

LICENSE AGREEMENT

BETWEEN

THE BATTERY CONSERVANCY, INC.

AND

**CITY OF NEW YORK
DEPARTMENT OF PARKS & RECREATION**

**FOR OPERATION AND MAINTENANCE OF FOOD AND BEVERAGE CONCESSION
IN THE NEW AMSTERDAM PAVILION AT**

**PETER MINUIT PLAZA
THE BATTERY, MANHATTAN**

DATED: _____, 2025

TABLE OF CONTENTS

ARTICLE 1: GRANT OF LICENSE	4
ARTICLE 2: DEFINITIONS	5
ARTICLE 3: TERM AND TERMINATION	8
ARTICLE 4: OPERATIONS	10
ARTICLE 5: MAINTENANCE, SANITATION & REPAIR	12
ARTICLE 6: ALTERATIONS	15
ARTICLE 7: CAPITAL IMPROVEMENTS	15
ARTICLE 8: FIXED AND EXPENDABLE EQUIPMENT	16
ARTICLE 9: UTILITIES	17
ARTICLE 10: PERSONNEL	17
ARTICLE 11: RESERVATION FOR SPECIAL EVENTS	18
ARTICLE 12: INTELLECTUAL PROPERTY	20
ARTICLE 13: REVENUES & ACCOUNTS	21
ARTICLE 14: FINANCIAL RECORDS AND REPORTS	22
ARTICLE 15: RIGHT TO AUDIT	22
ARTICLE 16: RETENTION OF RECORDS	23
ARTICLE 17: INSPECTIONS AND AUDITS	23
ARTICLE 18: PROHIBITIONS ON USE	24
ARTICLE 19: SECURITY	25
ARTICLE 20: SIGNAGE	25
ARTICLE 21: APPROVALS	26
ARTICLE 22: SPONSORSHIPS, PUBLICATIONS, ADVERTISING AND PUBLICITY	26
ARTICLE 23: DONOR RECOGNITION	27
ARTICLE 24: TRANSFERS, ASSIGNMENTS, AND SUBLICENSES	27
ARTICLE 25: PARKS CONSTRUCTION	28
ARTICLE 26: COMPLIANCE WITH LAWS	29
ARTICLE 27: NON-DISCRIMINATION	29
ARTICLE 28: NO WAIVER OF RIGHTS	29
ARTICLE 29: INDEMNIFICATION	29
ARTICLE 30: INSURANCE	31
ARTICLE 31: WAIVER OF COMPENSATION	36
ARTICLE 32: INVESTIGATIONS	36
ARTICLE 33: CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE	38
ARTICLE 34: WAIVER OF TRIAL BY JURY	39
ARTICLE 35: CUMULATIVE REMEDIES - NO WAIVER	39
ARTICLE 36: INDEPENDENT STATUS OF LICENSEE	39
ARTICLE 37: CONFLICT OF INTEREST	40
ARTICLE 38: PROCUREMENT OF AGREEMENT	40
ARTICLE 39: NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES	40
ARTICLE 40: ALL LEGAL PROVISIONS DEEMED INCLUDED	40
ARTICLE 41: SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS	40
ARTICLE 42: JUDICIAL INTERPRETATION	41
ARTICLE 43: MODIFICATION OF AGREEMENT	41
ARTICLE 44: NOTICES	41
ARTICLE 45: LICENSEE ORGANIZATION, POWER AND AUTHORITY	41
ARTICLE 46: MISCELLANEOUS	41
ARTICLE 47: ENTIRE AGREEMENT	41
ARTICLE 48: COUNTERPARTS	42
EXHIBIT A: MAY 23, 2024, LICENSE AGREEMENT	45
EXHIBIT B: LICENSED PREMISES	46
EXHIBIT C: SCHEDULE OF APPROVED HOURS AND RATES, FEES, AND PRICES	48
EXHIBIT D: PARKS INSPECTION (PIP) MANUAL	49
EXHIBIT E: NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER	50
EXHIBIT F: CERTIFICATION BY INSURANCE BROKER OR AGENT	54

This **SOLE SOURCE LICENSE AGREEMENT** (“License Agreement” or “Agreement” or “License”) made this _____ day of _____, 2025, between the City of New York (the “City”), a municipal corporation of the State of New York (“State”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is the Arsenal, 830 Fifth Avenue, New York, NY 10065, and The Battery Conservancy, Inc. (“TBC” or “Licensee”), a not-for-profit corporation whose address is 90 Broad Street, Suite 1503 New York, NY 10004.

