

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))

AGENCY: NYC & Company, Inc. on behalf of NYC Department of Small Business Services
VOTES required for proposed action = 4
RECOMMENDED CONCESSIONAIRE
Name: The Creative Assembly Limited
Address: 27 Great West Road, Brentford, Middlesex, TW8 9BW, UK
Telephone # +01403756390
Not-for-Profit Organization
Certified by DSBS as M/WBE
CONCESSION TITLE/ DESCRIPTION:
Non-exclusive use of City-Owned Trademarks on Video Games
CONCESSION I.D.# NYCCO-2022-002

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

SELECTION PROCEDURE
(*CCPO approval of CRFA required)
Competitive Sealed Bids
Competitive Sealed Proposals*
Different Selection Procedure: * Sole Source Agreement
> FCRC approved different selection procedure on 4/13/22.
Negotiated Concession*

CONCESSION AGREEMENT TERM
Initial Term: From Effective Date To 12/31/26
Renewal Option(s) Term: From 01/01/27 To 12/31/27
Total Potential Term: 4 Years and 6 months
ANNUAL REVENUE (Check all that apply)
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, The Creative Assembly Limited shall pay royalties equal to ten percent (10%) of Net Sales where applicable.
Guaranteed Minimum Royalty payment shall be payable as follows:
A guaranteed minimum fee of forty thousand dollars (\$40,000) that the amount of Twenty Thousand Dollars (\$20,000) will be paid on signing in and Twenty Thousand Dollars (\$20,000) shall be paid on or before January 1, 2025 (\$20,000).

NOTIFICATION REQUIREMENTS
Subject concession was awarded by CSB or CSP.
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 3/4/22, which was at least 40 days in advance of the FCRC meeting on 4/13/22 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 XXXXXX

Award is a major concession. YES NO

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

CPC approved on ___/___/___ City Council approved on ___/___/___ or N/A

AUTHORIZED AGENCY STAFF

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

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

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

Name _____ **Title** _____

Signature _____ **Date** ___/___/___

CERTIFICATE OF PROCEDURAL REQUISITES

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

Signature _____ **Date** ___/___/___

City Chief Procurement Officer

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

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

NYC & Company Inc./SBS is requesting authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source agreement with The Creative Assembly Limited for the non-exclusive use of City-owned trademarks in video games. The Creative Assembly Limited has the ability to create an entire new set of customers and revenue stream for the licensing program. The Creative Assembly Limited will help expand the type of items the City now licenses and will help expand the licensing program beyond souvenirs. Given the popularity of video games and the potential of creating a new source of income for the licensing program, we believe it is in the City's best interest to enter into a sole source agreement. This proposed non-exclusive license agreement will not bar opportunities for other video game manufacturers.

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

A. SELECTION PROCEDURE

Sole Source

Other *Describe:*

B. NEGOTIATIONS

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

NYC & Company/SBS negotiated that The Creative Assembly Limited shall pay licensing fees equal to 10 percent (10%) of Net Sales where applicable with a guaranteed minimum fee of forty thousand dollars (\$40,000) that the amount of Twenty Thousand Dollars (\$20,000) will be paid on signing in and Twenty Thousand Dollars (\$20,000) shall be paid on or before January 1, 2025 (\$20,000). With an option to extend the agreement for an additional 1 year on substantially the same terms, but not to exceed the threshold for significant concession.

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

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

Creative Assembly is one of Europe's leading games development studios, founded in 1987 and located in West Sussex, UK and in Sofia, Bulgaria. Creative Assembly is a craft-led studio with over 35 years' experience in video game development. Creative Assembly have won multiple awards for their culture and their people-centric approach, having won a Best Place to Work Award for five consecutive years. Creative Assembly plans on using some of New York City's IP in a new video game set to be released in the next year. With the current state of travel, it is in the City's best interest to continue to create agreements that continue to put and keep New York City top of mind globally. Creative Assembly's games have global reach and will be able to have our marks seen in a new way and for the City to enter into a potential revenue stream. For these reasons, it is in the City's best interest enter into a sole source agreement with The Creative Assembly Limited. This proposed non-exclusive license agreement will not bar opportunities for other types of gaming partners.

D. PUBLIC HEARING

N/A – Subject award NOT a significant concession]

1. Publication & Distribution of Public Hearing Notice

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

- _____, a NYC citywide newspaper on ___/___/___ and ___/___/___
- _____, a NYC citywide newspaper on ___/___/___ and ___/___/___

OR

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

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

2. Public Hearing Date, Exception to Public Hearing Requirement

A Public Hearing was conducted on ___/___/___.

OR

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

LICENSE AGREEMENT

AGREEMENT made this _____ day of _____, 2023, 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, USA, and The Creative Assembly Limited, a company organized and existing under the laws of the United Kingdom with its registered address at 27 Great West Road, Brentford, Middlesex, TW8 9BW, UK (hereinafter “Licensee”).

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

SECTION I (License)

Subject to the limitations, terms and conditions set forth herein, Licensor hereby grants to Licensee a limited, revocable non-exclusive license to use the trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the “Property”) solely in the manner approved in advance in writing by Licensor for inclusion in the Licensor’s video game provisionally titled Keaton (“Licensed Product”) during the Term in connection with the manufacture, advertising, promotion, sale, and offering for sale of the products listed in Exhibit 2 Worldwide (“Territory”). Licensed Products listed in Exhibit 2 shall be sold only in the distribution channels defined in Exhibit 3. Upon mutual written agreement of the parties, the Property set forth in Exhibit 1 and the scope of product use in Exhibit 2 may be amended during the Term or any renewal period.

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

SECTION II (Express Conditions and Limitations)

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

(a) Unless otherwise stated in Exhibit 4, 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: “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. © 2022 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales, 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. © 2022 (or other initial year of publication). City of New York. All rights reserved.” Any shortened version of such notices may be used only with the City’s prior written approval.

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

advance in writing. Except where otherwise agreed by the parties, Licensee shall not, without limitation, animate or adapt the Property; use the Property as a weapon; damage or destroy the Property within the Licensed Product; display the Property in connection with blood, bloodshed, in a sexual context or alter or mutilate the Property in any manner other than as approved in advance in writing by Licensor.

(c) Information labels which include the statements set forth in Exhibit 4, attached hereto and made a part hereof, shall be displayed within the Licensed Product. The City may, from time to time after consultation with Licensee, amend the language of the notices upon written notice thereof to Licensee.

(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; provided, however, for the avoidance of doubt, the Licensor acknowledges that the Licensed Product will feature trademarks, service marks, trade names, corporate names, or personal names of third parties and that, upon Licensor's written request, a list of such third party brands shall be provided to Licensor prior to inclusion of the Property in the Licensed Product.

(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 in the Licensed Product. No license is granted hereunder for the manufacture, sale or distribution of items or material bearing the Property other than in the Licensed Product, which Licensed Property may be used for publicity purposes, in combination sales, as giveaways, or to be disposed of under similar methods of merchandising. If Licensee desires to sell items or material bearing the Property other than in the Licensed Product, 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 other than as depicted in the Licensed Product. Licensee acknowledges that such separate license may be withheld for any reason.

(h) Licensee may use the Property within Licensed Product only in the form approved by the City and in advertising that depicts such approved uses within the Licensed Product (in accordance with Exhibit 2), but may not otherwise feature or promote the Licensed Product using the Property apart from authorized use in accordance with this Agreement.

(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 acknowledges the nature and content of the Licensed Property (as further described at Section XI (a)) and subject to the City's right to approve all uses of the Property and may object to and require discontinuance of the use of the Property in the Licensed Product that the City determines in its sole and reasonable discretion to be inconsistent with the goodwill and reputation in the Property, or otherwise not in the best interests of the City.

(k) Licensee agrees and acknowledges that its license extends only to the Property and 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) Licensee will provide NYC & Company with ten (10) digital PC copies of the Licensed Property per year to be used at Licensor's discretion.

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 on the Effective Date and shall continue through 12/31/26 (December 31, 2026), unless sooner terminated pursuant to the terms and conditions of this License Agreement. The parties shall have the option of renewing this License Agreement on substantially the same terms and conditions for a period of One (1) year (together with the Initial Term, the "Term"). Nothing herein shall be construed as obligating Licensor to exercise its renewal option. If the scope of Property within Exhibit 1 or the permitted uses in Exhibit 2 are expanded during the Term or any renewal period, the terms for such arrangement shall be mutually agreed by both parties.

SECTION IV (License Years)

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

SECTION V (Royalties)

To the extent that the parties choose to exercise the option set forth in Sections I or III and agreed upon terms include a payment of royalty, in each License Year of this License Agreement, for products bearing solely the Licensed Property (or the Property with the Licensee's marks) other than as non-animated digital content as background use Licensee shall pay to NYC & Company for the license granted herein a royalty equal to ten percent (10%) of Net Sales. In the event the parties wish to co-brand the Property and the Licensee's marks with any additional marks, the parties shall mutually agree to co-brand and mutually agree to the co-brand royalty in an amendment to this Agreement. The term Net Sales means the gross invoice price billed to purchasers or end users of Licensed Products (whether sold by Licensee or any person or entity acting on behalf of Licensee) for any use (e.g., custom skins, decals, rewards or the like) for which Licensee receives earned or purchased currency from an end user of the Licensed Product less only promotional allowances, taxes, freight charges (if separately stated) and such other discounts as may be approved in writing by NYC & Company, and any actual and adequately documented returns. Net Sales shall include insurance proceeds received by Licensee in payment for Licensed Products. Licensed Products shall be considered sold (and therefore included in Net Sales and subject to royalty payments) when they are billed, invoiced, shipped, or paid for, whichever occurs first. No costs incurred in the manufacture, sale, offering for sale, promotion, advertisement, or shipment of the Licensed Products shall be deducted, nor shall deductions be made for cash, taxes, tariffs, freight, advertising, any other discounts or uncollectible accounts, or any other purpose. Sales of Licensed Product made other than in an arm's length transaction shall be deemed to have been made at the regular wholesale price for such Licensed Products.

SECTION VI (Advance, Guaranteed Minimum Royalty or Fee in Lieu of Royalty)

Notwithstanding any other royalty payment requirements of this License Agreement, including those set forth above, Licensee shall pay to NYC & Company a Fee (i) on signing in the amount of Twenty Thousand Dollars (\$20,000); and (ii) the amount of Twenty Thousand Dollars (\$20,000) on or before [x], which shall be in lieu of any advance or guaranteed minimum royalty.

Such payment shall be in lieu of any Advance or Guaranteed Minimum Royalty payment and shall be nonrefundable.

To the extent that the parties wish to exercise the options in Sections I or III of this License Agreement, a substantially equivalent payment shall be agreed to for any renewal period. If the parties agree to expansion of Licensed Property in Exhibit 1 or scope of use in Exhibit 2 whether in the form of a royalty based on Net Sales or a fee in lieu of a Guaranteed Minimum Royalty payment, such compensation shall be subject to mutually agreed terms.

SECTION VII

(Royalty Payments, Accounting and Statements)

Where Licensee is required to pay royalty payments to Licensor in accordance with this Agreement Licensee shall furnish to NYC & Company the following no later than thirty (30) days after the end of each calendar quarter (beginning with the calendar quarter in which the initial sale 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., TLC, DOT) and showing the net number of units sold inclusive of returns/cancellation, item description and Average Sales price of the Licensed Products sold by Licensee during the preceding quarter. Such statements shall be furnished to NYC & Company whether or not any Licensed Products have been sold during the preceding quarter; and

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

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

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

SECTION VIII

(Audit Rights)

The City or its authorized agent shall have the right during business hours upon forty-eight (48) hours' advance notice to examine and request copies of Licensee's books, records, and accounts and all other documents and materials in the possession or under the control of Licensee relating to the sale of the Licensed Product or this License Agreement to such extent as may be necessary to determine the accuracy or inaccuracy of any royalty statements submitted by Licensee to Licensor. Licensee shall segregate its records and agrees that such

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

SECTION IX (No Assignment)

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

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. For the avoidance of doubt, the Licensor acknowledges that Licensee has fully explained the format, style and nature of the Licensed Product to the Licensor that the Licensed Product shall be targeted to an adult audience (provisionally rated as PEGI 18 and/or rated M by the ESRB) and shall be themed with an irreverent tone and humor, and that the Licensed Product (and any and all related marketing materials) shall contain content relating to third-party intellectual property, which may be displayed alongside and/or in close proximity to the Property. Such use of the Property in the Licensed Product in accordance with this clause (a) will not be deemed as disparaging or derogatory, to the extent that the parties have complied with all prior notice, review, written approval requirements provided in this Agreement. In addition, in the event that any part of the Property is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this License Agreement shall terminate unless Licensee ceases and halts all such uses immediately.

(b) Licensee shall use the Property only in the manner specified by the City in this Agreement. 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 that consist of the Property shall be considered "work made for hire" within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Property, Licensee shall first obtain the City's written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City.

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

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

SECTION XII (Termination Rights)

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

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

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

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

(d) If Licensee makes any assignment for the benefit of creditors, or files any petition under Title 11, United States Code, or files in bankruptcy or is adjudicated as bankrupt or insolvent, or if any trustee in bankruptcy or insolvency is appointed under the laws of the United States or of any State. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this License Agreement or exploit the Property if this License Agreement terminates pursuant to this paragraph. Notwithstanding, if, pursuant to Title 11, United States Code, or any amendment or successor thereto, a trustee in bankruptcy or Licensee, as debtor, is permitted to assume this License Agreement and does so and, thereafter, wishes to assign this License Agreement to a third party, and that assignment complies with Title 11 of the United States Code, the trustee or Licensee shall notify Licensor of same. Said notice shall set forth the name and address of the proposed assignee, the proposed consideration for assignment and all other relevant details of the assignment. Such notice shall be deemed to grant the Licensor the option to have this License Agreement assigned to such assignee for such consideration, or its equivalent in money and upon such terms as specified in the notice. The option may be exercised by written notice to the trustee or Licensee by Licensor within fifteen (15) days from Licensor's receipt of the notice, or within such

shorter time as may be deemed appropriate by the court in a bankruptcy proceeding. If Licensor fails to give notice to the Licensee or trustee within said period, the Licensee or trustee may execute the assignment to the entity referred to in the notice for the consideration and on the terms specified therein. Nothing contained herein shall be deemed to preclude or impair any rights Licensor may have as a creditor in any bankruptcy proceeding.

(e) If Licensor determines that this License Agreement should be terminated as to prospective uses of the Property without cause.

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

(g) If Licensee fails to sell Licensed Products within twelve (12) months of the date of this License Agreement.

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

SECTION XIII (Post Termination)

(a) Upon the expiration or termination of this License Agreement (but not upon termination pursuant to Section XII(a), (b), (c), (d), (f) and (g)), Licensee shall be permitted ninety (90) days to remove the Licensed Property from the Licensed Products ("Sell Off Period"). Sales under this section during the Sell Off Period shall require payment of royalties (if applicable) 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 the Sell Off Period, or upon termination pursuant to any other provision this License Agreement, Licensee shall remove the Licensed Property from the Licensed Products as soon as reasonably practicable but in no event longer than five (5) business days from the expiry of the Sell Off Period. Following the expiry of the Sell Off Period, Licensee further agrees to cease featuring the Licensed Property for any advertising or promotional purposes. For the avoidance of doubt, Licensor shall not be obliged to remove or delete any marketing/promotional assets (e.g. marketing trailers) published before the expiry or termination of the Agreement. In addition, upon expiration or termination of this License Agreement for any reason, Licensee shall deliver to Licensor a letter confirming removal of all Licensed Property from the Licensed Product.

(b) Licensee acknowledges and agrees that its failure to cease using the Licensed Property 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 featuring the Licensed Property 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 using the Licensed Property, 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.

