not make claim for, or be entitled to recover, any sum or sums due under this License. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by law or under this License.

B. NYCEDC covenants and agrees that for so long as this License is in effect it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

C. The City hereby represents and warrants that this License has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by NYCEDC, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

D. NYCEDC shall ensure that Permitted Users comply and cooperate in all respects with the requirements of this License.

## **22. CONFLICT OF INTEREST**

NYCEDC represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. NYCEDC further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

## **23. NO LEASE**

It is expressly understood that the City has title to the Former Streets and that no land, building, space, or equipment is leased to NYCEDC, but that during the term of this License, NYCEDC shall be allowed the use of the Former Streets only as herein provided.

## **24. INTENTIONALLY OMITTED**

## **25. RESERVATION OF RIGHTS AND INTERESTS**

A. The parties to this License will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License.

B. NYCEDC will conspicuously acknowledge the involvement of DSBS in any such statement or release. If DSBS finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Former Streets is incorrect or unacceptable, NYCEDC and DSBS agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

C. If NYCEDC publishes a work discussing any aspect of this License, NYCEDC will acknowledge therein the involvement, if any, of the City, when appropriate, and the City will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use such publication.

## **26. WAIVER OF JURY TRIAL**

NYCEDC hereby expressly waives all rights to trial by jury in any lawsuit or summary proceeding hereafter instituted by the City against NYCEDC or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this License with regard to any matter whatsoever in any way connected with this License. This provision relating to the waiver of jury trial rights shall survive the expiration or termination of this License or any terms hereof.

## **27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE**

A. This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of NYCEDC and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against the City arising under this License or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License and intent, it is understood that:

(1) If the City initiates any action arising out of this License against NYCEDC in Federal Court or in New York State Court, service of process may be made on NYCEDC either by personal service upon an officer or authorized agent of NYCEDC, wherever NYCEDC may be found, or by registered mail addressed to NYCEDC at the address set forth in this License, or to such other address as NYCEDC may provide to DSBS or the City in writing; and

(2) With respect to any action arising out of this License between the City and NYCEDC in New York State Courts, NYCEDC expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of forum non conveniens, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County.

(3) With respect to any action arising out of this License between the City and NYCEDC in Federal Court located in New York City, NYCEDC expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City.

(4) If NYCEDC commences any action arising out of this License against the City in a court located other than in the County, City and State of New York, upon request of the City, NYCEDC shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, NYCEDC shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

B. All disputes arising out of this License shall be interpreted and decided in accordance with the laws of the State of New York.

## **28. CLAIMS AND ACTIONS THEREON**

A. No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License or arising out of this License or in any way connected with this License unless NYCEDC shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against the City by NYCEDC upon any claims based upon this License unless such action shall be commenced (i) within six months of the termination or conclusion of this License, or (ii) within six months after the accrual of the cause of action, whichever first occurs.

C. In the event any claim is made or any action brought in any way relating to the License herein, NYCEDC shall diligently render to the City without additional compensation any and all assistance which the City may require of NYCEDC.

## **29. CLAIM AGAINST OFFICERS OR EMPLOYEES**

No claim whatsoever shall be made by NYCEDC against any officer, agent, employee or volunteer of the City for, or on account of, anything done or omitted in connection with this License.

## **30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

A. NYCEDC agrees that neither NYCEDC nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of NYCEDC or a substantially-owned affiliated company thereof, or participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render, forfeit and void this License.

C. NYCEDC shall comply in all respects, with the provisions of §6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

## **31. TRADEMARK**

The City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If NYCEDC or its Permitted User(s) sells merchandise that uses the City's trademarks, they shall purchase such merchandise from authorized licensees of the City of New York. The knowing sale of counterfeit or unlicensed merchandise at the Former Streets will result in the immediate termination of this License.

### **32. INFRINGEMENTS**

NYCEDC and/or Permitted Users shall be liable to the City, and NYCEDC hereby agrees to provide in any Subconcession or Permit, the obligation that Permitted User shall indemnify and hold the City harmless for any damage or loss or expense sustained by the City from any infringement by Permitted User or NYCEDC of any intellectual property, including without limitation, any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by NYCEDC or Permitted User in the performance of this License.

