

**CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET**

*(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable) )*

<b>AGENCY: NYC &amp; Company, Inc. on behalf of NYC Department of Small Business Services</b>	<b>RECOMMENDED CONCESSIONAIRE</b> Name: Taylor Made Golf Company, Inc. Address: 5545 Fermi Ct. Carlsbad, CA 92008 Telephone # (760) 918-6000 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN #33-0831814 Not-for-Profit Organization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>CONCESSION TITLE/ DESCRIPTION:</b> Non-exclusive use of City-Owned Trademarks on Merchandise <b>CONCESSION I.D.#</b> NYCCO-2019-020
<b># VOTES required for proposed action</b> = 4 <input type="checkbox"/> N/A		

**LOCATION OF CONCESSION SITE(S\*) Address** \_\_\_\_\_  N/A  
 \*Attach additional sheet **Borough** \_\_\_\_\_ **C.B.** \_\_\_\_\_ **Block #** \_\_\_\_\_ **Lot #** \_\_\_\_\_

**SELECTION PROCEDURE**  
 (\*CCPO approval of CRFA required)

Competitive Sealed Bids  
 Competitive Sealed Proposals\* ( FCRC approved Agency request to deviate from final recommendation of the Selection Committee on \_\_/\_\_/\_\_.)  
 Different Selection Procedure: \* ( Sole Source Agreement  Other \_\_\_\_\_ )  
 > FCRC approved different selection procedure on 11/13/19.  
 Negotiated Concession\*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p><b>Term: From Notice to Proceed To 12/31/20</b>  <b>Renewal Option(s) Term: None</b></p> <p><b>Total Potential Term: 1 Year</b></p> <p><input type="checkbox"/> * &gt;20 years – FCRC unanimously approved term on __/__/__</p>	<p align="center"><b>ANNUAL REVENUE</b>                  (Check all that apply)                  (<input type="checkbox"/> Additional sheet (<input type="checkbox"/>s) attached)</p> <p><input type="checkbox"/> Annual Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> <b>Other</b> For each license year of the term, Taylor Made Golf Company, Inc shall pay royalties equal to eleven percent (11%) of Net Sales when sold at wholesale and five and a half percent (5.5%) of Net Sales when sold at retail.</p> <p>Guaranteed Minimum Royalty payment shall be payable as follows:</p> <p>A guaranteed minimum royalty of fifteen thousand dollars (\$15,000).</p>
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**NOTIFICATION REQUIREMENTS**

**Subject concession was awarded by CSB or CSP.**  YES  NO

**If YES**, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by \_\_/\_\_/\_\_, which was at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.

The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by \_\_/\_\_/\_\_, which was at least 40 days prior to issuance of the solicitation.

**If NO**, check the applicable box below:

The Agency certifies that each affected CB/BP received written notice by 10/4/19, which was at least 40 days in advance of the FCRC meeting on 11/13/19 at which the agency sought and received approval to use a different selection procedure.

- The Agency certifies that each affected CB/BP received written notice on \_\_/\_\_/\_\_, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on \_\_/\_\_/\_\_.
- The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_/\_\_/\_\_.

**Law Department approved concession agreement on \_\_/\_\_/\_\_**

**Award is a major concession.**  YES  NO

**If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:**

- CPC approved on \_\_/\_\_/\_\_
- City Council approved on \_\_/\_\_/\_\_ or  N/A

**AUTHORIZED AGENCY STAFF**

**This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.**

**If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:**

- The concession was approved by the FCRC on \_\_/\_\_/\_\_.
- The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

**Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_/\_\_/\_\_

**CERTIFICATE OF PROCEDURAL REQUISITES**

**This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.**

**Signature** \_\_\_\_\_ **Date** \_\_/\_\_/\_\_

City Chief Procurement Officer

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:  
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

NYC & Company, Inc. ("NYC & Company") on behalf of the New York City Department of Small Business Services ("SBS") intends to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a Sole Source License Agreement ("License Agreement") with Taylor Made Golf Company, Inc. ("Taylor Made") for the non-exclusive use of city-owned trademarks on merchandise. Taylor Made Golf Company, Inc. has been one of the top golf equipment and accessories manufacturers in the industry and has global brand recognition. For the U.S. Open in June 2020 Taylor Made would like to create a one-off program to produce golf bags and accessories using the New York City Fire Department and the New York City Police Department marks. Taylor Made would showcase the bags and accessories by having PGA Tour players with whom they have a relationship, such as Rory McIlroy and Dustin Johnson, carry the golf bags at the 2020 U.S. Open. Taylor Made's unique player relationships and manufacturing capabilities would offer the opportunity for merchandise with City-owned trademarks to be sold in places where it is not being sold currently. Therefore, it is in the City's best interest to enter into a sole source agreement with Taylor Made Golf Company, Inc. This proposed non-exclusive license agreement will not bar opportunities for other equipment and accessories manufacturers.

***Instructions:*** Provide all information requested below; check all applicable boxes.

**A. SELECTION PROCEDURE**

Sole Source

Other *Describe:*

**B. NEGOTIATIONS**

***Instructions:*** Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.

NYC & Company/SBS negotiated that Taylor Made Golf Company, Inc. shall pay licensing fees equal to eleven percent (11%) of Net Sales when sold at wholesale and five and a half percent (5.5%) of Net Sales when sold at retail with a guaranteed minimum royalty of fifteen thousand dollars (\$15,000) that shall be paid on or before December 31<sup>st</sup>, 2020.

**C. BASIS FOR AWARD** (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

**The agency determined that award of the concession is in the best interest of the City because:**

Taylor Made Golf Company, Inc. approached The City in August 2019 to create a one-off program to produce golf bags and accessories featuring the New York City Fire Department and New York City Police Department Trademarks for the U.S. Open that is set to occur in June 2020. Taylor Made has relationships with high-profile PGA Tour players, all of whom would showcase Taylor Made golf bags and accessories bearing these City Trademarks during the 2020 U.S. Open. Associating the City's marks with athletes of this caliber would generate priceless exposure to the City's licensing program, the New York City Fire Department, and the New York City Police Department. Due to accelerated production timelines, however, Taylor Made would need to

begin producing these items by December 2019 in order to have them available for June 2020. This proposed non-exclusive license agreement will not bar other opportunities for other apparel manufacturers and will allow the City to diversify apparel options available to consumers at retail.

**D. PUBLIC HEARING       N/A – Subject award NOT a significant concession]**

**1. Publication & Distribution of Public Hearing Notice**

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on \_\_\_/\_\_\_/\_\_\_, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on \_\_\_/\_\_\_/\_\_\_, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by \_\_\_/\_\_\_/\_\_\_.

- \_\_\_\_\_, a NYC citywide newspaper on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_
- \_\_\_\_\_, a NYC citywide newspaper on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_

***OR***

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on \_\_\_/\_\_\_/\_\_\_, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on \_\_\_/\_\_\_/\_\_\_, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by \_\_\_/\_\_\_/\_\_\_.

- \_\_\_\_\_, a NYC local newspaper published in the affected borough(s) on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_.
- \_\_\_\_\_, a NYC local newspaper published in the affected borough(s) on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_.

**2. Public Hearing Date, Exception to Public Hearing Requirement**

A Public Hearing was conducted on \_\_\_/\_\_\_/\_\_\_.

***OR***

The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on \_\_\_/\_\_\_/\_\_\_ and sent a copy of that notice to all Committee Members.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

December 11, 2019

(Cal. No. 1 )

BE IT RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes NYC & Company, Inc., on behalf of the New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a non-exclusive, Sole Source License Agreement (“License Agreement”) with Taylor Made Golf Company, Inc. (“Taylor Made”) for the non-exclusive use of city-owned trademarks on merchandise. The License Agreement will provide for a license term beginning from notice to proceed and shall continue through December 31, 2020. For each license year of the Term, Taylor Made shall pay royalties equal to eleven percent (11%) of Net Sales when sold at wholesale and five and half percent (5.5%) of Net Sales when sold at retail (Term and Net Sales have the meanings as they are defined in the License Agreement). The License Agreement provides for a guaranteed minimum royalty of fifteen thousand dollars (\$15,000) covering the period from notice to proceed to December 31, 2020.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

**December 11<sup>th</sup>, 2019**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: Director of the Mayor's Office of Contract Services

## LICENSE AGREEMENT

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of New York (the “City” or “Licensor”), acting by and through the New York City Department of Small Business Services with its principal place of business located at 110 Williams Street, 2nd Floor, New York, NY 10038, and Taylor Made Golf Company, Inc. a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 5545 Fermi Ct. Carlsbad, CA 92008 (hereinafter “Licensee”).

**IN CONSIDERATION OF** the mutual promises, covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### SECTION I (License)

Subject to the limitations, terms and conditions set forth herein, Licensor hereby grants to Licensee and its subsidiaries a limited, revocable, worldwide, non-exclusive license to use the trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the “Property”) solely in the manner approved in advance in writing by Licensor during the Term in connection with the manufacture, advertising, promotion, sale, and offering for sale of the products listed in Exhibit 2 in any country throughout the world (“Territory”). Licensed Products listed in Exhibit 2 shall be sold only in the distribution channels defined in Exhibit 3.

The license granted herein shall be personal in nature, and it is expressly understood and agreed that Licensee and its subsidiaries have no right to sublicense, assign, convey or transfer in any manner to any other person or entity any rights granted to them hereunder, except that Licensee and its subsidiaries may sell Licensed Products through the distribution channels in Exhibit 3 and have Licensed Products manufactured by their third party manufacturers, provided that Licensee’s contracts with such parties obligate them to comply with the license restrictions set forth this Agreement. Any attempt by Licensee, or anyone acting on its behalf, to sublicense, assign, convey or otherwise transfer the license granted herein other than as permitted hereby, including pursuant to Section XXI, shall be null and void and shall be grounds for immediate termination of this License Agreement by the City. All sales of Licensed Products pursuant to this License Agreement shall be made by or through Licensee or its subsidiaries, who agree to account to Licensor for all sales in the Territory. The City hereby appoints as its agent for all purposes under this License Agreement NYC & Company, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York and having an address at 810 Seventh Avenue, 3<sup>rd</sup> Floor, New York, NY 10019 (“NYC & Company”).

### SECTION II (Express Conditions and Limitations)

The license granted herein is subject to the following express conditions and limitations:

(a) Licensee agrees to use the applicable trademark and copyright notices as directed by Licensor (™, ® or ©), as well as any additional notations directed by Licensor in connection with the first and most prominent usages of the Property on or in connection with all Licensed Products, hang tags, and packaging: “All New York City logos and marks depicted herein are the property of the City of New York and may not be reproduced without written consent. © 2019 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, and other promotional materials for each Licensed Product (hereinafter the “Promotional Materials”): “All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2019 (or other initial year of publication). City of New York. All rights reserved.” Any shortened version of such notices may be used only with the City’s prior written approval.

(b) Licensee agrees that it will not use the Property in any advertising, promotion, sale, or offering for sale of the Licensed Products except as depicted in Exhibit I hereto, or as approved by the City in advance in writing.

(c) Information labels which include the statements set forth in Exhibit 4, attached hereto and made a part hereof, shall be affixed to the Licensed Product, or to the packaging for the Licensed Product. The City may, from time to time after consultation with Licensee, amend the language of the labels upon written notice thereof to Licensee. Licensee shall purchase such holographic labels that identify and authenticate the Licensed Product ("Product Authentication Materials") as required by the City from the City's authorized supplier of Product Authentication Materials. Such Product Authentication Materials shall be displayed in connection with Licensed Products sold or offered for sale by Licensee in a form and location specified by the City.

(d) The Property shall not be used in connection with the trademarks, service marks, trade names, corporate names, or personal names of any third party, except with the prior written consent of the City.

(e) The Property shall not be used by Licensee or any entity or individual controlled directly or indirectly by Licensee as or as any part of its corporate name, trade name, fictitious name, "d/b/a," symbol, logo, or other identifier.

(f) The Licensed Product and Licensee's manufacture, sales, promotion, marketing and selling of the Licensed Product shall be in full compliance (at Licensee's sole cost and expense) with all applicable federal, state and local statutes, rules, regulations and orders. If Licensee is required to or chooses to recall or remove the Licensed Product to maintain conformity to any such statutes, rules, regulations or orders, Licensee shall bear all costs, expenses and charges caused by or related to such recall or modification.

(g) No license is granted hereunder for the use of the Property for any purpose other than upon or in connection with the Licensed Product. No license is granted hereunder for the manufacture, sale or distribution of Licensed Products to be used for publicity purposes, in combination sales, as giveaways, or to be disposed of under similar methods of merchandising. In the event that Licensee desires to sell Licensed Products for such purposes, Licensee acknowledges and agrees that it must first seek and obtain a separate license therefore from the City, and that the user thereof must also obtain a separate license from Licensor for such use of the Licensed Products. Licensee acknowledges that such separate license may be withheld for any reason.

(h) Licensee may manufacture, promote, advertise, sell, and offer for sale the Licensed Product only in the form approved by the City.

(i) Subject to the City's prior written approval in the City's sole discretion, Licensee agrees to adhere to such quality and ethical standards as may be provided by the City from time to time. The current quality control guidelines and ethical standards in effect are attached hereto as Exhibit 5 and 6.

(j) Subject to the City's prior written approval in the City's sole discretion, Licensee shall sell the Licensed Products in the Territory. The City may object to the continued sale of any Licensed Products that the City determines in its sole discretion to be inconsistent with the goodwill and reputation represented by the Property, or otherwise not in the best interests of the City.

(k) Licensee agrees and acknowledges that its license extends only to the Territory, and that it has no rights in the Property or to export, sell or authorize or permit the sale of any Licensed Products or other products or services bearing or otherwise associated with the Property outside the Territory, or any such proposed or potential sales that Licensee reasonably knows or should know would occur outside the Territory.

(l) Except to the extent that exclusive rights are explicitly granted hereunder, the parties agree and acknowledge that the City reserves the right to use itself or license to others the right to use the Property on any products or services, including those specifically defined as Licensed Products under this License Agreement.

**SECTION III  
(Term)**

This License Agreement shall become effective upon written notice from NYC & Company to Licensee (the “Effective Date”). The term (the “Term”) of this License Agreement shall commence on the Effective Date and shall continue through December 31, 2020, unless sooner terminated pursuant to the terms and conditions of this License Agreement.

**SECTION IV  
(License Years)**

For purposes of administering this License Agreement and of computing royalty payments owing from Licensee to the City hereunder, the term “License Year” shall apply to each calendar year during the Term.

**SECTION V  
(Royalties)**

In each License Year of this License Agreement, for products bearing solely the Licensed Property (or the Property with the Licensee’s marks) Licensee shall pay to NYC & Company for the license granted herein a royalty equal to eleven percent (11%) of Net Sales when sold at wholesale and five and a half percent (5.5%) when sold at retail. In the event the parties wish to co-brand the Property and the Licensee’s marks with any additional marks, the parties shall mutually agree to co-brand and mutually agree to the co-brand royalty in an amendment to this Agreement. The term Net Sales means the gross invoice price billed to purchasers of Licensed Products (whether sold by Licensee or any affiliate of Licensee) less only promotional allowances, taxes, freight charges (if separately stated) and such other discounts as may be approved in writing by NYC & Company, and any actual and adequately documented returns. Net Sales shall include insurance proceeds received by Licensee in payment for lost, stolen or damaged Licensed Products. Licensed Products shall be considered sold (and therefore included in Net Sales and subject to royalty payments) when they are billed, invoiced, shipped, or paid for, whichever occurs first. Except as otherwise permitted by the definition of Net Sales, no costs incurred in the manufacture, sale, offering for sale, promotion, advertisement, or shipment of the Licensed Products shall be deducted, nor shall deductions be made for cash, taxes, tariffs, freight, advertising, any other discounts or uncollectible accounts, or any other purpose. Sales of Licensed Product made other than in an arm’s length transaction shall be deemed to have been made at the regular wholesale price for such Licensed Products.

**SECTION VI  
(Guaranteed Minimum Royalty)**

Notwithstanding any other royalty payment requirements of this License Agreement, including those set forth above, Licensee shall pay to NYC & Company guaranteed minimum royalties in the amount and on the date set forth below:

Guaranteed Minimum:

The following total Guaranteed Minimum Royalties shall be payable as follows:

On or before December 31<sup>st</sup>, 2020: Fifteen Thousand dollars (\$15,000) minus actual Royalties paid by Licensee pursuant to Sections V and VII.

All Guaranteed Minimum Royalty payments shall be nonrefundable and shall be made whatever the Net Sales of the Licensed Products have been or are for any of the License Years, and shall be applied to and credited as advances against Licensee's liability for royalties for which the License Agreement is in effect. No carry over of excess earned royalty (over the Guaranteed Minimum Royalty) or deficiency of earned royalty (under the Guaranteed Minimum Royalty) into subsequent license periods within the term shall be allowed.

## **SECTION VII**

### **(Royalty Payments, Accounting and Statements)**

Licensee shall furnish to NYC & Company the following no later than forty-five (45) days after the end of each calendar quarter (beginning with the calendar quarter in which the initial shipment of Licensed Products covered by this License Agreement is made):

(a) complete and accurate statements in a format approved by NYC & Company and certified in writing to be accurate by an officer or authorized employee of Licensee, itemized by (a) product item number; (b) City Agency and/or specific trademark associated with such Agency (e.g., FDNY, NYPD) and showing the net number of units sold inclusive of returns, item description and Average Sales price of the Licensed Products sold by Licensee during the preceding quarter. Such statements shall be furnished to NYC & Company whether or not any Licensed Products have been sold during the preceding quarter; and

(b) payment of the earned royalty due from sales during the preceding quarter.

