

**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: Nike, Inc. Address: One Bowerman Dr, Beaverton, OR 97005 Telephone # (503) 532-3402 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN #93-0584541 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-2019-003
<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 5/8/19.  
 Negotiated Concession\*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> Initial Term: From <u>9/4/19</u> <del>notice to proceed</del> To <u>12/31/21</u> Renewal Option(s) Term: From <u>1/1/22</u> To <u>12/31/23</u> From __/__/__ To __/__/__ Total Potential Term: <b>4 Years *</b> <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"/> Annual Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____% <input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$ _____ v. _____% of Gross Receipts <input checked="" type="checkbox"/> <b>Other</b> For each license year of the initial term, Nike, Inc. shall pay royalties equal to five percent (5%) of Net Sales. Guaranteed Minimum Royalty payment shall be payable as follows: A guaranteed minimum royalty of twenty thousand dollars (\$20,000).
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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 3/29/19, which was at least 40 days in advance of the FCRC meeting on 5/8/19 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**

FRANCHISE AND CONCESSION REVIEW COMMITTEE

August 14, 2019

(Cal. No. 1)

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 Nike, Inc. (“Nike”) for the non-exclusive use of city-owned trademarks on merchandise. The License Agreement will provide for a license term ~~beginning on September 1, 2019 commencing upon written notice from NYC & Company to Nike~~ and shall continue through December 31, 2021 with an option for the ~~City parties~~ 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, Nike, ~~Inc.~~ shall pay royalties equal to five percent (5%) of Net Sales (as defined in the License Agreement). The License Agreement provides for a guaranteed minimum royalty of twenty thousand dollars (\$20,000). ~~covering the period from September 1, 2019 to December 31, 2021?~~

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

August 14<sup>th</sup>, 2019

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

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

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

## **LICENSE AGREEMENT**

AGREEMENT made this \_\_\_\_\_ day of July, 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 NIKE, Inc. a corporation organized and existing under the laws of the State of Oregon with its principal place of business located at One Bowerman Dr, Beaverton, OR 97005 (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 names, trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the “Property”) solely in the manner approved 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 (other than its Affiliates) 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”). "Affiliates shall mean any individual or entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with that Party, where “Control” means the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise”. It is understood and agreed that Licensee is responsible for the acts and omissions of its Affiliates and shall ensure Affiliates honor the obligations set forth in this Agreement.

### **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.”, unless otherwise agreed to by the parties in advance, in writing. 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.”, unless otherwise agreed to by the parties in advance, in writing. 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, unless otherwise agreed to by the parties in advance, in writing. 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, unless otherwise agreed to by the parties in advance, in writing. 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, unless otherwise agreed to by the parties in advance, in writing.

(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 an amount of Licensed Product as mutually agreed to by the parties 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 “Initial Term”) of this License Agreement shall commence (Effective Date) and shall continue through December 31, 2021(the “Termination Date”), unless sooner terminated pursuant to the terms and conditions of this License Agreement. The parties may have the option 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”), subject to mutual agreement of the parties. Nothing herein shall be construed as obligating either party to exercise its renewal option.

**SECTION IV  
(License Years)**

Intentionally deleted.

**SECTION V  
(Royalties)**

In each ~~License Year~~ of this License Agreement, Licensee shall pay to Licensor for the license granted herein a royalty equal to:

Five percent (5%) of Net Sales (as defined below) when selling Licensed Product; and

The term “Net Sales” means the wholesale revenue received by Licensee, or by any direct or indirect subsidiary or parent company of Licensee, or by any licensee authorized to manufacture Licensed Products by any of the foregoing (as approved by Licensor) (each, including Licensee, being a “Licensee Affiliate”) from a sale of Licensed Products to a retail seller to the public (including a Licensee Affiliate that is a retail seller to the public) or to any distributor or other wholesale customer that is not a Licensee Affiliate (such sale being a “Wholesale Sale”), less cash, trade, sales and other program discounts given by the selling Licensee Affiliate and adjusted for legitimate merchandise returns. If a third party (other than a Licensee Affiliate) purchases a Licensed Product and no Wholesale Sale takes or has taken place for that Licensed Product, the “Net Sales” relating to such Licensed Product shall be an amount equal to the wholesale price regularly charged (including any program discounts regularly given) by a Licensee Affiliate when making Wholesale Sales of such Licensed Products, adjusted for legitimate merchandise returns. Net Sales shall be computed by Licensee’s accounting system, guidance for which is established by generally accepted accounting principles, and shall not include (a) the value or price of any sales by a Licensee Affiliate at less than such Licensee Affiliate’s original cost of purchase or manufacture, (b) any value added tax, or other tax on consumption, and any insurance, freight or similar cost separately charged, or (c) more than one sale transaction per Licensed Product which, in the case of a Wholesale Sale, shall be the Wholesale Sale that occurs first in time. For the avoidance of doubt, a sale by a Licensee Affiliate to an end consumer (e.g. a member of the general public) or to a third party engaged to fulfil end consumer orders placed on Licensee Affiliate retail websites, shall not be a “Wholesale Sale”.