### **33. ANTI-TRUST**

NYCEDC hereby assigns, sells, and transfers to the City all right title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular services purchased or procured by the City under this License.

### **34. EMINENT DOMAIN AND PUBLIC USE**

In the event that the Former Streets or any part thereof is required for a public use or condemned for a public use, whether by DSBS or any other agency of government, NYCEDC waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DSBS may, in its sole discretion and upon NYCEDC's request, use reasonable efforts to provide NYCEDC with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to NYCEDC's business. In such case, the License term shall begin to run again as soon as the public work is completed and NYCEDC is able to resume its business.

### **35. INTENTIONALLY OMITTED.**

### **36. SEVERABILITY**

If any provision(s) of this License is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

### **37. ALL LEGAL PROVISIONS DEEMED INCLUDED**

It is the intent and understanding of the parties to this License that each and every provision of law required to be inserted in the License shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

**38. MODIFICATION**

No waiver or modification of any provision of this License will be effective unless it is in writing and signed by duly authorized representatives of DSBS and NYCEDC.

**39. ENTIRE AGREEMENT**

This License contains all the terms and conditions agreed upon by the parties hereto and no other agreement, oral or otherwise, regarding the subject matter of this License shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein.

**40. COUNTERPARTS**

This License may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

**NO FURTHER TEXT ON THIS PAGE**

**IN WITNESS WHEREOF**, the parties have duly executed this License as of the date first written above.

LICENSOR:  
THE CITY OF NEW YORK

LICENSEE:  
NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Andrew Schwartz  
Deputy Commissioner for  
Legal & Regulatory Affairs  
Department of Small Business Services

By: \_\_\_\_\_  
Name:  
Title  
Asset Management  
New York City Economic Development  
Corporation  
EIN: \_\_\_\_\_

Approved as to Form and  
Certified as to Legal Authority

\_\_\_\_\_  
Acting Corporation Counsel

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came Andrew Schwartz to me known, and known to be the Deputy Commissioner, New York City Department of Small Business Services, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_ who, being duly sworn by me did depose and say that s/he is the Executive Vice President of the Asset Management NYCEDC, the corporation described in and who executed the foregoing instrument and s/he acknowledged that s/he executed the same in his/her official capacity and for the purposes mentioned therein.