The receipt or acceptance by NYC & Company or the City of any statements furnished pursuant to this License Agreement or any royalties paid hereunder (or the cashing of any royalty checks paid hereunder) shall not preclude NYC & Company or the City from questioning the correctness of such statement or payment at any time. In the event any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Licensee. In the event of an overpayment by Licensee, Licensee may deduct such mutually verified overpayment from any earned royalty or guaranteed minimum royalty payment due with the next regular quarterly royalty statement and payment. In the event no further royalty payments would be forthcoming after discovery and mutual verification of the payment, then Licensee shall receive a refund of such overpayment within thirty (30) days after its written request for a refund is received by NYC & Company.

In the event that Licensee fails to make any payments, including, advances, guaranteed minimum royalty, earned royalty and audit findings, when such payments are due under this License Agreement, interest shall be charged at an annual rate of eighteen percent (18%), or the maximum rate allowed by law, whichever is lower. All payments made hereunder shall be in United States currency drawn on a United States bank. Licensee shall keep accurate books of account and records covering all transactions related to this License Agreement for at least six (6) years after termination of this License Agreement.

## **SECTION VIII**

### **(Audit Rights)**

The City or its authorized agent shall have the right, during business hours upon forty-eight (48) hours' advance notice and not more than once per year, to examine and request copies of Licensee's books, records, and accounts and all other documents and materials in the possession or under the control of Licensee relating to the sale of the Licensed Product or this License Agreement to such extent as may be necessary to determine the accuracy or inaccuracy of any royalty statements submitted by Licensee to Licensor. Licensee shall segregate its records and agrees that such audit may be used as a basis for settlement of charges under this License Agreement. The City may also at any time select any independent accounting firm to review Licensee's books, records and accounts, and to check shipments and verify the account (hereinafter referred to as the "Audit"). In the event that the Audit reveals any underpayment by Licensee to Licensor, Licensee shall remit payment for the amount shown to be due within ten (10) days, of receipt of official audit report plus a late charge in the amount of

eighteen percent (18%) per annum, or the maximum rate allowed by law whichever is lower, on all amounts shown to be owing by Licensee. In the event that the Audit determines that Licensee has underpaid by an amount equal to five percent (5%) or more of the total amount shown to be due to Licensor for the period audited, Licensee shall reimburse Licensor or its agent for all costs and expenses of the Audit. In addition, if the discrepancy is an amount equal to five percent (5%) or more and a discrepancy or underpayment of 5% or more had been found in at least one prior instance, Licensor may terminate this License Agreement by giving Licensee notice within sixty (60) days after receipt of the audit report disclosing the discrepancy. Licensee shall retain all books of account and records relating to this License Agreement for at least six (6) years after the termination or expiration of this License Agreement, and any renewals thereof and Licensor's right to audit such records during the duration of this License Agreement and for Six (6) years thereafter. The parties acknowledge and agree that the powers, duties, and obligations of the Comptroller of the City of New York pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

### **SECTION IX (No Assignment)**

This License Agreement is personal to Licensee and may not be assigned in whole or in part by Licensee without the prior written consent of the City, which may be withheld in the sole discretion of the City. Any attempted or purported assignment or other transfer, sublicense, mortgage or other encumbrance of this License Agreement by Licensee without the prior written approval of the City shall be null and void and grounds for immediate termination of this License Agreement by the City.

### **SECTION X (Trademark Ownership)**

(a) Licensee agrees that by virtue of this License Agreement it does not and shall not claim any right, title, or interest in the Property or any part thereof (except the right to use them in accordance with this License Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the Property and the validity of the trademarks and service marks that are part of the Property and the City's rights therein. Licensee agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Property, to this License Agreement or to the validity of the Property and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such Property. Any violation of this paragraph shall constitute an immediate breach of this License Agreement and cause for immediate termination by the City.

(b) Licensee agrees to reasonably assist the City in protecting the City's rights to the Property, including but not limited to reporting to the City any infringement or imitation of the Property of which Licensee becomes aware. The City shall have the sole right to determine whether to institute litigation with respect to such infringements, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the Property in its own name or the name of Licensee or join Licensee as a party thereto. The City shall be entitled to keep the entire amount of any recovery. If the City brings an action against any infringement of the Property, Licensee shall cooperate with the City and lend whatever assistance is necessary, subject to being reimbursed for its reasonable and pre-approved out-of-pocket expenses.

(c) If claims are made against the City, NYC & Company, or Licensee with respect to the use of the Property in connection with the Licensed Products, then the parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee of the Property.

(d) Licensee agrees to make modifications requested by the City in Licensee's use of the Property or to discontinue use of the Property on the Licensed Products which are involved, if the City, in its sole

discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

## **SECTION XI (Goodwill)**

(a) Licensee recognizes and acknowledges that the Property and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the Property has acquired secondary meaning in the mind of the public. The Property shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this License Agreement immediately, upon written notice, in the event that any part of the Property is used by Licensee in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the Property is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this License Agreement shall terminate unless Licensee ceases and halts all such uses immediately.

(b) Licensee shall use the Property only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the Property shall inure to the sole benefit of the City. Licensee shall not acquire any rights in the Property by virtue of any use it makes of the Property. Licensee shall not attempt to register the Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the Property.

(c) Licensee agrees that it will apply the proper notations on all Licensed Products, tags, labels, package inserts, containers, packaging, advertising, promotional and display materials or the like containing the Property as set forth in Exhibits 2 and 3 hereto.

(d) Any art work or other materials conceived under or resulting from this License Agreement and derived from the Property, including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, whether developed by Licensee or on behalf of Licensee, but excluding any of Licensee's marks or logos and/or any jointly developed marks to the extent that any jointly developed marks incorporate Licensee's marks or logos, shall be considered "work made for hire" within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Property, Licensee shall first obtain the City's written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City.

(e) Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the Property in connection with the Licensed Products, to include additional elements to the Property, or to discontinue use of some or all of the elements of the Property. Accordingly, the City does not represent or warrant that the Property or any elements thereof will be maintained or used in any particular fashion. Any new elements or modifications to existing elements used by the City following the execution of this License Agreement may be included in, or deleted from (as applicable), the Property at the sole discretion of the City. Licensee agrees to comply with the City's written request to include such elements as, or to delete such elements from, the Property within a reasonable period of time from Licensee's receipt of such written request.

(f) The City shall have the right, but shall not be under any obligation, to use the Property, Licensed Products, and/or the name of Licensee so as to give the Property, and/or the Licensed Products full and favorable prominence and publicity, provided that the City obtains Licensee's prior written approval of any use by the City of Licensee's name, marks or logos. The City shall be under no obligation whatsoever to use or continue using the Property, the Licensed Products and/or the name of Licensee in connection with its products or services.

## **SECTION XII (Termination Rights)**

Without prejudice to any other rights, the City has the right to terminate this License Agreement upon written notice to Licensee, effective immediately, at any time that any of the following occurs:

(a) If Licensee shall cease to manufacture and sell the Licensed Products for any reason (except for a cause beyond the control of Licensee, including "acts of God"), for a period of three (3) consecutive months or more.

(b) If Licensee shall fail to make any payment due hereunder or to deliver any of the statements herein referred to, or breaches any other obligation hereunder, and if such default shall continue for a period of thirty (30) days after written notice of such default is sent by the City to Licensee. Licensee shall pay interest on the unpaid balance thereof from and including the date such payment becomes due until the date the entire amount is paid in full at a rate equal to the prime rate being charged in New York, New York, by Citibank as of the close of business on the date the payment first becomes due plus five percent (5%) (or the maximum rate which legally can be paid by Licensee, if lower).

(c) If Licensee defaults on any obligation that is secured by a security interest in any Licensed Product, Licensee shall immediately and automatically no longer have the right to sell or otherwise transfer Licensed Products or otherwise use the Property until it notifies the City of the occurrence of such default on any such obligation, and Licensor notifies Licensee that Licensor has elected to waive its right to terminate this License Agreement.

(d) If Licensee makes any assignment for the benefit of creditors, or files any petition under Title 11, United States Code, or files in bankruptcy or is adjudicated as bankrupt or insolvent, or if any trustee in bankruptcy or insolvency is appointed under the laws of the United States or of any State. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this License Agreement or exploit the Property if this License Agreement terminates pursuant to this paragraph. Notwithstanding, if, pursuant to Title 11, United States Code, or any amendment or successor thereto, a trustee in bankruptcy or Licensee, as debtor, is permitted to assume this License Agreement and does so and, thereafter, wishes to assign this License Agreement to a third party, and that assignment complies with Title 11 of the United States Code, the trustee or Licensee shall notify Licensor of same. Said notice shall set forth the name and address of the proposed assignee, the proposed consideration for assignment and all other relevant details of the assignment. Such notice shall be deemed to grant the Licensor the option to have this License Agreement assigned to such assignee for such consideration, or its equivalent in money and upon such terms as specified in the notice. The option may be exercised by written notice to the trustee or Licensee by Licensor within fifteen (15) days from Licensor's receipt of the notice, or within such shorter time as may be deemed appropriate by the court in a bankruptcy proceeding. If Licensor fails to give notice to the Licensee or trustee within said period, the Licensee or trustee may execute the assignment to the entity referred to in the notice for the consideration and on the terms specified therein. Nothing contained herein shall be deemed to preclude or impair any rights Licensor may have as a creditor in any bankruptcy proceeding.

(e) If Licensor determines that this License Agreement should be terminated without cause; provided, however, such termination shall not be arbitrary or capricious.

(f) If Licensee violates the non-assignment provisions of this License Agreement.

Upon termination or expiration of this License Agreement, except as otherwise provided in Section XIII, during the sell-off period, all royalties earned and all applicable guaranteed minimum royalties shall become immediately due and payable.

### **SECTION XIII (Post Termination)**

Upon the expiration of this License Agreement (but not upon termination pursuant to Section XII), Licensee shall be permitted one hundred and twenty days (120) days to sell its remaining inventory of Licensed Products. Sales under this section shall require payment of royalties and all other duties and obligations of Licensee under this License Agreement shall remain in force during the sell off period. At the end of such sell-off period, or upon termination pursuant to any other provision this License Agreement Licensee shall immediately discontinue manufacture, promotion, advertisement, and sale of Licensed Products. In addition, upon expiration or termination of this License Agreement for any reason, Licensee shall deliver to Licensor, or destroy or alter under Licensor's supervision, all molds, dies, prints or other equipment used to manufacture the Licensed Products and Promotional Materials so that such equipment no longer can be used to manufacture products or promotional materials bearing, displaying, or otherwise including the Property and shall provide Licensor with a letter confirming depletion or destruction of such inventory. Licensee acknowledges and agrees that its failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon expiration or termination of this License Agreement will result in immediate and irreparable harm to Licensor. Licensee further acknowledges and admits that Licensor has no adequate remedy at law for Licensee's failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon termination or expiration of this License Agreement, except as expressly provided for above. Licensee acknowledges and admits that, in the event of any such failure by it to cease manufacture, sale, advertising, or promotion of the Licensed Products, Licensor shall be entitled to equitable or injunctive relief against Licensee's failure, in addition to any and all other remedies at law that are available to Licensor.

### **SECTION XIV (Samples and Approvals)**

(a) The Licensed Products shall meet or exceed the requirements imposed by any and all laws, regulations, government standards, guidelines, manufacturing codes, rules, and the like applicable to the Licensed Products. Without limiting the foregoing, no Licensed Products shall be manufactured from any flammable, explosive, toxic, or otherwise inherently dangerous materials or substances, nor designed so as to constitute any inherent danger to the consumer. Further, Licensee agrees that the Licensed Products shall be of a standard of quality at least as high as that of the product samples initially approved by Licensor so as to be suited to their exploitation and to the protection and enhancement of the Property and the goodwill pertaining thereto.

(b) The Licensed Products shall be manufactured in accordance with the manufacturing specifications, protocol, safety, and quality standards that have been reviewed and approved in writing by Licensor ("Specifications"), which, once approved, shall be deemed to be a part of this License Agreement. Licensor may amend such Specifications from time to time and shall provide Licensee with reasonable notice of such changes so that the Licensed Products may be adjusted to meet such changed quality standards, if required.

(c) The Specifications shall include at least the following information (and other information which Licensor requests regarding particular Licensed Products): (i) a description of the materials used in the Licensed Products, the materials' dimensional tolerances, performance and durability requirements, specifications that enable the materials to meet governmental regulatory requirements (if any) and such other appropriate information that will accurately describe the Licensed Products and their expected performance during use by the consumer; and (ii) a quality assurance plan that is used to assure the continuing acceptable quality of the Licensed Products. The plan shall include a description of the quality controls observed in the Licensed Products' manufacture, and the procedures followed to audit and verify continued quality and conformance to specifications of the Licensed Products, as well as applicable laws and regulations.

(d) The Specifications shall be provided to Licensee's suppliers and manufacturers of the Licensed Products, and Licensee shall require its suppliers and manufacturers to comply with the Specifications. Licensor shall have the ability to inspect Licensee's facilities and warehouses and those of its suppliers and manufacturers at any time with or without prior notice to assure Licensee's compliance with this paragraph.

(e) Licensee agrees to submit, at the Licensor's request and at no cost to Licensor (i) initial sketches and/or design concepts; (ii) finished artwork or final proofs; (iii) prototypes; and (iv) pre-production samples (the "Samples") of the Licensed Products (and any variations thereof), as well as initial samples of subsequent production run(s) if such subsequent production run(s) vary in any manner from prior runs, for Licensor's inspection, testing, analysis and approval prior to any sale or shipment of the Licensed Products. In addition, at Licensor's request and at no cost to Licensor, Licensee agrees to submit a minimum of three (3) production samples to Licensor for Licensor's records. If requested by Licensor, such samples (together with the Specifications) shall be submitted by Licensee to an independent laboratory or other test facility approved in writing by Licensor. All costs associated with such inspection, testing and analysis shall be borne by Licensee, and the results of such inspection, testing and analysis shall be submitted to Licensor for its approval. If requested by Licensor, Licensee shall also provide a reasonable number of samples of the Licensed Product to Licensor in accordance with this paragraph at reasonable intervals of no less than once every twelve (12) months during the Term, with such additional inspection, testing and analysis as Licensor may require in the manner set forth in this paragraph for purposes of product review and quality control.

(f) Licensor shall use reasonable efforts to communicate its written approval or disapproval within twenty (20) business days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed disapproved. If Licensor does not approve the Samples of the Licensed Products, the reasons for disapproval shall be communicated to Licensee. After the Samples are approved pursuant to this paragraph, Licensee shall not depart therefrom in any material respect without Licensor's prior written consent, and Licensor shall not withdraw its approval of the Samples except for good cause.

(g) Licensee shall adhere to Licensor's graphic and packaging standards and guidelines in the use of the Property and shall use the materials depicted in Exhibit 4 hereto, which have been approved by Licensor. To the extent that Licensee wishes to amend or alter the graphics depicted in Exhibit 4, Licensee shall submit to Licensor for Licensor's prior written approval all tags, labels, package inserts, containers, packaging, advertising, promotional, display or sales materials or the like containing or referring to the Property. Licensor shall use reasonable efforts to communicate its written approval or disapproval within twenty (20) business days of its receipt of items under this paragraph. Any materials not specifically approved shall be deemed disapproved. If Licensor does not approve an item under this paragraph, the reason for such disapproval shall be communicated to Licensee.

(h) Licensee shall at its own cost handle all product warranty and/or guarantee issues, responses and compliance requirements, as well as all consumer complaints (collectively, "Consumer Complaints") directly relating to any of the Licensed Products. Licensor shall forward to Licensee for handling any and all such Consumer Complaints that Licensor receives. Upon request by Licensor, Licensee shall advise Licensor in writing of the manner in which it handled any Consumer Complaint. In addition, upon Licensor's request Licensee shall provide Licensor with a quarterly report (submitted with royalty reports pursuant to Section VII hereto) containing relevant data and information regarding Consumer Complaints handled during the quarter.

(i) Licensee shall immediately advise Licensor of any product recall considerations or deliberations and provide Licensor with the right to attend and have input into such deliberations. Licensor shall have the ability to declare a product recall of such Licensed Products as Licensor determines in good faith after consulting with Licensee that any product recall is necessary for reasons of public health, safety, welfare or damage to reputation or good will. Licensee shall bear any and all costs related to any product recall of the Licensed Products using the Property whether voluntary, required by a governmental authority or the Licensor. Licensee shall have in place a comprehensive lot tracking program, starting with raw materials, to ensure such recall effectiveness.

(j) Licensee agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Licensee agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products. Licensee shall perform all obligations under this License Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect from time to time.

#### **SECTION XV (Purchase Rights)**

Licensor shall have the right to purchase from Licensee, at Licensee’s lowest available wholesale price, such number of royalty-free units of any Licensed Product as Licensor may from time to time specify in a notice to Licensee:

#### **SECTION XVI (Indemnification)**

Licensee hereby agrees to be solely responsible for and to indemnify, defend and hold harmless Licensor, NYC & Company, their affiliates and respective officers, agents, and employees, and to hold each of them harmless from and against any claims, judgments, demands, causes of action, damages, losses, costs and expenses, including but not limited to reasonable attorneys’ fees, which may be made or asserted by third persons in connection with the manufacture, design, sale, offering for sale, advertising, promotion or use of the Licensed Products, excluding claims of infringement of third party intellectual property rights based on Licensee’s use of the Property authorized by this License Agreement. Such indemnification shall further extend to Licensee’s failure to comply with the terms of this License Agreement and Licensee’s unauthorized use of any patent, process, idea, method or device, or unfair trade practice, false advertising, trademark, copyright infringement or the like in connection with the manufacture, design, sale, advertising, promotion or use of the Licensed Products. Licensee expressly agrees that its obligations hereunder shall survive and continue beyond any termination or expiration of this License Agreement.

#### **SECTION XVII (Existing Licenses)**

Licensee hereby acknowledges that Licensor has previously granted and may continue to grant licenses to third parties for the use of the Property.