W I T N E S S E T H:

WHEREAS, the Commissioner of Parks (“Commissioner”), pursuant to Section 533 of the New York City Charter, is charged with the responsibility to manage, maintain, and operate parks and recreational facilities under Parks’ jurisdiction, and has the authority to plan, develop, conduct and enter into arrangements with private organizations for their participation in the improvement of their community by undertaking the maintenance and operation of parks for the benefit of the public;

WHEREAS, the Commissioner has jurisdiction over The Battery, the park located between State Street, Whitehall Street, and Battery Place as well as Peter Minuit Plaza, which is adjacent to The Battery in Manhattan, New York;

WHEREAS, TBC was formed in 1994 to promote and assist in the restoration, preservation, maintenance, programming, and operations of The Battery and also to promote and assist in the restoration, preservation, programming and operations of Peter Minuit Plaza (or “Plaza”), which is adjacent to The Battery; and

WHEREAS, TBC has been an effective advocate for The Battery, and through its fundraising efforts has secured over \$78 million dollars of privately raised funds, which in turn has leveraged \$109 million dollars in public funds for the benefit of The Battery;

WHEREAS, in 2008 TBC and Parks effectively secured \$23 million dollars of funds for the reconstruction of the Peter Minuit Plaza, and TBC privately secured \$2.3 million dollars to fund the design, fabrication and installation of the architecturally significant structure designed by UN Studios for food service and information to be located in a 5,000 square foot area on the Plaza, which shall be known as New Amsterdam Plein and Pavilion (the "Pavilion"), and further, the Dutch government contributed a major grant to TBC as part of the NY400 celebration for the celebration of the 400th anniversary of Henry Hudson's arrival in New York Harbor and in honor of the enduring relationship between New York and the Netherlands;

WHEREAS, TBC allots a full 62% of its operating budget to the maintenance of The Battery and Plaza, which includes the purchasing of garbage removal materials and gardening equipment, and the hiring of consultants and contractors, as well as paying the salaries of full- and part-time gardeners and operations staff; and

WHEREAS, TBC and Parks have created an effective public-private partnership whereby TBC and Parks work together in connection to improving and administering The Battery and the Plaza, which was first memorialized in a license agreement dated February 26, 2007, and superseded with a

maintenance and operation (“M&O”) license agreement dated May 23, 2024, annexed hereto as **Exhibit A**; and

WHEREAS the Commissioner and TBC desire to ensure the best use of the Pavilion in providing services, including maintenance, recreational and educational programs and services, for the benefit of the public;

WHEREAS, the Pavilion enhances the economic activity of Lower Manhattan, and TBC's maintenance of the Pavilion adds to the beautification of Lower Manhattan; and

WHEREAS Parks sought approval of the Franchise and Concession Review Committee (“FCRC”), which has authorized Parks to use different procedures to enter into this License Agreement with Licensee;

WHEREAS, on July 10, 2024, the FCRC authorized Parks to enter into a Sole Source License Agreement with TBC, to provide for the operation and maintenance of a high-quality food and beverage concession in the Pavilion at the Plaza, as well as maintenance of the Plaza itself (collectively referred to as the "Licensed Premises") for the benefit of the public.

WHEREAS Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the maintenance, operation, and management of the Licensed Premises.

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

ARTICLE 1: GRANT OF LICENSE

1.1 (a) Parks hereby grants to Licensee, and Licensee hereby accepts from Parks, this License to use, occupy, maintain, and operate the Licensed Premises as shown in **Exhibit B**, attached hereto, including for the operation and maintenance of a high-quality food and beverage concession in the Pavilion at the Plaza (“Concession”) for the benefit of the general public, in accordance with the terms and conditions set forth herein, and to the Commissioner’s satisfaction. Licensee may enter into a sublicense with third parties, in accordance with the terms and conditions set forth herein and in Article 24 to operate the Concession and maintain the Licensed Premises. All funds and fees from revenue generating activities will be used solely to offset costs associated with maintenance, improvement, and operation of the Licensed Premises, and including keeping and maintaining the Licensed Premises in good condition and repair, in accordance with the provisions of this License. All such work will be under the supervision of Licensee.