Notwithstanding the foregoing, Licensor acknowledges and agrees that any rights in digital in-game items which comprise the Licensed Property, and which have been acquired by End Users (as defined in the Exhibit Definitions) during gameplay prior to expiry or termination of this Agreement are perpetual and irrevocable, and shall survive the expiration or termination of the same.

SECTION XIV (Samples and Approvals)

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

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

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

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

(f) Subject to the Approvals process (as defined in Exhibit I of this Agreement) Licensor shall use reasonable efforts to communicate its written approval or disapproval within ten (10) days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed disapproved. If Licensor does not approve the Samples of the Licensed Products, the reasons for disapproval shall be communicated to Licensee. After the Samples are approved pursuant to this paragraph, Licensee shall not depart therefrom in any material respect without Licensor's prior written consent, and Licensor shall not withdraw its approval of the Samples except for good cause.

(g) Where applicable, Licensee shall adhere to Licensor's graphic and packaging standards and guidelines in the use of the Property and shall use the materials depicted in Exhibit 4 hereto, which have been approved by Licensor. To the extent that Licensee wishes to amend or alter the graphics depicted in Exhibit 4, Licensee shall submit to Licensor for Licensor's prior written approval all tags, labels, package inserts, containers, packaging, advertising, promotional, display or sales materials or the like containing or referring to the Property.

Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) business days of its receipt of items under this paragraph. Any materials not specifically approved shall be deemed disapproved. If Licensor does not approve an item under this paragraph, the reason for such disapproval shall be communicated to Licensee.

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

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

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

SECTION XV (Purchase Rights)

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

SECTION XVI (Indemnification)

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

Licensors hereby agree to be solely responsible for and to indemnify, defend and hold harmless Licensee, its 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 use of the Licensed Property. Including those based on Licensee's use of the Property authorized by this License Agreement. Such indemnification shall further extend to Licensor's failure to comply with the terms of this License Agreement. Licensor expressly agrees that its obligations hereunder shall survive and continue beyond any termination or expiration of this License Agreement.

SECTION XVII (Existing Licenses)

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

SECTION XVIII (Insurance)

During the term of this license and for at least three (3) years after the last date of sale by Licensee of any Licensed Product, Licensee agrees to carry commercial general liability insurance, including but not limited to product liability coverage, with insurer(s) that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII", a Standard & Poor's rating of at least A, a Moody's investors service rating of at least A3, a Fitch Ratings rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department. The commercial general liability insurance must: (x) be in an amount of at least one million dollars (\$1,000,000) per occurrence for bodily injury and property damage, one million dollars (\$1,000,000) for personal and advertising injury, two million dollars (\$2,000,000) policy aggregate, and two million dollars (\$2,000,000) products/completed operations; (y) be at least as broad as that provided by the latest edition of Insurance Services Office (ISO) form CG 00 01; and (z) include NYC & Company and the City, together with their officials and employees, as additional insureds under such policy with coverage at least as broad as the latest edition of either ISO form CG 20 26 or ISO form CG 20 36. Policies of insurance provided pursuant to this Agreement shall be primary and non-contributing to any insurance or self-insurance maintained by NYC & Company or the City.

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

In the event that Licensee fails at any time to carry insurance as required herein, Licensee shall immediately notify Licensor thereof and Licensor shall have the right to terminate this Agreement immediately. Notwithstanding the foregoing, with NYC & Company's approval, Licensee shall be permitted to meet the obligations of this Section XVIII through self-insurance.

Whenever notice of occurrence, claim or suit to an insurance company is required under any such policy, Licensee shall provide timely notice thereof on behalf of both NYC & Company and the City, including their officials and employees, and shall promptly send a copy of such notice(s) to both NYC & Company and the City. The copy of such notice to NYC & Company shall be sent to the address set forth in Paragraph 12 above and the copy to the City shall be sent to c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. The existence of such insurance shall in

no way limit Licensor's or NYC & Company's rights under this Agreement, at law or in equity, including the right to be indemnified as set forth in this Agreement.

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

**SECTION XIX
(Governing Law)**

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

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

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

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

Where applicable and upon Licensor's written request, Licensee shall provide Licensor with a list of the names and addresses of Licensee's manufacturers, importers and distributors and will notify Licensor of any change in such list. From time to time, Licensor may request that Licensee provide the names of its designers, raw material suppliers and/or authorized importers of the Licensed Products, and Licensee agrees to provide such information upon the request of Licensor. Licensee may sublicense rights under this License Agreement ("Sublicense") to any third party, provided that it remains liable to the Licensor for all payments due to Licensor and for such third party's acts or omissions as if they had been Licensee's own acts or omissions. For the avoidance of doubt, Licensee is not permitted to sublicense the rights in the Licensed Property other than within the Licensed Product.

**SECTION XXII
(Notices)**

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

If to Licensor:

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

With a copy to:

New York City Department of Small Business Services

110 Williams Street, 2nd Floor
New York, NY 10038

If to Licensee:

The Legal Department
SEGA Europe Limited
27 Great West Road, Brentford,
Middlesex, TW8 9BW, UK

SECTION XXIII (Confidentiality)

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

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

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

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

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

SECTION XXIV (Investigations)

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

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

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

C. (i) The commission or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

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

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

(ii) The cancellation or termination of any and all such existing City of New York contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City of New York incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by Licensor.

E. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (i) and (ii) below. He or she may

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

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

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

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

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

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

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

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

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

G. In addition to and notwithstanding any other provision of this License Agreement the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) days' written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License Agreement by Licensee, or affecting the performance of this License Agreement.

SECTION XXV (Miscellaneous)

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

B. No action shall lie or be maintained against Licensor or NYC & Company by Licensee upon any claims based upon this License Agreement unless such action shall be commenced within six (6) months after the date of final

payment hereunder, or within six (6) months of the termination or conclusion of this License Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

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

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

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

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

J. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable law, and to execute and deliver such documents and other papers, as may be required to carry out the provisions of this License Agreement and

consummate and make effective the transactions contemplated by this License Agreement. In no event shall either Party be liable to the other Party for any punitive, special, consequential, incidental or indirect damages of any kind (including without limitation loss of profit), whether or not the Licensor was advised of the possibility of such loss, however caused, whether for breach of contract, negligence, or otherwise. Save in relation to any breach of either Party's warranties and indemnities, for which liability shall be unlimited, the entire liability of each Party arising out of or in connection with this Agreement shall be limited to the License Fees payable under this Agreement.

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

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

By:

Its:

Date of Signature: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY:

Acting Corporation Counsel

(Licensee Name)

By: NICOLA ORMROD

Its: General Counsel

Date of Signature: _____

Exhibit Definitions

In addition to the definitions as set out in the main body of the Agreement for the purposes of further understanding the Exhibits to this Agreement, the following definitions shall apply:

- (a) **“End User(s)”** shall mean any third-party that has acquired a licence from Licensee and/or third party operators of the distribution channels defined in Exhibit 3 to access and play the Licensed Product for personal use.
- (b) **“Game Content”** shall mean digital content developed by Licensee which shall be derived from, and comprise, the Licensor Property to be used by Licensee in connection with the Licensed Product and/or Marketing Materials and which shall be in accordance with the terms of this Agreement.
- (c) **“IPR”** shall mean all intellectual property rights including without limitation patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in inventions, rights in data, database rights, rights in know-how and confidential information and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and rights to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action).
- (d) **“Marketing Materials”** means pre and post launch marketing content for the Licensed Product, including but not limited to trailers, and any content published on the distribution channels defined in Exhibit 3, social media and digital channels (whether owned by Licensee and/or its Affiliates or third parties), promotional materials for trade and in-store kiosks, and any hardware-based advertisements.

Exhibit I
The Property

Trademarks of the City of New York to be added that are approved for use and as Agreement may in future be amended.

Exhibit 2

Scope of Licensed Product Use

Licensed Product tentatively titled “Keaton”.

The Licensed Product consists of a video game that incorporates depictions of the Licensed Property to use, stream and/or download the Licensed Product (by Licensee and/or third party operators of the distribution channels specified in Exhibit 3), and such license shall include the rights to distribute live-streaming and/or pre-recorded materials from the Licensed Product to third party digital distribution channels (such as Twitch, Facebook, You Tube) and to participate in video game tournaments (e-sports) and other related online activities as authorized in this Agreement.

For the avoidance of doubt, the Licensee is permitted to display the Licensed Property in Marketing Content provided that the Licensed Property is not the focal point of such content e.g. the Licensee is permitted to display the Licensed Property within gameplay footage in a marketing trailer provided that the Licensed Property is incidental to the overall content of the trailer.

Exhibit 3

Distribution Channels

Games distribution platforms, including but not limited to consoles (such as Microsoft Xbox One, Sony Playstation 4, Nintendo Switch or subsequent versions thereof), PC, Mac/iOS, mobile, tablet or other digital media platform whether via cloud, physical or digital download and by any distribution method (e.g. cloud, physical or digital download to own)

Exhibit 4

Licensed Product Notice

City Seal Hologram

All Licensed Products must include a permanent copyright notice and trademark designation notice within the Licensed Product game credit section. It must read “© 2022[or current year] City of New York. All Rights Reserved.”

Exhibit 5
Quality Control Guidelines

The process below, modifications below or another mutually acceptable process to ensure that Licensor's written approval is obtained prior to use the of Licensed Property in the Licensed Product shall be used.

1. All Licensed Products and related materials associated with NYC & Company's licensing program, including but not limited to print ads, advertising initiatives, story boards, scripts, brochures, videos, and all collateral materials must be submitted to NYC & Company for written approval prior to any production.
2. Each product submitted for approval must, at every stage, be submitted via NYC & Company's online product approval system, Trademarx Insight. Licensee will be introduced and set up with Trademarx Insight upon contract execution or such other mutually agreed process to obtain NYC & Company's prior written approval prior to production, launch or use of the Licensed Property in the Licensed Product.
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 any variation of the Licensed Product using the Licensed Property.
6. 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. The Licensed Product must include a permanent copyright notice and trademark designation in the Licensed 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 in the Licensed Product.
11. To the extent relevant, 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, TM, ® 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. © 2022 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to use the following notice, TM, ® 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. © 2022 (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 as provided in Exhibit 4 to this License Agreement.
- 13.** Licensee shall ensure that any vendor or factory that is used to produce Licensed Products complies with the Ethical Standards Form attached as Exhibit 6. Licensee agrees to upload to Trademarx the factory name and factory contact information (foreign or domestic) where production of a particular item will occur once such factory has been assigned for such item., or similar vendor information to the extent applicable via a mutually approved method. 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.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

May 10, 2023

(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 The Creative Assembly Limited (“Creative Assembly”) for the non-exclusive use of City-owned trademarks in video games. The Agreement shall commence upon written notice (Effective Date) and shall continue through December 31, 2027 (Termination Date), unless sooner terminated pursuant to the terms and conditions of this License Agreement. Licensor shall have the option in its sole discretion of renewing this License Agreement on substantially the same terms and conditions for a period of one (1) year together with the Initial Term. For the initial term, Creative Assembly shall pay royalties equal to ten percent (10%) of Net Sales where applicable (as defined in the License Agreement). The License Agreement provides for a guaranteed minimum fee of forty thousand dollars (\$40,000) that the amount of Twenty Thousand Dollars (\$20,000) will be paid on signing in and Twenty Thousand Dollars (\$20,000) shall be paid on or before January 1, 2025 (\$20,000). With an option to extend the agreement for an additional 1 year on substantially the same terms, but not to exceed the threshold for significant concession.

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

May 10th, 2023

Date: _____

Signed: _____

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



NYC Parks

David Cerron
Assistant Commissioner
Business Development &
Special Events

T 212.360.1397

E david.cerron@parks.nyc.gov

**City of New York
Parks & Recreation**

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

MEMORANDUM

TO: Hon. Mark Levine, Manhattan Borough President
Susan Stetzer, District Manager, Manhattan Community Board 3
Marisa Mack, District Manager, Manhattan Community Board 5
Maxwell Vandervliet, District Manager, Manhattan Community Board 7
Will Brightbill, District Manager, Manhattan Community Board 8
Eutha Prince, District Manager, Manhattan Community Board 9
Shatic Mitchell, District Manager, Manhattan Community Board 10
Angel Mescaín, District Manager, Manhattan Community Board 11

Hon. Vanessa Gibson, Bronx Borough President
Etta Ritter, District Manager, Bronx Community Board 3
Yajaira Arias, Chair, Bronx Community Board 7
William Rivera, District Manager, Bronx Community Board 9

Hon. Antonio Reynoso, Brooklyn Borough President
Lenny Singletary III, Chair, Brooklyn Community Board 2
Henry Butler, District Manager, Brooklyn Community Board 3
Michael Racioppo, District Manager Brooklyn, Community Board 6
Eddie Mark, District Manager, Brooklyn Community Board 13
Viola Greene-Walker, District Manager, Brooklyn Community Board 16

Hon. Donovan Richards, Queens Borough President
Florence Koulouris, District Manager, Queens Community Board 1
Debra Markell Kleinert, District Manager, Queens Community Board 2
Giovanna Reid, District Manager, Queens Community Board 3
Christian Cassagnol, District Manager, Queens Community Board 4
Frank Gulluscio, District Manager, Queens Community Board 6
Marilyn McAndrews, District Manager, Queens Community Board 7
Marie Adam-Ovide, District Manager, Queens Community Board 8
Mark McMillan, District Manager, Queens Community Board 13

Hon. Vito Fossella, Staten Island Borough President
Joan Cusack, District Manager, Staten Island Community Board 1

FROM: Phil Abramson, Director of Revenue Communications *PA*

SUBJECT: Notice of Joint Public Hearing, May 8, 2023: Intent to award as a concession the operation and management of a food, beverage and merchandise concession related to the presentation of live events at SummerStage in Central Park, Manhattan, and for the sale of naming rights of the SummerStage festival, primarily based in Central Park, Manhattan, to City Parks Foundation
Concession No. M10-1-71-O.

DATE: April 21, 2023



NYC Parks

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks & Recreation (“NYC Parks”) to be held remotely via a Microsoft Teams dial-in on Monday, May 8, 2023 at 2:30 p.m. relative to:

INTENT TO AWARD as a concession the operation and management of a food, beverage and merchandise concession related to the presentation of live events at SummerStage in Central Park, Manhattan, and for the sale of naming rights of the SummerStage festival, primarily based at Central Park, Manhattan, for one potential twenty (20) year term to City Parks Foundation (“Licensee”).

All gross receipts received by Licensee at the food, beverage and merchandise concession will be used exclusively to provide for the management, maintenance, operation and programming at the Licensed Premises, including the operations under this License Agreement. Licensee shall use any revenue it receives from the Naming Rights Sponsorship Agreement to offset the high costs of the maintenance and operations of the Rumsey Playfield in Central Park, and programming free events at the Rumsey Playfield and other locations as part of SummerStage, including but not limited to attracting a more diverse and higher profile slate of performers.

The public may participate in the public hearing by calling the dial-in number below. Written testimony may be submitted in advance of the hearing electronically to fcrc@mocs.nyc.gov. All written testimony must be received by May 8, 2023. In addition, the public may also testify during the hearing by calling the dial-in number.


The dial-in information is below:

Dial-in #: +1-646-893-7101
Access Code: 155 536 037 #
Press # on further prompts

A draft copy of the agreement may be obtained at no cost by any of the following ways:

- 1) Submit a written request to NYC Parks at philip.abramson@parks.nyc.gov from **April 21, 2023** through **May 8, 2023**.
- 2) Download from **April 21, 2023** through **May 8, 2023** on NYC Parks’ website. To download a draft copy of the agreement, visit <https://www.nycgovparks.org/opportunities/concessions/rfps-rfbs-rfeis>
- 3) Submit a written request by mail to NYC Department of Parks and Recreation, Revenue Division, 830 Fifth Avenue, Room 407, New York, NY 10065. Written requests must be received by **May 5, 2023**. For mail-in requests, please include your name, return address, and Concession # M10-1-71-O.