**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 and annual advances in the amounts and on the dates set forth below:

Guaranteed Minimum:

The following total Guaranteed Minimum Royalties for the Initial Term of the contract is, as follows:

On or before December 31, 2021: Twenty Thousand dollars (\$20,000)

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 the Term and shall be applied to and credited as advances against Licensee's liability for royalties for the Term 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 Licensee fiscal quarter (beginning with the fiscal 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 from sales during the preceding quarter. In the event Licensee's earned royalties are less than the guaranteed minimum royalty after the Sell-Off period, the final payment shall include the difference between earned royalties 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)**

Not more than twice per year, Licensor or Licensor's designated representatives (who shall be a certified public accountant reasonably acceptable to Licensee and who has signed a confidentiality agreement in a form provided by the Licensor) shall have the right, at Licensor's cost, to conduct an audit of Licensee's books and records with respect to Net Sales (the "Records"). Any audit shall be conducted during Licensee's normal business hours, at a reasonable and mutually agreed upon date, and in a manner so as not to interfere with the normal operation of Licensee's business. Licensor and Licensor's representatives shall comply with Licensee's security requirements with respect to the Records and Licensee's facilities, including not removing any Records from Licensee's principal office and having Licensee personnel present during the audit. If an audit establishes that Licensee has underpaid royalties to Licensor, Licensee shall remit the shortfall within forty-five (45) days together with interest thereon. If Licensee has overpaid Licensor, Licensor shall remit the overpayment (together with interest thereon) to Licensee within forty-five (45) days, or, at Licensee's option, Licensee may elect to withhold the amount of the overpayment from future payments due to Licensor. Should Licensee have underpaid Licensor by the greater of fifty thousand dollars (\$50,000) or seven percent (7%) or more for the assessment period, Licensee shall reimburse Licensor the reasonable documented costs of the audit. If Licensee certifies to Licensor that no Licensed Products were sold during a given year, this Paragraph ~~10-8~~ shall be without force or effect with respect to such year. 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. Notwithstanding the foregoing, ~~T~~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, provided that such decision to terminate shall not be arbitrary or related to uses that were approved by Licensor in advance.

(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, provided that Licensor shall not be permitted to use or license unique art work or materials during the Term, unless agreed to by the parties. 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, provided that Licensee shall not be required to make such changes to Licensed Products that have already been manufactured or have been approved and are in the process of being manufactured.

(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. 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 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).

(b) 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.

(c) 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.

(d) If Licensor determines that this License Agreement should be terminated without cause.

(e) If Licensee violates the non-assignment or change in controlling interest 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, provided however that the guaranteed minimum royalty requirement will be void if terminated without cause and only the earned royalties to date shall be immediately due.

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

Upon the expiration of this License Agreement (but not upon termination pursuant to Section XII), Licensee shall be permitted ninety (90) days to sell its remaining inventory of Licensed Products (“Sell-Off Period”). 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, all molds, dies, prints or other equipment used to create or manufacture the Licensed Products and Promotional Materials that specifically relate to the Property so that such products or promotional materials bearing, displaying, or otherwise including the Property can no longer be created. Licensee acknowledges and admits that 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 and set forth in the Exhibits attached hereto or as updated by the Licensor from time to time (“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 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. Upon Licensor reasonable notice, Licensor shall have the ability to inspect Licensee's facilities and warehouses and those of its suppliers and manufacturers to assure Licensee's compliance with this paragraph

(e) Licensee agrees to allow Licensor to review (except as otherwise set forth in this License Agreement, ownership rights are not transferred in the submitted documents), at the Licensor's request and at no cost to Licensor (i) CADS (Computer-aided drafting); (ii) finished artwork or final proofs; (iii) prototypes or pre-production samples during in-person review sessions; and (iv) two (2) final production samples (the "Samples") of the Licensed Products (and any variations thereof), for Licensor's approval prior to any sale or shipment of the Licensed Products. All costs associated with such inspection, testing and analysis, shall borne by the 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 Products 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 10 business days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed approved. 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 ten (10) 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 inquires 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. In addition, Licensee shall provide Licensor notice of any material Consumer Inquiries or those that relate to the Property.