(b) Licensee shall obtain all applicable permits, approvals, and other licenses required by federal, State, and City laws, rules, regulations, and orders, which are or may become necessary to operate the Licensed Premises in accordance with the terms of this License.

1.2 No Lease. It is expressly understood that the City has title to the Licensed Premises and no land, building, space, improvement, or equipment is leased or otherwise conveyed to Licensee, but that during the Term of this License, Licensee and its sublicensee(s) shall have the use of the Licensed

Premises for the purposes herein provided. Licensee and sublicensee(s) have the right to occupy and operate the Licensed Premises during the Term of the License only so long as each and every term and condition in this License is strictly and properly complied with and so long as this License is not terminated by the Commissioner in accordance with this License.

1.3 Full and Free Access. Licensee shall, at all times, provide free access to the Concession and Licensed Premises to the Commissioner or the Commissioner’s representatives and to other City, State, and federal officials having jurisdiction, for inspection and any other lawful purposes. The Commissioner, Commissioner’s representatives, and such other officials, including the New York City Police Department (“NYPD”) and the New York City Fire Department (“FDNY”), shall have the right to enter and be present at the Concession and Licensed Premises, and to observe Licensee’s and sublicensee’s operations.

ARTICLE 2: DEFINITIONS

2.1 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)** “Commissioner” means the Commissioner of the New York City Department of Parks & Recreation or her designee.

- (d)** “Comptroller” means the Comptroller of the City of New York.

- (e)** “Excess Revenue(s)” means, for any Fiscal Year, the positive difference, if any, between Licensee’s Gross Receipts for such Fiscal Year and expenses for such Fiscal Year.

- (f)** “Expendable Equipment” means all equipment and property of Licensee, other than Fixed and Additional Fixed Equipment.

- (g)** “Final Completion” or “Finally Complete” means that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in writing that it has been finally completed and that no further work is required by Licensee pursuant to this License in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair, and indemnity) set forth in this License Agreement.

- (h)** “Fiscal Year” means the period beginning each July 1 during the Term and ending June 30 of the following calendar year.

(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 at the Licensed Premises, without deduction or set-off of any kind, from the sale or provision of food, beverages, merchandise, goods or services of any kind at the Licensed Premises, from the licensing of the Licensed Premises for private functions, and from any related 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, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee’s net receipts from such vending machines shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee’s income from rental and sublicense or subcontracting fees and commissions Licensee receives in connection with income from short-term facility agreements, Special Events, and all services provided by Licensee’s subcontractors or sublicensees, unless otherwise approved in writing by Parks.

(iii) 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.

(iv) 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 (iv):

(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 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 Licensee.

(k) “Licensed Premises” means the area of the Plaza, including three of the four wings of the Pavilion so denoted and described in **Exhibit B** attached hereto, and shall include the structures, as well as any improvements constructed thereon, including without limitation, all buildings or structures, walkways, curbs, trees and landscaping. The fourth wing of the Pavilion as denoted in **Exhibit B** is not part of the Licensed Premises and is reserved by the City for other uses.

(l) “Licensee’s Special Events” means any private function or program (e.g. either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee or sublicensee(s) by third parties) for a Parks appropriate purpose, and in accordance with 56 RCNY § 1-02, at the Licensed Premises, excluding “Parks’ Special Events” as defined in Article 11 of this License Agreement.

(m) “Substantial Completion” or “Substantially Complete” means, with respect to an improvement at the Licensed Premises, that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules provided for herein and/or set forth as a list of incomplete and outstanding items and that the improvement may be utilized by the public.