A transcript of the hearing will be posted on the FCRC website at <https://www1.nyc.gov/site/mocs/reporting/agendas.page>

For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor’s Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 298-0734. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability. 



NYC Parks

NOTIFICATION REQUIREMENTS

Subject concession was awarded by CSB or CSP.

YES NO

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

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

If NO, check the applicable box below:

- The Agency certifies that each affected CB/BP received written notice by 08/05/2022, which was at least 40 days in advance of the FCRC meeting on 09/14/2022 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 Alexander Han

Title Chief of Concessions

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

LOCATION OF CONCESSION SITE(S)

Central Park

Address Rumsey Playfield Central Park
Borough Manhattan C.B. 5, 7, 8, 10, 11
Block # 111 **Lot #** 1

John V. Lindsay East River Park

Address Montgomery St. To E. 12 St., FDR Drive
Borough Manhattan C.B. 3 **Block #** 262 **Lot #** 200

Tompkins Square Park

Address Ave. A To Ave. B, E. 7 St. To E. 10 St.
Borough Manhattan C.B. 3 **Block #** 403 **Lot #** 1

Jackie Robinson Park

Address Bradhurst Av and Edgecombe Ave, W 145 St to 155 St
Borough Manhattan C.B. 9, 10 **Block #** 2052 **Lot #** 1

Marcus Garvey Park

Address Madison Ave, E. 120 St. to E. 124 St
Borough Manhattan C.B. 11 **Block #** 1719 **Lot #** 1

Brooklyn Bridge Park

Address Furman St., Water St. and John St. between Atlantic Ave., Old Fulton St., Main St., Adams St., and Jay St
Borough Brooklyn C.B. 2, 6 **Block #** 199 **Lot #** 3

Herbert Von King Park

Address Marcy Ave., Tompkins Ave., bet. Greene Ave. and Lafayette Ave.
Borough Brooklyn C.B. 3 **Block #** 1790 **Lot #** 1

Ford Amphitheatre at Coney Island

Address 3052 West 21 Street
Borough Brooklyn C.B. 13 **Block #** 7071 **Lot #** 100

Betsy Head Park

Address Blake Ave., Dumont Ave., Livonia Ave. bet. Strauss St., Hopkinson Ave. and Bristol St.
Borough Brooklyn C.B. 16 **Block #** 3570 **Lot #** 1

Crotona Park

Address Crotona Park North to South, Fulton Ave to Southern Blvd and Crotona Park East
Borough Bronx C.B. 3 **Block #** 2942 **Lot #** 1

Williamsbridge Oval

Address Van Cortlandt Ave. East, Reservoir Oval East
Borough Bronx C.B. 7 **Block #** 3343 **Lot #** 400

Soundview Park

Address Bronx River, Bronx River Ave. bet. Lafayette Ave., Surf Dr.
Borough Bronx C.B. 9 **Block #** 3543 **Lot #** 1

Socrates Sculpture Park

Address Vernon Blvd., bet. Broadway and 30 Dr.
Borough Queens C.B. 1 **Block #** 501 **Lot #** 16

Queensbridge Park

Address Queensboro Bridge, 41 Rd., 40 Ave. between The East River, Vernon Blvd., and 21 St.
Borough Queens C.B. 1, 2 **Block #** 477 **Lot #** 49

Flushing Meadows Corona Park

Address Grand Central Pkwy., Whitestone Exwy. Bet. 111 St. and College Point Blvd., Park Drive East
Borough Queens C.B. 3, 4, 6, 7, 8 **Block #** 2209 **Lot #** 10

Springfield Park

Address 149 Ave, Springfield Blvd, 145 Rd, 184 St

Borough Queens **C.B.** 13 **Block #** 13361 **Lot #** 100

Clove Lakes Park

Address Forest Ave., Victory Blvd., between Clove Rd. and Brookside Ave., Royal Oak Rd.

Borough Staten Island **C.B.** 1 **Block #** 319 **Lot #** 1

Corporal Thompson Park

Address Broadway, Henderson Ave., Chappell St.

Borough Staten Island **C.B.** 1 **Block #** 186 **Lot #** 119

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

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

The New York City Department of Parks and Recreation ("Parks") intends to seek Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement ("Agreement") with City Parks Foundation ("CPF") for the operation and management of a food, beverage and merchandise concession related to the presentation of live events at SummerStage in Central Park, Manhattan, and for the sale of naming rights of the SummerStage festival, primarily based in Central Park, Manhattan.

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

A. SELECTION PROCEDURE

Sole Source

Other *Describe:*

B. NEGOTIATIONS

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

The term of this Agreement shall commence upon the date in a written Notice to Proceed issued to Licensee by Parks and, unless terminated sooner in accordance with this Agreement, shall terminate ten (10) years from the date of execution of a new Maintenance and Operations Agreement ("M&O Agreement") to be entered into with CPF, or the last day of any subsequent renewal periods that are exercised pursuant to this Agreement. Parks, in its sole discretion, shall have the option to renew this Agreement for up to two (2) additional five (5)-year periods, provided that Parks has renewed the M&O Agreement for the same periods. Notwithstanding the foregoing, in no event will the total length of the term of this Agreement, including any renewal periods, exceed the shorter of (i) twenty (20) years; or (ii) the term of the M&O Agreement, including any renewal periods.

In lieu of a license fee, all gross receipts received by CPF at the food, beverage and merchandise concession will be used exclusively to provide for the management, maintenance, operation and programming at the Licensed Premises, including the operations under this License Agreement. CPF shall use any revenue it receives from the Naming Rights Sponsorship Agreement to offset the high costs of the maintenance and operations of the Rumsey Playfield in Central Park, and programming free events at the Rumsey Playfield and other locations as part of SummerStage, including but not limited to attracting a more diverse and higher profile slate of performers.

In no event shall the revenue received by CPF from this Agreement during any fiscal year exceed CPF's expenses under the Maintenance and Operation Agreement (the "Difference"). If at any time revenue received from the operation of the License is projected by Parks to exceed the Difference, Parks shall direct CPF to implement a plan to provide additional SummerStage related services, including but not limited to additional free events, subject to the prior written approval of Parks.

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

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

CPF is an independent, nonprofit organization with a mission to offer park programs throughout the five boroughs of New York City. CPF supports New York City neighborhood parks that lack access to private resources, presenting free arts, sports, educational, and community-building programs and making parks a focal point for community development. Founded in 1989, CPF works in hundreds of parks citywide, reaching hundreds of thousands of New Yorkers each year and contributing to the revitalization of communities across the five boroughs.

One of CPF's most popular arts programs is SummerStage, which debuted in 1986. SummerStage is one of the world's largest and most acclaimed outdoor music festivals. Each year, the festival brings more than 100 free performances to parks throughout the five boroughs reaching more than 280,000 audiences annually. With performances ranging from American pop, Latin and World music to dance, opera, comedy and theater, the festival reflects the dynamic and diverse cultures of New York City, presenting performances by emerging and established musicians, dancers, and literary figures from around the globe. Since its inception, more than six million people from New York City and around the world have enjoyed SummerStage.

In 2009, Parks entered into a Maintenance and Operation Agreement with CPF for the operation of SummerStage at Rumsey Playfield in Central Park. This agreement was renewed in June 2018. The total cost of the free events, maintenance and operation of the Site, and administrative expenses directly related to SummerStage festival, primarily based in Central Park, is approximately \$7 million annually. In 2016, CPF entered into a Sole Source License Agreement with Parks for the operation and maintenance of a food, beverage, and merchandise concession related to the presentation of live events at SummerStage in Central Park. In 2019, CPF entered into an additional Sole Source License Agreement with Parks for the naming rights of the SummerStage festival. Both agreements expire on June 27, 2023. Parks and CPF are interested in entering into new singular Agreement to include both the food, beverage and merchandise concession, as well as the naming rights concession.

The revenue generated from these activities help CPF offset the high costs of maintenance and operations of the Site, programming events in Central Park and in parks throughout the five boroughs, most of which are offered free of charge, as well as the administrative expenses associated with this very popular series. Any revenues in excess of the amount attributable to covering the cost of the free events, for maintenance and operation of the Site, and administrative expenses directly related to SummerStage will be strictly used for additional free public programming at the Site.

Given CPF's commitment to providing New Yorkers with world-class entertainment experiences at SummerStage and given CPF's Maintenance and Operation Agreement for the operation of SummerStage, Parks believes that it is in the best interest of the City to enter into an Agreement with CPF, rather than proceed with a competitive solicitation process.

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

1. Publication & Distribution of Public Hearing Notice

- Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 04/21/2023, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 04/21/2023, which was not less than 15 days prior to the hearing date Agency also published a public hearing notice

twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by 04/21/2023.

- New York Post, a NYC citywide newspaper on 04/24/2023 and 05/01/2023
- New York Daily News, a NYC citywide newspaper on 04/24/2023 and 05/01/2023

OR

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

2. Public Hearing Date, Exception to Public Hearing Requirement

- A Public Hearing was conducted on 05/08/2023.

OR

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

LICENSE AGREEMENT

BETWEEN

**CITY OF NEW YORK
PARKS & RECREATION**

AND

CITY PARKS FOUNDATION

for

THE OPERATION AND MANAGEMENT OF A FOOD, BEVERAGE, AND
MERCHANDISE CONCESSION AT AND NAMING RIGHTS SPONSORSHIP TO THE
SUMMERSTAGE FESTIVAL

NEW YORK, NEW YORK

M10-1-71-O

DATED: _____, 2023

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THIS LICENSE AGREEMENT (“License” or “Agreement”), made this _____ day of _____, 2023 between the City of New York (“City”), a municipal corporation of the State of New York (“State”) acting by and through the Commissioner of the Department of Parks & Recreation (“Commissioner” and “Parks”, respectively), having an office at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065; and City Parks Foundation, Inc. (“CPF” or “Licensee”), a not-for-profit corporation organized in accordance with the laws of the State, with an office at The Arsenal, Central Park, 830 Fifth Avenue, 2nd Floor, New York, NY 10065.

WITNESSETH

WHEREAS, the Commissioner pursuant to Section 533 of the New York City Charter is charged with the duty to manage, maintain, and operate City parks, buildings, and recreation facilities under the jurisdiction of Parks for the beneficial use of the people of the City, and has the duty to plan, develop, conduct, and enter into arrangements on behalf of Parks and for the benefit of the public; and,

WHEREAS, Licensee was formed in 1989 for the purpose of offering various park programs throughout the five (5) boroughs of the City; and,

WHEREAS, Licensee supports City neighborhood parks that lack access to private resources by presenting free arts, sports, educational, and community building programs, and making City neighborhood parks a focal point for community development; and,

WHEREAS, the Commissioner has jurisdiction over the National Historic Landmark park known as Central Park, located in the Borough of Manhattan; and,

WHEREAS, since 1986, the SummerStage Program (“SummerStage” or “the Program”), one of the most popular arts programs in Central Park (and elsewhere in parks throughout New

York City), has contributed to the cultural heritage of the City by presenting performances by emerging and established musicians, dancers, and literary figures from around the globe; and,

WHEREAS, the Central Park portion of SummerStage runs from April 1st through two (2) Mondays prior to Marathon Sunday (or thirteen (13) days before the NYC Marathon is held) each year (“Operating Season”) and presents approximately forty (40) days of free performing arts events to an average audience of one hundred ten thousand (110,000) New Yorkers and visitors annually; and,

WHEREAS, the non-Central Park portion of SummerStage runs each summer and is anticipated to present approximately thirty-five (35) free performing arts events to an anticipated audience of fifty thousand (50,000) New Yorkers each summer; and,

WHEREAS, the Commissioner has determined that the area known as Rumsey Playfield (“the Playfield”), located in Central Park near East Drive and the 72nd Street Transverse, is the most appropriate venue to host the Central Park portion of SummerStage; and

WHEREAS, Licensee has assumed responsibility for the management and operation of SummerStage since 1993; and,

WHEREAS, on April 11, 2023, Parks and Licensee entered into a license agreement (“Maintenance and Operation Agreement” attached hereto as **Exhibit A**) for the management and operation of SummerStage in Central Park and through Parks’ special event permits Licensee has operated SummerStage events at other Parks locations throughout the City; and,

WHEREAS, the total cost of the free events and the maintenance and operation of SummerStage is approximately ten million dollars (\$10,000,000.00) annually and the revenue generated from the Maintenance and Operation Agreement does not cover these costs; and,

WHEREAS, in April 2016, Parks and Licensee entered into a sole source license agreement for the operation and maintenance of a food, beverage, and merchandise concession related to the presentation of live events at SummerStage in Central Park; and,

WHEREAS, in March 2019, Parks and Licensee entered into an additional sole source license agreement for the naming rights of the SummerStage festival; and,

WHEREAS, Licensee desires to continue to operate and maintain or provide for the operation and maintenance of a food, beverage, and merchandise concession at the Licensed Premises, as defined herein below, related to the presentation of live events at SummerStage and use any revenue generated to offset the high costs of the maintenance and operations of the Playfield and programming free events thereon; and,

WHEREAS, Licensee desires to enter into an agreement with a third-party entity (the “Naming Rights Sponsor”) granting certain sponsorship rights related to the presentation of live events at SummerStage in Central Park and other locations approved by Parks and use any revenue generated to offset the high costs of the maintenance and operations of the Playfield in Central Park and other locations where SummerStage events take place, and programming free events as part of SummerStage including but not limited to attracting a more diverse and higher profile slate of performers; and,

WHEREAS, the Commissioner and Licensee desire to ensure that the coordinated efforts of Parks and Licensee will continue to serve the best interest of the public; and,

WHEREAS, Parks and Licensee have collectively created an effective public-private partnership whereby Parks and Licensee complement each other’s efforts in connection with ensuring that the public continues to have access to free programs on the Playfield and other locations throughout the City; and,

WHEREAS, the Franchise and Concession Review Committee (“FCRC”), has authorized Parks to use a different procedure to enter into this Sole Source License Agreement with CPF.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the City and Licensee covenant and agree as follows:

ARTICLE 1: GRANT OF LICENSE

1.1 Parks hereby grants to Licensee and Licensee hereby accepts from Parks a non-exclusive license throughout the Term (i) to maintain and operate a food, beverage, and merchandise concession at the Licensed Premises related to the presentation of live events at SummerStage and in accordance with the terms and conditions set forth herein, and to the satisfaction of the Commissioner, (ii) to enter into an agreement with a Naming Rights Sponsor (“Naming Rights Sponsorship Agreement”), subject to the specifications, terms, reservations and restrictions of this Agreement, for the purpose of publicly identifying and associating SummerStage with such Naming Rights Sponsor, and (iii) to collect all revenues generated by such Sponsorship activities (collectively, the “Concession”). Notwithstanding the foregoing, Parks agrees that, during each Operating Season during the Term of this License, it shall not authorize operations similar to the Concession at the Licensed Premises without Licensee’s prior written approval. The “Licensed Premises” shall mean the area within the Playfield as designated on Exhibit A-1 of the Maintenance and Operations Agreement.

1.2 (a) Licensee may, subject to the prior written approval of Parks, not to be unreasonably delayed, enter into sublicense agreements (“Sublicense Agreements”) with third parties (“Sublicensees”) to maintain and operate all or a portion of the Concession at the Licensed Premises during the Operating Season in accordance with the terms and conditions set forth herein. Prior to entering into any proposed Sublicense Agreement, Licensee shall submit to Parks a written request for approval, together with a copy of any proposed Sublicense Agreement, in a form

reasonably acceptable to Parks. The terms and conditions of any proposed Sublicense Agreement shall be subject to Parks' prior written approval, which approval shall not be unreasonably withheld or delayed.