#### **SECTION XVIII (Insurance)**

During the term of this license and for at least three (3) years after the last date of sale by Licensee of any Licensed Product, Licensee agrees to carry commercial general liability insurance, including but not limited to product liability coverage, with insurer(s) that may lawfully issue the required 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. The commercial general liability insurance must: (x) be in an amount of at least one million dollars (\$1,000,000) per occurrence for bodily injury and property damage, one million dollars (\$1,000,000) for personal and advertising injury, two million dollars (\$2,000,000) policy aggregate, and two million dollars (\$2,000,000) products/completed operations; (y) be at

least as broad as that provided by the latest edition of Insurance Services Office (ISO) form CG 00 01; and (z) include NYC & Company and the City, together with their officials and employees, as additional insureds under such policy with coverage at least as broad as the latest edition of either ISO form CG 20 26 or ISO form CG 20 36 . Policies of insurance provided pursuant to this Agreement shall be primary and non-contributing to any insurance or self-insurance maintained by NYC & Company or the City.

Each year such insurance is required, Licensee shall provide NYC & Company and the City with a Certificate of Insurance, which certifies the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the required additional insured endorsements, accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Licensor, or certified copies of all policies referenced in such Certificate of Insurance.

In the event that Licensee fails at any time to carry insurance as required herein, Licensee shall immediately notify Licensor thereof and Licensor shall have the right to terminate this Agreement immediately.

Whenever notice of occurrence, claim or suit to an insurance company is required under any such policy with respect to the Licensed Products, Licensee shall provide timely notice thereof on behalf of both NYC & Company and the City, including their officials and employees, and shall promptly send a copy of such notice(s) to both NYC & Company and the City. The copy of such notice to NYC & Company shall be sent to the address set forth in Paragraph 12 above and the copy to the City shall be sent to c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. The existence of such insurance shall in no way limit Licensor's or NYC & Company's rights under this Agreement, at law or in equity, including the right to be indemnified as set forth in this Agreement.

Licensee waives all rights against the NYC & Company and the City, including their officials and employees, for any damages or losses that are covered under any insurance required by this Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee.

#### **SECTION XIX (Governing Law)**

This License Agreement shall be construed in accordance with the laws of the State of New York, notwithstanding conflicts of laws principles. By execution of this License Agreement, Licensee consents to submit to the jurisdiction of the courts of the State of New York located in New York City and the federal courts located therein.

#### **SECTION XX (No Partnership or Joint Venture)**

Nothing in this License Agreement or in the course of performance under this License Agreement shall be construed to constitute a partnership or joint venture. Neither party shall have any right to obligate or bind the other party in any manner whatsoever (nor shall either party hold itself out to any third party as being so authorized) and nothing contained herein nor in the course of performance hereunder shall give or be intended to give any right of any kind to any third party.

#### **SECTION XXI (Manufacturers, Importers, or Sublicensees)**

Licensee shall provide Licensor with a list of the names and addresses of Licensee's manufacturers, importers and distributors and will notify Licensor of any change in such list. From time to time, Licensor may request that Licensee provide the names of its designers, raw material suppliers and/or authorized importers of the Licensed Products, and Licensee agrees to provide such information upon the request of Licensor. Licensee may sublicense rights under this License Agreement ("Sublicense") only with the prior, written approval of the Licensor, which may be withheld in Licensor's sole discretion. Each and every Sublicense granted

under this License Agreement shall contain such provisions as Licensor may require, including without limitation that the Sublicense shall be assignable to the Licensor upon the written demand of the Licensor.

**SECTION XXII  
(Notices)**

All notices required to be given under the terms of this License Agreement, or which either party hereto may desire to give to the other, shall be in writing and sent by mail to the following addresses:  
If to Licensor:

NYC & Company  
810 Seventh Ave.  
New York, NY 10019  
ATTN.: Natalie Koepff  
General Counsel

With a copy to:

New York City Department of Small Business Services  
110 Williams Street, 2nd Floor  
New York, NY 10038

If to Licensee:

Taylor Made Golf Company, Inc.  
Attention: Michael Fox  
5545 Fermi Court  
Carlsbad, CA 92008

With a copy to:

Taylor Made Golf Company, Inc.  
Attention: William S. Reimus  
Sr. Vice President & General Counsel  
5545 Fermi Court  
Carlsbad, CA 92008

**SECTION XXIII  
(Confidentiality)**

Except as otherwise required by law, each party (a "Recipient") agrees to, and shall cause its affiliates, agents, representatives, accountants, employees, officers and directors to: (i) treat and hold as confidential all information, reports or data of the other party ("Discloser") that Recipient receives or otherwise comes to obtain under this License Agreement, and (ii) not disclose or provide access to such confidential information to any individual or organization without the prior written approval of Discloser. In the event that Recipient or an Affiliate, agent, contractor, representative, employee, officer, or director of Recipient, becomes legally compelled to disclose confidential information of Discloser, Recipient must provide Discloser with prompt written notice of such requirement so that Discloser may seek a protective order or other remedy or waive compliance with this Article XXIII. In the event that such protective order or other remedy is not obtained, or compliance with this Article XXIII is waived, Recipient agrees to furnish only that portion of such confidential information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances

that confidential treatment will be accorded such information. Notwithstanding the foregoing, this Article XXIII shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this License Agreement, (ii) was known to the Recipient without breach of an obligation of confidentiality or (iii) was learned from a third party who was not under an obligation of confidentiality. The parties agree and acknowledge that remedies at law for any breach of the obligations under this Article XXIII may be inadequate and that in addition thereto Discloser is entitled to seek equitable relief, including injunction and specific performance, in the event of any such breach.

In the event that Licensee believes that specific information it submits to Licensor or NYC & Company pursuant to this Agreement should be treated confidentially by Licensor or NYC & Company, Licensee shall so advise the party receiving the information in a writing identifying the specific information. Licensor and NYC & Company agree to treat information so designated as confidential proprietary information of Licensee, consistent with legal requirements.

The City or NYC & Company may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 84 et seq.), to disclose information, or any portion thereof. In the event that disclosure is requested by a third party of materials designated by Licensee as confidential or proprietary information in accordance with this Section, the Licensor or NYC & Company will provide notice to Licensee and shall consult with Licensee to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL.

Consistent with the requirements of FOIL, the final determination regarding disclosure shall be made by Licensor or NYC & Company in their sole discretion. In the event that Licensor or NYC & Company determines in its discretion that information may not be withheld, Licensor or NYC & Company, as appropriate will provide Licensee with prompt notice of intent to disclose in order that Licensee may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

Licensee expressly acknowledges and agrees that neither the Licensor nor NYC & Company will have any obligation or liability to Licensee in the event of disclosure of materials, including materials designated by Licensee as proprietary information, provided such disclosure is in accordance with this Section.

## **SECTION XXIV (Investigations)**

A. The parties to this License Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York or City of New York 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, permit, or license that is the subject of the investigation, audit or inquiry.

B. (i) 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, permit, contract, or license entered into with the City of New York, the State of New York, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City of New York, or any public benefit corporation organized under the laws of the State of New York, or;

(ii) 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 of New York 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 of New York, the State, or any political subdivision thereof or any local development corporation within the City of New York, then;

C. (i) The commissioner 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 (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(ii) 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 paragraph E below without the City of New York 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:

(i) 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 of New York; and/or

(ii) The cancellation or termination of any and all such existing City of New York contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, 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, without the City of New York 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 Licensor.

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 paragraphs (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) 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.

(ii) 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.

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

(iv) 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 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 C(i) above gives notice and proves that such interest was previously 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. (i) 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.

(ii) 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.

(iii) 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 of New York, or otherwise transacts business with the City of New York.

(iv) 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 provision of this License Agreement the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) days’ written notice in the event Licensee fails to promptly 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 Agreement by Licensee, or affecting the performance of this License Agreement.

## **SECTION XXV (Miscellaneous)**

A. No action at law or proceeding in equity by Licensee against Licensor or NYC & Company shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee has 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 Licensor or NYC & Company by Licensee upon any claims based upon this License Agreement unless such action shall be commenced within six (6) months after the date of final payment hereunder, or within six (6) months of the termination or conclusion of this License Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs

C. In the event any claim is made or any action is brought against Licensor or NYC & Company in any way relating to the Agreement herein on the basis of Licensee’s actions and in each case by a third party, Licensee shall diligently render to Licensor and NYC & Company without additional compensation any and all assistance which Licensor and NYC & Company may reasonably require of Licensee, subject to reimbursement for Licensee’s actual, reasonable, pre-approved expenses.

D. Either party shall report to the other party in writing within ten (10) working days of the date such party becomes aware of the initiation by or against it of any legal action or proceeding in connection with or relating to this License Agreement.

E. No claim whatsoever shall be made by Licensee against any officer, agent, or employee of Licensor or NYC & Company for, or on account of, anything done or omitted in connection with this License Agreement.

F. This License Agreement may be executed in two copies, each of which shall be deemed an original. This License Agreement contains the entire understanding between the parties with respect to the subject matter hereof and replaces and supersedes all prior agreements and understandings between the parties. This License Agreement may only be amended by a writing executed by all parties.

G. Headings used herein are for convenience only and shall not be considered part of this License Agreement. This Agreement has been negotiated by the parties hereto. No provision of this License Agreement shall be strictly construed against the drafter of the language concerned, but shall be interpreted applying the most reasonable interpretation under the circumstances, giving due consideration to the intentions of the parties at the time of contracting.

H. Licensee represents and warrants to Licensor that: (i) it is duly organized and validly existing under the laws of the State of Delaware, (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; (iii) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (iv) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms; (v) there are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of Licensee) threatened against Licensee which, if adversely determined, could have a material adverse effect on the financial condition, operations, business or prospects of Licensee; (vi) the execution and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under, the charter, by-laws or partnership agreement, as applicable, of Licensee, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Licensee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon any of the revenues or assets of Licensee pursuant to the terms of any such agreement or instrument.

I. Licensor represents and warrants to Licensee that: (i) subject to applicable law, it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (ii) to the best of Licensor's knowledge, the execution of and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under any agreement or instrument to which Licensor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

J. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable law, and to execute and deliver such

documents and other papers, as may be required to carry out the provisions of this License Agreement and consummate and make effective the transactions contemplated by this License Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement as of the date and year first above written.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

By:

Its:

Date of Signature: \_\_\_\_\_

APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY:

\_\_\_\_\_

Acting Corporation Counsel

TAYLOR MADE GOLF COMPANY, INC.

By:

Its:

Date of Signature: \_\_\_\_\_

Exhibit I  
The Property

Trademarks of the City of New York

Trademarks



## **Exhibit 2**

### **Licensed Products**

1. Golf Equipment
2. Golf Accessories

### **Exhibit 3**

#### **Distribution Channels**

1. Licensee's authorized retail outlets
2. Specialty Golf Stores
3. Ecommerce

## **Exhibit 4**

### **Product Labels and Graphics**

#### City Seal Hologram

All products must include a permanent copyright notice and trademark designation etched on the back of the product. It must read “© 2019[or current year] City of New York. All Rights Reserved.”

If too little room is available to accommodate this etching, individual decisions will be made in consultation with NYC & Company, which shall have the right of prior approval over the final version.

All packaging must include at least the copyright notice “© 2019 [or current year] City of New York. All Rights Reserved.”

**Exhibit 5**  
**Quality Control Guidelines**

1. All Licensed Products and related materials associated with NYC & Company's licensing program, including but not limited to packaging, print ads, advertising initiatives, point of purchase displays, story boards, scripts, molds, brochures, videos, DVDs, labels, hangtags, catalogs, sales sheets and all collateral materials must be submitted to NYC & Company for written approval prior to any production.
2. Each product submitted for approval must, at every stage, be submitted via NYC & Company's online product approval system, Trademarx Insight. Licensee will be introduced and set up with Trademarx Insight upon contract execution.
3. All prototypes of any items which utilize trademarks discussed herein must be submitted at each stage of production. Based on written approval, Licensee may proceed to the next step.
4. Contracts will contain NYC & Company's entire sample submission/ approval process. The following brief steps will be required for all product submissions:
  - Initial sketches and/ or design concepts
  - Finished artwork or final proofs
  - Prototypes
  - Pre-production samples
  - Production Samples (for Licensor's records)
5. Licensees are required to submit all licensed products in each style and variation.
6. Product submissions shall be reviewed and evaluated for:
  - Accuracy of logo representation
  - Proper use of Pantone colors
  - Proper use of trademark designations
  - General appearance and quality of product
  - NYC & Company policies and standards
7. All approvals granted are conditioned upon FULL EXECUTION OF THE LICENSING AGREEMENT AND TIMELY PAYMENTS, or with the prior written permission of NYC & Company
8. Each logo is distinctive and therefore must be used separately on Licensed Product and collateral materials. Logos may not be reversed and/ or turned to appear in an opposite direction.
9. All hard goods must include a permanent copyright notice and trademark designation etched on the bottom or other approved location on the product.
10. Licensees must indicate the size of, and the amount of times, they intend to utilize logo(s) discussed herein, third party logo(s) and/or corporate identification(s) in relationship to the size of the logo(s) discussed herein prior to the Licensee's logo use on products.
11. All products are required to utilize holographic labels purchased from NYC & Company's exclusive on-product authentication products supplier.
12. Licensee agrees to use the following notice, <sup>TM</sup>, ® or ©, as specified by the Licensor, in connection with the first most prominent usage of the Property on all Licensed Products, hang tags and packaging: "All New York City logos and marks depicted herein are the property of New York City and may not be reproduced without

written consent. © 2019 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to use the following notice, ™, ® or ©, in connection with all displays, advertising, sales brochures, instruction manuals and other promotional materials for each Licensed Product (hereinafter the “Promotional Materials”): “All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2019 (or other initial year of publication). City of New York. All rights reserved.” If impracticable in a particular situation, a shortened version of such notices may be used with Licensor’s prior written approval.

- 13.** Licensee must have any vendor or factory that is used to produce Licensed Products acknowledge in writing receipt and compliance with the Ethical Standards Form attached as Exhibit 6. Such written acknowledgment of receipt and compliance shall be substantially in the form attached as Exhibit 7. Licensee agrees to upload to Trademarx the factory name and factory contact information (foreign or domestic) where production of a particular item will occur once such factory has been assigned for such item. No product approvals will be given without this information.

## **Exhibit 6**

### **Ethical Standards for the City of New York**

The City of New York (“City”) is committed to conducting business in an ethical and responsible manner in all countries, and requires the same from all of its business partners. While the City recognizes that there are different legal and cultural environments in which factories operate throughout the world, these Ethical Standards for Vendors (“Standards”), set forth the basic minimum requirements all factories must meet in order to do business with the City.

These Standards apply to City rights holders of specific licensed products (“Licensees”) and factories that produce goods for the City (“Licensed Products”), including manufacturers, contractors and subcontracted manufacturers (hereinafter collectively referred to as “Vendors”). Under the agreement in place with each Licensee, the City has the right to approve all Vendors of Licensed Products. No Vendor will be approved and no currently approved Vendor will be retained who does not comply with these Standards. The City strongly encourages Vendors to exceed these Standards and promote best practices and continuous improvement throughout their factories.

#### **Legal Requirements:**

The City requires that its Vendors must operate in full compliance with all applicable laws and regulations of the countries in which they manufacture and compliance with all local environmental laws applicable to the workplace.

#### **Forced Labor:**

The City requires that its Vendors not use forced labor, including, but not limited to, prison, indentured, bonded or involuntary labor.

#### **Child Labor:**

Vendor agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Vendor agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products.

#### **Harassment or Abuse:**

The City requires that its Vendors treat their employees with respect and dignity. Vendors must provide a work environment free of harassment, abuse or corporal punishment in any form. In addition, Vendors will not use monetary fines as a disciplinary practice.

#### **Discrimination:**

The City requires that its Vendors ensure that employment, including but not limited to hiring, salary, benefits, advancement, discipline or termination, is based solely on ability and not on any personal characteristics.

#### **Health and Safety:**

The City requires that its Vendors provide a safe and healthy working environment in accordance with applicable local law to prevent accidents and injury arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities. Vendors who provide residential facilities must ensure these facilities are also safe and healthy in accordance with applicable local laws.

**Freedom of Association:**

The City requires that its Vendors recognize and respect the legal right of employees to freely associate. Employees should not be subject to intimidation or harassment as a result of the peaceful exercise of their legal right to join or to refrain from joining any organization.

**Compensation and Benefits:**

The City requires that its Vendors pay employees at least the minimum compensation required by local law, and to provide all legally mandated benefits. In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

**Hours of Work:**

The City requires that its Vendors ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, employees shall (i) not be required to work more than the lesser of (a) sixty (60) hours per week or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture, and (ii) be entitled to at least one day off in every seven day period.

**Communication:**

The City requires that its Vendors take appropriate steps to ensure that the provisions of these Standards are communicated to employees.

**Monitoring and Compliance:**

The City requires that its Vendors maintain on file all documentation necessary to demonstrate compliance with the City's Standards. Vendors must allow the City and its designated agents (including third parties) to engage in announced and unannounced monitoring visits, including confidential employee interviews.

City Vendors are required to take necessary corrective actions to promptly remediate any noncompliance. The City reserves the right to ultimately terminate its business relationship and/or cancel existing orders with any Vendor who is unwilling or unable to comply with these Standards.

**Exhibit 7**  
**Vendor or Factory Acknowledgements of Receipt and Compliance with Ethical Standards for the City of New York for Manufacture or Otherwise in Connection with any Licensed Product**

Each entity signing below acknowledges receipt and full compliance with the Ethical Standards for the City of New York.