(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 3: TERM AND TERMINATION

3.1 This License shall become effective upon Parks giving written notice to proceed (“Notice to Proceed”) to Licensee following registration with the Comptroller (“Commencement Date”) and, unless terminated sooner in accordance with this License Agreement, shall terminate ten (10) years from the Commencement Date, or the last day of any subsequent renewal periods that are exercised pursuant to this License (“Expiration Date”). The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be referred to as the “Term.” Parks, in its sole discretion, shall have the option to renew this License for up to two (2) additional five (5)-year periods, provided that Parks has renewed the May 23, 2024, M&O license agreement according to its terms, annexed hereto in **Exhibit A**. Notwithstanding the foregoing, in no event will the total length of the Term, including any renewal periods, exceed the term of the M&O license agreement, including any renewal periods. This License Agreement shall terminate upon the expiration or termination of the M&O license agreement.

3.2 Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. Such termination shall be effective after twenty-five (25) calendar days written notice is sent to Licensee. The Commissioner, the City, its employees, and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein.

3.3 Parks may terminate this License or any sublicense for cause as follows:

(a) Should Licensee breach or fail to comply with any of the provisions of this License or any federal, State or City law, rule, regulation or order affecting this License or the Licensed Premises with regard to any and all matters, Commissioner shall, in writing, order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty (30) calendar days from the mailing, or e-mailing thereof, subject to unavoidable delays beyond the reasonable control of Licensee, as determined by the Commissioner, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee’s control, as determined by the Commissioner, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner’s judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing or e-mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on a single (1) day’s written notice: the appointment of any receiver of Licensee’s assets; the making of a general assignment for the benefit of creditors; 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 this License; 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) calendar days.

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

3.4 Upon expiration or sooner termination of this License by 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, Parks, or City.

3.5 In the event the Commissioner terminates this License for reasons related to Section 3.3 above, any property of Licensee on the Licensed Premises may be held and used by the Commissioner in order to operate the Licensed Premises during the balance of the calendar year and may be held and used thereafter until all indebtedness of Licensee hereunder, at the time of termination of this License, is paid in full.

3.6 Licensee agrees that upon the expiration or sooner 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 the City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, the City, in accordance with law, reserves the right to take immediate possession of the Licensed Premises.

3.7 Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Licensed Premises and leave the Licensed Premises in as good or better condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License is intended by Licensee 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 Licensee fail to remove all possessions from the Licensed Premises during the time prescribed in this Agreement.

3.8 If this License is terminated as provided herein, and/or upon the expiration of the License, 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 therefor and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

3.9 If this Agreement is terminated as provided in Section 3.3 above, Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this Agreement or to otherwise affect any such liability.

3.10 No receipt of monies by Parks from Licensee after the termination of this Agreement, or after the giving of any notice of the termination of this Agreement, shall reinstate, continue, or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of Parks' right to recover possession of the Licensed Premises by proper remedy. After the service of notice to terminate this Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, Parks may demand, receive and collect any

monies due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Licensed Premises or, at the election of Parks, on account of Licensee's liability hereunder.

ARTICLE 4: OPERATIONS

4.1 (a) Licensee shall, at its sole cost and expense, (i) operate a high-quality food service facility Concession, and (ii) perform such ongoing and preventive maintenance activities necessary to maintain the Licensed Premises in good order and repair, for the benefit of the general public in accordance with the terms herein, 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. Licensee accepts the Licensed Premises "as is." Licensee assumes all risk in the operation of this License.

(b) All services, items and merchandise and all rates, fees and prices, or changes thereto, to be charged by Licensee for any goods, rights, or services provided pursuant to the operation of this License are subject to prior written approval by Parks, in advance of each Operating Year during the Term of the License, which approval shall not be unreasonably withheld or delayed.

(c) Licensee shall maintain adequate inventory to ensure a constant supply of food and beverages at the Licensed Premises. 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 New York City Department of Health and Mental Hygiene ("DOHMH") permits. Licensee may only operate the Licensed Premises if it has obtained the appropriate valid permits and authorizations required by DOHMH. At all times the Concession is 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.

(d) Licensee may place tables, chairs, and umbrellas at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas at the Licensed Premises are subject to Parks' prior written approval. Licensee must ensure free and open public access to any outdoor seating areas, provided however that access to any outdoor seating area where alcoholic beverages are served may be restricted to comply with Section 18.2 of this License Agreement and the requirements of the New York State Liquor Authority or other agency having jurisdiction.