(b) Any Sublicense Agreement which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require said Sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. Licensee shall require Sublicensee(s) to comply with all provisions contained within this License, including, but not limited to, obtaining insurance required of the Licensee under this License and indemnifying the City as set forth in Articles 19 and 20 of this License.

(c) No Sublicense Agreement may be assigned without Parks' prior written approval. If approved, any subsequent Sublicense Agreement(s) will be subject to the terms and conditions set forth in this License.

1.3 During the Operating Season, Licensee shall sell only the concession items approved in advance by Parks, which approval shall not be unreasonably withheld or delayed. Licensee shall submit to Parks for approval the schedule of its proposed concession items and accompanying prices for the first Operating Season upon receipt of written Notice to Proceed; a copy of the approved concession items and prices ("Schedule of Approved Items and Prices") for the first Operating Season shall be attached hereto as **Exhibit B**. For all other Operating Seasons during the Term, Licensee shall submit its proposed revisions to the schedule for Parks approval no later than one month prior to the Operating Season. Any increase in price or change in the Schedule of Approved Items and Prices is subject to Parks' prior written approval. Should Licensee decide not to charge the maximum allowable prices for the approved concession items, this shall in no way be interpreted as a waiver of rights to charge such maximum allowable prices at any other time during the Term of this License.

1.4 The terms and conditions of any such Naming Rights Sponsorship Agreement and the entity selected as the Naming Rights Sponsor shall be subject to the prior written approval of the Commissioner, not to be unreasonably delayed. Any such Naming Rights Sponsorship Agreement which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and the Maintenance and Operation Agreement and Licensee shall require the Naming Rights Sponsor to acknowledge in writing that it received a copy of this License and the Maintenance and Operation Agreement and that all provisions of this License, and the portions of the Maintenance and Operation Agreement and any other permits applicable to the operations under this License, including but not limiting to those regarding signage and use of the City Property (as hereinafter defined), shall be equally applicable to any Naming Rights Sponsor. Licensee shall require any Naming Rights Sponsor to agree in writing that it will comply with Parks' directives and the provisions of this License and the Maintenance and Operation Agreement applicable to Licensee with respect to the use of the City Property including, but not limited to indemnifying the City as set forth in Paragraph 10 herein, and shall be responsible for assuring such compliance. If the Naming Rights Sponsor does not comply with this License and the Maintenance and Operation Agreement insofar as applicable to it, such Naming Rights Sponsor's operations shall be terminated by Licensee upon direction of Parks. No Naming Rights Sponsorship Agreement may be assigned without the prior written consent of Parks, and Licensee shall ensure that the Naming Rights Sponsorship Agreement provides that the City shall be named a third-party beneficiary of any such Naming Rights Sponsorship Agreement. Any subsequent Naming Rights Sponsorship Agreements will be subject to the terms and conditions as set forth in this License.

1.5 Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations, and orders which are or may become necessary to operate

this Concession, in whole or in part, in accordance with the terms of this License. In order to be in compliance with this License, Licensee must fulfill in all material respects all of the obligations contained herein. Failure to fulfill in all material respects any of the obligations set forth herein for any reason may be deemed as a default by the Commissioner. Whenever any act, consent, approval, or permission is required of the City or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or his duly authorized representative, and such approval or permission shall not be unreasonably withheld or delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, the Commissioner, or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his duly authorized representative.

1.6 Licensee shall ensure that any Naming Rights Sponsor whose aggregate value of City contracts, franchises, and concessions awarded during the past twelve-month period equals or exceeds one hundred thousand dollars (\$100,000) enrolls in the Mayor’s Office of Contract Services’ Procurement and Sourcing Solutions Portal (PASSPort).

ARTICLE 2: NO LEASE

2.1 It is expressly understood that the City has title to the Licensed Premises and no land, building, space, improvement, or equipment is leased to the Licensee. During the Term and any subsequent Renewal Term(s) of this License, Licensee shall have the use of the Licensed Premises and shall continue to use and occupy the Premises in compliance with the provisions and conditions of this License.

2.2 Licensee shall at all times provide free access to the Licensed Premises to the Commissioner or Commissioner’s representatives and to other City, State, and Federal officials having jurisdiction, for inspection and any other lawful purposes. Commissioner’s representatives

and such other officials shall have the right to enter and be present at the Premises to observe Licensee's operations.

ARTICLE 3: DEFINITIONS

3.1 As used throughout this License, the following terms shall have the meanings set forth below:

- (a) "Alteration" means (excepting ordinary repair and maintenance):
 - (i) any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition, or improvement to Licensed Premises; or
 - (ii) any work affecting the plumbing, heating, electrical, water, mechanical, ventilating, or other systems of the Licensed Premises.
- (b) "City" means the City of New York, its departments, and political subdivisions
- (c) RESERVED
- (d) "Commissioner" means the Commissioner of the City of New York Department of Parks & Recreation or Commissioner's designee.
- (e) "Comptroller" means the Comptroller of the City of New York.
- (f) "Excess Revenue(s)" means, for any Fiscal Year, the positive difference, if any, between Licensee's Gross Receipts and Naming Rights Sponsorship Agreement compensation for such Fiscal Year and Licensee's expenses in connection with its obligations under the Maintenance and Operation Agreement for such Fiscal Year.
 - (i) "Fiscal Year" means the period beginning each January 1 during the Term and ending December 31 of the same calendar year.
- (g) "Expendable Equipment" means all equipment and property of Licensee, other than Fixed and Additional Fixed Equipment and shall include the following:

(i) Lighting, video screens, refrigerators, heating units, and cooking equipment.

(i) “Fixed Equipment” means any property affixed in any way to the Licensed Premises existing at the time the Notice to Proceed is given, whose removal would damage the Licensed Premises.

(i) “Additional Fixed Equipment” means Fixed Equipment affixed to the Licensed Premises subsequent to the date that Notice to Proceed is given.

(ii) “Fixed and Additional Fixed Equipment” means Fixed Equipment and Additional Fixed Equipment jointly and severally.

(j) (i) “Gross Receipts” includes, without limitation, all funds or receipts of any kind received by Licensee from or in connection with its operations and programming at the Licensed Premises under this License, without deduction or set-off of any kind, from the sale or provision of goods or services of any kind, provided that Gross Receipts shall exclude the amount of any federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee. Gross Receipts shall include any orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof. For example, if Licensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place and although delivery of merchandise sold, or services rendered upon the Licensed Premises may be made other than at the Licensed Premises.

(ii) Gross Receipts also includes all sales made by other operator(s) using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Article 39 of this License Agreement, provided that Gross Receipts shall also include the Licensee's income from rental and sublicense or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee's subcontractors or sublicensees, unless otherwise approved in writing by Parks.

(iii) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the Parties that all sums received by Licensee shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee or any sublicensee directly or indirectly to employees shall not be included within Gross Receipts. For purposes of this subsection (iii):

(A) With respect to non-catered food and beverages service, a "Gratuity" shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee's customer or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee receives and pays over in total to its employees (other than management) who are primarily engaged in the serving of food or beverage to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a "food service worker" pursuant to NY Labor Law Section 652(4). Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer

of the Licensee. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee.

(B) With respect to catered events, a “Gratuity” shall be an amount no greater than 20% of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee’s customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee in total to its employees (other than management) who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee. Such documentation shall be signed and verified by an officer of the Licensee.

(iv) Gross Receipts shall include receipts received by Licensee from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment, or commodities.

(v) Reserved.

(vi) Gross Receipts shall not include Naming Rights Sponsorship Agreement compensation.

(k) “Licensed Premises” or “Premises” means the area so denoted in Exhibit A.

(l) “Operating Costs” means the actual expenses for Licensee to perform Licensee’s obligations pursuant to the Maintenance and Operations Agreement.

(m) “Parks” means the City of New York Department of Parks & Recreation.

(n) “Year” or “Operating Year” means the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year.

ARTICLE 4: TERM

4.1 This License shall become effective upon registration with the Comptroller and commence upon the date written in a written Notice to Proceed issued to Licensee by Parks (“Commencement Date”) and, unless terminated sooner in accordance with this License, shall terminate on the same date as the Maintenance and Operation Agreement (April 10, 2033) (“Termination Date”). If, at the Commissioner’s discretion, the Maintenance and Operation Agreement is renewed for one (1) or two (2) of the additional five (5) year terms (each, a “Renewal Term”), this License may also be renewed in a similar fashion for one (1) or two (2) of the additional five (5) Renewal Terms and shall expire at the end of the last of such Renewal Terms. The period between the Commencement Date and the Termination Date shall be the “Term.” In no event shall the Term exceed the term of the Maintenance and Operation Agreement.

4.2 Notwithstanding any language contained herein, this License is terminable at will by the Commissioner, in whole or in part, at any time. Such termination shall be effective after twenty-five (25) days written notice is sent to Licensee. The Commissioner, the City, Parks, its employees and agents shall not be liable for damages to Licensee if Commissioner as provided in this Agreement terminates this License. If such notice is not given, this License Agreement shall terminate as described in Section 4.1 above.

ARTICLE 5: GROSS RECEIPTS

5.1 In lieu of a license fee, Licensee will use all Gross Receipts exclusively to provide for the management, maintenance, operation and programming at the Licensed Premises, including the operations under this License Agreement, with the exception of Naming Rights Sponsorship Agreement compensation. Licensee shall submit such reports to Parks and permit Parks such audit of its books and records as Parks shall reasonably require assuring that such Gross Receipts were so used. Such reports shall include, without limitation, a report to be furnished, beginning in the second (2nd) Operating Year, no later than October 31st of each year, in a form that complies with the report attached as Exhibit C to this License Agreement, of data concerning all funds that Licensee has expended at the Licensed Premises for the preceding period of July 1st to June 30th. All information to be furnished to Parks shall be accurate, correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by Licensee at the Licensed Premises.

5.2 RESERVED.

5.3 (a) (i) On or before the thirtieth (30th) day following the end of each month of each Operating Year, Licensee shall submit to Parks, in the forms annexed as Exhibit D or other forms satisfactory to Parks:

(ii) A statement of Gross Receipts (Exhibit D), signed and verified by an officer of Licensee, reporting any Gross Receipts generated by Licensee under this License Agreement;

(b) Licensee's statements of Gross Receipts as well as all statements of gross revenues shall indicate whether or not the amounts reported are inclusive of sales tax collected.

(c) Licensee is solely responsible for the payment of all Federal, State and local taxes applicable to the operation of the Licensed Premises. With the exception of Federal, State and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts or from the compensation due under this License.

5.4 On or before the sixtieth (60th) day following the end of each Operating Year beginning in the second (2nd) Operating Year, Licensee shall submit to Parks a detailed income and expense statement (on a cash basis) pertaining to operations under this License for the preceding period of January 1st to December 31st, signed and verified by an officer of Licensee. At the same time, Licensee shall submit to Parks a detailed income and expense statement signed and verified by an officer of Licensee's Sublicensee(s), if any, pertaining to operations at that location for the preceding period of January 1st to December 31st. The statements referenced in the preceding two sentences shall be in a format approved by Parks. Neither Parks nor the City may disclose to any third party any documents or information with respect to Licensee's income or expenses in connection with its operations at the Licensed Premises, except to the extent otherwise required by court order or applicable law (including "freedom of information" laws and Local Law 28 of 2008, NYC Admin Code Sec. 18-134). For the avoidance of doubt, this prior sentence shall not apply to the Comptroller or any other authorized auditor nor prevent disclosure by the Comptroller or any other authorized auditor of any information derived from audits of this License Agreement.

5.5 (a) Licensee, during the Term of this License shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner reasonably acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. To the extent Licensee provides services such as catering at the Licensed Premises, Licensee must also document each such event via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment or other method approved by Parks. All accounting and internal control related records shall be maintained

for a minimum of ten (10) years after the date of creation of the record. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all Federal, State and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee prior to the commencement of the Term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each year's records, books of account and data for a minimum of ten (10) years after the date of creation of the record.

(c) Licensee's failure or refusal to: (i) furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, (ii) to maintain adequate internal controls or (iii) to keep any of the records as reasonably required by this Article shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License.

5.6 In the event Parks reasonably determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Sections 5.1 and 5.3 through 5.5 above, Licensee may be subject to a charge of Five Hundred Dollars (\$500.00) with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has failed to cure within thirty (30) days of such notice.

ARTICLE 6: ALTERATIONS

6.1 (a) The Licensee may alter the Licensed Premises only in accordance with the requirements of subsection (b) of this Section. Alterations shall become property of the City, at its option, upon their attachment, installation, or affixing

(b) In order to alter the Licensed Premises, the Licensee must:

(i) obtain the Commissioner's written approval (which shall not be unreasonably withheld or delayed) for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings may pertain to contemplated purchases and/or work;

(ii) ensure that work performed, and Alterations made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to section (i) of this Article, in a good and workmanlike manner, and within a reasonable time; and

(iii) notify the Commissioner of completion of, and making final payment for, any Alteration within ten (10) days after the occurrence of said completion or final payment.

(c) The Commissioner may, in her discretion and upon prior written notice to Licensee, make repairs, alterations, decorations, additions or improvements to the Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require the Commissioner to make any repairs, Alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation herein in any respect.

ARTICLE 7: FIXED AND EXPENDABLE EQUIPMENT

7.1 Licensee shall, at its sole cost and expense and to the reasonable satisfaction of the Commissioner, acquire, provide, replace, or repair, install or affix, if necessary, all equipment and materials necessary for the successful operation of this License, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises. Licensee shall be responsible for the regular maintenance and repair of Fixed and

Additional Fixed Equipment on the Licensed Premises and for keeping such Fixed and Additional Fixed Equipment in good operating condition, normal wear and tear excepted.

7.2 At its option, the City has title to all Fixed Equipment on the Premises as of the Commencement Date on the Notice to Proceed. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation, or improvement. To the extent the City chooses not to exercise such option, it shall, at the termination or expiration of this License, be the responsibility of Licensee, at its sole cost and expense and to the satisfaction of the Commissioner, be responsible for removing such equipment and restoring the Licensed Premises to Parks in a condition as good as or better than at the commencement of the Term.

7.3 Licensee shall supply at its own cost and expense all Expendable Equipment required for the proper operation of this License, and repair or replace same at its own cost and expense when reasonably requested by Commissioner. Licensee must acquire and use for the purpose intended any Expendable Equipment, which the Commissioner reasonably determines, is necessary to the operation of this License.

7.4 Title to all Expendable Equipment obtained by Licensee and not provided by the City shall remain with Licensee, and Licensee shall remove such equipment at the termination or expiration of this License. In the event that such equipment remains in the Licensed Premises following such termination or expiration, the Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

7.5 Licensee acknowledges that it is acquiring this License to use the Licensed Premises and Fixed Equipment thereon solely in reliance on its own investigation, that no representations,

warranties, or statements have been made by the City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee accepts them in their present condition “as is.”

7.6 The equipment to be removed by Licensee pursuant to this Agreement shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises, ordinary wear and tear excepted. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage it may have caused to the Licensed Premises.

7.7 Licensee shall install Energy Star approved or other similarly efficient appliances and equipment.

ARTICLE 8: UTILITIES

8.1 Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee will be required to connect to and/or upgrade any existing utility service or create a new utility system, and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures utility usage on the Licensed Premises and an account with the appropriate service providers. Licensee shall pay, and to the extent that Parks approves Licensee to sublicense any portion of the operations under this License, Licensee shall cause its Sublicense to pay, at its sole cost and expense, all utility costs associated with the operation of the Licensed Premises, including but not limited to all Department of Environmental Protection (“DEP”) water and sewer charges. Licensee shall, at its sole cost and expense, install or cause to be installed and maintained, all utilities, service lines, conduits, pipes, meters and supplies of power necessary for the proper operation of this license and pay all utility costs. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues. Licensee shall not undertake the installation of any new utility lines without

first having obtained all necessary permits and approvals from Parks and such other Federal, State, or City agencies or entities as have jurisdiction over the operation of the Licensed Premises and/or the Playfield. Licensee shall remove any unsuitable existing materials as required.