NAME OF VENDOR OR FACTORY  
FULL ADDRESS OF VENDOR OR FACTORY

By:  
NAME

Its:  
TITLE

Date of Signature: \_\_\_\_\_

NAME OF VENDOR OR FACTORY  
FULL ADDRESS OF VENDOR OR FACTORY

By:  
NAME

Its:  
TITLE

Date of Signature: \_\_\_\_\_

LICENSEE SHOULD ADD AS MANY SIGNATURE BLOCKS AS NECESSARY TO INCLUDE ALL AUTHORIZED SOURCES OF LICENSED PRODUCT

**CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET**

*(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable) )*

<b>AGENCY: NYC &amp; Company, Inc. on behalf of NYC Department of Small Business Services</b>	<b>RECOMMENDED CONCESSIONAIRE</b> Name: Vineyard Vines LLC Address: 181 Harbor Drive Stamford, CT 06902 Telephone # (203) 391-9711 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN #06-1531016 Not-for-Profit Organization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>CONCESSION TITLE/ DESCRIPTION:</b> Non-exclusive use of City-Owned Trademarks on Merchandise <b>CONCESSION I.D.#</b> NYCCO-2019-012
<b># VOTES required for proposed action</b> = 4 <input type="checkbox"/> N/A		

**LOCATION OF CONCESSION SITE(S\*) Address** \_\_\_\_\_  N/A  
 \*Attach additional sheet **Borough** \_\_\_\_\_ **C.B.** \_\_\_\_\_ **Block #** \_\_\_\_\_ **Lot #** \_\_\_\_\_

**SELECTION PROCEDURE**  
 (\*CCPO approval of CRFA required)

Competitive Sealed Bids  
 Competitive Sealed Proposals\* ( FCRC approved Agency request to deviate from final recommendation of the Selection Committee on \_\_/\_\_/\_\_.)  
 Different Selection Procedure: \* ( Sole Source Agreement  Other \_\_\_\_\_ )  
 > FCRC approved different selection procedure on 9/11/19.  
 Negotiated Concession\*

**CONCESSION AGREEMENT TERM**

**Initial Term: From 4/1/19 To 12/31/22**  
**Renewal Option(s) Term: From 1/1/23 To 12/31/24**  
 From \_\_/\_\_/\_\_ To \_\_/\_\_/\_\_  
  
**Total Potential Term: 5 Years, 9 months**  
  
 \* >20 years – FCRC unanimously approved term on \_\_/\_\_/\_\_

**ANNUAL REVENUE**  
 (Check all that apply)  
 Additional sheet (s) attached

Annual Fee(s) \$ \_\_\_\_\_  
 % Gross Receipts \_\_\_\_\_%  
 The Greater of Annual Minimum Fee(s of \$ \_\_\_\_\_ v. \_\_\_\_\_% of Gross Receipts  
 **Other** For each license year of the initial term, Vineyard Vines, LLC. shall pay royalties equal to Ten percent (10%) of Net Sales when sold at wholesale and royalties equal to Seven and a half percent (7.5%) of Net Sales when sold at retail.  
  
 Guaranteed Minimum Royalty payment shall be payable as follows:  
  
 A guaranteed minimum royalty of Fifteen thousand dollars (\$15,000).

**NOTIFICATION REQUIREMENTS**

**Subject concession was awarded by CSB or CSP.**  YES  NO

**If YES**, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by \_\_/\_\_/\_\_, which was at least 30 days prior to its issuance.  
  
 The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.  
  
 The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by \_\_/\_\_/\_\_, which was at least 40 days prior to issuance of the solicitation.

**If NO**, check the applicable box below:

The Agency certifies that each affected CB/BP received written notice by 8/2/19, which was at least 40 days in advance of the FCRC meeting on 9/11/19 at which the agency sought and received approval to use a different selection procedure.

- The Agency certifies that each affected CB/BP received written notice on \_\_/\_\_/\_\_, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on \_\_/\_\_/\_\_.
- The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_/\_\_/\_\_.

**Law Department approved concession agreement on \_\_/\_\_/\_\_**

**Award is a major concession.**  YES  NO

**If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:**

- CPC approved on \_\_/\_\_/\_\_
- City Council approved on \_\_/\_\_/\_\_ or  N/A

**AUTHORIZED AGENCY STAFF**

**This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.**

**If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:**

- The concession was approved by the FCRC on \_\_/\_\_/\_\_.
- The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

**Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_/\_\_/\_\_

**CERTIFICATE OF PROCEDURAL REQUISITES**

**This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.**

**Signature** \_\_\_\_\_ **Date** \_\_/\_\_/\_\_

City Chief Procurement Officer

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:  
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

NYC & Company, Inc. ("NYC & Company") on behalf of the New York City Department of Small Business Services ("SBS") intends to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a Sole Source License Agreement ("License Agreement") with Vineyard Vines, LLC. ("Vineyard Vines") for the non-exclusive use of city-owned trademarks on merchandise. Vineyard Vines, LLC. produces apparel and accessories for adults and children that is distributed to retailers such as Bloomingdale's and Nordstrom with whom Vineyard Vines has unique manufacturing and distribution arrangements. Vineyard Vines has been a successful licensee in the past and their unique retail relationships offer the opportunity for merchandise with city owned trademarks and Vineyard Vines iconic whale logo to be sold in places where it is not being sold currently. Therefore, it is in the City's best interest to enter into a sole source agreement with Vineyard Vines, LLC. This proposed non-exclusive license agreement will not bar opportunities for other apparel and accessory manufacturers.

***Instructions:*** Provide all information requested below; check all applicable boxes.

**A. SELECTION PROCEDURE**

Sole Source

Other *Describe:*

**B. NEGOTIATIONS**

***Instructions:*** Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.

NYC & Company/SBS negotiated that Vineyard Vines, LLC. shall pay licensing fees equal to Ten percent (10%) of Net Sales when sold at wholesale and Seven and a half percent (7.5%) of Net Sales when sold at retail, with a guaranteed minimum royalty of Fifteen thousand dollars (\$15,000) that shall be paid on or before December 31, 2022.

**C. BASIS FOR AWARD** (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

**The agency determined that award of the concession is in the best interest of the City because:**

Vineyard Vines, LLC. holds a non-concession agreement for the purpose of testing the product interest to its distribution channels and customers unique to Vineyard Vines, LLC. At the time the non-concession agreement with Vineyard Vines, LLC was executed the parties anticipated that the revenue would not exceed administrative costs which were estimated to be \$11,000, however the products released by Vineyard Vines, LLC. were such a success that the royalties for these items exceeded \$18,102.71 in the first four quarters of the term of the agreement. It was impossible to determine during negotiation of the non-concession agreement that the pilot program would have been so successful and based on the information available at the time there was no basis to justify bringing the matter before the FCRC for a concession agreement. Given Vineyard Vines, LLC. past success and current sales it is now in the city's best interest to enter into a concession agreement with Vineyard Vines, LLC. to develop this market segment. NYC & Company/SBS is seeking to enter

into a concession agreement that includes the excess revenue from the non-concession agreement. Vineyard Vines, LLC. maintains unique manufacturing and distribution arrangements with retailers such as Bloomingdales and Nordstrom. Vineyard Vines proposed unique designs to be created using the City's marks and Vineyard Vines unique logo on apparel and accessories and only to be produced if approved in advance, per our agreement. This proposed non-exclusive license agreement will not bar other opportunities for other apparel and accessories manufacturers and will allow the City to diversify apparel and accessory options available to consumers at retail.

**D. PUBLIC HEARING                       N/A – Subject award NOT a significant concession]**

**1. Publication & Distribution of Public Hearing Notice**

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by \_\_/\_\_/\_\_.

- \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_
- \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_

**OR**

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by \_\_/\_\_/\_\_.

- \_\_\_\_\_, a NYC local newspaper published in the affected borough(s) on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_.
- \_\_\_\_\_, a NYC local newspaper published in the affected borough(s) on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_.

**2. Public Hearing Date, Exception to Public Hearing Requirement**

A Public Hearing was conducted on \_\_/\_\_/\_\_.

**OR**

The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on \_\_/\_\_/\_\_ and sent a copy of that notice to all Committee Members.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

December 11<sup>th</sup>, 2019

(Cal. No. 2 )

Be IT RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes NYC & Company, Inc., on behalf of the New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a non-exclusive, Sole Source License Agreement (“License Agreement”) with Vineyard Vines, LLC. (“Vineyard Vines”) for the non-exclusive use of city-owned trademarks on merchandise. The License Agreement will provide for a license term beginning on April 1, 2019 and shall continue through December 31, 2022 with an option for the City to renew the License Agreement on substantially the same terms and conditions, in its sole discretion, for two (2) years. For each license year of the Initial Term, Vineyard Vines shall pay royalties equal to Ten percent (10%) of Net Sales when sold at wholesale and Seven and a half percent (7.5%) of Net Sales when sold at retail (Initial Term and Net Sales have the meanings as defined in the License Agreement). The License Agreement provides for a guaranteed minimum royalty of Fifteen thousand dollars (\$15,000) that shall be paid on or before December 31, 2022.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

**December 11<sup>th</sup>, 2019**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: Director of the Mayor's Office of Contract Services

## LICENSE AGREEMENT

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of New York (the “City” or “Licensor”), acting by and through the New York City Department of Small Business Services with its principal place of business located at 110 Williams Street, 2nd Floor, New York, NY 10038, and Vineyard Vines, a LLC organized and existing under the laws of the State of Connecticut with its principal place of business located at 181 Harbor Drive, Stamford, CT 06902 (hereinafter “Licensee”).

**IN CONSIDERATION OF** the mutual promises, covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### SECTION I (License)

Subject to the limitations, terms and conditions set forth herein, Licensor hereby grants to Licensee a limited, revocable non-exclusive license to use the trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the “Property”) solely in the manner approved in advance in writing by Licensor during the Term in connection with the manufacture, advertising, promotion, sale, and offering for sale of the products listed in Exhibit 2 in the United States (including its territories and possessions) and Canada (“Territory”). Licensed Products listed in Exhibit 2 shall be sold only in the distribution channels defined in Exhibit 3.

The license granted herein shall be personal in nature, and it is expressly understood and agreed that Licensee has no right to sublicense, assign, convey or transfer in any manner to any other person or entity any rights granted to it hereunder. Any attempt by Licensee, or anyone acting on its behalf, to sublicense, assign, convey or otherwise transfer the license granted herein shall be null and void and shall be grounds for immediate termination of this License Agreement by the City. All sales of Licensed Products pursuant to this License Agreement shall be made by or through Licensee, who agrees to account to Licensor for all sales in the Territory. The City hereby appoints as its agent for all purposes under this License Agreement NYC & Company, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York and having an address at 810 Seventh Avenue, 3<sup>rd</sup> Floor, New York, NY 10019 (“NYC & Company”).

### SECTION II (Express Conditions and Limitations)

The license granted herein is subject to the following express conditions and limitations:

(a) Licensee agrees to use the applicable trademark and copyright notices as directed by Licensor (™, ® or ©), as well as any additional notations directed by Licensor in connection with the first and most prominent usages of the Property on or in connection with all Licensed Products, hang tags, and packaging: “All New York City logos and marks depicted herein are the property of the City of New York and may not be reproduced without written consent. © 2019 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, and other promotional materials for each Licensed Product (hereinafter the “Promotional Materials”): “All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2019 (or other initial year of publication). City of New York. All rights reserved.” Any shortened version of such notices may be used only with the City’s prior written approval.

(b) Licensee agrees that it will not use the Property in any advertising, promotion, sale, or offering for sale of the Licensed Products except as depicted in Exhibit 2 hereto, or as approved by the City in advance in writing.

(c) Information labels which include the statements set forth in Exhibit 4, attached hereto and made a part hereof, shall be affixed to the Licensed Product, or to the packaging for the Licensed Product. The City may, from time to time after consultation with Licensee, amend the language of the labels upon written notice thereof to Licensee. Licensee shall purchase such hangtags, holograms and/or adhesive labels that identify and authenticate the Licensed Product ("Product Authentication Materials") as required by the City from the City's authorized supplier of Product Authentication Materials. Such Product Authentication Materials shall be displayed in connection with Licensed Products sold or offered for sale by Licensee in a form and location specified by the City.

(d) The Property shall not be used in connection with the trademarks, service marks, trade names, corporate names, or personal names of any third party, except with the prior written consent of the City.

(e) The Property shall not be used by Licensee or any entity or individual controlled directly or indirectly by Licensee as or as any part of its corporate name, trade name, fictitious name, "d/b/a," symbol, logo, or other identifier.

(f) The Licensed Product and Licensee's manufacture, sales, promotion, marketing and selling of the Licensed Product shall be in full compliance (at Licensee's sole cost and expense) with all applicable federal, state and local statutes, rules, regulations and orders. If Licensee is required to or chooses to recall or remove the Licensed Product to maintain conformity to any such statutes, rules, regulations or orders, Licensee shall bear all costs, expenses and charges caused by or related to such recall or modification.

(g) No license is granted hereunder for the use of the Property for any purpose other than upon or in connection with the Licensed Product. No license is granted hereunder for the manufacture, sale or distribution of Licensed Products to be used for publicity purposes, in combination sales, as giveaways, or to be disposed of under similar methods of merchandising. In the event that Licensee desires to sell Licensed Products for such purposes, Licensee acknowledges and agrees that it must first seek and obtain a separate license therefore from the City, and that the user thereof must also obtain a separate license from Licensor for such use of the Licensed Products. Licensee acknowledges that such separate license may be withheld for any reason.

(h) Licensee may manufacture, promote, advertise, sell, and offer for sale the Licensed Product only in the form approved by the City.

(i) Subject to the City's prior written approval in the City's sole discretion, Licensee agrees to adhere to such quality and ethical standards as may be provided by the City from time to time. The current quality control guidelines and ethical standards in effect are attached hereto as Exhibit 5 and 6.

(j) Subject to the City's prior written approval in the City's sole discretion, Licensee shall sell the Licensed Products in the Territory. The City may object to the continued sale of any Licensed Products that the City determines in its sole discretion to be inconsistent with the goodwill and reputation represented by the Property, or otherwise not in the best interests of the City.

(k) Licensee agrees and acknowledges that its license extends only to the Territory, and that it has no rights in the Property or to export, sell or authorize or permit the sale of any Licensed Products or other products or services bearing or otherwise associated with the Property outside the Territory, or any such proposed or potential sales that Licensee reasonably knows or should know would occur outside the Territory.

(l) Except to the extent that exclusive rights are explicitly granted hereunder, the parties agree and acknowledge that the City reserves the right to use itself or license to others the right to use the Property on any products or services, including those specifically defined as Licensed Products under this License Agreement.

(m) Co-Op Budget – Licensee will provide NYC & Company with a minimum of one hundred (100) units per year to be used, in their sole discretion, as promotional products.

**SECTION III  
(Term)**

This License Agreement shall become effective upon written notice from NYC & Company to Licensee (the "Effective Date"). The term (the "Term") of this License Agreement shall commence April 1, 2019 and shall continue through December 31, 2022(the "Initial Term") unless sooner terminated pursuant to the terms and conditions of this License Agreement.. In addition to the Initial Term, the Licensor shall have the option in its sole discretion of renewing this License Agreement on substantially the same terms and conditions for a period of two (2) years (together with the Initial Term, the "Term"). Nothing herein shall be construed as obligating Licensor to exercise its renewal option, or as preventing the parties from negotiating or agreeing to higher Guaranteed Minimum Royalties

**SECTION IV  
(License Years)**

For purposes of administering this License Agreement and of computing royalty payments owing from Licensee to the City hereunder, the term "License Year" shall apply to each calendar year during the Term.

**SECTION V  
(Royalties)**

In each License Year of this License Agreement, for products bearing solely the Licensed Property (or the Property with the Licensee's marks) Licensee shall pay to NYC & Company for the license granted herein a royalty equal to Ten percent (10%) of Net Sales price when sold at wholesale and Seven and a half (7.5%) percent of the Net Sales price when sold at retail. In the event the parties wish to co-brand the Property and the Licensee's marks with any additional marks, the parties shall mutually agree to co-brand and mutually agree to the co-brand royalty in an amendment to this Agreement. The term Net Sales means the gross invoice price billed to purchasers of Licensed Products (whether sold by Licensee or any person or entity acting on behalf of Licensee) less only promotional allowances, taxes, freight charges (if separately stated) and such other discounts as may be approved in writing by NYC & Company, and any actual and adequately documented returns. Net Sales shall include insurance proceeds received by Licensee in payment for Licensed Products. Licensed Products shall be considered sold (and therefore included in Net Sales and subject to royalty payments) when they are billed, invoiced, shipped, or paid for, whichever occurs first. No costs incurred in the manufacture, sale, offering for sale, promotion, advertisement, or shipment of the Licensed Products shall be deducted, nor shall deductions be made for cash, taxes, tariffs, freight, advertising, any other discounts or uncollectible accounts, or any other purpose. Sales of Licensed Product made other than in an arm's length transaction shall be deemed to have been made at the regular wholesale price for such Licensed Products.

**SECTION VI  
(Guaranteed Minimum Royalty)**

Notwithstanding any other royalty payment requirements of this License Agreement, including those set forth above, Licensee shall pay to NYC & Company a guaranteed minimum royalty ("Guaranteed Minimum Royalty") of Fifteen thousand dollars (\$15,000) on or before December 31, 2022.

For the avoidance of doubt, any amount accrued prior to the Effective Date will not be included in the Guaranteed Minimum Royalties. The calculation for the Guaranteed Minimum Royalties shall begin as of the Effective Date as described in Section III above.

All Guaranteed Minimum Royalty payments shall be nonrefundable and shall be made whatever the Net Sales of the Licensed Products have been or are for any of the License Years, and shall be applied to and credited as advances against Licensee's liability for royalties for each License Year for which the License Agreement is in effect. No carry over of excess earned royalty (over the Guaranteed Minimum Royalty) or deficiency of earned royalty (under the Guaranteed Minimum Royalty) into subsequent license periods within the term shall be allowed.