\_\_\_\_\_  
Notary Public

Exhibit A  
Map of Former Streets

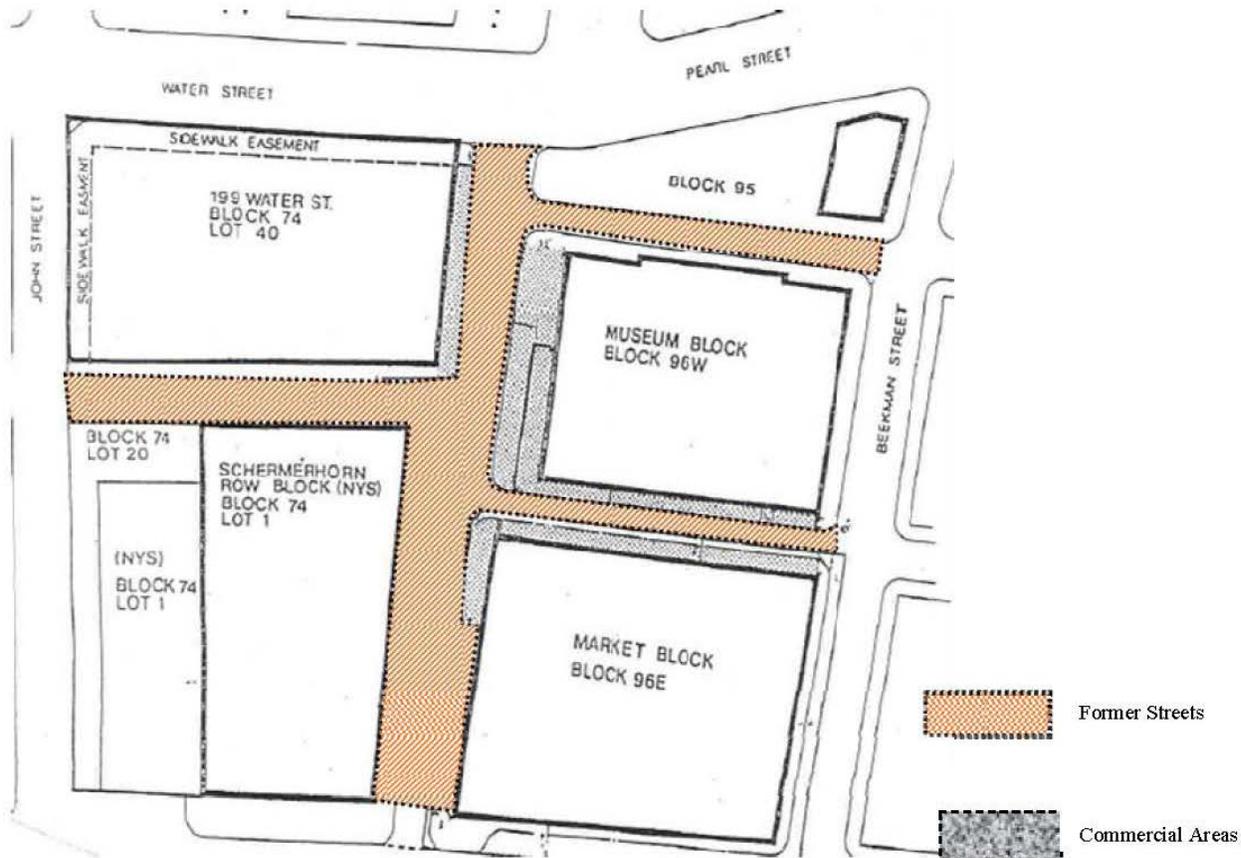


Exhibit B

Intentionally Omitted

**EXHIBIT C**

**INSURANCE REQUIREMENTS FOR PERMITS AND SUBCONCESSIONS**

(a) **Required Insurance:**

- i. Commercial General Liability Insurance. Permitted User shall be required to obtain and maintain Commercial General Liability (“CGL”) insurance coverage in the minimum amounts indicated in Table A and Table B as follows with coverage for personal and advertising injury and property damage in the same amounts as the per occurrence limit, and products-completed operations in the same amount as the general aggregate limit. All general aggregate coverage specified in Table A and Table B shall apply on a per-location basis applicable to the Former Streets. In addition, Permitted Users and, as indicated, third party(ies), shall obtain and maintain the additional insurance coverages as indicated in Table C as follows.

**Table A: CGL Insurance Coverages and Minimum Limits Required:**

<b>Personal and Advertising Injury, Damage to Rented Premises, and Per Occurrence Limits:</b>	<b>Products-Completed Operations Aggregate and General Aggregate Limits:</b>	<b>Applicable Level Required [mark one]:</b>
\$1,000,000	\$2,000,000	
\$2,000,000	\$3,000,000	
\$3,000,000	\$4,000,000	
\$5,000,000	\$6,000,000	
\$10,000,000	\$11,000,000	

**Table B: Additional CGL Insurance Coverages and Minimum Limits Required:** The following additional CGL requirements shall apply (if marked “Yes” under “Applicable”):

<i>Specific Requirements</i>	<i>Insured Party</i>	<i>Applicable</i>	<i>Coverage [Revise limits as needed to reflect higher risk, consult with AVP of Insurance and Risk Management]</i>
<b>Food Concessions</b>	Each third party food concession vendor	YES NO	CGL insurance with minimum limits of coverage of at least \$1,000,000 per occurrence, and \$2,000,000 general aggregate.
<b>Pyrotechnics or Special Effects</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for pyrotechnics, fireworks or special effects (including smoke machines).
	Each party conducting pyrotechnics	YES NO	CGL insurance covering pyrotechnics, fireworks, or special effects (including smoke machines) with minimum limits of coverage of at least \$5,000,000 per occurrence, and \$6,000,000 general aggregate.
<b>Stunts</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for stunts.
<b>Animals</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for animals.
<b>Temporary Structures including</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for temporary structures, seating, tents, stages and collapse.
	Each third party	YES	CGL insurance covering all temporary structures,