ARTICLE 9: OPERATIONS

9.1 Licensee, at its sole cost and expense, shall operate the Concession for the use and enjoyment of the general public and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations, and orders of government agencies having jurisdiction, including but not limited to the New York City Paid Sick Leave Law, attached hereto as **Exhibit H**.

9.2 Licensee shall obtain written approval from the Commissioner, not to be unreasonably delayed, prior to entering into the Naming Rights Sponsorship Agreement. The Naming Rights Sponsor entering into the Naming Rights Sponsorship Agreement with Licensee may be afforded signage and sponsorship rights as set forth in **Schedule B**.

9.3 Licensee shall record all revenue generated as a result of the operation of this License and keep books and records as required and in compliance with the provisions set forth in Articles 24 and 26 and as deemed acceptable by the Commissioner.

9.4 Licensee shall designate an officer or representative to act as a direct point of contact for the operation of this License or employ an operations manager (“Manager”), qualified to manage operations of the Concession in a manner that is reasonably satisfactory to the Commissioner.

9.5 Licensee shall provide equipment that will provide security for all monies received. Licensee shall provide for the transfer of all monies collected to Licensee’s designated banking institution and bear the loss of any lost, stolen, misappropriated, or counterfeit monies derived from operations under this License.

9.6 Licensee shall comply with all applicable laws, rules and regulations in force as of the date of this Agreement and which may hereafter be adopted.

9.7 (a) Smoking and the use of cigarettes, cigars, electronic cigarettes and other tobacco and non-tobacco smoking products anywhere on the Licensed Premises is strictly prohibited.

(b) Reserved.

(c) Licensee shall not use, in its operations, any polystyrene packaging or food containers. Additionally, Licensee is prohibited from selling any beverages in glass bottles. All beverages must be in non-glass, shatterproof containers, except when table service or catered events are approved by Parks. Licensee shall not, in its operations, sell single-use rigid plastic bottles containing a beverage with a capacity of twenty-one (21) fluid ounces or less. Plastic bottle alternatives, such as aluminum or boxed containers, are permitted.

(d) Licensee shall ensure that all customers are given paper bags made of recycled material or biodegradable plastic bags. Licensee shall use best efforts to utilize sustainable food products in its ingredients.

(e) Licensee shall adhere to and enforce the prohibitions contained in this Section 9.7.

9.8 Licensee, at its sole cost and expense, shall obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including amendments thereto) that may be required for the operation and maintenance of the Licensed Premises in accordance with all applicable Federal, State, and City laws, rules and regulations. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy (“C of O”). Licensee shall at

all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. If at the Commencement Date Licensee does not have a C of O for the Buildings because one is not legally required, then Licensee shall obtain a “Letter of No Objection” from the Department of Buildings (“DOB”). Furthermore, in the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a C of O, where required, and does not have a “Letter of No Objection,” Licensee shall diligently pursue a temporary C of O and a C of O, such certificate to be obtained within a reasonable time, as determined by the Commissioner, or may conduct its operations in temporary structures that have been approved by Parks, such approval not to be unreasonably withheld or delayed. Licensee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations hereunder.

9.9 (a) Licensee warrants that all merchandise, food, beverages and services of any kind sold or rented pursuant to this License shall be of a high quality. Licensee shall operate in such a manner as to maintain an exceedingly high health inspection rating.

(b) Any staff assigned by Licensee to sell food and beverages to the public at the Licensed Premises must possess all required Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Licensee may only operate the Licensed Premises if it has obtained the appropriate valid permits and authorizations required by DOHMH.

(c) At all times that any of the food service operations at the Licensed Premises are operating, a staff person with a valid DOHMH food handler’s license must be present. If Licensee operates without all necessary permits and licenses, it may be subject to fines and/or confiscation of merchandise and vending units.

9.10 Licensee, at its sole cost and expense, shall provide, hire, train, supervise and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (a) collecting and safeguarding all monies generated under this License;
- (b) maintaining the Licensed Premises; and
- (c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

9.11 Licensee must provide Americans with Disabilities Act (“ADA”) accessibility throughout the Licensed Premises. Licensee shall comply with all City, State and Federal laws relating to access for persons with disabilities. The Licensee shall also comply with all New York City, State and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required. Such accessibility shall be clearly indicated by signs and included in all of Licensee’s advertising. Licensee shall include in its advertising and promotion program a plan that describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for compliance with the applicable provisions of the Americans with Disabilities Act and any other similarly applicable legislation.

9.12 Pursuant to a plan approved in writing by Parks, the Licensee, at its sole cost and expense, shall be responsible for all security at the Licensed Premises and surrounding parkland and shall provide for a twenty-four (24) hour per day security system at the Licensed Premises in accordance with plans that have received the prior written approval of Parks. The Licensed Premises and any

other equipment used shall be secured every evening before closing for the day in a manner reasonably approved by the Commissioner.

9.13 (a) Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to manage all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises. Licensee shall notify Parks in writing as to said person's name and address.

(b) Licensee shall immediately notify Parks of major accidents or unusual incidents occurring on the Licensed Premises.

9.14 Licensee shall promptly notify the Commissioner of any unusual conditions that may develop with respect to the Licensed Premises in the course of the operation of this License such as, but not limited to, fire, flood, casualty and substantial damage of any character.

9.15 Licensee shall maintain close liaison with the Parks Enforcement Patrol (PEP) and New York City Police Department (NYPD). Licensee shall cooperate with all efforts to enforce Parks' Rules and Regulations at the Licensed Premises and adjacent areas. Licensee shall use its commercially reasonable efforts to prevent illegal activity on the Licensed Premises and shall immediately report any illegal activity to the police upon becoming aware of the same.

9.16 (a) Licensee may establish an advertising and promotion program, subject to Parks' prior written approval, not to be unreasonably delayed. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing any advertising matter except advertising which contains tobacco, non-tobacco smoking product, electronic cigarette or alcoholic beverage advertising, which is false or misleading, which promotes unlawful or illegal goods, services, or activities, or which is otherwise unlawful, including but not limited to

advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11. Licensee may release news items to the media as it sees fit. If the Commissioner in his reasonable discretion, however, finds any advertising or other news releases to be unacceptable, then Licensee shall cease or alter such advertisements or news releases as directed by the Commissioner.

(b) Licensee may establish with the Naming Rights Sponsor an advertising and promotion program in compliance with **Schedule B**, which shall be subject to the Commissioner's prior written approval, not to be unreasonably delayed. Licensee and/or the Naming Rights Sponsor shall have the right to print or to arrange for the printing of programs or brochures containing City Property and/or the Artwork in connection with any advertising matter except advertising matter which in the sole discretion of the Commissioner is indecent, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of SummerStage or the City of New York. If the Commissioner, in the Commissioner's discretion, finds any advertising or other releases to be unacceptable, then Licensee and/or the Naming Rights Sponsor shall cease or alter such advertisements or releases as directed by the Commissioner. The Commissioner shall have prior written approval as to design and distribution of all advertising and promotional materials. The Commissioner shall have prior written approval as to design and distribution of all advertising and promotional materials containing City Property or the Artwork, such as season brochures, which approval shall be exercised within a reasonable period of time following such request.

(c) All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. Licensee shall not advertise any product brands without Parks' prior written approval.

Licensee is prohibited from displaying, placing or permitting the display or placement of advertisements in the Licensed Premises without Parks' prior written approval.

9.17 The design, placement and content of all signage, including signage which includes Licensee's name, trade name(s) and/or logo(s), is subject to Parks' prior written approval. Any and all signage is subject to Parks' prior written approval.

9.17 Licensee must obtain Parks' prior written approval before entering into any marketing or sponsorship agreement. In the event Licensee breaches this provision, Parks shall direct the Licensee to take any action that the City may deem necessary to protect the City's interests.

9.18 Should the Commissioner reasonably determine that Licensee is not operating the Licensed Premises in a satisfactory manner, the Commissioner may in writing order Licensee to improve operations or correct such conditions, as the Commissioner may deem unsatisfactory. In the event that Licensee fails to comply with such written notice or respond in a manner reasonably satisfactory to the Commissioner within the reasonable timeframe set forth in said notice, subject to delays beyond the reasonable control of Licensee, notwithstanding any other provisions herein, then the Commissioner may terminate this License.

9.19 RESERVED

9.20 Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.

9.21 Licensee shall operate the Licensed Premises in accordance with all applicable FDNY Codes.

9.22 Parks' inspectors shall visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises and determine whether or not Licensee follows the terms of this License Agreement. Based on their inspections, if Licensee fails to provide the cleaning, maintenance, and operational services required by this License, Parks shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the timeframe set forth in such notice. If Licensee fails to cure the violation within the time frame set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess Licensee as liquidated damages payable to Parks Five Hundred Dollars (\$500.00) per day with respect to each violation of the License, until the shortcomings have been corrected, and/or suspend or terminate this License.

If an assessment is received for a violation, there is a process by which the assessment may be appealed if Licensee feels that the assessment has been assessed in error. The procedure is outlined below:

(a) Filing an Appeal

(1) If Licensee wishes to appeal the assessment, a notice of appeal must be delivered to Parks within ten (10) days along with a statement of reasons why it believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Licensee's appeal (such as photographs, documents, witness statements, etc.) should also be included.

(2) If no appeal is received within 10 days of the date the assessment is mailed, the assessment shall be considered final and charged to Licensee's account.

(b) Adjudication of Appeal

(1) The appeal shall be sent to the Director of Operations Management & Planning, whose office is located at the Arsenal, 830 Fifth Avenue, New York, NY 10065. The Commissioner has designated the Director of Operations Management & Planning to decide on the merits of these appeals. The decision of the Director of Operations Management & Planning shall constitute Parks' final decision.

(2) The Director of Operations Management & Planning is authorized to investigate the merits of the appeal but is not required to hold a hearing or to speak to Licensee in person.

9.23 Licensee recognized that this License Agreement does not grant Licensee exclusive rights to sell in the park in which the Licensed Premises are located. Moreover, Parks may grant other licenses or permits to vendors to sell the same or similar items authorized under this License Agreement within the same park as that in which the Licensed Premises are located. Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with Licensee or operate near the Licensed Premises. Parks encourages concessionaires to report illegal vendors by calling 311.

9.24 Parks makes no representations that there is adequate storage at the Licensed Premises. Licensee, at its sole expense, will be responsible for the storage of all equipment and personal property. Licensee shall be responsible for, at its sole cost and expense, obtaining any additional storage space required for the operation of the concession granted hereby. Licensee shall not store any equipment or supplies at the Licensed Premises without Parks' prior written approval. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior written approval, which shall not be unreasonably withheld or delayed.

Licensee will be required to secure all outdoor equipment, if any, on a nightly basis and anytime the concession granted hereby is closed.

9.25 Licensee shall have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the concession granted hereby. Licensee shall provide a copy of Licensee's staffing plan to Parks upon receipt of written notice to proceed.

9.26 Reserved.

9.27 Reserved.

9.28 Licensee shall notify the Commissioner within five (5) business days of any tentative schedules of private use of the Licensed Premises which would close the Licensed Premises to the general public, in which such approval by the Commissioner, shall not be unreasonably withheld or delayed. In no event shall the Licensed Premises be closed to conduct private activities during the general public hours of use, as defined under Parks' rules and regulations, except when such activities are specifically approved in advance or is sponsored by Parks. Any closure of the Licensed Premises, during public hours of use, must be announced to the general public, by posting notifications of such closure, at the Licensed Premises at least five (5) business days in advance.

9.29 Licensee must make every effort to ensure that any and all sound and/or music from its operation of the Concession is in such a manner so as to avoid or minimize disturbance to the surrounding community. Amplified sound and music must not exceed the decibel level allowed by City noise regulations. Any musical programming or other types of entertainment must end no later than 10pm. A cabaret license will be strictly prohibited at the Licensed Premises.

9.30 Licensee, or Sublicensee(s) approved by Parks, may sell alcoholic beverages at the Licensed Premises, provided that Licensee or such Sublicensee shall, prior thereto, obtain at its sole expense, all permits and licenses applicable to the sale of alcoholic beverages from the New

York State Liquor Authority and any other governmental agency having jurisdiction thereof. Alcoholic beverages must be consumed within the designated areas of the Playfield, subject to the prior approval of Parks.

ARTICLE 10: MAINTENANCE AND REPAIR

10.1 Licensee shall provide maintenance and repair of the Licensed Premises and comply with the standards as set forth in the Maintenance and Operation Agreement. A copy of the Maintenance and Operation Agreement is attached hereto as **Exhibit A**.

10.2 Licensee shall, at its sole cost and expense, operate and maintain the Licensed Premises in a good, clean, and orderly condition, ordinary wear and tear excepted, and shall be responsible for all daily maintenance of the Licensed Premises during the Operating Season to the reasonable satisfaction of the Commissioner. Any and all such maintenance and repair shall be performed in a good and workman-like manner.

10.3 Such maintenance shall include, but not be limited to:

(a) **Cleaning.**

(i) Licensee shall keep the Licensed Premises and the area within one hundred (100) feet of the Licensed Premises, neat and clean, free of all waste, garbage, refuse, rubbish, litter, dirt, debris, and obstructions at all times. Licensee shall have any of its receptacles emptied each day there is an event during the Operating Season. Rubbish removal schedules, and the location and placement of all waste receptacles, are subject to Parks' prior written approval;

(ii) Licensee shall maintain the cleanliness of all walkways, sidewalks, improvements, and facilities, on the Licensed Premises;

(iii) At its sole cost and expense, Licensee shall keep all signs and structures in good condition and shall remove any and all graffiti that may appear on the buildings and structures on the Licensed Premises during the Term of this License. Such graffiti removal shall be

commenced promptly after the appearance of any such graffiti and shall continue until such graffiti is removed; and,

(iv) Licensee shall provide regular cleaning and maintenance schedules, which are subject to Parks' approval.

(b) Recycling.

(i) In compliance with all City, State, and Federal regulations regarding recycling, Licensee shall provide patrons with appropriately labeled, sized, and well-positioned recycling bins or receptacles for glass, metal, and plastic, and bins or receptacles for paper and cardboard. Licensee shall provide adequate recycling receptacles, approved by Parks, and have those receptacles emptied after each live event during the Operating Season. The location and placement of all recycling receptacles is subject to Parks' prior written approval. The parties agree that the use of recycling receptacles provided by CPC is approved.

(c) Pest Control.

(ii) Licensee shall conduct regularly scheduled pest control inspections and extermination at the Licensed Premises and its adjacent areas, as needed. All pest control methods are subject to the prior written approval of Parks. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

(d) Other Maintenance.

(i) Licensee shall maintain all equipment and areas of the Licensed Premises in good condition and good working order at all times.

10.4 Licensee shall periodically inspect the Licensed Premises, and shall promptly notify Parks of any known hazardous condition(s) and institute reasonable measures to protect the public from

harm, including, but not limited to, the erection of warning signs and temporary barriers. Should the Commissioner, in the Commissioner's sole judgment, decide that an unsafe or emergency condition exists at the Licensed Premise, after written notification, Licensee shall have twenty-four (24) hours to correct such unsafe or emergency condition. During this period, the Commissioner may require a partial or complete suspension of use of the affected area. If such unsafe or emergency condition cannot be remedied within the specified time frame, the Licensee shall notify the Commissioner in writing and indicate the amount of time needed to correct such condition. The Commissioner, in the Commissioner's sole discretion, may extend such period of time in order to permit Licensee to cure the unsafe or emergency condition, under such terms and conditions as appropriate, such consent not to be unreasonably withheld or delayed.