(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; provided that, Licensor will not be arbitrary or capricious in acting pursuant to this paragraph and that Licensor may ~~and~~ declare a recall in response to consumer complaint or complaints made to a regulatory agency or similar authority, including but not limited to the Consumer Product Safety Commission, Federal Trade Commission. 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)**

If agreed to by Licensee, Licensor may 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 as authorized by this License Agreement, but not including those based on infringement claims related to the Property. 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.

Licensor hereby agrees to be solely responsible for and to indemnify, defend and hold harmless Licensee, its affiliates and their 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 (“Claim”), including but not limited to reasonable attorneys’ fees, which may be made or asserted by third persons relating to intellectual property infringement to the extent arising out of: (i) the use of the Property as authorized by this Agreement, or (ii) ownership of the Property.

#### **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)**

~~Licensee agrees to carry commercial general liability insurance, including but not limited to product liability coverage, with insurer(s) having 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, and~~

~~licensed to transact business where such insurance is issued, in an amount of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, and to 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 most recent editions of both Insurance Services Office (ISO) Form CG 2026 and ISO Form CG 2037.~~

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: (a) 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; (b) be at least as broad as that provided by the latest edition of Insurance Services Office (ISO) form CG 00 01; and (c) include NYC & Company and the City of New York, 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, however it is agreed that additional insured status shall be noted as provided via blanket provision within Licensee's general liability policy. 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, accompanied by a duly executed "Certification by Broker" in the form required by the Licensor, or, in the event licensee's insurer disclaims coverage when licensor reasonably believes that coverage is required under this section, certified copies of all policies referenced in such Certificate of Insurance, evidencing the required limits of coverage and identifying NYC & Company and the City as additional insureds as provided by blanket additional insured provision under all such policies. Such insurance shall be maintained for at least six (6) years after the last date of sale by Licensee of any Licensed Product.

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 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 section XXII below 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.

#### **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)**

If requested by Licensor, 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. 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

~~Additional copy to:~~

~~New York City Law Department  
100 Church Street, 6<sup>th</sup> Floor  
New York, NY 10007  
ATTN.: Sharon Cantor~~

If to Licensee:

Nike Inc.,  
One Bowerman Drive,  
Beaverton, Oregon 97005  
ATTN.: Legal Department

**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 and will follow the same obligations as set forth above for Licensee.

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. Except for any claim for indemnification under this Agreement, 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 New York, (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. Licensors 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; (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; and (iii) Licensee's authorized use of the Property pursuant to this License Agreement shall not infringe upon or violate any intellectual property rights or any other rights of any nature of any third party.

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

NIKE, INC.

By: Erica Bullard

Its: Vice President and General Manager of East and NYC

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

Exhibit 1  
The Property

Trademarks of the City of New York

Trademarks



## **Exhibit 2**

### **Licensed Products**

1. Footwear
2. Apparel(Including but not limited to):
  - a. T-shirts
  - b. Sweatshirts
  - c. Athletic Wear
  - d. Sweatpants
  - e. Pants

### **Exhibit 3**

#### **Distribution Channels**

1. NIKE owned retail channels (e.g. NIKE stores, NIKE.com, SNKRS, NIKE app)
2. Athletic Specialty stores (e.g. Foot Locker, Foot Action, Finish Line)
3. Premium stores (e.g. Nordstrom)
4. Athletic leisure and urban streetwear stores (e.g. KITH)

## **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. Licensee will be introduced and set up with Trademarx 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, <sup>TM</sup>, ® 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.** Anytime a new factory is used to produce licensed merchandise, the Licensee must have the vendor sign the Ethical Standards Form attached as Exhibit 5 above. Any product being submitted on Trademarx must list the factory name and factory contact information (foreign or domestic) where production of that particular item will occur. 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.