<b>Seating, Tents, Stages, Displays</b>	vendor	NO	seating, tents, stages, and collapse with minimum limits of coverage of at least \$5,000,000 per occurrence, and \$6,000,000 general aggregate.
<b>Performers or Entertainers</b>	Each third party	YES NO	CGL insurance with minimum limits of coverage of at least \$1,000,000 per occurrence, and \$2,000,000 general aggregate and products-completed operations.
<b>Drone / UAV *All parties must have received NYC Permit*</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for drone or unmanned aircraft.
	Third party operator	YES NO	CGL insurance with no exclusion for drone or unmanned aircraft with minimum limits of coverage of at least \$1,000,000 per occurrence, and \$2,000,000 general aggregate.
<b>Events involving Minors</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for abuse and molestation or assault.
<b>Athletic Events and/or Open to Public</b>	The Permitted User	YES NO	CGL insurance cannot exclude liability for athletic activities, sports, physical activities (including games, gymnastics, trampolines, inflatable devices, mechanical rides), or participants.
<b>Security (Unarmed)</b>	The Permitted User and/or Each third party vendor	YES NO	CGL insurance with no exclusion for assault and battery and covering false arrest/invasion of privacy (which can be provided through a separate professional liability policy) with minimum limits of coverage of at least \$1,000,000 per occurrence, and \$2,000,000 general aggregate.
<b>Security (Armed)</b>	The Permitted User and/or Each third party vendor	YES NO	CGL insurance with no exclusion for armed operations or assault and battery and covering false arrest/invasion of privacy (which can be provided through a separate professional liability policy) with minimum limits of coverage of at least \$6,000,000 per occurrence, and \$7,000,000 general aggregate
<b>Alcoholic Beverages on the Premises:</b>	The Permitted User	YES NO	Host Liquor Liability insurance to cover alcoholic beverages served at the Premises.
	Permitted User and each third party engaged in serving, distributing or selling of alcohol at the Premises	YES NO	Liquor Legal Liability insurance, including, without limitation, coverage against any claim for loss of means of support with minimum limits of \$3,000,000 per occurrence and \$4,000,000 general aggregate.

**Table C: Additional Insurance Coverages and Minimum Limits Required**

<b>Filming At the Premises</b>	The Permitted User	YES NO	Media Liability / Errors & Omissions insurance providing coverage for defamation, invasion of privacy, copyright, trademark, title, slogan, misappropriation, plagiarism, breach of the Permit or Subconcession; and include coverage for the acquisition and gathering of matter and actual publication, broadcast or any other form of dissemination; independent contractors and freelancers furnishing matter or services; and contractual liability with limits of at least \$1,000,000 per claim and aggregate. Coverage must be in place prior to the Commencement Date of the Permit or Subconcession and for three years after the termination.
<b>Premises in the Care, Custody, and Control of the Permitted User</b>	The Permitted User	YES NO	Third Party Property Damage insurance including loss of use to cover damage to Premises of at least \$1,000,000 each occurrence.
<b>Autos Used at the Premises:</b>	The Permitted User	YES NO	Commercial Automobile Liability insurance with coverage at least as broad as the most recently issued ISO Form CA 00 01 in the amount of at least \$1,000,000 each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned, rented or hired vehicles including while loading and unloading. Permitted User may also be covered by a private Automobile Liability policy if the policy covers the commercial use of the vehicle, including while loading and unloading.
<b>Auto Liability for transport of Hazardous Materials:</b>	The Permitted User	YES NO	Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Workers’ Compensation, Employers’ Liability, and Disability Benefits Insurance.

The Permitted User shall obtain and maintain Workers’ Compensation insurance, Employers’ Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees and volunteers involved in the Permitted User’s operations under the applicable Permit and Subconcession according to the laws of the State of New York and with limits as required by statute.

Property Insurance. If Third Party Property Damage coverage is expressly determined to be appropriate in NYCEDC’s discretion to be required to be marked off in Table C above, then the Permitted User shall obtain and maintain all-risk, special causes of loss form property insurance on a replacement cost basis with no coinsurance requirement for the Premises. No property insurance shall provide for any deductible or self-insured retention in excess of ten thousand dollars (\$10,000) per occurrence. NYCEDC and the City of New York

shall be named as loss payees as their respective interests may appear.