ARTICLE 11: MAINTENANCE AND REPAIR STANDARDS

11.1 Licensee shall perform, or cause to be performed, maintenance and repair activities to the reasonable satisfaction of the Commissioner. Notwithstanding this provision, Licensee shall maintain the Licensed Premises in accordance with Parks' standards and/or any other standards that Parks may require in the future.

11.2 Licensee shall, at all times, operate and occupy the Licensed Premises in accordance with all applicable law and the provisions of any required licenses or permits, and shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate the Concession in accordance with applicable law.

ARTICLE 12: LICENSING AND INTELLECTUAL PROPERTY

12.1 Subject to the limitations, terms and conditions set forth in this Agreement, the City hereby grants to Licensee a non-exclusive license to use, during the Term, the City trademark (the "City Property"), attached hereto as **Schedule A**, to, upon prior written approval by the Commissioner,

directly or indirectly develop, market, and promote the Program in connection with the Naming Rights Sponsorship Agreement.

12.2 Licensee shall work with the Naming Rights Sponsor to develop, at Licensee's expense, a graphic design ("Artwork") incorporating the Sponsor's trademarks, logos, servicemarks, and other intellectual property identified and given prior approval in writing by the Commissioner for use in connection with this Naming Rights Sponsorship agreement, (individually and/or collectively the "Sponsor Property"), City Property, Licensee's trademarks, logos, servicemarks, and other intellectual property identified and given prior approval in writing by the Commissioner for use in connection with this Naming Rights Sponsorship agreement, (individually and/or collectively the "Licensee Property"), and/or trademarks, logos, servicemarks, and other intellectual property of a third party (but only to the extent identified and given prior approval in writing by the Commissioner, and subject to the representations and warranties set forth in Section 34.1(f) of this Agreement, for use in connection with this Naming Rights Sponsorship agreement) ("Third Party Property") to be used for marketing and promotional purposes in connection with the Program. Such Artwork shall be subject to the Commissioner's prior written approval. To the extent that the Artwork incorporates City Property, the City shall own the portion of any Artwork that consists of or includes City Property.

12.3 Licensee agrees to use the applicable trademark and copyright notices as directed by the City (™, ® or ©), as well as any additional notations directed by the City in connection with the first and most prominent usages of the City Property in any manner authorized by this Agreement: "SUMMERSTAGE and its design is the property of the City of New York and may not be reproduced without written consent. © 2019. City of New York. All rights reserved." Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, instruction manuals, and other promotional materials

(hereinafter the “Promotional Materials”): “SUMMERSTAGE and its design is the property of the City of New York and may not be used or reproduced without prior written consent. © 2019. City of New York. All rights reserved.” Any shortened version of such notices may be used only with the Commissioner’s prior written approval. Licensee shall require the Naming Rights Sponsor to comply with the provisions of this Article 12.3 in any Naming Rights Sponsorship Agreement. Any failure to do so shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination. The right to terminate the Agreement pursuant to this Article 12.3 is in addition to any other rights to terminate set forth in this Agreement.

12.4 Upon termination or expiration of this Agreement, Licensee shall immediately cease using the City Property and cause the Naming Rights Sponsor to cease using the City Property. Failure to do so shall cause immediate and irreparable harm to the City and Licensee and its Naming Rights Sponsor shall acknowledge this and the City shall be entitled to equitable relief in the event that use of City Property does not immediately cease upon termination or expiration of this Agreement.

12.5 Licensee may use the City Property or the Artwork for limited merchandising purposes under this Agreement, including festival t-shirts, sweatshirts, hats, ponchos and other typical festival souvenirs, provided that CPF enters into a licensing agreement with the NYC & Company that allows Licensee to produce and sell Licensee’s own merchandise. The Naming Rights Sponsor may not use the City Property or the Artwork for any merchandising without prior approval from both licensee and City. Violation of this Article 12.5 shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination. The right to terminate the Agreement pursuant to this Article 12.5 is in addition to any other rights to terminate set forth in this Agreement.

ARTICLE 13: NAMING RIGHTS SPONSORSHIP AGREEMENT COMPENSATION

13.1 With respect to the Naming Rights Sponsorship Agreement, in lieu of a license fee, Licensee shall use any revenue it receives from the Naming Rights Sponsorship Agreement to offset the high costs of the maintenance and operations of the Playfield; and programming free events at the Playfield and other locations as part of SummerStage, including but not limited to attracting a more diverse and higher profile slate of performers.

ARTICLE 14: EXCESS REVENUE

14.1 In no event shall the revenue received by Licensee from the Naming Rights Sponsorship Agreement combined with Licensee's Gross Receipts during any fiscal year exceed Licensee's expenses under the Maintenance and Operation Agreement (the "Difference"). If at any time revenue received from the operation of the License is projected by Parks to exceed the Difference, Parks shall direct Licensee to implement a plan to provide additional SummerStage related services, including but not limited to additional free events, subject to the prior written approval of the Commissioner. Failure of Licensee to comply with such written directive within the time frame specified therein shall be deemed a material breach of this License and as such will be subject to immediate termination. The right to terminate the Agreement pursuant to this Article 14.1 is in addition to any other rights to terminate set forth in this Agreement. Operating Costs shall include any and all administrative expenses directly related to the cost of events at the Playfield and other locations where SummerStage events take place and operation and maintenance of the Playfield and other locations where SummerStage events take place, including, but not limited to:

- (a) any allocation of Licensee's office rent or overhead;
- (b) any portion of the salary of the Executive Director or development or marketing professionals employed by Licensee; and,

(c) any other cost, such as insurance, which is expressly stated to be a cost to be borne by Licensee pursuant to this License.

14.2 No later than sixty (60) days after the end of each Operating Season, Licensee shall deliver to Parks an accounting setting forth its calculation of annual Operating Costs, Other Revenue Sources, and revenue received by Licensee from the operation of the Program for the preceding Operating Season, in accordance with Article 22 herein.

14.3 Licensee shall present to Parks annually a report of Licensee's Excess Revenues (as defined in Section 3.1(f)) from the previous operating year. Such report shall be furnished, beginning in the second (2nd) Operating Year, no later than October 31st of each year.

14.4 Licensee shall account for any Excess Revenues for any Fiscal Year and any disbursements therefrom in its report in a clearly identifiable manner. Any Excess Revenues shall be used exclusively to pay: (i) accumulated Operating Costs incurred in the prior Fiscal Year; or (ii) Operating Costs incurred in any subsequent Fiscal Year, subject to submission to Parks of the report described in Section 5.1.

ARTICLE 15: SIGNS

15.1 Pursuant to the provisions of the Maintenance and Operation Agreement, Licensee shall display, at its sole cost and expense and with the Commissioner's reasonable approval, such signs as may be needed to guide and inform the public as to the location, purpose, hours of operation, and related fees of the Playfield. Licensee shall maintain such signs in good condition and repair and shall also include the Parks logo and indicate that the Playfield is operated by Licensee through a license agreement with Parks. All signs must face inward towards the Playfield and not out towards the other areas of Central Park, except those required for directional or instructional purposes. As to any signage under this Agreement related to Program events outside of Central

Park, such signage shall be subject to the terms and conditions set forth in the special event permit for that event.

15.2 Pursuant to the provisions of the Maintenance and Operation Agreement, Licensee shall, at its sole cost and expense, post throughout the Playfield such signs as may be necessary to direct patrons to its services and facilities. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. Licensee shall, obtain any necessary approvals or permits from any governmental agency with jurisdiction over any nearby highways, streets, or other specified location contemplated for the placement of any signs off-site of the Playfield. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior written approval. As to any signage under this Agreement related to Program events outside of Central Park, such signage shall be subject to the terms and conditions set forth in the special event permit for that event and subject to the Commissioner's prior written approval.

ARTICLE 16: TRADEMARK OWNERSHIP

16.1 Licensee agrees that by virtue of this Agreement it does not and shall not claim any right, title, or interest in the City Property, or any other intellectual property right owned or claimed by the City or any part thereof (except the right to use them in accordance with this Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City, to the extent that such uses incorporate City Property. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the City Property (and in the Artwork to the extent it incorporates City Property) and the validity of the trademarks and service marks that are part of the City Property (or Artwork to the extent that it incorporates City Property) and the City's rights therein. Licensee agrees that neither it nor the Naming Rights Sponsor will raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the City Property; the Artwork, to the extent that it includes City Property; to Article 12, Article 16, and Article 17 herein;

or to the validity of the City Property (or the Artwork to the extent that it incorporates City 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 City Property or the Artwork to the extent that it incorporates City Property. Licensee shall require the Naming Rights Sponsor to comply with the provisions of this Article 16.1 in any Naming Rights Sponsorship Agreement. Any failure to do so shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination.

16.2 Licensee agrees to assist the City in protecting the City's rights to the City Property (and the Artwork to the extent that it incorporates City Property), including but not limited to reporting to the City any infringement or imitation of the City Property or the Artwork. The City shall have the sole right to determine whether to institute litigation with respect to such infringements of City Property or the Artwork to the extent that it incorporates City Property, as well as the right to select counsel to represent the City in such litigation. The City may commence or prosecute any claims or suits for infringement of the City Property or the Artwork to the extent that it incorporates City Property in its own name or, with Licensee's prior written approval, in the name of Licensee or with Licensee's prior written approval, join Licensee as a party thereto. If the City brings an action against any infringement of the City Property or the portion of any Artwork that infringes City Property, Licensee shall cooperate with the City at its own cost and Licensee shall have the right to select counsel to represent Licensee in such litigation.

16.3 If claims are made against the City, or Licensee with respect to the use of the City Property or the Artwork to the extent that it incorporates City Property, 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 or the Naming Rights Sponsor of the City Property or any Artwork that incorporates City Property.

16.4 Licensee agrees to make modifications requested by the City in Licensee's or Naming Rights Sponsor's use of the City Property or any Artwork incorporating City Property, 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.

ARTICLE 17: GOODWILL

17.1 Licensee and any Naming Rights Sponsor recognize and acknowledge that the City Property, any Artwork to the extent that it incorporates City 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 City Property has acquired secondary meaning in the mind of the public. The City Property or any Artwork to the extent that it incorporates City 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 the license granted by this section immediately, upon written notice to Licensee, in the event that any part of the City Property or any Artwork to the extent that it incorporates City Property are used by Licensee or the Naming Rights Sponsor (a) in connection with any illegal, illicit or immoral activity, or (b) in any way which, in the reasonable judgment of the Commissioner, is inconsistent with or damaging to the City's name or reputation. Licensee and its Naming Rights Sponsor acknowledge that such uses shall cause immediate and irreparable harm to the City and the City

shall be entitled to equitable relief in the event that use of City Property or any Artwork to the extent that it incorporates City Property does not immediately cease upon termination or expiration of this Agreement. Licensee shall require the Naming Rights Sponsor to comply with the provisions of this Section in any Naming Rights Sponsorship Agreement. Any failure to do so shall constitute a material breach of this Agreement by Licensee and be cause for immediate termination. The right to terminate the Agreement pursuant to this Section 17.1 is in addition to any other rights to terminate set forth in this Agreement.

17.2 Licensee and any Naming Rights Sponsor shall use the City Property and any Artwork incorporating City Property only in the manner specified by the City. Licensee acknowledges and agrees, and will require any Naming Rights Sponsor to acknowledge and agree, that all use of and goodwill in the City Property and Artwork shall inure to the sole benefit of the City or the trademark owner whose marks are incorporated into the Artwork. Except for the rights granted under this Agreement, neither Licensee nor any Naming Rights Sponsor shall acquire any rights in the City Property or Artwork by virtue of any use it makes of the City Property. Neither Licensee nor any Naming Rights Sponsor shall attempt to register the City 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 or any Naming Rights Sponsor 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 City Property or Artwork except to the extent that such use is preapproved in advance in writing by the City and any marks, names, domain names, designations or indicia that are the same as or similar to the City Property or the Artwork are used, adopted or registered for the benefit of the City, and are assigned to the City, at the expiration or termination of this Agreement.

17.3 Licensee agrees not to use any artwork or other materials conceived under or resulting from this Agreement and the Naming Rights Sponsorship (other than any Sponsor Property, Licensee Property, or Third Party Property), including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, photographs, sound and/or video recordings, films, broadcasts, brochures, printed material, or any other tangible work in any media (including but not limited to social media) or format, now known or hereafter discovered, as well as copies of any of these, whether developed by Licensee or on behalf of Licensee, without prior approval of the City, whose approval shall not be unreasonably withheld or delayed. The foregoing shall not apply to the Licensee's right to record performances at the Licensed Premise and exploit such performances, provided the City Property, if any, embodied in such recordings shall appear solely in the manner in which such City Property appears on any signage at the Licensed Premises as permitted hereunder and Licensee provides City with a perpetual royalty free license to use any such recordings for similar such City purposes. However, if Licensee can demonstrate to the City's reasonable satisfaction that Licensee cannot secure clearances from any applicable third parties with respect to third party owned materials, then City and Licensee will in good faith negotiate regarding how to address such a circumstance. In the event of a non-public event that is created entirely by Licensee, the Parties will negotiate in good faith regarding the rights concerning such event if City Property is involved.

17.4 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 City Property, to include additional elements to the City Property, or to discontinue use of some or all of the elements of the City Property. Accordingly, the City does not represent or warrant that the City Property or any elements thereof will be maintained or used in any particular fashion by the City. Any new elements or modifications to existing elements used by the City following the execution of this

Agreement may be included in, or deleted from (as applicable), the City 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 City Property within a reasonable period of time from Licensee's receipt of such written request. The Parties shall mutually agree on the manner in which such request shall be implemented.

ARTICLE 18: PROHIBITIONS ON USE

18.1 Nuisance and Waste. Licensee shall not create or suffer to be created any nuisance or danger to the public safety or public property in, on or around the Licensed Premises and shall not commit or cause any waste, damage, disfigurement, or injury to the Licensed Premises.

18.2 Licensee should be aware that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. As such, the following terms and conditions shall apply:

(a) If the Licensee wants to sell merchandise that uses the City's trademark, Licensee shall purchase such merchandise from authorized licensees of the City of New York, or Licensee shall enter into a licensing agreement with the NYC & Company that allows Licensee to produce and sell Licensee's own merchandise; and,

(b) The knowing sale of counterfeit or unlicensed merchandise by this Licensee will result in immediate termination of this License Agreement.

18.3 Parks will not permit the sale of merchandise promoting sports figures, cartoon characters, commercial products, or non-park-related events.

18.4 Licensee shall not use or allow the Licensed Premises to be used or occupied for any unlawful purpose or in violation of the provisions on the use of the Licensed Premises as set out in this License.

ARTICLE 19: INSURANCE

19.1 Licensee's Obligation to Insure:

(a) From the date, this License is executed through the date of its expiration or termination, the Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements. The City may require higher liability limits, provided they are commercially reasonable, if, in the Commissioner's opinion, Licensee's operations warrant it.

(b) The Licensee is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

19.2 Commercial General Liability Insurance:

(a) The Licensee shall maintain Commercial General Liability insurance for **Three Million Dollars (\$3,000,000.00)** per occurrence for bodily injury (including death) and property damage and **One Million Dollars (\$1,000,000.00)** per occurrence for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least **Two Million Dollars (\$2,000,000.00)**. This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

(b) Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an **Additional Insured** for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent editions of ISO Form CG 20 26 and CG 20 37, and the limits for the City shall be no lower than Licensee's.

“Blanket” or other forms are acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

19.3 Workers Compensation Insurance, Employers Liability and Disability Benefits Insurance:

(a) The Licensee shall maintain Workers’ Compensation Insurance, Employers Liability Insurance and Disability Benefits Insurance on behalf of, or with regard to, all employees involved in the Licensee’s operations under this License, and such insurance shall comply with the laws of the State of New York.