## **SECTION VII**

### **(Royalty Payments, Accounting and Statements)**

Licensee shall furnish to NYC & Company the following no later than thirty (30) days after the end of each calendar quarter (beginning with the calendar quarter in which the initial shipment of Licensed Products covered by this License Agreement is made):

(a) complete and accurate statements in a format approved by NYC & Company and certified in writing to be accurate by an officer of Licensee, itemized by (a) product item number; (b) City Agency and/or specific trademark associated with such Agency (e.g., FDNY, NYPD) and showing the net number of units sold inclusive of returns, item description and Average Sales price of the Licensed Products sold by Licensee during the preceding quarter. Such statements shall be furnished to NYC & Company whether or not any Licensed Products have been sold during the preceding quarter; and

(b) payment of the earned royalty and/or guaranteed minimum royalty due from sales during the preceding quarter. In the event Licensee's earned royalty in a given quarter is less than the guaranteed minimum royalty, then payment shall include the difference between earned royalty and the guaranteed minimum royalty.

The receipt or acceptance by NYC & Company or the City of any statements furnished pursuant to this License Agreement or any royalties paid hereunder (or the cashing of any royalty checks paid hereunder) shall not preclude NYC & Company or the City from questioning the correctness of such statement or payment at any time. In the event any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Licensee. In the event of an overpayment by Licensee, Licensee may deduct such mutually verified overpayment from any earned royalty or guaranteed minimum royalty payment due with the next regular quarterly royalty statement and payment. In the event no further royalty payments would be forthcoming after discovery and mutual verification of the payment, then Licensee shall receive a refund of such overpayment within thirty (30) days after its written request for a refund is received by NYC & Company.

In the event that Licensee fails to make any payments, including, advances, guaranteed minimum royalty, earned royalty and audit findings, when such payments are due under this License Agreement, interest shall be charged at an annual rate of eighteen percent (18%), or the maximum rate allowed by law, whichever is lower. All payments made hereunder shall be in United States currency drawn on a United States bank. Licensee shall keep accurate books of account and records covering all transactions related to this License Agreement for at least six (6) years after termination of this License Agreement.

## **SECTION VIII**

### **(Audit Rights)**

The City or its authorized agent shall have the right during business hours upon forty-eight (48) hours' advance notice to examine and request copies of Licensee's books, records, and accounts and all other documents and materials in the possession or under the control of Licensee relating to the sale of the Licensed Product or this License Agreement to such extent as may be necessary to determine the accuracy or inaccuracy of any royalty statements submitted by Licensee to Licensor. Licensee shall segregate its records and agrees that such audit may be used as a basis for settlement of charges under this License Agreement. The City may also at any time select any independent accounting firm to review Licensee's books, records and accounts, and to check shipments and verify the account (hereinafter referred to as the "Audit"). In the event that the Audit reveals any

underpayment by Licensee to Licensor, Licensee shall remit payment for the amount shown to be due within ten (10) days, of receipt of official audit report plus a late charge in the amount of eighteen percent (18%) per annum, or the maximum rate allowed by law whichever is lower, on all amounts shown to be owing by Licensee. In the event that the Audit determines that Licensee has underpaid by an amount equal to five percent (5%) or more of the total amount shown to be due to Licensor for the period audited, Licensee shall reimburse Licensor or its agent for all costs and expenses of the Audit. In addition, if the discrepancy is an amount equal to five percent (5%) or more and a discrepancy or underpayment of 5% or more had been found in at least one prior instance, Licensor may terminate this License Agreement by giving Licensee notice within sixty (60) days after receipt of the audit report disclosing the discrepancy. Licensee shall retain all books of account and records relating to this License Agreement for at least six (6) years after the termination or expiration of this License Agreement, and any renewals thereof and Licensor's right to audit such records during the duration of this License Agreement and for six (6) years thereafter. The parties acknowledge and agree that the powers, duties, and obligations of the Comptroller of the City of New York pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

#### **SECTION IX (No Assignment)**

This License Agreement is personal to Licensee and may not be assigned in whole or in part by Licensee without the prior written consent of the City, which may be withheld in the sole discretion of the City. Any attempted or purported assignment or other transfer, sublicense, mortgage or other encumbrance of this License Agreement by Licensee without the prior written approval of the City shall be null and void and grounds for immediate termination of this License Agreement by the City.

#### **SECTION X (Trademark Ownership)**

(a) Licensee agrees that by virtue of this License Agreement it does not and shall not claim any right, title, or interest in the Property or any part thereof (except the right to use them in accordance with this License Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the Property and the validity of the trademarks and service marks that are part of the Property and the City's rights therein. Licensee agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Property, to this License Agreement or to the validity of the Property and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such Property. Any violation of this paragraph shall constitute an immediate breach of this License Agreement and cause for immediate termination by the City.

(b) Licensee agrees to reasonably assist the City in protecting the City's rights to the Property, including but not limited to reporting to the City any infringement or imitation of the Property of which Licensee becomes aware. The City shall have the sole right to determine whether to institute litigation with respect to such infringements, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the Property in its own name or the name of Licensee or join Licensee as a party thereto. The City shall be entitled to keep the entire amount of any recovery. If the City brings an action against any infringement of the Property, Licensee shall cooperate with the City and lend whatever assistance is necessary, subject to being reimbursed for its reasonable and pre-approved out-of-pocket expenses.

(c) If claims are made against the City, NYC & Company, or Licensee with respect to the use of the Property in connection with the Licensed Products, then the parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee of the Property.

(d) Licensee agrees to make modifications requested by the City in Licensee's use of the Property or to discontinue use of the Property on the Licensed Products which are involved, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

## **SECTION XI (Goodwill)**

(a) Licensee recognizes and acknowledges that the Property and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the Property has acquired secondary meaning in the mind of the public. The Property shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this License Agreement immediately, upon written notice, in the event that any part of the Property is used by Licensee in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the Property is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this License Agreement shall terminate unless Licensee ceases and halts all such uses immediately.

(b) Licensee shall use the Property only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the Property shall inure to the sole benefit of the City. Licensee shall not acquire any rights in the Property by virtue of any use it makes of the Property. Licensee shall not attempt to register the Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the Property.

(c) Licensee agrees that it will apply the proper notations on all Licensed Products, tags, labels, package inserts, containers, packaging, advertising, promotional and display materials or the like containing the Property as set forth in Exhibits 2 and 3 hereto.

(d) Any art work or other materials conceived under or resulting from this License Agreement, including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, whether developed by Licensee or on behalf of Licensee shall be considered "work made for hire" within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Property, Licensee shall first obtain the City's written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City. For the avoidance of doubt, other than as set forth herein, this paragraph shall not transfer any right, title or interest in the marks, logos and/or graphics or other intellectual property of Licensee not expressly created for, or otherwise adapted for use with, the Licensed Property or Licensor hereunder.

(e) Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the Property in connection with the Licensed Products, to include additional elements to the Property, or to discontinue use of some or all of the elements of the Property. Accordingly, the City does not represent or warrant that the Property or any elements thereof will be maintained or used in any particular fashion. Any new elements or modifications to existing elements used by the City following the execution of this License Agreement may be included in, or deleted from (as applicable), the Property at the sole discretion of the City. Licensee agrees to comply with the City's written request to include

such elements as, or to delete such elements from, the Property within a reasonable period of time from Licensee's receipt of such written request.

(f) During the Term, the City shall have the right, but shall not be under any obligation, to use the Property, Licensed Products, and/or the name of Licensee so as to give the Property, and/or the Licensed Products full and favorable prominence and publicity. The City shall be under no obligation whatsoever to use or continue using the Property, the Licensed Products and/or the name of Licensee in connection with its products or services.

## **SECTION XII (Termination Rights)**

Without prejudice to any other rights, the City has the right to terminate this License Agreement upon written notice to Licensee, effective immediately, at any time that any of the following occurs:

(a) If Licensee shall cease to manufacture and sell the Licensed Products for any reason (except for a cause beyond the control of Licensee, including "acts of God"), for a period of three (3) consecutive months or more.

(b) If Licensee shall fail to make any payment due hereunder or to deliver any of the statements herein referred to, or breaches any other obligation hereunder, and if such default shall continue for a period of thirty (30) days after written notice of such default is sent by the City to Licensee. Licensee shall pay interest on the unpaid balance thereof from and including the date such payment becomes due until the date the entire amount is paid in full at a rate equal to the prime rate being charged in New York, New York, by Citibank as of the close of business on the date the payment first becomes due plus five percent (5%) (or the maximum rate which legally can be paid by Licensee, if lower).

(c) If Licensee defaults on any obligation that is secured by a security interest in any Licensed Product, Licensee shall immediately and automatically no longer have the right to sell or otherwise transfer Licensed Products or otherwise use the Property until it notifies the City of the occurrence of such default on any such obligation, and Licensor notifies Licensee that Licensor has elected to waive its right to terminate this License Agreement.

(d) If Licensee makes any assignment for the benefit of creditors, or files any petition under Title 11, United States Code, or files in bankruptcy or is adjudicated as bankrupt or insolvent, or if any trustee in bankruptcy or insolvency is appointed under the laws of the United States or of any State. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this License Agreement or exploit the Property if this License Agreement terminates pursuant to this paragraph. Notwithstanding, if, pursuant to Title 11, United States Code, or any amendment or successor thereto, a trustee in bankruptcy or Licensee, as debtor, is permitted to assume this License Agreement and does so and, thereafter, wishes to assign this License Agreement to a third party, and that assignment complies with Title 11 of the United States Code, the trustee or Licensee shall notify Licensor of same. Said notice shall set forth the name and address of the proposed assignee, the proposed consideration for assignment and all other relevant details of the assignment. Such notice shall be deemed to grant the Licensor the option to have this License Agreement assigned to such assignee for such consideration, or its equivalent in money and upon such terms as specified in the notice. The option may be exercised by written notice to the trustee or Licensee by Licensor within fifteen (15) days from Licensor's receipt of the notice, or within such shorter time as may be deemed appropriate by the court in a bankruptcy proceeding. If Licensor fails to give notice to the Licensee or trustee within said period, the Licensee or trustee may execute the assignment to the entity referred to in the notice for the consideration and on the terms specified therein. Nothing contained herein shall be deemed to preclude or impair any rights Licensor may have as a creditor in any bankruptcy proceeding.

(e) If Licensor determines that this License Agreement should be terminated without cause; provided, however, such termination shall not be arbitrary or capricious.

(f) If Licensee violates the non-assignment or change in controlling interest provisions of this License Agreement.

(g) If Licensee fails to sell Licensed Products within six months of the date of this License Agreement.

Upon termination or expiration of this License Agreement, except as otherwise provided in Section XIII, during the sell-off period, all royalties earned and all applicable guaranteed minimum royalties shall become immediately due and payable.

### **SECTION XIII (Post Termination)**

Upon the expiration of this License Agreement (but not upon termination for cause pursuant to Section XII or any other provision of this License Agreement other than Section XII (e)), Licensee shall be permitted ninety (90) days to sell its remaining inventory of Licensed Products. Sales under this section shall require payment of royalties and all other duties and obligations of Licensee under this License Agreement shall remain in force during the sell off period. At the end of such sell-off period, or upon termination pursuant to any other provision this License Agreement Licensee shall immediately discontinue manufacture, promotion, advertisement, and sale of Licensed Products. In addition, upon expiration or termination of this License Agreement for any reason, Licensee shall deliver to Licensor, or destroy or alter under Licensor's supervision, all molds, dies, prints or other equipment used to manufacture the Licensed Products and Promotional Materials so that such equipment no longer can be used to manufacture products or promotional materials bearing, displaying, or otherwise including the Property and shall provide Licensor with a letter confirming depletion or destruction of such inventory. Licensee acknowledges and agrees that its failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon expiration or termination of this License Agreement will result in immediate and irreparable harm to Licensor. Licensee further acknowledges and admits that Licensor has no adequate remedy at law for Licensee's failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon termination or expiration of this License Agreement, except as expressly provided for above. Licensee acknowledges and admits that, in the event of any such failure by it to cease manufacture, sale, advertising, or promotion of the Licensed Products, Licensor shall be entitled to equitable or injunctive relief against Licensee's failure, in addition to any and all other remedies at law that are available to Licensor.

### **SECTION XIV (Samples and Approvals)**

(a) The Licensed Products shall meet or exceed the requirements imposed by any and all laws, regulations, government standards, guidelines, manufacturing codes, rules, and the like applicable to the Licensed Products. Without limiting the foregoing, no Licensed Products shall be manufactured from any flammable, explosive, toxic, or otherwise inherently dangerous materials or substances, nor designed so as to constitute any inherent danger to the consumer. Further, Licensee agrees that the Licensed Products shall be of a standard of quality at least as high as that of the product samples initially approved by Licensor so as to be suited to their exploitation and to the protection and enhancement of the Property and the goodwill pertaining thereto.

(b) The Licensed Products shall be manufactured in accordance with the manufacturing specifications, protocol, safety, and quality standards that have been reviewed and approved in writing by Licensor ("Specifications"), which, once approved, shall be deemed to be a part of this License Agreement. Licensor may amend such Specifications from time to time and shall provide Licensee with reasonable notice of such changes so that the Licensed Products may be adjusted to meet such changed quality standards, if required.

(c) The Specifications shall include at least the following information (and other information which Licensor requests regarding particular Licensed Products): (i) a description of the materials used in the Licensed Products, the materials' dimensional tolerances, performance and durability requirements, specifications that enable the materials to meet governmental regulatory requirements (if any) and such other appropriate information that will accurately describe the Licensed Products and their expected performance during use by the

consumer; and (ii) a quality assurance plan that is used to assure the continuing acceptable quality of the Licensed Products. The plan shall include a description of the quality controls observed in the Licensed Products' manufacture, and the procedures followed to audit and verify continued quality and conformance to specifications of the Licensed Products, as well as applicable laws and regulations.

(d) The Specifications shall be provided to Licensee's suppliers and manufacturers of the Licensed Products, and Licensee shall require its suppliers and manufacturers to comply with the Specifications. Licensor shall have the ability to inspect Licensee's facilities and warehouses and those of its suppliers and manufacturers at any time with or without prior notice to assure Licensee's compliance with this paragraph.

(e) Licensee agrees to submit, at the Licensor's request and at no cost to Licensor (i) initial sketches and/or design concepts; (ii) finished artwork or final proofs; (iii) prototypes or pre-production samples; and (iv) a minimum of one (1) and maximum of twelve (12) final production samples (the "Samples") of the Licensed Products (and any variations thereof), as well as initial samples of subsequent production run(s) if such subsequent production run(s) vary in any manner from prior runs, for Licensor's inspection, testing, analysis and approval prior to any sale or shipment of the Licensed Products. If requested by Licensor, such samples (together with the Specifications) shall be submitted by Licensee to an independent laboratory or other test facility approved in writing by Licensor. All costs associated with such inspection, testing and analysis shall be borne by Licensee, and the results of such inspection, testing and analysis shall be submitted to Licensor for its approval. Licensee shall also provide a reasonable number of samples of the Licensed Product to Licensor in accordance with this paragraph at reasonable intervals of no less than once every twelve (12) months during the Term, with such additional inspection, testing and analysis as Licensor may require in the manner set forth in this paragraph for purposes of product review and quality control.

(f) Licensor shall use reasonable efforts to communicate its written approval or disapproval within twenty (20) business days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed disapproved. If Licensor does not approve the Samples of the Licensed Products, the reasons for disapproval shall be communicated to Licensee. After the Samples are approved pursuant to this paragraph, Licensee shall not depart therefrom in any material respect without Licensor's prior written consent, and Licensor shall not withdraw its approval of the Samples except for good cause.

(g) Licensee shall adhere to Licensor's graphic and packaging standards and guidelines in the use of the Property and shall use the materials depicted in Exhibit 4 hereto, which have been approved by Licensor. To the extent that Licensee wishes to amend or alter the graphics depicted in Exhibit 4, Licensee shall submit to Licensor for Licensor's prior written approval all tags, labels, package inserts, containers, packaging, advertising, promotional, display or sales materials or the like containing or referring to the Property. Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) business days of its receipt of items under this paragraph. Any materials not specifically approved shall be deemed disapproved. If Licensor does not approve an item under this paragraph, the reason for such disapproval shall be communicated to Licensee.

(h) Licensee shall at its own cost handle all product warranty and/or guarantee issues, responses and compliance requirements, as well as all consumer inquiries or complaints (collectively, "Consumer Inquiries") relative to any of the Licensed Products. Licensor shall forward to Licensee for handling any and all such Consumer Inquiries that Licensor receives. Upon request by Licensor, Licensee shall advise Licensor in writing of the manner in which it handled any Consumer Inquiry. In addition, Licensee shall provide Licensor with a quarterly report (submitted with royalty reports pursuant to Section VII hereto) containing all data and information regarding Consumer Inquiries handled during the quarter.

(i) Licensee shall immediately advise Licensor of any product recall considerations or deliberations and provide Licensor with the right to attend and have input into such deliberations. Licensor shall have the ability to declare a product recall of such Licensed Products as Licensor determines in good faith after consulting with Licensee that any product recall is necessary for reasons of public health, safety, welfare or damage

to reputation or good will. Licensee shall bear any and all costs related to any product recall of the Licensed Products using the Property whether voluntary, required by a governmental authority or the Licensor. Licensee shall have in place a comprehensive lot tracking program, starting with raw materials, to ensure such recall effectiveness.

(j) Licensee agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Licensee agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products. Licensee shall perform all obligations under this License Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect from time to time.

#### **SECTION XV (Purchase Rights)**

Licensor shall have the right to purchase from Licensee, at Licensee’s lowest available wholesale price, such number of royalty-free units of any Licensed Product as Licensor may from time to time specify in a notice to Licensee.