**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: Nike, Inc. Address: One Bowerman Dr, Beaverton, OR 97005 Telephone # (503) 532-3402 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN #93-0584541 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-2019-003
<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 5/8/19.  
 Negotiated Concession\*

**CONCESSION AGREEMENT TERM**

**Initial Term:** From notice to proceed To 12/31/21  
**Renewal Option(s) Term:** From 1/1/22 To 12/31/23  
 From \_\_/\_\_/\_\_ To \_\_/\_\_/\_\_

**Total Potential Term:** 4 Years \*

\* >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, Nike, Inc. shall pay royalties equal to five percent (5%) of Net Sales.

Guaranteed Minimum Royalty payment shall be payable as follows:  
 A guaranteed minimum royalty of twenty thousand dollars (\$20,000).

**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 3/29/19, which was at least 40 days in advance of the FCRC meeting on 5/8/19 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**

FRANCHISE AND CONCESSION REVIEW COMMITTEE

August 14, 2019

(Cal. No. 1)

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 Nike, Inc. (“Nike”) for the non-exclusive use of city-owned trademarks on merchandise. The License Agreement will provide for a license term commencing upon written notice from NYC & Company to Nike and shall continue through December 31, 2021 with an option for the parties to renew the License Agreement on substantially the same terms and conditions for two (2) years. For the initial term, Nike shall pay royalties equal to five percent (5%) of Net Sales (as defined in the License Agreement). The License Agreement provides for a guaranteed minimum royalty of twenty thousand dollars (\$20,000) .

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

August 14<sup>th</sup>, 2019

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

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

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

## **LICENSE AGREEMENT**

AGREEMENT made this \_\_\_\_\_ day of July, 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 NIKE, Inc. a corporation organized and existing under the laws of the State of Oregon with its principal place of business located at One Bowerman Dr, Beaverton, OR 97005 (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 names, trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the “Property”) solely in the manner approved 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 (other than its Affiliates) 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”). "Affiliates shall mean any individual or entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with that Party, where “Control” means the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise”. It is understood and agreed that Licensee is responsible for the acts and omissions of its Affiliates and shall ensure Affiliates honor the obligations set forth in this Agreement.

### **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.”, unless otherwise agreed to by the parties in advance, in writing. 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.”, unless otherwise agreed to by the parties in advance, in writing. 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, unless otherwise agreed to by the parties in advance, in writing. 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, unless otherwise agreed to by the parties in advance, in writing. 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, unless otherwise agreed to by the parties in advance, in writing.

(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 an amount of Licensed Product as mutually agreed to by the parties 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 “Initial Term”) of this License Agreement shall commence (Effective Date) and shall continue through December 31, 2021(the “Termination Date”), unless sooner terminated pursuant to the terms and conditions of this License Agreement. The parties may have the option 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”), subject to mutual agreement of the parties. Nothing herein shall be construed as obligating either party to exercise its renewal option.

**SECTION IV  
(License Years)**

Intentionally deleted.

**SECTION V  
(Royalties)**

In each ~~License Year~~ of this License Agreement, Licensee shall pay to Licensor for the license granted herein a royalty equal to:

Five percent (5%) of Net Sales (as defined below) when selling Licensed Product; and

The term “Net Sales” means the wholesale revenue received by Licensee, or by any direct or indirect subsidiary or parent company of Licensee, or by any licensee authorized to manufacture Licensed Products by any of the foregoing (as approved by Licensor) (each, including Licensee, being a “Licensee Affiliate”) from a sale of Licensed Products to a retail seller to the public (including a Licensee Affiliate that is a retail seller to the public) or to any distributor or other wholesale customer that is not a Licensee Affiliate (such sale being a “Wholesale Sale”), less cash, trade, sales and other program discounts given by the selling Licensee Affiliate and adjusted for legitimate merchandise returns. If a third party (other than a Licensee Affiliate) purchases a Licensed Product and no Wholesale Sale takes or has taken place for that Licensed Product, the “Net Sales” relating to such Licensed Product shall be an amount equal to the wholesale price regularly charged (including any program discounts regularly given) by a Licensee Affiliate when making Wholesale Sales of such Licensed Products, adjusted for legitimate merchandise returns. Net Sales shall be computed by Licensee’s accounting system, guidance for which is established by generally accepted accounting principles, and shall not include (a) the value or price of any sales by a Licensee Affiliate at less than such Licensee Affiliate’s original cost of purchase or manufacture, (b) any value added tax, or other tax on consumption, and any insurance, freight or similar cost separately charged, or (c) more than one sale transaction per Licensed Product which, in the case of a Wholesale Sale, shall be the Wholesale Sale that occurs first in time. For the avoidance of doubt, a sale by a Licensee Affiliate to an end consumer (e.g. a member of the general public) or to a third party engaged to fulfil end consumer orders placed on Licensee Affiliate retail websites, shall not be a “Wholesale Sale”.