19.4 Commercial Automobile Liability Insurance:

(a) With regard to all operations under this License, in the event that vehicles are brought onto the Licensed Premises or used in Licensee’s operations, Licensee shall maintain or cause to be maintained Commercial Automobile Liability Insurance in the amount of at least one million dollars (\$1,000,000.00) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned, or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

(b) If vehicles are used for transporting hazardous materials, such Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

19.5 Liquor Law Liability Insurance

(a) In the event the Licensee shall serve alcohol on the Licensed Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than Two million (\$2,000,000) per occurrence, and name CPC and the City as additional insureds pursuant to ISO Form CG 20 26. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

(b) In the event the Licensee shall permit sublicensees or others to serve alcohol on the Licensed Premises, the Licensee shall carry or cause each such person to carry liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, and name CPF, CPC and the City as additional insureds pursuant to ISO Form CG 20 26. Such insurance shall be effective prior to the commencement of any service of alcohol by such person on the Licensed Premises and continue throughout such operations.

19.6 General Requirements for Insurance Coverage and Policies:

(a) Policies of insurance required under this Paragraph shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A-/"VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Commissioner.

(b) Policies of insurance required under this Paragraph shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(c) Wherever this Article requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that Licensee can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

(d) There shall be no self-insurance program with regard to any insurance required under this Paragraph unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including, but not limited to, the defense and indemnification obligations that insurers are required to undertake in liability policies.

(e) The City's limits of coverage for all types of insurance required under this Article shall be the greater of:

(i) The minimum limits set forth in this Article; or,

(ii) The limits provided to the Licensee under all primary, excess, and umbrella policies covering operations under this License.

(f) All required policies, except for Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the **Commissioner, New York City Department of Parks & Recreation, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New, York, NY 10007.** Such notice is to be sent at least thirty (30) days before the expiration, cancellation, or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(g) All required policies, except Workers' Compensation Insurance, Employers Liability Insurance and Disability Benefits Insurance, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

19.7 Proof of Insurance:

(a) Certificates of Insurance for all insurance required in this Article must be submitted to and accepted by the Commissioner prior to or upon execution of this License.

(b) For Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance policies, the Licensee shall submit one of the following:

(i) C-105.2 Certificate of Worker's Compensation Insurance;

(ii) U-26.3 – State Insurance Fund Certificate of Workers’ Compensation Insurance;

(iii) Request for WC/DB Exemption (Form CE-200);

(iv) Equivalent or successor forms used by the New York State Workers’ Compensation Board; or,

(v) Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of Workers’ Compensation coverage.

(c) For all insurance required under this Article other than Workers’ Compensation, Employers Liability and Disability Benefits, the Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall:

(i) Certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and,

(ii) Be accompanied by the provision(s) or endorsement(s) in the Licensee’s policy/ies, including its general liability policy, by which the City has been made an Additional Insured or Loss Payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed “Certification by Insurance Broker or Agent” in the form annexed in **Exhibit G** or as otherwise required by the Commissioner or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner before the expiration date of coverage of all policies required under this License. Such Certificates of Insurance shall comply with subparagraphs © (i) and (ii) directly above.

(e) The Commissioner's acceptance or approval of a Certificate of Insurance or any other matter does not waive Licensee's obligation to ensure that insurance fully consistent with the requirements of this Paragraph is secured and maintained, nor does it waive Licensee's liability for its failure to do so.

(f) The Licensee shall be obligated to provide the City with a copy of any policy of insurance required under this Article upon the Commissioner or the New York City Law Department's request.

19.8 Miscellaneous:

(a) The Licensee may satisfy its insurance obligations under this Article through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(b) The Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the City is an insured under the policy.

(c) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Paragraph, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License, including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees, no later than twenty (20) days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or

accident, and the identity of the persons or things injured, damaged, or lost. The Licensee shall simultaneously send a copy of such notice to:

City of New York Law Department
c/o Insurance Claims Specialist
Affirmative Litigation Division
100 Church Street
New York, NY 10007

(d) The Licensee's failure to secure and maintain insurance in complete conformity with this Paragraph, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Paragraph shall constitute a material breach of this License. Such breach shall not be waived or otherwise excused by the City's action or inaction at any time.

(e) Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this License, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this License or the law.

(f) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Paragraph, the Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(g) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, the Licensee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Paragraph, whether or not such insurance is actually procured or claims are paid thereunder, or any other

insurance applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors, or subcontractors.

(h) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 21.2, and such insurance shall include City, together with its officials and employees, as Additional Insureds with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License Agreement and requires such entity to name Licensee as an Additional Insured under such insurance, Licensee shall ensure that such entity also names City, together with its officials and employees, as Additional Insureds (with coverage for Commercial General Liability Insurance) at least as broad as ISO form CG 20 26).

(i) [Intentionally Omitted].

(j) If the Licensee receives, notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated), for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, New York City Department of Parks & Recreation, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, attn.: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY 10007. Notwithstanding the above, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

ARTICLE 20: RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION

20.1 Licensee Responsibility

(a) Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

(b) Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

(c) Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, or any other person.

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

20.2 Indemnification and Related Obligations

(a) To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City and the Central Park Conservancy (“CPC”), and their respective officials and employees, harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not Licensee itself had been negligent) and/or Licensee’s failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude the City or CPC, or their respective officials and employees, from being completely indemnified by Licensee, the City and CPC, and their officials and employees, shall be partially indemnified by Licensee to the fullest extent permitted by law.

(b) Licensee shall defend, indemnify and hold the City and CPC harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City and CPC may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by Licensee of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by Licensee or the Naming Rights Sponsor in the performance of this Agreement. Licensee shall defend, indemnify, and hold the City and CPC harmless regardless of whether or not the alleged infringement arises out of compliance with this Agreement. Insofar as the facts or law relating to any claim would preclude the City and CPC from being completely indemnified by Licensee, the City and CPC shall be partially indemnified by Licensee to the fullest extent permitted by law.

ARTICLE 21: ASSUMPTION OF RISK

21.1 Licensee assumes all risk in the operation of this License.

ARTICLE 22: INSPECTION AND AUDITS

22.1 Licensee will make available, upon reasonable prior notice, at its principal place of business, for audit, inspection or removal of copies by Parks, the Comptroller, and a Parks-authorized independent auditor, Licensee's books and records relating to the performance of this Agreement, including, but not limited to, the following:

(a) Revenue and expenditures, annual budget, bi-weekly payroll recap, fringe benefits, books, accounts, canceled checks, and all other fiscal records;

(b) Staff and salary roster, including salary changes and adjustments;

(c) Internal and external audits completed within the last three (3) years;

(d) Minutes of meetings of the Board of Directors;

(e) Programs, research, and other reports and publications in connection with Licensee's responsibilities at the Licensed Premises pursuant to this Agreement; and,

(f) Registration and attendance records of Licensee's sponsored programs and any other matters relating to the performance of and compliance with this Agreement, or with any laws or regulations governing the Licensee's conduct under this Agreement.

22.2 Licensee will establish and maintain accurate records and accounts, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this License and any revenue generated pursuant to this Agreement. Such records and accounts shall conform to generally accepted accounting principles ("GAAP").

22.3 Licensee shall use accounting and internal control methods and procedures and keep additional books and records as may be reasonably prescribed by Parks or the Comptroller. Parks or the Comptroller shall have the right to examine Licensee's record keeping procedures before the commencement of the Term, and at any other subsequent time to assure that the procedures are adequate to reveal the true, correct and entire business conducted by Licensee.

22.4 Licensee's failure or refusal to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal to maintain adequate internal controls or to keep any of the records required by this Paragraph after receiving Parks or the Comptroller's prior written notice, or the existence of any unexplained discrepancy, as disclosed by audit conducted by Parks or the Comptroller, the results of which are provided by written notice to Licensee in each instance, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default under this Agreement, which shall entitle Parks, at its option, to terminate this License.

22.5 Licensee shall make available to the Comptroller, and Parks' auditor, on demand, all books, records, documents, and correspondence pertaining to the License Agreement, for the purpose of examination, audit, review, or any purpose deemed necessary by the Comptroller and Parks; provided, however, that Licensee shall not be obligated to make available for examination or copying the identities of Licensee's donors.

22.6 Notwithstanding the foregoing, the Parties acknowledge and agree that the Comptroller's powers, duties and obligations under the Charter provisions shall not be diminished, compromised or abridged in any way.

ARTICLE 23: NO REMOVAL OF RECORDS FROM THE LICENSED PREMISES

23.1 Where performance of this License may involve the use by Licensee of Parks' papers, files, data, or records at Parks' facilities or offices, Licensee shall not remove any such papers, files, data, or records, therefrom without the prior written approval of the Commissioner.

ARTICLE 24: RETENTION OF RECORDS

24.1 Licensee agrees to retain all books, records, and other documents relevant to this License for ten (10) years from the date of the creation of the record. City, State, and Federal auditors shall

have full access to and the right to examine any of said materials during this period, upon reasonable prior notice.

ARTICLE 25: RESERVED

ARTICLE 26: PERSONNEL

26.1 All experts, consultants, independent contractors, specialist, trainees, agents and employees of Licensee or any Naming Rights Sponsor who are employed by Licensee or any Naming Rights Sponsor to perform work under this License Agreement are neither employees of the City or CPC, nor under contract to the City or CPC, and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License Agreement. Nothing in this License Agreement shall impose any liability or duty on the City or CPC for acts, omissions, liabilities or obligations of Licensee, any Naming Rights Sponsor, or any person, firm, company, agency, association, corporation or organization engaged by Licensee or any Naming Rights Sponsor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

ARTICLE 27: NO DISCRIMINATION

27.1 Licensee shall not unlawfully discriminate against any employee, applicant for employment, or patron because of race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act (“ADA”) and regulations pertaining thereto as applicable. Any violation of this Article 30 shall be a material breach of this License. All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

ARTICLE 28: WAIVER OF COMPENSATION

28.1 Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Playfield and/or at the site of any of the non-Central Park portions of SummerStage, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharge the Commissioner, the Commissioner's agents, and the City from any and all demands, claims, actions, and causes of action arising from any of the aforementioned causes.

28.2 Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, or any other payment whatsoever, in the event this License is terminated by the Commissioner earlier than the fixed Term because the Playfield, and/ or the site of any of the non-Central Park portions of SummerStage is required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

ARTICLE 29: INVESTIGATIONS

29.1 (a) The parties to this License shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (hereinafter "State") or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, 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, the State, 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, 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 or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then

(A) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

(B) 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 Section 29.1(d) below without the City incurring any penalty or damages for delay or otherwise.

(c) The penalties which may attach after a final determination by 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 of any person or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 29.1(d)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 29.1(d)(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.

(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 (c) 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 Section 29.1(b)(ii)(A) 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 potentially adverse impact a penalty will have on such person or entity.

(e) (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 or otherwise transacts business with the City.

(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.

(f) In addition to and notwithstanding any other provision of this License the Commissioner or agency head may in his or her sole discretion terminate this License upon not less than three days written notice in the event 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 of other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Licensee, or affecting the performance or this License Agreement.

ARTICLE 30: NOTICE

30.1 All notices from Licensee to Parks shall be in writing and delivered by mailing a copy of such notice by registered or certified mail, return receipt requested, or by hand delivering with confirmation of receipt, to the Office of the Revenue Division, New York City Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, or such other address as Parks may designate, with copies sent to Parks' General Counsel at the same address. All notices from Parks to Licensee shall be dispatched in the same manner, and delivered to Licensee at The Arsenal, Central Park, 830 Fifth Avenue, 2nd Floor, New York, NY 10065, Executive Director, or such other address as may be notified from time to time. Notices shall also be given by electronic mail to the electronic mail addresses for each party provided at the beginning of this License Agreement.

ARTICLE 31: PARKS' RIGHT TO TERMINATE

31.1 Parks may terminate this License for cause as follows:

(a) Should Licensee materially breach or fail to comply with any of the provisions of this License or any Federal, State, or local law, rule, regulation, or order affecting the License or the Program with regard to any and all matters, the Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation, or order. In the event that Licensee fails to respond in a reasonable manner to the Commissioner, substantially comply with such written notice, or commence, in good faith and with due diligence, efforts to comply

with such order within the time frame set forth in said notice from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee and notwithstanding any other provisions herein, then this License may immediately terminate. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation, or order follows thereafter, the Commissioner, by notice in writing, may revoke and terminate this License. Such revocation and termination shall be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on one (1) day's notice:

(i) the appointment of any receiver of Licensee's assets;

(ii) the making of a general assignment for the benefit of creditors;

(iii) the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the License;

and,

(iv) the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

(c) Nothing contained in Sub-paragraphs (a) or (b) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which the Commissioner may terminate this License.

(d) Upon expiration or earlier termination of this License by the Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment, or any other payment whatsoever against the Commissioner or City.

(e) In the event the Commissioner terminates this License for reasons related to Sub-paragraphs (a) or (b) above, any property of Licensee on the Licensed Premises may be held and

used by Commissioner in order to operate the Concession during the balance of the Operating Season and may be held and used thereafter until all debts incurred by Licensee hereunder, at the time of termination of this License, are paid in full.

(f) Licensee agrees that upon the expiration or earlier termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Licensed Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or earlier termination of this License, the City reserves the right to take immediate possession of the Licensed Premises.

(g) Licensee shall within thirty (30) days following the expiration or earlier termination of this License, remove all personal possessions from the Licensed Premises. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or earlier termination of this License is intended to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should all possessions fail to be removed from the Licensed Premises within thirty (30) days following the earlier expiration or date of termination of this License. All obligation of Licensee hereunder will remain in effect until the Licensed Premises are fully vacated and all property has been removed.

(h) If this License is terminated as provided herein, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution, or damages therefore and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

ARTICLE 32: RESPONSIBILITY FOR PROPERTY AFTER TERMINATION

32.1 Licensee shall be held responsible for the condition of all property belonging to the City upon the earlier termination or expiration of this License, ordinary wear and tear excepted. Upon

such earlier termination or expiration, Licensee shall quit the Licensed Premises and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

ARTICLE 33: COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

33.1 Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees, and invitees, including any Naming Rights Sponsor, to conform to all rules, regulations, and orders prescribed as of the date hereof or which may hereafter be reasonably prescribed by the Commissioner, provided Commissioner shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders hereafter prescribed by Parks, and comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Playfield and the site of any of the non-Central Park portions of SummerStage and the Licensee's use and occupation thereof. This provision includes, but is not limited to, the Parks' Rules and Regulations as set forth in 56 RCNY §1-01 et seq., the New York State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

ARTICLE 34: REPRESENTATIONS, WARRANTIES, AND COVENANTS

34.1 Licensee makes the following representations and warranties:

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

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

(c) The execution and delivery of this License, and compliance with the provisions herein, do not and will not conflict with or constitute a violation of or default under Licensee's

Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust, or other agreement or instrument to which Licensee is bound, or, to the knowledge of Licensee, any statute, order, rule, or regulation of any court, governmental agency or body having jurisdiction over Licensee or any of its activities or properties.

(d) Licensee has neither been asked to pay, offered to pay nor paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of this License.

(e) Licensee has not employed any person to solicit or procure this License, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee, or any other compensation in connection with the procurement of this License.