#### **SECTION XVI (Indemnification)**

Licensee hereby agrees to be solely responsible for and to indemnify, defend and hold harmless Licensor, NYC & Company, their affiliates and respective officers, agents, and employees, and to hold each of them harmless from and against any claims, judgments, demands, causes of action, damages, losses, costs and expenses, including but not limited to reasonable attorneys’ fees, which may be made or asserted by third persons in connection with the manufacture, design, sale, offering for sale, advertising, promotion or use of the Licensed Products, including those based on Licensee’s use of the Property authorized by this License Agreement. Such indemnification shall further extend to Licensee’s failure to comply with the terms of this License Agreement and Licensee’s unauthorized use of any patent, process, idea, method or device, or unfair trade practice, false advertising, trademark, copyright infringement or the like in connection with the manufacture, design, sale, advertising, promotion or use of the Licensed Products. Licensee expressly agrees that its obligations hereunder shall survive and continue beyond any termination or expiration of this License Agreement.

#### **SECTION XVII (Existing Licenses)**

Licensee hereby acknowledges that Licensor has previously granted and may continue to grant licenses to third parties for the use of the Property.

#### **SECTION XVIII (Insurance)**

During the term of this license and for at least three (3) years after the last date of sale by Licensee of any Licensed Product, Licensee agrees to carry commercial general liability insurance, including but not limited to product liability coverage, with insurer(s) that may lawfully issue the required 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. The commercial general liability insurance must: (x) be in an amount of at least one million dollars (\$1,000,000) per occurrence for bodily injury

and property damage, one million dollars (\$1,000,000) for personal and advertising injury, two million dollars (\$2,000,000) policy aggregate, and two million dollars (\$2,000,000) products/completed operations; (y) be at least as broad as that provided by the latest edition of Insurance Services Office (ISO) form CG 00 01; and (z) include NYC & Company and the City, together with their officials and employees, as additional insureds under such policy with coverage at least as broad as the latest edition of either ISO form CG 20 26 or ISO form CG 20 36 . Policies of insurance provided pursuant to this Agreement shall be primary and non-contributing to any insurance or self-insurance maintained by NYC & Company or the City.

Each year such insurance is required, Licensee shall provide NYC & Company and the City with a Certificate of Insurance, which certifies the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the required additional insured endorsements, accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Licensor, or certified copies of all policies referenced in such Certificate of Insurance.

In the event that Licensee fails at any time to carry insurance as required herein, Licensee shall immediately notify Licensor thereof and Licensor shall have the right to terminate this Agreement immediately.

Whenever notice of occurrence, claim or suit to an insurance company is required under any such policy, Licensee shall provide timely notice thereof on behalf of both NYC & Company and the City, including their officials and employees, and shall promptly send a copy of such notice(s) to both NYC & Company and the City. The copy of such notice to NYC & Company shall be sent to the address set forth in Paragraph 12 above and the copy to the City shall be sent to c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. The existence of such insurance shall in no way limit Licensor's or NYC & Company's rights under this Agreement, at law or in equity, including the right to be indemnified as set forth in this Agreement.

Licensee waives all rights against the NYC & Company and the City, including their officials and employees, for any damages or losses that are covered under any insurance required by this Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee.

#### **SECTION XIX (Governing Law)**

This License Agreement shall be construed in accordance with the laws of the State of New York, notwithstanding conflicts of laws principles. By execution of this License Agreement, Licensee consents to submit to the jurisdiction of the courts of the State of New York located in New York City and the federal courts located therein.

#### **SECTION XX (No Partnership or Joint Venture)**

Nothing in this License Agreement or in the course of performance under this License Agreement shall be construed to constitute a partnership or joint venture. Licensee shall have no right to obligate or bind Licensor in any manner whatsoever (nor shall Licensee hold itself out to any third party as being so authorized) and nothing contained herein nor in the course of performance hereunder shall give or is intended to give any right of any kind to any third party.

#### **SECTION XXI (No Manufacturers, Importers, or Sublicensees)**

Licensee shall provide Licensor with a list of the names and addresses of Licensee's manufacturers, importers and distributors and will notify Licensor of any change in such list. From time to time, Licensor may request that Licensee provide the names of its designers, raw material suppliers and/or authorized importers of the Licensed Products, and Licensee agrees to provide such information upon the request of Licensor. Licensee may sublicense rights under this License Agreement ("Sublicense") only with the prior, written

approval of the Licensor, which may be withheld in Licensor's sole discretion. Each and every Sublicense granted under this License Agreement shall contain such provisions as Licensor may require, including without limitation that the Sublicense shall be assignable to the Licensor upon the written demand of the Licensor.

## **SECTION XXII (Notices)**

All notices required to be given under the terms of this License Agreement, or which either party hereto may desire to give to the other, shall be in writing and sent by mail to the following addresses:

If to Licensor:

NYC & Company  
810 Seventh Ave.  
New York, NY 10019  
ATTN.: Natalie Koepff  
General Counsel

With a copy to:

New York City Department of Small Business Services  
110 Williams Street, 2nd Floor  
New York, NY 10038

If to Licensee:

Vineyard Vines  
181 Harbor Drive  
Stamford, CT 06902  
Attn: JoAnn Slattery, SVP of Wholesale

## **SECTION XXIII (Confidentiality)**

Except as otherwise required by law, Licensee agrees to, and shall cause its affiliates, agents, representatives, accountants, employees, officers and directors to: (i) treat and hold as confidential all information, reports or data, prepared, assembled, used or that Licensee comes to obtain under this License Agreement, and (ii) prior to publication, not disclose or provide access to such confidential information to any individual or organization without the prior written approval of Licensor. In the event that Licensee or Affiliate, agent, contractor, representative, employee, officer, or director of Licensee, becomes legally compelled to disclose confidential information of Licensor, Licensee must provide Licensor with prompt written notice of such requirement so that Licensor may seek a protective order or other remedy or waive compliance with this Article XXIII. In the event that such protective order or other remedy is not obtained, or compliance with this Article XXIII is waived, Licensee agrees to furnish only that portion of such confidential information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information. Notwithstanding the foregoing, this Article XXIII shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this License Agreement, (ii) was known to the receiving party without breach of an obligation of confidentiality or (iii) was learned from a third party who was not under an obligation of confidentiality. The parties agree and acknowledge that remedies at law for any breach of the obligations under this Article XXIII may be inadequate and that in addition thereto Licensor and NYC & Company are entitled to seek equitable relief, including injunction and specific performance, in the event of any such breach.

In the event that Licensee believes that specific information it submits to Licensor or NYC & Company pursuant to this Agreement should be treated confidentially by Licensor or NYC & Company, Licensee shall so advise the party receiving the information in a writing identifying the specific information. Licensor and NYC & Company agree to treat information so designated as confidential proprietary information of Licensee, consistent with legal requirements.

The City or NYC & Company may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 84 et seq.), to disclose information, or any portion thereof. In the event that disclosure is requested by a third party of materials designated by Licensee as confidential or proprietary information in accordance with this Section, the Licensor or NYC & Company will provide notice to Licensee and shall consult with Licensee to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL.

Consistent with the requirements of FOIL, the final determination regarding disclosure shall be made by Licensor or NYC & Company in their sole discretion. In the event that Licensor or NYC & Company determines in its discretion that information may not be withheld, Licensor or NYC & Company, as appropriate will provide Licensee with prompt notice of intent to disclose in order that Licensee may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

Licensee expressly acknowledges and agrees that neither the Licensor nor NYC & Company will have any obligation or liability to Licensee in the event of disclosure of materials, including materials designated by Licensee as proprietary information, provided such disclosure is in accordance with this Section.

#### **SECTION XXIV (Investigations)**

A. The parties to this License Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York or City of New York 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, permit, or license that is the subject of the investigation, audit or inquiry.

B. (i) 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, permit, contract, or license entered into with the City of New York, the State of New York, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City of New York, or any public benefit corporation organized under the laws of the State of New York, or;

(ii) 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 of New York 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 of New York, the State, or any political subdivision thereof or any local development corporation within the City of New York, then;

C. (i) The commission 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 (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(ii) 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 paragraph E below without the City of New York 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:

(i) 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 of New York; and/or

(ii) The cancellation or termination of any and all such existing City of New York contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, 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, without the City of New York 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 Licensor.

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 paragraphs (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) 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.

(ii) 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.

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

(iv) 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 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 C(i) above gives notice and proves that such interest was previously 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. (i) 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.

(ii) 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.

(iii) 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 of New York, or otherwise transacts business with the City of New York.

(iv) 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 provision of this License Agreement the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) days’ written notice in the event Licensee fails to promptly 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 Agreement by Licensee, or affecting the performance of this License Agreement.

## **SECTION XXV (Miscellaneous)**

A. No action at law or proceeding in equity by Licensee against Licensor or NYC & Company shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee has 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 Licensor or NYC & Company by Licensee upon any claims based upon this License Agreement unless such action shall be commenced within six (6) months after the date of final payment hereunder, or within six (6) months of the termination or conclusion of this License Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs

C. In the event any claim is made or any action is brought against Licensor or NYC & Company in any way relating to the Agreement herein on the basis of Licensee’s actions and in each case by a third party, Licensee shall diligently render to Licensor and NYC & Company without additional compensation any and all assistance which Licensor and NYC & Company may reasonably require of Licensee, subject to reimbursement for Licensee’s actual, reasonable, pre-approved expenses.

D. Either party shall report to the other party in writing within ten (10) working days of the date such party becomes aware of the initiation by or against it of any legal action or proceeding in connection with or relating to this License Agreement.

E. No claim whatsoever shall be made by Licensee against any officer, agent, or employee of Licensor or NYC & Company for, or on account of, anything done or omitted in connection with this License Agreement.

F. This License Agreement may be executed in two copies, each of which shall be deemed an original. This License Agreement contains the entire understanding between the parties with respect to the subject matter hereof and replaces and supersedes all prior agreements and understandings between the parties. This License Agreement may only be amended by a writing executed by all parties.

G. Headings used herein are for convenience only and shall not be considered part of this License Agreement. This Agreement has been negotiated by the parties hereto. No provision of this License Agreement shall be strictly construed against the drafter of the language concerned, but shall be interpreted applying the most reasonable interpretation under the circumstances, giving due consideration to the intentions of the parties at the time of contracting.

H. Licensee represents and warrants to Licensor that: (i) it is duly organized and validly existing under the laws of the State of Connecticut (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; (iii) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (iv) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms; (v) there are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of Licensee) threatened against Licensee which, if adversely determined, could have a material adverse

effect on the financial condition, operations, business or prospects of Licensee; (vi) the execution and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under, the charter, by-laws or partnership agreement, as applicable, of Licensee, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Licensee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon any of the revenues or assets of Licensee pursuant to the terms of any such agreement or instrument.

I. Licensor represents and warrants to Licensee that: (i) subject to applicable law, it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (ii) to the best of Licensor's knowledge, the execution of and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under any agreement or instrument to which Licensor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

J. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable law, and to execute and deliver such

documents and other papers, as may be required to carry out the provisions of this License Agreement and consummate and make effective the transactions contemplated by this License Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement as of the date and year first above written.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

By:

Its:

Date of Signature: \_\_\_\_\_

APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY:

\_\_\_\_\_

Acting Corporation Counsel

(Licensee Name)

By:

Its:

Date of Signature: \_\_\_\_\_

Exhibit I  
The Property

Trademarks of the City of New York

Trademarks



## **Exhibit 2**

### **Licensed Products**

1. Apparel
2. Bags
3. Accessories

### **Exhibit 3**

#### **Distribution Channels**

1. Better Department store chains, specialty chains, boutiques
2. Direct to consumer media such as websites, catalogues and television shopping

## **Exhibit 4**

### **Product Labels and Graphics**

#### City Seal Hologram

All products must include a permanent copyright notice and trademark designation etched on the back of the product. It must read “© 2019[or current year] City of New York. All Rights Reserved.”

If too little room is available to accommodate this etching, individual decisions will be made in consultation with NYC & Company, which shall have the right of prior approval over the final version.

All packaging must include at least the copyright notice “© 2019 [or current year] City of New York. All Rights Reserved.”

## **Exhibit 5 Quality Control Guidelines**

1. All Licensed Products and related materials associated with NYC & Company's licensing program, including but not limited to packaging, print ads, advertising initiatives, point of purchase displays, story boards, scripts, molds, brochures, videos, DVDs, labels, hangtags, catalogs, sales sheets and all collateral materials must be submitted to NYC & Company for written approval prior to any production.
2. Each product submitted for approval must, at every stage, be submitted via NYC & Company's online product approval system, Trademarx Insight. Licensee will be introduced and set up with Trademarx Insight upon contract execution.
3. All prototypes of any items which utilize trademarks discussed herein must be submitted at each stage of production. Based on written approval, Licensee may proceed to the next step.
4. Contracts will contain NYC & Company's entire sample submission/ approval process. The following brief steps will be required for all product submissions:
  - Initial sketches and/ or design concepts
  - Finished artwork or final proofs
  - Prototypes or pre-production samples
  - Production samples
5. Licensees are required to submit all licensed products in each style and variation.
6. Product submissions shall be reviewed and evaluated for:
  - Accuracy of logo representation
  - Proper use of Pantone colors
  - Proper use of trademark designations
  - General appearance and quality of product
  - NYC & Company policies and standards
7. All approvals granted are conditioned upon FULL EXECUTION OF THE LICENSING AGREEMENT AND TIMELY PAYMENTS, or with the prior written permission of NYC & Company
8. Each logo is distinctive and therefore must be used separately on Licensed Product and collateral materials. Logos may not be reversed and/ or turned to appear in an opposite direction.
9. All hard goods must include a permanent copyright notice and trademark designation etched on the bottom or other approved location on the product.
10. Licensees must indicate the size of, and the amount of times, they intend to utilize logo(s) discussed herein, third party logo(s) and/or corporate identification(s) in relationship to the size of the logo(s) discussed herein prior to the Licensee's logo use on products.
11. All products are required to utilize holograms, hangtags and/ or labels purchased from NYC & Company's exclusive on-product authentication products supplier.
12. Licensee agrees to use the following notice, ™, ® or ©, as specified by the Licensor, in connection with the first most prominent usage of the Property on all Licensed Products, hang tags and packaging: "All New York City logos and marks depicted herein are the property of New York City and may not be reproduced without written consent. © 2019 (or other year of initial publication). City of New York. All rights reserved."

Licensee agrees to use the following notice, ™, ® or ©, in connection with all displays, advertising, sales brochures, instruction manuals and other promotional materials for each Licensed Product (hereinafter the "Promotional Materials"): "All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2019 (or other initial year of publication). City of New York. All rights reserved." If impracticable in a particular situation, a shortened version of such notices may be used with Licensor's prior written approval.

- 13.** Licensee must have any vendor or factory that is used to produce Licensed Products acknowledge in writing receipt and compliance with the Ethical Standards Form attached as Exhibit 6. Such written acknowledgment of receipt and compliance shall be substantially in the form attached as Exhibit 7. Licensee agrees to upload to Trademarx the factory name and factory contact information (foreign or domestic) where production of a particular item will occur once such factory has been assigned for such item. No product approvals will be given without this information.

## Exhibit 6

### Ethical Standards for the City of New York

The City of New York (“City”) is committed to conducting business in an ethical and responsible manner in all countries, and requires the same from all of its business partners. While the City recognizes that there are different legal and cultural environments in which factories operate throughout the world, these Ethical Standards for Vendors (“Standards”), set forth the basic minimum requirements all factories must meet in order to do business with the City.

These Standards apply to City rights holders of specific licensed products (“Licensees”) and factories that produce goods for the City (“Licensed Products”), including manufacturers, contractors and subcontracted manufacturers (hereinafter collectively referred to as “Vendors”). Under the agreement in place with each Licensee, the City has the right to approve all Vendors of Licensed Products. No Vendor will be approved and no currently approved Vendor will be retained who does not comply with these Standards. The City strongly encourages Vendors to exceed these Standards and promote best practices and continuous improvement throughout their factories.

#### **Legal Requirements:**

The City requires that its Vendors must operate in full compliance with all applicable laws and regulations of the countries in which they manufacture and compliance with all local environmental laws applicable to the workplace.

#### **Forced Labor:**

The City requires that its Vendors not use forced labor, including, but not limited to, prison, indentured, bonded or involuntary labor.

#### **Child Labor:**

Vendor agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Vendor agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products.

#### **Harassment or Abuse:**

The City requires that its Vendors treat their employees with respect and dignity. Vendors must provide a work environment free of harassment, abuse or corporal punishment in any form. In addition, Vendors will not use monetary fines as a disciplinary practice.

#### **Discrimination:**

The City requires that its Vendors ensure that employment, including but not limited to hiring, salary, benefits, advancement, discipline or termination, is based solely on ability and not on any personal characteristics.

#### **Health and Safety:**

The City requires that its Vendors provide a safe and healthy working environment in accordance with applicable local law to prevent accidents and injury arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities. Vendors who provide residential facilities must ensure these facilities

are also safe and healthy in accordance with applicable local laws.

**Freedom of Association:**

The City requires that its Vendors recognize and respect the legal right of employees to freely associate. Employees should not be subject to intimidation or harassment as a result of the peaceful exercise of their legal right to join or to refrain from joining any organization.

**Compensation and Benefits:**

The City requires that its Vendors pay employees at least the minimum compensation required by local law, and to provide all legally mandated benefits. In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

**Hours of Work:**

The City requires that its Vendors ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, employees shall (i) not be required to work more than the lesser of (a) sixty (60) hours per week or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture, and (ii) be entitled to at least one day off in every seven day period.

**Communication:**

The City requires that its Vendors take appropriate steps to ensure that the provisions of these Standards are communicated to employees.

**Monitoring and Compliance:**

The City requires that its Vendors maintain on file all documentation necessary to demonstrate compliance with the City's Standards. Vendors must allow the City and its designated agents (including third parties) to engage in announced and unannounced monitoring visits, including confidential employee interviews.

City Vendors are required to take necessary corrective actions to promptly remediate any noncompliance. The City reserves the right to ultimately terminate its business relationship and/or cancel existing orders with any Vendor who is unwilling or unable to comply with these Standards.