**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 and annual advances in the amounts and on the dates set forth below:

Guaranteed Minimum:

The following total Guaranteed Minimum Royalties for the Initial Term of the contract is, as follows:

On or before December 31, 2021: Twenty Thousand dollars (\$20,000)

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 the Term and shall be applied to and credited as advances against Licensee's liability for royalties for the Term 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 Licensee fiscal quarter (beginning with the fiscal 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 from sales during the preceding quarter. In the event Licensee's earned royalties are less than the guaranteed minimum royalty after the Sell-Off period, the final payment shall include the difference between earned royalties 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)**

Not more than twice per year, Licensor or Licensor's designated representatives (who shall be a certified public accountant reasonably acceptable to Licensee and who has signed a confidentiality agreement in a form provided by the Licensor) shall have the right, at Licensor's cost, to conduct an audit of Licensee's books and records with respect to Net Sales (the "Records"). Any audit shall be conducted during Licensee's normal business hours, at a reasonable and mutually agreed upon date, and in a manner so as not to interfere with the normal operation of Licensee's business. Licensor and Licensor's representatives shall comply with Licensee's security requirements with respect to the Records and Licensee's facilities, including not removing any Records from Licensee's principal office and having Licensee personnel present during the audit. If an audit establishes that Licensee has underpaid royalties to Licensor, Licensee shall remit the shortfall within forty-five (45) days together with interest thereon. If Licensee has overpaid Licensor, Licensor shall remit the overpayment (together with interest thereon) to Licensee within forty-five (45) days, or, at Licensee's option, Licensee may elect to withhold the amount of the overpayment from future payments due to Licensor. Should Licensee have underpaid Licensor by the greater of fifty thousand dollars (\$50,000) or seven percent (7%) or more for the assessment period, Licensee shall reimburse Licensor the reasonable documented costs of the audit. If Licensee certifies to Licensor that no Licensed Products were sold during a given year, this Paragraph ~~10-8~~ shall be without force or effect with respect to such year. 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. Notwithstanding the foregoing, ~~T~~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, provided that such decision to terminate shall not be arbitrary or related to uses that were approved by Licensor in advance.

(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, provided that Licensor shall not be permitted to use or license unique art work or materials during the Term, unless agreed to by the parties. 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, provided that Licensee shall not be required to make such changes to Licensed Products that have already been manufactured or have been approved and are in the process of being manufactured.

(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. 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 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).

(b) 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.

(c) 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.

(d) If Licensor determines that this License Agreement should be terminated without cause.

(e) If Licensee violates the non-assignment or change in controlling interest 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, provided however that the guaranteed minimum royalty requirement will be void if terminated without cause and only the earned royalties to date shall be immediately due.

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

Upon the expiration of this License Agreement (but not upon termination pursuant to Section XII), Licensee shall be permitted ninety (90) days to sell its remaining inventory of Licensed Products (“Sell-Off Period”). 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, all molds, dies, prints or other equipment used to create or manufacture the Licensed Products and Promotional Materials that specifically relate to the Property so that such products or promotional materials bearing, displaying, or otherwise including the Property can no longer be created. Licensee acknowledges and admits that 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 and set forth in the Exhibits attached hereto or as updated by the Licensor from time to time (“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 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. Upon Licensor reasonable notice, Licensor shall have the ability to inspect Licensee's facilities and warehouses and those of its suppliers and manufacturers to assure Licensee's compliance with this paragraph

(e) Licensee agrees to allow Licensor to review (except as otherwise set forth in this License Agreement, ownership rights are not transferred in the submitted documents), at the Licensor's request and at no cost to Licensor (i) CADS (Computer-aided drafting); (ii) finished artwork or final proofs; (iii) prototypes or pre-production samples during in-person review sessions; and (iv) two (2) final production samples (the "Samples") of the Licensed Products (and any variations thereof), for Licensor's approval prior to any sale or shipment of the Licensed Products. All costs associated with such inspection, testing and analysis, shall borne by the 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 Products 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 10 business days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed approved. 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 ten (10) 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 inquires 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. In addition, Licensee shall provide Licensor notice of any material Consumer Inquiries or those that relate to the Property.