Additional Waterfront Insurance Coverage. The following additional coverage shall be obtained and maintained (if marked “Yes” under “Applicable”):

<i>Specific Requirements</i>	<i>Insured Party</i>	<i>Applicable</i>	<i>Coverage</i>
<b>U.S. Longshoremen and Harbor Workers’ Act Insurance:</b>	The Permitted User	If required by federal law	U.S. Longshoremen and Harbor Workers’ Act Insurance in accordance with federal statutory limits and as required by federal law.
	Each third party employer of personnel working on or near navigable waters while acting in the scope of their employment	If required by federal law	
<b>Marine Protection and Indemnity Insurance:</b>	The Permitted User	YES NO	Marine Protection and Indemnity Insurance with a limit of not less than \$5,000,000 per occurrence if the vessel(s) have passenger capacity of less than 150 people, or not less than \$10,000,000 per occurrence if any vessel(s) has a passenger capacity of more than 150 people.
	Each third party owner or operator of a vessel	YES NO	
<b>Jones Act Insurance:</b>	The Permitted User	If required by federal law	Jones Act coverage for each vessel’s captain and crew in accordance with federal statutory limits and as required by federal law.
	Each third party owner or operator of a vessel	If required by federal law	

(b) **Requirements for Liability Policies.** The following requirements shall apply to all policies required to be obtained and maintained under (a), above.

All liability insurance (including Marine Protection and Indemnity, if applicable), whether held by the Permitted User or by a third party, shall name the City of New York and NYCEDC, together with their respective members, officials, officers, directors and employees (the “Additional Insureds”), as additional insureds on a primary and non-contributory basis. For CGL, such coverage must be at least as broad as the most recent edition of Insurance Services Office (“ISO”) Form CG 20 26, CG 20 12, and CG 20 37. For any insurance provided by any third party other than the Permitted User, the Additional Insureds shall be added without regard to privity of contract and must be specifically added as additional insureds by endorsement; blanket additional insured endorsements are not accepted. The Permitted User shall provide to NYCEDC a copy of any endorsements providing coverage to the Additional Insureds.

All liability insurance shall protect the insureds from claims for property damage and/or bodily injury, including death that may arise from any of the operations under the Permit or Subconcession, as applicable. CGL and excess/umbrella liability coverages shall be at least as broad as that provided by the most recently issued ISO Form CG 00 01 and shall be “occurrence” based rather than “claims-made.” By way of example and not limitation, no CGL and excess/umbrella policy delivered hereunder shall limit (whether by exception, exclusion,

endorsement, script or other modification) any of the following coverage attributes:

1. personal and advertising injury and products/completed operations coverage;
2. contractual liability coverage insuring the contractual obligations of the insureds;
3. employers' liability coverage for liability assumed by the Permitted User under an "insured contract";
4. coverage for claims arising under New York Labor Law; and
5. the applicability of CGL coverage to the Additional Insureds in respect of liability arising out of any of the following claims: (A) claims against the Additional Insureds by employees of a the Permitted User or employees of the entity required to maintain the insurance hereunder, or (B) claims against the City or NYCEDC, together with their respective members, officials, officers, directors and employees, by any general contractor, construction manager, contractor, architect or engineer or by the employees of any of the foregoing, or (C) claims against the City or NYCEDC, together with their respective members, officials, officers, directors and employees arising out of any work performed by a general contractor, construction manager, contractor, architect or engineer.

The Permitted User or, where specified, a third party may satisfy its liability insurance obligations through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

**(c) Proof of Insurance.**

Proof of insurance for all insurance required in this Exhibit must be submitted to and accepted by the New York City Department of Small Business Services ("DSBS") and/or NYCEDC prior to or upon execution of the Permit or Subconcession. Such proof shall include a certificate of insurance, certification of insurance broker or agent (in the form attached), and any required additional insured endorsements (or policy provisions). Upon request, the Permitted User shall also provide a list of the Declarations and Endorsements.