(f) Licensee is the sole and exclusive owner of the Licensee Property required in connection with promoting the Program during the Term of this Agreement; it is free, clear, and unencumbered; no part of it is taken from or based on any other work; no part violates the right of any other person or infringes any copyright, trademark, or any other intellectual property right; and the reproduction, publication, exhibition, or any other use by the City of the Licensee Property in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person. Licensee further represents and warrants that, prior to identifying and seeking the Commissioner's approval of any Third Party Property, it has obtained, or caused the Naming Rights Sponsor to obtain, all applicable rights to use such Third Party Property; that no part of such use violates the right of any other person or infringes any copyright, trademark, or any other intellectual property right; and the reproduction, publication, exhibition, or any other use by the City of the Third Party Property in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person. Licensee shall ensure that the Naming Rights Sponsorship Agreement provides that the Naming Rights Sponsor represents and warrants that the Naming Rights Sponsor is the sole and exclusive owner of the Sponsor Property required in connection

with promoting the Program during the Term of this Agreement; it is free, clear, and unencumbered; no part of it is taken from or based on any other work; no part violates the right of any other person or infringes any copyright, trademark or any other intellectual property right; the reproduction, publication, exhibition, or any other use by the City of the Sponsor Property in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person. Licensee shall ensure that the Naming Rights Sponsorship Agreement provides that the Naming Rights Sponsor represents and warrants that, prior to identifying and seeking the Commissioner's approval of any Third Party Property, it has obtained all applicable rights to use such Third Party Property; that no part of such use violates the right of any other person or infringes any copyright, trademark, or any other intellectual property right; and the reproduction, publication, exhibition, or any other use by the City of the Third Party Property in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person.

34.2 Licensee covenants and agrees that during the Term, it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 35: CONFLICT OF INTEREST

35.1 Licensee represents and warrants that neither it nor any of its officers, trustees, members, partners, employees, or volunteers has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Licensee further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License

which affects his or her personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

**ARTICLE 36: PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND
SUBLICENSES**

36.1 Subject to the terms of this Article 36, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent (10%) or more of the shares of or interest in Licensee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Playfield, and/or the site of any of the non-Central Park portions of SummerStage, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

Should Licensee choose to assign or sublicense the management and operation of any element of the Playfield, and/or the site of any of the non-Central Park portions of SummerStage to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided herein which approval shall not be unreasonably withheld or delayed. The Commissioner may request any additional information she deems reasonably necessary and Licensee shall promptly comply with such requests.

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in ten percent (10%) or more in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee or its nominee may be made under any circumstance if such

sale or transfer will result in a change of control of Licensee violative of the intent of this Section 36.

36.2 No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten percent or more of stock or voting control of Licensee in the Playfield and/or the site of any of the non-Central Park portions of SummerStage without the prior written consent of Commissioner, which shall not be unreasonably withheld. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Playfield and/or the site of any of the non-Central Park portions of SummerStage. The constraints contained herein are intended to assure the City that the Playfield and the site of any of the non-Central Park portions of SummerStage are operated by persons, firms and corporations, which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Playfield and/or the site of any of the non-Central Park portions of SummerStage.

36.3 No consent to or approval of any assignment or sublicense granted pursuant to this Section 36 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License. The right to terminate the License pursuant to this Section 36.3 is in addition to any other rights to terminate set forth in this License.

36.4 In the event that Parks authorizes Licensee to enter into a sublicense for operations at the Licensed Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of Parks. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the renovation, operation and maintenance of the Licensed Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with Parks' directives and the provisions of this License applicable to Licensee with respect to the renovation, operation, and maintenance of the Licensed Premises, including, but not limited to, obtaining insurance required of Licensee under this License Agreement and indemnifying the City as set forth in Article 19 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this License insofar as applicable to it, Parks may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of Parks. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this License.

36.5 Licensee and proposed assignee/transferee shall comply with all applicable PASSPort procedures in connection with any such assignment/transfer

ARTICLE 37: FEDERAL EMPLOYER IDENTIFICATION NUMBER

37.1 Licensee represents that it is not in arrears to the City upon any debt, contract, or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of Licensee to receive public contracts or concessions.

The Federal Employer Identification Number of Licensee is 13- 3561657.

ARTICLE 38: PARKS' RESERVATION OF RIGHTS AND INTERESTS

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

38.2 Public Communications. In any statement or release made to the public relating to the subject of this License, Licensee will conspicuously acknowledge the involvement of Parks. If the Commissioner finds that any release, advertisement, or statement made to the public relating to the programs and activities offered through the Program is incorrect or unacceptable, Licensee and the Commissioner agree in good faith to make such release, advertisement, or statement accurate and acceptable to both parties.

38.3 Publications. If Licensee publishes a work, such as a book, discussing any aspect of performance of any service covered by this License, Licensee will acknowledge therein the involvement, if any, of the City, when appropriate, and to the extent Licensee has the ability to grant such rights, the City will have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use such publication.

38.4 Intentionally Omitted.

38.5 NYC Parks expressly reserves the right, in consultation with Licensee, to schedule and conduct events, alone or in conjunction with co-sponsors, including but not limited to concerts, fairs and festivals in the Licensed Premises.

38.6 Large-Scale Citywide Events. Should any large-scale citywide event as determined by the City be awarded to the City during the Term:

- (a) the City, at its sole discretion, may require Licensee to cease to sell and place advertising at the Playfield and/or other locations during the event period;
- (b) the City, at its sole discretion, may impose restrictions on the parties who may

advertise at the Playfield and/or other locations and/or the nature of the advertising during the event period;

(c) the City or its designated representative may assume control of advertising sales and placement during the event period;

(d) the Licensee shall continue to comply with all other terms of this Agreement, except as expressly set forth herein.

Any material displayed or placed in violation of Section 38.6 shall be removed by Licensee within forty-eight (48) hours of notice from Parks. If Licensee fails to do so, the City shall have the right to remove such material without any liability to Licensee and Licensee shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work.

ARTICLE 39: WAIVER OF JURY TRIAL

39.1 Licensee hereby expressly waives all rights to trial by jury in any summary proceeding hereafter instituted by the City or CPC against Licensee or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants, or conditions of this License or the use and occupation of the Playfield and/or the site of any of the non-Central Park portions of SummerStage or any matter whatsoever in any way connected with this License, including, but not limited to, the relationship between the City and Licensee. The provision relating to waiver of jury trial shall survive the expiration or earlier termination of this License.

(a) No action at law or proceeding in equity against the City or CPC 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 shall have

strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(b) No action shall lie or be maintained against the City or CPC by Licensee upon any claims based upon this License unless such action shall be commenced within six (6) months of the termination or conclusion of this License, 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 brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all assistance which the City of New York may reasonably require of Licensee.

ARTICLE 40: USE OF NAME

40.1 The parties will not use the name of the other party, its subsidiaries, or affiliates in any sales or marketing publication or advertisement without prior full disclosure of such use and the written consent of the other party, such consent not to be unreasonably withheld or delayed. This provision will survive any termination of this License.

ARTICLE 41: CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

41.1 This License Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Licensee and shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the City or CPC arising under this License or related thereto shall be heard and determined either in the courts of the United States (“Federal Courts”) located in New York City or in the courts of the State of New York (“New York State Courts”) located in the City and County of New York. To effect this License and intent, it is understood:

(a) If the City or CPC initiates any action arising out of this License against Licensee in Federal Court or in New York State Court, service of process may be made on Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to Licensee as their address is set forth in this License, or to such other address as Licensee may provide to the City in writing;

(b) With respect to any action arising out of this License between the City, CPC, and Licensee in New York State Court, Licensee expressly waives and relinquishes any rights they might otherwise have to:

- (i)** move to dismiss on grounds of forum non conveniens;
- (ii)** remove to Federal Court; or,
- (iii)** move for change of venue to a New York State Court outside New York County.

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

(d) If Licensee commences any action arising out of this License against the City or CPC in a court located other than in the City and State of New York, upon request of the City or CPC, Licensee shall consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York, or if the court where the action is initially brought will not or cannot transfer the action, Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

ARTICLE 42: RESERVED

ARTICLE 43: NO CLAIM AGAINST OFFICIALS OR EMPLOYEES

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

ARTICLE 44: ALL LEGAL PROVISIONS DEEMED INCLUDED

44.1 Each and every provision of law required to be inserted in this License shall be and is deemed inserted herein, whether or not actually inserted.

ARTICLE 45: SEVERABILITY

45.1 If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 46: HEADINGS AND TABLE OF CONTENTS

46.1 The headings of articles and paragraphs contained in this License are inserted for convenience only and shall not be deemed to constitute part of this License Agreement or to affect the construction thereof. The use in this License Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others as the context may require.

ARTICLE 47: ENTIRE AGREEMENT

47.1 This License constitutes the entire agreement between the parties and cannot be changed, modified or terminated orally, but only by an instrument in writing executed by Commissioner and Licensee.

ARTICLE 48: MODIFICATION

48.1 This License Agreement constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License Agreement may be modified from time to time by agreement in writing, but no modification of this License Agreement shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification

ARTICLE 49: JUDICIAL INTERPRETATION

49.1 Should any provision of this License require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule of construction that a document should be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation of this License and that legal counsel was consulted by each responsible party before the execution of this License.

ARTICLE 50: COUNTERPARTS

50.1 This License may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same License.

IN WITNESS WHEREOF, the parties hereto have caused this License to be signed and sealed on the day and year first above written.

CITY OF NEW YORK
PARKS & RECREATION

CITY PARKS FOUNDATION, INC.

By: _____

By: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

APPROVED AS TO FORM:
Certified as to Legal Authority

Acting Corporation Counsel

Dated: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ___ day of _____, 2023, before me personally came _____, who being duly sworn by me did depose and say that he/she resides at _____ and that he/she is the _____ of the City Parks Foundation, Inc., described herein and who executed the foregoing instrument and acknowledged that he/she executed the same in his/her official capacity and for the purposes mentioned therein.

NOTARY PUBLIC

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this ___ day of _____, 2023, before me personally came _____ to me known and known to me to be the _____ of the Department of Parks & Recreation of the City of New York, and the said person described in and who executed the foregoing instrument, and he/she acknowledged that he/she executed the same in his/her official capacity and for the purpose mentioned therein.

NOTARY PUBLIC

EXHIBIT A – MAINTENANCE AND OPERATIONS AGREEMENT

Attached

**EXHIBIT B - SCHEDULE OF APPROVED ITEMS AND PRICES FOR THE FIRST
OPERATING SEASON**

Licensee to provide on Notice to Proceed

EXHIBIT C - FORM OF REPORT UNDER NYC ADMINISTRATIVE CODE § 18-134

Local Law 28 of 2008 Partnership Reporting Form						
Reporting Period: January 1 – December 31 Fiscal Year: XXXX						
Partner	Park Location	Borough	Fiscal Year-end	Total Spending - Maintenance and Operations	Total Spending - Programming	Total Spending - Capital
CPF	Central Park	Manhattan				

EXHIBIT D –GROSS RECEIPTS STATEMENT

MONTHLY REPORT OF GROSS RECEIPTS

CITY PARKS FOUNDATION

THIS REPORT REPRESENTS GROSS RECEIPTS RECEIVED THROUGH THE LAST DAY OF THE MONTH

MONTH:	<i>MM/YYYY</i>
RECEIPTS CATEGORY	
Food and merchandise sales	
TOTAL GROSS RECEIPTS:	\$

Sales Tax Collected Amount: \$

I hereby certify the above statement to be true and correct.

Certified correct: _____
Signature

Date

Title

EXHIBIT E - CERTIFICATION OF BROKER OR AGENT

Instructions to New York City Agencies, Departments and Offices

One of the following must accompany all certificates of insurance (except certificates of insurance solely evidencing Workers ' Compensation Insurance, Employer's Liability Insurance and/or Disability Benefits Insurance):

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

-- OR --

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

CITY OF NEW YORK CERTIFICATION BY INSURANCE BROKER OR AGENT

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

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

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

[Signature of authorized official, broker, or agent]

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

State of)

) ss.:

County of)

Sworn to before me this _____ day of _____ 20__

By: _____

NOTARY PUBLIC FOR THE STATE OF _____

EXHIBIT F - PAID SICK LEAVE LAW RIDER

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.¹ Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

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

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

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

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

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

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage.

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

Employers are not required to provide more than forty hours of sick time to an employee in any Year.

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

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

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

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

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

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

Exemptions and Exceptions

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

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

Retaliation Prohibited

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

Notice of Rights

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

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

Records

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

Enforcement and Penalties

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

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

More Generous Policies and Other Legal Requirements

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

SCHEDULE A - CITY PROPERTY

SUMMERSTAGE®

SCHEDULE B – SPONSORSHIP ACTIVITIES

I. Signage

**All signage size and specifications subject Parks approval.*

Playfield/Central Park:

- Artwork on entry signs at main and secondary entrance to the Playfield.
- Stage signage:
 - Artwork on two (2) side-stage LED screens with option for one Naming Rights Sponsor static image
 - Artwork on on-stage screen slides with one (1) dedicated Naming Rights Sponsor static image slide in ROS
 - Artwork on crown banner on top of stage
- Artwork on bleacher signage (3 or 4, depending upon final Playfield design)
- Artwork on each stage left and stage right trailer face
- Artwork on VIP area signage
- Artwork on one sign each at Fifth Avenue/72nd Street and 59th Street/Columbus Circle park entrances (location of signage subject to Parks approval)
- Artwork on approximately 50 bike rack dividers within the Playfield
- Artwork on all wayfinding signage including check-in banner, concessions and merchandise areas, and information booth
- Artwork on staff uniforms, ponchos, and lanyards/credentials/wristbands (not intended for sale to the public and will be produced only in a quantity suitable for distribution to event employees)
- Artwork on Rules/Regulations signage, ADA signage, and bag check signage

Artwork on mobile stage or other Parks locations subject to Parks special event permits:

- Center stage banner and two side-stage banners (space permitting in amphitheaters), festival program, and posters
- Two feather banners
- Artwork on staff uniforms, ponchos, and lanyards/credentials/wristbands (not intended for sale to the public and will be produced only in a quantity suitable for distribution to event employees)
- Artwork on Rules/Regulations signage, ADA signage, bag check signage, and other temporary signage

II. Artwork on ticketing:

- Artwork on ticket purchase pages
- Artwork on the confirmation page and the confirmation email

III. Print/Media/Digital/Social Assets:

Prior to the start of each new season, Licensee may implement a media plan to highlight Naming Rights Sponsor's sponsorship of the Program, which will include the Artwork on the following CPF-produced material:

- All print collateral: season brochures, house programs, postcards, posters, and membership cards
- All e-newsletters sent during the Program season and included in Program

- stories in monthly Licensee e-newsletters during the “off-season”
- Four (4) dedicated Naming Rights Sponsor Program e-newsletters
- Program partner page on Licensee website with a direct click-through link to Naming Rights Sponsor’s home page.
- Media Clips: Prominent positioning in all Program press releases, press conferences, ceremonies and other public events.
- Print/Digital/Radio advertising
 - Television
- Social Media integration

**CITY OF NEW YORK
FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. 2)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement (“Agreement”) with City Parks Foundation (“Licensee”) for the operation and management of a food, beverage and merchandise concession related to the presentation of live events at SummerStage in Central Park, Manhattan, and for the sale of naming rights of the SummerStage festival, primarily based at Central Park, Manhattan.

All gross receipts received by Licensee at the food, beverage and merchandise concession will be used exclusively to provide for the management, maintenance, operation and programming at the Licensed Premises, including the operations under this License Agreement. Licensee shall use any revenue it receives from the Naming Rights Sponsorship Agreement to offset the high costs of the maintenance and operations of the Rumsey Playfield in Central Park, and programming free events at the Rumsey Playfield and other locations as part of SummerStage, including but not limited to attracting a more diverse and higher profile slate of performers.

The term of this Agreement shall commence upon the date in a written Notice to Proceed issued to Licensee by Parks and, unless terminated sooner in accordance with this Agreement, shall terminate ten (10) years from the date of execution of a new Maintenance and Operations Agreement (“M&O Agreement”) to be entered into with Licensee, or the last day of any subsequent renewal periods that are exercised pursuant to this Agreement. Parks, in its sole discretion, shall have the option to renew this Agreement for up to two (2) additional five (5)-year periods, provided that Parks has renewed the M&O Agreement for the same periods. Notwithstanding the foregoing, in no event will the total length of the term of this Agreement, including any renewal periods, exceed the shorter of (i) twenty (20) years; or (ii) the term of the M&O Agreement, including any renewal periods.

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

May 10, 2023

Date: _____

Signed: _____

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