(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; provided that, Licensor will not be arbitrary or capricious in acting pursuant to this paragraph and that Licensor may ~~and~~ declare a recall in response to consumer complaint or complaints made to a regulatory agency or similar authority, including but not limited to the Consumer Product Safety Commission, Federal Trade Commission. 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)**

If agreed to by Licensee, Licensor may 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 as authorized by this License Agreement, but not including those based on infringement claims related to the Property. 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.

Licensor hereby agrees to be solely responsible for and to indemnify, defend and hold harmless Licensee, its affiliates and their 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 (“Claim”), including but not limited to reasonable attorneys’ fees, which may be made or asserted by third persons relating to intellectual property infringement to the extent arising out of: (i) the use of the Property as authorized by this Agreement, or (ii) ownership of the Property.

#### **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)**

~~Licensee agrees to carry commercial general liability insurance, including but not limited to product liability coverage, with insurer(s) having 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, and~~

~~licensed to transact business where such insurance is issued, in an amount of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, and to 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 most recent editions of both Insurance Services Office (ISO) Form CG 2026 and ISO Form CG 2037.~~

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: (a) 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; (b) be at least as broad as that provided by the latest edition of Insurance Services Office (ISO) form CG 00 01; and (c) include NYC & Company and the City of New York, 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, however it is agreed that additional insured status shall be noted as provided via blanket provision within Licensee's general liability policy. 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, accompanied by a duly executed "Certification by Broker" in the form required by the Licensor, or, in the event licensee's insurer disclaims coverage when licensor reasonably believes that coverage is required under this section, certified copies of all policies referenced in such Certificate of Insurance, evidencing the required limits of coverage and identifying NYC & Company and the City as additional insureds as provided by blanket additional insured provision under all such policies. Such insurance shall be maintained for at least six (6) years after the last date of sale by Licensee of any Licensed Product.

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 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 section XXII below 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.

#### **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)**

If requested by Licensor, 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. 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

~~Additional copy to:~~

~~New York City Law Department  
100 Church Street, 6<sup>th</sup> Floor  
New York, NY 10007  
ATTN.: Sharon Cantor~~

If to Licensee:

Nike Inc.,  
One Bowerman Drive,  
Beaverton, Oregon 97005  
ATTN.: Legal Department

**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 and will follow the same obligations as set forth above for Licensee.

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. Except for any claim for indemnification under this Agreement, 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 New York, (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. Licensors 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; (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; and (iii) Licensee's authorized use of the Property pursuant to this License Agreement shall not infringe upon or violate any intellectual property rights or any other rights of any nature of any third party.

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

NIKE, INC.

By: Erica Bullard

Its: Vice President and General Manager of East and NYC

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

Exhibit 1  
The Property

Trademarks of the City of New York

Trademarks



## **Exhibit 2**

### **Licensed Products**

1. Footwear
2. Apparel(Including but not limited to):
  - a. T-shirts
  - b. Sweatshirts
  - c. Athletic Wear
  - d. Sweatpants
  - e. Pants

### **Exhibit 3**

#### **Distribution Channels**

1. NIKE owned retail channels (e.g. NIKE stores, NIKE.com, SNKRS, NIKE app)
2. Athletic Specialty stores (e.g. Foot Locker, Foot Action, Finish Line)
3. Premium stores (e.g. Nordstrom)
4. Athletic leisure and urban streetwear stores (e.g. KITH)

## **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. Licensee will be introduced and set up with Trademarx 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, <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, <sup>TM</sup>, ® 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.** Anytime a new factory is used to produce licensed merchandise, the Licensee must have the vendor sign the Ethical Standards Form attached as Exhibit 5 above. Any product being submitted on Trademarx must list the factory name and factory contact information (foreign or domestic) where production of that particular item will occur. 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.