For all insurance required under the applicable Permit or Subconcession other than Workers' Compensation, Employers' Liability, and Disability Benefits, the Permitted User and applicable third party shall submit one or more Certificates of Insurance. If the Certificate in question evidences liability coverage, such Certificate shall include the City of New York and NYCEDC, together with their respective members, officials, officers, directors and employees, as additional insureds in the description of operations box in the following manner:

*"The City of New York and the New York City Economic Development Corporation, together with their respective members, officials, officers, directors and employees, are additional insureds on a primary and non-contributory basis under Commercial General Liability and Umbrella/Excess<sup>1</sup> policies for [Fill in Location] on [Fill in Dates] without regard to privity of contract. Such policy(ies) include a waiver of subrogation in favor of the City of New York and the New York City Economic Development Corporation, together with their respective members, officials, officers, directors and employees, and no policies may contain any limitations / exclusions for New York Labor Law claims."*

As required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Permitted User shall submit proof of the Permitted User's workers' compensation insurance,

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<sup>1</sup> Delete "Umbrella/Excess policies" if License only requires \$1M/\$2M in General Liability limits.

disability benefits insurance, and the payment of family leave benefits (or proof of a legal exemption) to the DSBS and/or NYCEDC in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, Certificate of Workers' Compensation Insurance;
2. Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Form SI-12, Certificate of Workers' Compensation Self-Insurance;
4. Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;
5. Form DB-120.1, Certificate of Disability Benefits Insurance;
6. Form DB-155, Certificate of Disability Benefits Self-Insurance;
7. Form CE-200 – Affidavit of Exemption;
8. Other forms approved by the New York State Workers' Compensation Board; or
9. Other proof of insurance in a form acceptable to DSBS.

For such forms that include a place to designate the certificate holder, the certificate holders shall be listed as:

The City of New York, c/o New York City Department of Small Business Services, One Liberty Plaza, 165 Broadway, New York, New York 10006

and

New York City Economic Development Corporation, One Liberty Plaza, 165 Broadway, New York, New York 10006.

Proof of insurance confirming renewals of insurance shall be submitted to DSBS and NYCEDC prior to the expiration date of coverage of all policies required pursuant to this Exhibit C under this License. Such proof of insurance shall comply with subsections (i) and (ii) directly above.

Acceptance or approval by DSBS or NYCEDC of proof of insurance or any other matter does not waive the Permitted User's obligation to ensure that insurance fully consistent with the requirements of this Exhibit are maintained nor does it waive the Permitted User's liability for its failure to do so.

The Permitted User shall be obligated to provide in the Permit or Subconcession DSBS and NYCEDC with a copy of any policy of insurance required under this Exhibit upon request by the DSBS Commissioner, NYCEDC, or the New York City Law Department.

**(d) General Requirements for Insurance Coverage and Policies.**

All insurance required under this Exhibit (other than Disability Benefits) shall include a waiver of the right of subrogation against the City and NYCEDC, together with their respective members, officials, officers, directors and employees. In addition, all insurance required to be provided by third parties under this Exhibit (other than Disability Benefits) shall include a waiver of the right of subrogation against the City and NYCEDC, together with their respective members, officials, officers, directors and employees.

There shall be no self-insurance program, including a self-insured retention exceeding \$10,000, with regard to any insurance required under this Exhibit unless approved in writing by the DSBS Commissioner and NYCEDC. The Permitted User shall ensure that any such self-insurance program provides the Additional Insureds with all rights that would be provided by traditional insurance under this Exhibit, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

Policies of insurance required under this Exhibit shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.

The limits of coverage for all types of insurance required under this Exhibit shall be the greater of (A) the minimum limits set forth in this Exhibit or (B) the limits provided to the Permitted User under all primary, excess and umbrella policies covering operations under the applicable Permit or Subconcession.

The Permitted User, shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the Additional Insureds are each an insured under the policy.

All property and liability insurance shall contain a provision that no act or omission of the City and/or NYCEDC shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by the City and/or NYCEDC.

The Permitted User waives all rights against the City and NYCEDC including their respective members, officials, officers, directors and employees, for any damages or losses that are covered under any insurance required under this Exhibit (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Permitted User or any their respective employees, agents, or servants or those of the Permitted User's contractors or subcontractors.