**Exhibit 7**  
**Vendor or Factory Acknowledgements of Receipt and Compliance with Ethical Standards for the City of New York for Manufacture or Otherwise in Connection with any Licensed Product**

Each entity signing below acknowledges receipt and full compliance with the Ethical Standards for the City of New York.

NAME OF VENDOR OR FACTORY  
FULL ADDRESS OF VENDOR OR FACTORY

By:  
NAME

Its:  
TITLE

Date of Signature: \_\_\_\_\_

NAME OF VENDOR OR FACTORY  
FULL ADDRESS OF VENDOR OR FACTORY

By:  
NAME

Its:  
TITLE

Date of Signature: \_\_\_\_\_

LICENSEE SHOULD ADD AS MANY SIGNATURE BLOCKS AS NECESSARY TO INCLUDE ALL AUTHORIZED SOURCES OF LICENSED PRODUCT



NEW YORK CITY DEPARTMENT OF

HEALTH AND MENTAL HYGIENE

Oxiris Barbot, MD

Commissioner

TO: All Borough Presidents  
All Community Boards

FROM: Christian Diaz   
Assistant Commissioner, Finance, Administration and Services  
Center for Health Equity and Community Wellness  
Department of Health and Mental Hygiene

SUBJECT: Notice of Joint Public Hearing, December 9, 2019: re Amendment of the concession agreement between the New York City Department of Health and Mental Hygiene and OptumRx Discount Card Services, LLC (formerly known as Catamaran Discount Card Services, LLC) to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents

DATE: November 20, 2019

**NOTICE OF A JOINT PUBLIC HEARING** of the Franchise and Concession Review Committee and the New York City Department of Health and Mental Hygiene to be held on December 9, 2019 at 2 Lafayette Street, 14th Floor Auditorium, Borough of Manhattan, commencing at 2:30 p.m. relative to:

**AMENDMENT** of the concession agreement between the New York City Department of Health and Mental Hygiene and OptumRx Discount Card Services, LLC (formally known as Catamaran Discount Card Services, LLC) for the development, operation and administration of the NYC Drug Discount Card Program available to all New York City residents. The amendment extends the expiration date of the concession agreement from August 16, 2018 to December 31, 2021.

A draft copy of the amendment may be reviewed or obtained at no cost commencing November 22, 2019 through December 9, 2019, between the hours of 9:00 a.m. and 5 p.m., excluding weekends and holidays at the New York City Department of Health and Mental Hygiene, Office of Contracts, located at 42-09 28th Street, 17th Floor, Long Island City, NY 11101.

This location is accessible to individuals using wheelchairs or other mobility devices. For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 788-0010. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least three (3) business days in advance of the hearing to ensure availability. 

TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115

**CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET**

*(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable) )*

<b>AGENCY:</b> NYC Department of Health and Mental Hygiene ("DOHMH")	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>OptumRx Discount Card Services, LLC (f/k/a Catamaran Discount Card Services, LLC)</u> <b>Address:</b> <u>1600 McConnor Parkway, Schaumburg, IL 60173</u> <b>Telephone #</b> <u>720-482-3726</u> <input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN #</b> <u>31-1728846</u> <b>Not-for-Profit Organization</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>CONCESSION TITLE/ DESCRIPTION:</b> To develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents.  <b>CONCESSION I.D.#</b> <u>11HM000701R2T03</u>
<b># VOTES required for proposed action</b> = <u>4</u> <input type="checkbox"/> N/A		

**LOCATION OF CONCESSION SITE(S\*) Address** \_\_\_\_\_  N/A  
 \*Attach additional sheet **Borough** \_\_\_\_\_ **C.B.** \_\_\_\_\_ **Block #** \_\_\_\_\_ **Lot #** \_\_\_\_\_

**SELECTION PROCEDURE**  
 (\*CCPO approval of CRFA required)

Competitive Sealed Bids  
 Competitive Sealed Proposals\* ( FCRC approved Agency request to deviate from final recommendation of the Selection Committee on \_\_\_/\_\_\_/\_\_\_.)  
 Different Selection Procedure: \* ( Sole Source Agreement  Other Amendment to the existing concession agreement between DOHMH and OptumRx Discount Card Services, LLC (formerly known as Catamaran Discount Card Services, LLC.))  
 > FCRC approved different selection procedure on 10/12/2018  
 Negotiated Concession\*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <b>Initial Term:</b> From <u>02/17/2015</u> To <u>08/16/2018</u>  <b>Renewal Option(s) Term:</b> <u>None</u>  <b>Total Potential Term:</b> <u>08/16/2018 to 12/31/2021</u>  <input type="checkbox"/> * >20 years – FCRC unanimously approved term on ___/___/___	<p align="center"><b>ANNUAL REVENUE</b>                  (Check all that apply)                  (<input type="checkbox"/> Additional sheet (<input type="checkbox"/>s) attached)</p> <input type="checkbox"/> <b>Annual Fee(s)</b> \$ _____ <input type="checkbox"/> <b>% Gross Receipts</b> _____% <input type="checkbox"/> <b>The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</b>  <input checked="" type="checkbox"/> <b>Other</b> <u>DOHMH is required to operate a drug discount card program available to all NYC residents pursuant to Local Law 19 of 2005. In 2011, OptumRx was awarded a concession to develop, operate, and administer the NYC Drug Discount Card Program without charge to the City. Although there is no revenue received by the City, the benefit to DOHMH is the receipt of these services without a cost to the City. OptumRx will continue to operate and administer the Program at no charge to the City.</u>
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**NOTIFICATION REQUIREMENTS**

**Subject concession was awarded by CSB or CSP.**  YES  NO  
 If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by \_\_\_/\_\_\_/\_\_\_, which was at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.

The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by \_\_\_/\_\_\_/\_\_\_, which was at least 40 days prior to issuance of the solicitation.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP received written notice by 08/29/2018, which was at least 40 days in advance of the FCRC meeting on 10/12/2018 at which the agency sought and received approval to use a different selection procedure.

The Agency certifies that each affected CB/BP received written notice on \_\_\_/\_\_\_/\_\_\_, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on \_\_\_/\_\_\_/\_\_\_.

The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_\_/\_\_\_/\_\_\_.

**Law Department approved concession agreement on** \_\_\_\_\_

**Award is a major concession.**  YES  NO

**If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:**

CPC approved on \_\_\_/\_\_\_/\_\_\_  City Council approved on \_\_\_/\_\_\_/\_\_\_ or  N/A

**AUTHORIZED AGENCY STAFF**

**This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.**

**If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:**

The concession was approved by the FCRC on \_\_\_/\_\_\_/\_\_\_.

The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

**Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_\_/\_\_\_/\_\_\_

**CERTIFICATE OF PROCEDURAL REQUISITES**

**This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.**

**Signature** \_\_\_\_\_ **Date** \_\_\_/\_\_\_/\_\_\_

**City Chief Procurement Officer**

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:  
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

New York City Department of Health and Mental Hygiene ("DOHMH") is seeking Franchise and Concession Review Committee ("FCRC") approval to use a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), to amend its current Concession Agreement with OptumRx Discount Card Services, LLC. (formerly known as Catamaran Discount Card Services, LLC) to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents.

***Instructions:*** Provide all information requested below; check all applicable boxes.

**A. SELECTION PROCEDURE**

Sole Source

Other ***Describe:*** DOHMH is seeking FCRC approval to use a different procedure, pursuant to Section 1-16 of the Concession rules, to amend its current Concession Agreement with OptumRx Discount Card Services, LLC. (formerly known as Catamaran Discount Card Services, LLC) for the development, operation and administration of the NYC Drug Discount Card Program available to all New York City residents.

**B. NEGOTIATIONS**

***Instructions:*** Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.

During negotiations it became apparent that a second extension of 18-months as originally anticipated was not going to be sufficient to complete the RFP process and enter into a new concession agreement. During the first extension of 18 months, DOHMH conducted extensive research to inform the next iteration of the Big Apple RX card, identified potential strategies to strengthen opioid controls, and worked with legal teams from both the City and the concessionaire to resolve issues concerning transition planning. In that time, DOHMH also worked diligently to solidify a provision to carve out opioid prescriptions. The foregoing efforts demanded extensive time, technical and legal expertise, negotiation with the existing concessionaire, OptumRx Discount Card Services, LLC., and input from agency and city leadership. Furthermore, the development and review of the RFP was time and resource intensive. Due to the now crowded landscape of prescription drug discount card programs and skyrocketing prices for prescription drugs, the City anticipates the number of interested RFP respondents, time needed for review and selection, and negotiation of a final concession agreement would considerably lengthen the time needed for the RFP process. Therefore, DOHMH is requesting an extension of the current concession from August 16, 2018 to December 31, 2021.

DOHMH has had a professional relationship with OptumRx Discount Card Services, LLC. since 2015. While there is no actual contract in place as of August 2018, OptumRx has been operating in good faith, and is willing to continue to operate and administer the NYC Drug Discount Card Program during the requested extension period. The amended Concession Agreement would extend the expiration date of the current Concession Agreement from August 16, 2018 to December 31, 2021. DOHMH intends to undertake a new RFP process to solicit a new concessionaire to develop, operate and administer the NYC Drug Discount Card Program, and anticipates a new award will be in place by the expiration of this extension period.

**C. BASIS FOR AWARD** (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

**The agency determined that amendment of the concession is in the best interest of the City because:**

DOHMH believes that the City will be best served by extending the Concession Agreement with OptumRx Discount Card Services, LLC., to enable the residents of New York City to continue to have access to pharmaceutical drugs at discount prices without interruption while DOHMH undertakes a new RFP process to solicit a concessionaire to develop, operate and administer the NYC Drug Discount Card Program.

Currently, over 1 million IDNYC cards have been issued by the City with the BigAppleRX benefit feature on the card, enabling cardholders to purchase pharmaceutical drugs at discount prices provided by OptumRx (also referred to as "BigAppleRX provider"). Those IDNYC cards will remain in effect until 5 years after their effective date. Given that the BigApple RX benefit is linked to these IDNYC cards, transitioning to a new provider will be administratively complicated and time consuming. Therefore, DOHMH believes that the City will be best served by an extension to the current concession agreement with OptumRx to enable the residents of New York City to continue to have access to pharmaceutical drugs at discount prices without interruption while DOHMH initiates a new RFP process to select a new concessionaire.

**D. PUBLIC HEARING**  **N/A – Subject award NOT a significant concession**

**1. Publication & Distribution of Public Hearing Notice**

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on November 22, 2019 which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on December 9, 2019, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by November 20, 2019.

- New York Post, a NYC citywide newspaper on December 4, 2019 and December 6, 2019
- New York Daily, a NYC citywide newspaper on December 4, 2019 and December 6, 2019

**OR**

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by \_\_/\_\_/\_\_.

- \_\_\_\_\_, a NYC local newspaper published in the affected borough(s) on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_.
- \_\_\_\_\_, a NYC local newspaper published in the affected borough(s) on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_.

**2. Public Hearing Date, Exception to Public Hearing Requirement**

A Public Hearing was conducted on December 9, 2019.

**OR**

- The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on \_\_\_/\_\_\_/\_\_\_ and sent a copy of that notice to all Committee Members.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 3)**

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Health and Mental Hygiene (“DOHMH”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to amend the concession agreement with OptumRx Discount Card Services, LLC (formerly known as Catamaran Discount Card Services, LLC) to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents. The amended concession agreement extends the expiration date of the concession agreement from August 16, 2018 to December 31, 2021.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

**December 11, 2019**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: Director of the Mayor’s Office of Contract Services

**SECOND AMENDMENT TO  
FIRST RENEWAL AGREEMENT**

**of**

**CONCESSION AGREEMENT**

**BETWEEN**

**OPTUMRX DISCOUNT CARD SERVICES, LLC**

**AND**

**CITY OF NEW YORK**

**Acting by and through its**

**DEPARTMENT OF HEALTH & MENTAL HYGIENE**

**for**

**THE OPERATION AND ADMINISTRATION OF THE  
NEW YORK CITY PRESCRIPTION DRUG DISCOUNT CARD PROGRAM**

**Concession ID #: 19HO011401R0X00**

**SECOND AMENDMENT TO THE FIRST RENEWAL AGREEMENT** (“Second Amendment”) effective as of August 16, 2018 (“the Effective Date”), between the City of New York (“City”) acting by and through its **Department of Health and Mental Hygiene** (“the Department” or “DOHMH”), having its principal office at 42-09 28<sup>th</sup> Street, Long Island City, New York 11101, and **OptumRx Discount Card Services, LLC**, a Delaware pharmacy benefit management company (“Concessionaire” or “OptumRx”), having a principal office at 1600 McConnor Parkway, Schaumburg, Illinois 60173 (each “a Party”, together, “the Parties”).

**WITNESSETH**

**WHEREAS**, the Department, pursuant to Local Law 19 of 2005 “Prescription Drug Discount Card Act” (“Local Law 19”), is required to develop a drug discount card program to be made available to all City residents, known as the NYC Prescription Drug Discount Card Program (“the Program”); and

**WHEREAS**, Local Law 19 allows the Department to enter into an agreement for the services of a Program administrator, and the City has determined that such agreement shall be in the form of a concession; and

**WHEREAS**, the Department entered into a concession agreement with HealthTran, LLC (d/b/a HealthTrans), as concessionaire (Concession ID#: 11HM000700R0X00), to develop, operate and administer the Program for the initial term of three (3) years, from February 17, 2011 through February 16, 2014 (“Initial Term”), with the option to renew for one or more periods of twelve (12) months that in the aggregate do not exceed three (3) years (“Original Concession Agreement”); and

**WHEREAS**, during the Initial Term of the Original Concession Agreement, the concessionaire was acquired by SXC Health Solutions Corp., which subsequently changed its name to Catamaran Corporation, and as a result thereof the concessionaire’s name was changed to Catamaran Corporation; and

**WHEREAS**, the Original Concession Agreement was renewed for a first renewal term of one (1) year, from February 17, 2014 through February 16, 2015, by amending and restating the Agreement and including therein the remaining renewals that in the aggregate do not exceed two (2) years (“First Renewal Agreement”, Concession ID#: 11HM000701R1X00); and

**WHEREAS**, the concessionaire in the First Renewal Agreement was Catamaran PBM of Colorado, a subsidiary of Catamaran Corporation, and during the First Renewal Agreement the concessionaire changed its name to Catamaran Discount Card Services, LLC (hereinafter “Catamaran”); and

**WHEREAS**, the First Renewal Agreement was renewed for a second renewal term of two (2) years, from February 17, 2015 through February 16, 2017, by a Notice to Renew letter provided

in accordance with the provisions of the First Renewal Agreement (“Second Renewal Agreement”, Concession ID#:11HM000701R2X00); and

**WHEREAS**, during the term of the Second Renewal Agreement, the concessionaire changed its name from Catamaran Discount Card Services, LLC to OptumRx Discount Card Services, LLC, due to the acquisition of Catamaran by OptumRx; and

**WHEREAS**, upon the expiration of the Second Renewal Agreement, there were no further renewals provided for under the First Renewal Agreement; and

**WHEREAS**, the Department intends to undertake a competitive request for proposal (“RFP”) process to solicit a new concessionaire to operate and administer the Program; and

**WHEREAS**, in order for the City to continue to comply with Local Law 19 and serve the needs of NYC residents without interruption during the RFP process, the Department sought and received authorization from the Franchise and Concession Review Committee (“FCRC”) to use a different procedure to enter into an Amendment to the First Renewal Agreement (Concession ID#: 11HM000701R2T01), pursuant to which OptumRx continued to operate and administer the program for an additional eighteen (18) months, from February 16, 2017 to August 16, 2018 (“First Amendment”); and

**WHEREAS**, the Department anticipated releasing an RFP and selecting a new concessionaire on or before August 2018, but because of unforeseen delays in the development of the RFP due to changes in the scope of services, the Department now anticipates that a new concessionaire will be in place by December 31, 2021; and

**WHEREAS**, in order for the City to continue to comply with Local Law 19 and serve the needs of NYC residents during the RFP process, it will be necessary to extend the First Renewal Agreement from August 16, 2018 through December 31, 2021 and to amend the scope of services (this Second Amendment) to continue to provide such services to NYC residents without interruption; and

**WHEREAS**, OptumRx is willing to continue to provide the services of operating and administering the Program, and the Parties desire to amend the terms of the First Renewal Agreement, subject to and in accordance with the terms of this Second Amendment; and

**WHEREAS**, the FCRC has authorized the Department to use a different procedure to enter into this Second Amendment.

**NOW THEREFORE**, in consideration of the mutual promises herein contained, the Parties hereby agree as follows:

1. Unless otherwise noted, all capitalized terms referenced herein shall have the meanings ascribed thereto in the First Renewal Agreement.
2. Section 3.03 of the First Renewal Agreement, as added by the First Amendment, is hereby deleted in its entirety and replaced with the following”

“Section 3.03 Extension: This Agreement shall be extended from February 16, 2017, the last day of the second Renewal Term exercised pursuant to Section 3.02 above, to August 16, 2018, for a period of eighteen (18) months, unless sooner terminated pursuant to the provisions hereof (“First Amendment Extension Term”). This Agreement shall be extended from August 16, 2018 to December 31, 2021, unless sooner terminated pursuant to the provisions hereof (“Second Amendment Extension Term”). Notwithstanding any inconsistent provision of this Agreement, the Services shall continue uninterrupted and in accordance with the provisions of this Agreement during the First Amendment and Second Amendment Extension Terms.”