The Permitted User's failure to secure and maintain insurance in complete conformity with this Exhibit, or to give the insurance carrier timely notice on behalf of the City and/or NYCEDC, or to do anything else required by this License, which requirements shall be incorporated in the applicable Permit or Subconcession, shall constitute a material breach of the applicable Permit or Subconcession. Such breach shall not be waived or otherwise excused

except by written consent from DSBS, and shall not be excused by any inaction by DSBS or NYCEDC at any time.

Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Exhibit, the Permitted User shall be required to notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under the applicable Permit or Subconcession (including notice to Commercial General Liability insurance carriers for events relating to the Permitted User's own employees) in the time required by the policy but no later than twenty (20) days after such event. For any policy where the Additional Insureds are additional insureds, such notice shall expressly specify that "this notice is being given on behalf of the City of New York and New York City Economic Development Corporation, including their respective members, officials, officers, directors and employees, as Additional Insureds as well as the Named Insured." Such notice shall also contain the following information to the extent known: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Permitted User, shall simultaneously send copies of such notice to the (1) City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007, (2) New York City Economic Development Corporation, attn: General Counsel, One Liberty Plaza, 165 Broadway, New York, New York 10006, and (3) New York City Department of Small Business Services, One Liberty Plaza, 165 Broadway, 11<sup>th</sup> Floor, New York, New York 10006, Attn: Deputy Commissioner for Legal & Regulatory Affairs.

In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Exhibit, the Permitted User shall at all times fully cooperate with the City and NYCEDC with regard to such potential or actual claim.

In the event the Permitted User receives notice, from an insurance company or other person, that any insurance policy required under this Exhibit shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Permitted User, shall immediately forward a copy of such notice to (1) the DSBS Commissioner, New York City Department of Small Business Services, One Liberty Plaza, 165 Broadway, New York, New York 10006, (2) New York City Economic Development Corporation, attn: Executive Vice President, Asset Management, and the General Counsel, One Liberty Plaza, 165 Broadway, New York, New York 10006, and (3) New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Permitted User shall ensure that there is no interruption in any of the insurance coverage required under this Exhibit.

Insurance coverage in the minimum amounts provided for in this Exhibit shall not relieve the Permitted User of any liability under this License, the applicable Permit, the applicable Subconcession, nor shall it preclude the City and/or NYCEDC from exercising any rights or taking such other actions as are available to any or all of them under any other provisions of this License, the applicable Permit, the applicable Subconcession, or the law.

Notwithstanding any other provision of this Exhibit or elsewhere in this License and/or applicable Permit or Subconcession, the Permitted User shall be, continue and remain liable for any uninsured destruction, loss or damage to the Premises during the Event. In the event of any such loss or damage for which the Permitted User becomes liable as aforesaid, the Permitted User shall, at its/their sole cost and expense, promptly repair or replace the property so lost or damaged in accordance with plans and specifications approved by the City or, at the discretion of the City, pay in cash the value of repairs or rebuilding, such value to be determined by the City, in lieu of performance of such repairs to or rebuilding of the Premises.

The Permitted User shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Exhibit, and the Permitted User shall perform, satisfy and comply with or cause to be performed, satisfied or complied with all conditions, provisions, and requirements of all such insurance policies.

## **CERTIFICATES OF INSURANCE**

### **Instructions to New York City Agencies, Departments, and Offices**

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR

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- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.



## **Exhibit D**

### **Paid Sick Leave Law Concession Rider**

#### **Introduction and General Provisions**

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>2</sup> Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

The NYCEDC agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this License. The NYCEDC further acknowledges that such compliance is a material term of this License and that failure to comply with the PSLL in performance of this License may result in its termination.

The NYCEDC must notify DSBS’s General Counsel in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this License. Additionally, the NYCEDC must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of the NYCEDC.

The NYCEDC is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the NYCEDC can get more information about how to comply with the PSLL. The NYCEDC acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

#### **Applicability, Accrual, and Use**

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<sup>2</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSSL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSSL may use sick time for any of the following:

- such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such

employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

### Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under Section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is permitted by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under Section 336-c of the New York State Social Services Law.

### Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

### Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

### Records

An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

### Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

### More Generous Policies and Other Legal Requirements

Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.