3. Subsection (a) of Article 22 of the First Renewal Agreement is hereby deleted in its entirety and replaced with the following:

(a) All notices, directions and communications by either party shall be in writing and, except as otherwise specified in this Agreement, directed to the address of the parties as follows:

**New York City**  
**Dept. of Health & Mental Hygiene**  
42-09 28<sup>th</sup> Street, WS 12-10  
Long Island City, NY 11101  
  
Attn: Cynthia Mont-Burbon  
Director of Contracts  
Prevention & Primary Care Administration

**OptumRx Discount Card Services, LLC**  
  
1600 McConnor Parkway  
Schaumburg, Illinois 60173  
  
Attn: Michael Oshins  
Vice President,  
Sales & Business Development  
Pharmacy Discount Services

With a copy to:

Vernon Blair  
Deputy General Counsel  
42-09 28<sup>th</sup> Street, WS 14-93  
Long Island City, NY 11101

With a copy to:

General Counsel  
1600 McConnor Parkway  
Schaumburg, Illinois 60173

4. Exhibit B of the First Renewal Agreement (The Scope of Services and Roles and Responsibilities of Each Party) (attached for convenience) is hereby amended as outlined in Exhibit B-1 of the First Renewal Agreement (The Amended Scope of Services and Roles and Responsibilities of Each Party) attached hereto and made a part hereof. All references in the First Renewal Agreement to “Exhibit B,” the “Scope of Services”, or the “Services” shall be deemed to also refer to Exhibit B-1.
5. Except as expressly amended herein, all terms and conditions of the First Renewal Agreement, as previously amended, shall remain unchanged and in full force and effect.

6. This Amendment shall take effect on, and shall be retroactive to, August 16, 2018, subject to compliance with all applicable processes including registration with the New York City Comptroller pursuant to Section 328 of the New York City Charter.

### **Attachments**

Exhibit B to First Renewal Agreement: The Scope of Services and Roles and Responsibilities of Each Party (attached for convenience)

Exhibit B-1 to First Renewal Agreement: The Amended Scope of Services and Roles and Responsibilities of Each Party

Attachment I to Exhibit B-1: Exceptions to Definition of Opioids

**IN WITNESS WHEREOF**, the City and the Concessionaire have caused this Second Amendment to be executed in triplicate by their duly authorized representatives as of the day and year written below.

**CITY OF NEW YORK  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

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

NAME: Judi R. Soehren  
TITLE: Agency Chief Contracting Officer

Date: \_\_\_\_\_

**OPTUMRX  
DISCOUNT CARD SERVICES, LLC**

By: \_\_\_\_\_

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY

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

Date: \_\_\_\_\_

NYC DEPARTMENT OF HEALTH AND MENTAL HYGIENE

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2019 before me personally came Judi Soehren, to me known and known to me to be the Agency Chief Contracting Officer of the **Department of Health and Mental Hygiene** of the City of New York, the person described in who, as Agency Chief Contracting Officer executed, the foregoing agreement, and she duly acknowledged to me that she executed the same on behalf of the City of New York and DOHMH of Health and Mental Hygiene for the purpose herein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

OPTUMRX DISCOUNT CARD SERVICES, LLC

STATE OF .....)

ss:

COUNTY OF .....)

On this \_\_\_\_ day of \_\_\_\_\_, 2019 before me personally came \_\_\_\_\_ who being by me duly sworn, did depose and say that (s)he resides in the City of \_\_\_\_\_; that (s)he is the \_\_\_\_\_ of **OptumRx Discount Card Services, LLC**, the corporation described in and which executed the foregoing instrument; that (s)he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that (s)he signed his/her name thereto by like order for the purposes therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

**AFFIRMATION**

The undersigned proposer or bidder Affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except

\_\_\_\_\_.

Full name of proposer or bidder: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

( ) A -- Individual or Sole Proprietorship  
SOCIAL SECURITY NUMBER

( ) B -- \_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_  
Partnership, Joint Venture or other unincorporated organization  
Employer Identification Number

( ) C -- \_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_  
Corporation  
Employer Identification Number

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

If a corporation, place seal here:

Must be signed by an officer or duly authorized representative.

Under the Federal Privacy Act the furnishing of Social Security Number by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses which seek City contracts.

**EXHIBIT B to FIRST RENEWAL AGREEMENT**

**THE SCOPE OF SERVICES AND ROLES AND RESPONSIBILITIES OF EACH  
PARTY**

**(separately attached)**

**Exhibit B**  
**Scope of Services and Roles and Responsibilities of each Party**

**I. Definitions**

All definitions set forth in the Agreement to which this Exhibit B is attached are incorporated herein unless otherwise defined herein or unless the context otherwise requires. The following words shall have the corresponding meanings:

<i>AM Staff</i>	Means	As described in Section III(2)(c) below.
<i>Cardholder</i>	Means	An individual who has access to the Program pursuant to this Agreement.
<i>Customer Care Center</i>	Means	As described in Section III(9)(a) below.
<i>Data Access</i>	Means	As described in Section III(10)(b) below.
<i>Facility</i>	Means	As described in Section III(4)(a)(i) below.
<i>FAQ</i>	Means	Frequently Asked Questions.
<i>FDA</i>	Means	The United States Food and Drug Administration of the US DHHS.
<i>Formulary</i>	Means	The list of FDA approved drugs and supplies available through the Program.
<i>Mail Order Pharmacy</i>	Means	As described in Section III(7)(a) below.
<i>Marketing Budget</i>	Means	As described in Section III(4) below.
<i>Marketing Plan</i>	Means	As described in Section III(4) below.
<i>NYC Specific Website</i>	Means	The website developed by Concessionaire for the City pursuant to Section III(5) below.
<i>OTC Products</i>	Means	As set forth in Section III(8)(b) below.
<i>Participating Pharmacy</i>	Means	Any pharmacy, including online and mail-order pharmacies, that have entered into a Participating Pharmacy Agreement to provide certain pharmacy services to Cardholders.
<i>Participating Pharmacy Agreement</i>	Means	As described in Section III(6)(b) below.
<i>Pharmacy Directory</i>	Means	As described in Section III(6)(c) below.

<i>Pricing Tool</i>	Means	As described in Section III(5)(a)(iii) below.
<i>Seal of the City</i>	Means	The official seal of the City of New York as shown in Exhibit A above.
<i>Staffing</i>	Means	As described in Section III(2)(a) below.
<i>Work Plan</i>	Means	As described in Section III(1)(a) below.

**II. Purpose.**

The Department selected the Concessionaire to promote and manage the Program. The Concessionaire shall, at its sole cost and expense, provide the Services set forth in this Agreement. The Program shall provide the residents of New York City a Card that may be used in at least 75% of the pharmacies in each of the Boroughs of New York City and shall be available to all residents of New York City regardless of age, income, immigrant status, or health insurance status without a fee for the Program or a registration process. The Card shall afford Cardholders presenting them at Participating Pharmacies, or through the Mail Order Pharmacy, discounted pricing for prescription drugs (both brand name and generic) and certain OTC Products in accordance with Exhibit C of this Agreement. The Card may not be utilized in conjunction with another type of prescription drug discount card for the same transaction.

**III. Services.**

**1. Staffing.**

- a. Concessionaire shall, within ten (10) days of the Commencement Date, submit to the Department an organization chart detailing the staff who will be providing the services for the Program ("Staffing"). Concessionaire shall thereafter submit updates to the organization chart either upon request by the Department, or within five (5) days of a change to the Staffing.
- b. The Concessionaire shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Department shall inform the Concessionaire, in writing, that any individual is, in the Department's opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct Concessionaire that an individual shall no longer perform work under this Agreement, the Department shall provide the Concessionaire an opportunity to be heard on no less than five (5) days' written notice. The Department may direct the Concessionaire not to allow the individual to perform work under the Agreement pending the opportunity to be heard and the Department's determination.



- iii. Identification of community based organizations, including those servicing immigrant and limited English speaking populations, in each Borough that Concessionaire will partner with to distribute and place Cards and literature;
  - b. Description of the Licensed Product including, but not limited to, posters, print and advertising in addition to the Card that will be produced for the promotion of the Program.
  - c. Description of the public relations strategy including, but not limited to, use of local media to promote the Card.
  - d. Description of web-based and other Card distribution methods Concessionaire shall use for the Program.
4. NYC Specific Website.
- a. To the specifications and approval of the Department, Concessionaire shall maintain the NYC Specific Website for the Program. The Licensed Property may appear on the NYC Specific Website in the manner approved by the Department, and shall not appear on any other website hosted or operated by Concessionaire without the prior written approval of the Department. The NYC Specific Website shall be free of all advertising other than advertising for the Program. To the extent permitted by relevant laws, rules and regulations, the NYC Specific Website shall link to and from the City's website, and the Department hereby consents to such link. The Department shall have the final approval of the content of the NYC Specific Website. The content of the NYC Specific Website shall include at a minimum:
    - i. General information about the Program, which includes content to be provided by the Department including, but not limited to, where to obtain the Card, how to use the Card, and how to make a complaint to Concessionaire;
    - ii. Interactive retail pharmacy locator that enables website visitors to search for a Participating Pharmacy by zip code or by city and state and returns an address and phone number of the Participating Pharmacy of the Cardholder's choice;
    - iii. Price look up tool that enables website visitors to find prices for retail and mail service prescriptions as well as brand name products versus generics ("Pricing Tool");
    - iv. The Pricing Tool shall also allow the website visitors to check pricing by Participating Pharmacy and the Mail-Order Pharmacy.
    - v. Mail Order Pharmacy service as set forth in Section III(7);

- vi. Links to health and wellness information including, but not limited to, a Drug Interaction Checker, a Drug Dictionary, a Medical Library, and Health Calculators. The NYC Specific Website shall also feature a prominently displayed disclaimer, which must be approved by the Department, which indicates that health and wellness information is provided by Concessionaire, not the Department, and is not endorsed by the Department;
  - vii. FAQs, which will be mutually agreed upon by the Parties, including, but not limited to Program-specific FAQs (which must be available from every Web page for easy navigation); and
  - viii. Active links to such other websites as may be designated or approved by the Department. The Department shall provide Concessionaire with a list of active links to be included on the NYC Specific Website.
  - ix. Option to print a Card in order to produce an active card for immediate use.
- b. The Concessionaire shall maintain a domain name(s) for the NYC Specific Website for the Department and shall convey the ownership rights for such domain name(s) to the Department and the City. Concessionaire shall have no rights of ownership in the domain name(s) but shall be permitted to use the domain name(s) for the Term to fulfill its obligations hereunder.

5. Participating Pharmacies.

- a. Concessionaire shall ensure there are an adequate number of Participating Pharmacies in each Borough in order to allow Cardholders in such Boroughs to take advantage of a same-day delivery option for their prescription drugs.
- b. Concessionaire shall provide to the Department a copy of its model agreement(s) that it uses with Participating Pharmacies ("Participating Pharmacy Agreements"). Concessionaire shall enforce the terms of the Participating Pharmacy Agreements during the duration of this Agreement.
- c. Concessionaire shall maintain a network of Participating Pharmacies that consists of at least 75% of the licensed retail pharmacies, including independent and chain pharmacies, in each of the five boroughs in New York City. Concessionaire shall provide to the Department a map and a list of all the Participating Pharmacies. Concessionaire shall keep its Participating Pharmacy directory ("Pharmacy Directory") current and shall make the Pharmacy Directory available on the NYC Specific Website, and shall update the same when network changes are known to Concessionaire.

Concessionaire shall provide the Department with an updated Pharmacy Directory on a monthly basis.

- d. Concessionaire shall provide an opportunity for any duly licensed pharmacy to become a Participating Pharmacy. Concessionaire shall offer to any such pharmacy the same terms offered to Participating Pharmacies in the City. Concessionaire shall not limit retail Participating Pharmacies to a single retail pharmacy (i.e. a CVS, Walgreens, Duane Reade, etc.).
- e. In the event the number of Participating Pharmacies falls below 75% of the total number of pharmacies in a borough, Concessionaire shall immediately notify the Department in writing. Concessionaire shall within ten (10) business days of such notice submit to the Department a plan to increase pharmacy participation in the deficient areas.

6. Mail Order Pharmacy.

- a. Concessionaire shall utilize a delivery fulfillment and distribution facility for those Cardholders who prefer to use traditional mail order services ("Mail Order Pharmacy").
- b. Concessionaire shall include in the NYC Specific Website a portal functionality that shall allow Cardholders to register, log in and perform the following mail order functions:
  - i. Order new medications
  - ii. Reorder/refill current prescriptions
  - iii. Track status of mail order shipments
  - iv. Sign up for e-mail refill reminders
- c. Concessionaire shall provide Cardholders several options for submitting prescriptions to utilize the Mail Order Pharmacy services, including, but not limited to, the submission of new orders and refills to the mail order pharmacy by web, mail, fax, and phone. Additionally, the Mail Order Pharmacy shall accept prescriptions faxed directly from the prescribing physician's office.
- d. Concessionaire shall ensure that the Mail Order Pharmacy provides both timely and accurate dispensing.
- e. Concessionaire shall provide Cardholders several options for submitting payment for prescriptions fulfilled via the Mail Order Pharmacy including, but not limited to, by check or money order via standard mail, via the credit card on the NYC Specific Website (through a secure transaction subweb), or by fax (credit card).

- f. Concessionaire's Mail Order Pharmacy shall utilize both automated and manual methods for dispensing prescriptions in order to ensure accurate and timely dispensing of prescriptions.
8. Prescription Drugs and Over the Counter Products.
- a. Concessionaire shall make available for discounts under the Program an extensive Formulary that shall include, but not be limited to, the most commonly prescribed drugs for each disease/chronic condition and drug category.
  - b. Concessionaire shall also include for discounts under the Program certain over the counter items ("OTC Products"), which shall be mutually agreed upon. OTC Products, however, shall include, at a minimum, nicotine replacement therapy aids, automated blood pressure monitors, and diabetic supplies.
9. Customer Service. Concessionaire shall provide to Cardholders, Participating Pharmacies and physicians/medical providers multiple ways to obtain information regarding the benefits provided with the Card and assistance in using the Card.
- a. Concessionaire shall operate a customer care center featuring a toll-free telephone number that is available 24 hours a day, seven days a week ("Customer Care Center") which shall provide to Cardholders, Participating Pharmacies, physicians, and the general public general and specific information regarding the Card and the Program.
  - b. Concessionaire shall provide language access services (translation and interpretation) to assist limited-English speaking New York City residents.
  - c. Concessionaire shall provide bi-lingual English and Spanish-speaking Customer Care Center specialists and shall also provide interpreter assistance in more than 170 languages for other limited English speaking NYC callers. Concessionaire shall also provide TTY and TDD capabilities to assist callers with hearing or vision impairments as necessary.
  - d. Concessionaire shall utilize full phone recording of inbound and outbound calls for the Customer Care Center, which may be used for quality assurance and training purposes.
  - e. Concessionaire shall use an issue tracking system that records all written and telephone contacts. Issue tracking shall include the dates of all communications with the caller, including the resolution date, the nature of the issue/problem, the solution, and the ID of the customer care specialist who dealt with the issue/problem.

- f. Concessionaire shall develop a process and protocols for addressing complaints and inquiries received at the Customer Care Center.

#### 10. Reporting

- a. Concessionaire shall develop, in collaboration with the Department, protocols for data collection, procedures supporting the generation of required management reports and other data submissions, including those required pursuant to Local Law 19, and timeframes for generating the same ("Reports"). Protocols shall ensure that Cardholder data is accurate, consistent and reliable, that all HIPAA standards are met, and that reports will be submitted on a timely basis. The Department will review all reports and statements and will notify Concessionaire in writing of any errors or objections within ninety (90) days of receipt.
  - i. Monthly & Annual reporting: At a minimum, Concessionaire must follow the reporting protocols as set forth in in Exhibit D.
  - ii. Non-Routine Reporting: All non-routine reporting requests will be submitted by DOHMH within 2 weeks of stated due date. DOHMH and Concessionaire will review all requests on a case-by-case basis to mutually determine feasibility and to adjust response timeline.
- b. Within 30 days of the Commencement Date, Concessionaire shall create an interface for the Department that provides real-time access to the aggregated non-identifiable data Concessionaire collects from the Program so that the Department may create its own customized reports ("Data Access").
  - i. Concessionaire shall provide assistance and training to employees of the Department to promote proper and efficient usage of the interface. Unless otherwise agreed upon by the Parties, trainings shall be held once per year or upon significant modifications to the interface by the Concessionaire.

#### 11. Quarterly Review.

The Parties shall jointly review the Marketing Plan, claim volume, operation of the Program and promotion and marketing of the Program on a quarterly basis, or upon request by the Department with five (5) business days prior written notice, to analyze the success of the Program and to make any necessary changes or modifications. This review is in addition to, and does not replace, the Program Review referenced in Exhibit C below.

#### IV. Assistance from Department

- 1. Press Releases. The Parties shall work together to issue, when deemed necessary by the City, press releases from the City informing the public about the Program and any specific issues and necessary information about the Program that would benefit the citizens of New York City.

2. **Outreach.** To the extent possible, the Department shall provide assistance to the Concessionaire in connecting with various elected officials' offices, other governmental agencies in order to provide information about and promote awareness of the Program.
3. **311 Access.** To the extent possible, the Department shall provide assistance to the Concessionaire in creating referral capability to the Customer Care Center and the City Specific Website.

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## **EXHIBIT B-1 to FIRST RENEWAL AGREEMENT**

### **THE AMENDED SCOPE OF SERVICES AND ROLES AND RESPONSIBILITIES**

#### ARTICLE I – Definitions

Page B-1:

In the table of definitions, after the definition of “NYC Specific Website”, add a definition of “Opioids” to read as follows: “Opioid analgesics or any drugs in the opiates therapeutic class except for the drugs listed in Attachment I of Exhibit B-1.”

#### ARTICLE III - Services

Page B-7:

Paragraph 8 – Delete the paragraph title in its entirety and replace with the following title:  
“Prescription Drugs and Over the Counter Products; Prohibition of Certain Opioids”.

Add a new sub-paragraph (c) to read as follows:

“c. The Card may not be used to purchase Opioids. To this end, the Concessionaire must perform all necessary edits and coding to remove and prevent all prohibited Opioids from being purchased using the Card.”

**ATTACHMENT I to EXHIBIT B-1**

**Exceptions to Definition of Opioids**

**(separately attached)**