(e) Licensee may sell merchandise at the Licensed Premises. All merchandise, supplies, and equipment to be sold at the Licensed Premises and the proposed prices of those items are subject to Parks' prior written approval. With respect to the sale of merchandise at the Licensed Premises, Licensee recognizes that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If Licensee wants to sell merchandise that uses the City's trademarks, Licensee must purchase that merchandise from authorized licensees of the City. Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, political movements, political figures, commercial products or non-park-related events. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Premises will result in the immediate termination of this License Agreement and forfeiture of the Security Deposit.

4.2 Licensee may only operate when the park in which the Licensed Premises is located is open, and the Licensed Premises must close not later than 10 p.m. each day. Licensee shall operate the

Concession daily each Year, unless otherwise approved by Parks. The exact hours and days of operation of all operations at the Licensed Premises are subject to Parks' prior written approval. All services, menu items and merchandise and all rates, fees and prices to be charged by Licensee must also be approved in advance in writing by Parks. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours/schedule. If the request is granted by the Commissioner, Licensee will continue to be responsible for all other obligations under this License Agreement. Licensee shall, at its sole cost and expense, print, frame and prominently display in a place and manner designated by Commissioner, the approved schedule of operating days and hours and rates, fees and prices. Annexed hereto as **Exhibit C** is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder.

4.3 Licensee shall comply with all national safety guidelines and federal, State and City laws, rules and regulations related to the operation and maintenance of the Licensed Premises, including, but not limited to, any necessary licenses, permits and approvals from Parks, the New York City Department of Environmental Protection ("DEP"), the New York City Department of Sanitation ("DSNY"), New York City Department of Buildings ("DOB") and the New York City Department of Health and Mental Hygiene ("DOHMH"). Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any and all required licenses or permits. Licensee shall, throughout each Operating Year during the Term, take all measures necessary to provide a safe environment for the public at the Licensed Premises.

4.4 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 Certificates of Operation, Place of Assembly and Certificate(s) of Occupancy. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. In the event that, at the Commencement Date or at any time during the Term, Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall obtain a "Letter of No Objection" from DOB. Furthermore, in the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a Certificate of Occupancy, where required, and does not have a "Letter of No Objection," Licensee may conduct its operations in temporary structures that have been approved by Parks. Licensee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations. However, if in such situations Licensee nonetheless chooses not to conduct such operations in temporary structures, then such operations shall not take place unless and until Licensee has obtained the necessary Certificate(s) of Occupancy, if required, or "Letter(s) of No Objection," to the extent applicable and required by DOB.

4.5 An officer or member of Licensee shall personally operate this License or employ an operations manager at the Licensed Premises. A member of Licensee or manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour cellular telephone number through which

Parks may contact the manager or officer in the event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor or sublicensee whenever requested by Commissioner.

4.6 Licensee shall comply with all laws, rules and regulations of appropriate agencies, specifically DEP regarding noise levels. Licensee shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for such music or music programming. Any musical programming or other types of entertainment must be approved in advance in writing by Parks. Outdoor amplified sound will not be permitted past 10:00 p.m. Any sound or music equipment shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d), the Administrative Code of the City of New York, Title 24, Chapter 2, and only at times and at a sound level acceptable to the Commissioner. Amplified sound and music must not exceed the decibel level allowed by City noise regulations. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises is in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community.

4.7 Licensee must provide Americans with Disabilities Act (“ADA”) accessibility throughout the Licensed Premises. Licensee shall also comply with all City, State, and federal requirements to provide safe and accessible 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.

ARTICLE 5: MAINTENANCE, SANITATION & REPAIR

5.1 Licensee shall provide or cause, at its sole cost and expense, to be provided the daily maintenance and repair of the Licensed Premises including, but not limited to, maintaining the Licensed Premises in a safe, clean, and orderly condition, in accordance with the standards set forth in this Section herein to the satisfaction of the Commissioner. Notwithstanding Licensee’s obligations to otherwise maintain and repair the Licensed Premises, Parks shall maintain and repair the Jewish Tercentenary Monument located within the Licensed Premises, as marked in **Exhibit B**, except that Licensee shall promptly report any graffiti, vandalism, and maintenance issues related to the monument to Parks. Any and all of Licensee’s maintenance and repair obligations shall be performed with high quality and worker-like manner and in accordance with the following standards:

- (a) cleaning and maintaining all walkways, sidewalks, passageways, curbs, and all pavements and structures, and facilities in the Licensed Premises, clean and free from garbage, leaves, debris, and other obstructions;
- (b) cleaning and maintaining all bathrooms in the Licensed Premises;
- (c) removing or painting over graffiti as appropriate to the nature of the surface and per Parks’ instruction, within forty-eight (48) hours of notice of such graffiti;
- (d) cleaning and preventing clogging of drains, trench drains, sewers and catch basins on the Licensed Premises; and
- (e) promptly notifying Parks of any damages to trees at the Licensed Premises, provided however, that Licensee shall not prune, cut down, replant, or remove any trees from the Licensed Premises, nor undertake any planting or landscaping without Parks’ prior written approval.

5.2 Licensee, at its sole cost and expense, shall repair any space within the Licensed Premises that is damaged by Licensee, its employees, agents, contractors, volunteers, invitees, or members of the public. All such damage shall be immediately reported to Parks. Parks must approve, in writing, any and all necessary repairs prior to commencement of the repair. Repairs include, but are not limited to:

- (a) Benches or other seating including movable tables and chairs
- (b) Pavements and crushed stone surfaces: All paved surfaces shall be maintained in a safe and attractive condition. Replacement materials shall match existing materials.
- (c) Painting: All items with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust and free of other extraneous matter and painted to match the existing color.

5.3 Licensee shall perform maintenance and repair activities to the satisfaction of the Commissioner, in order to achieve compliance with the ratings for all enumerated categories set forth in the Parks Inspection Program Manual, attached hereto as **Exhibit D**, and incorporated herein by reference. Parks reserves the right to extend the requirements of its existing rating system to the Licensed Premises. Licensee shall be required to perform said maintenance and repair activities to the satisfaction of the Commissioner regardless of the amount of Gross Receipts or revenue generated at the Licensed Premises.

5.4 Licensee shall, at its sole cost and expense, remove snow and ice from all walkways and paved surfaces at the Licensed Premises promptly after each snowfall or accumulation of ice. Sand and /or other approved plant-safe materials shall be spread as needed. In performing these duties, Licensee shall comply with all applicable federal, State, and City laws, rules, and regulations.

5.5 Licensee shall, at its own cost and expense, remove all rubbish generated by the operations under this License from the Licensed Premises and adjacent surrounding area. Licensee shall provide easily accessible Parks-approved waste and recycling receptacles, which shall be emptied as needed. All waste, garbage, refuse, rubbish, and litter collected at, and along the perimeter of, the Licensed Premises, without regard for its source, shall be collected, bagged, and recycled and removed from the Licensed Premises. In performing their duties under this Section, Licensee shall comply with all applicable federal, State, and City laws, rules, and regulations.

5.6 Licensee shall maintain and improve the landscaping at the Licensed Premises including, but not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. Licensee shall also remove or destroy any weeds from paving blocks, pavement, cobbled arid concrete, and crushed stone areas. Licensee shall report dead and diseased trees to Parks and remove them upon Parks' request. In addition, Parks requires that any trees on the Licensed Premises be pruned as needed. Licensee must submit detailed plans to Parks of all horticultural and landscaping work to be performed. All landscaping and horticultural work to be performed at the Licensed Premises is subject to Parks' prior written approval. Licensee shall obtain all necessary permits, approvals, and authorizations from all federal, State, and City agencies having jurisdiction over the Licensed Premises before any work is performed, and such work shall be of a quality which meets Parks' standards.

5.7 Should the Commissioner decide that Licensee is not operating and maintaining the Licensed Premises in a satisfactory manner, the Commissioner may, in writing, order Licensee to improve operations or correct such conditions as Commissioner may reasonably deem unsatisfactory. In the

event that Licensee fails to comply with such written notice or fails to respond in a manner satisfactory to Commissioner within the timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee, notwithstanding any other provisions herein, then Commissioner may terminate this License.

5.8 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. Necessary repairs to remedy such unsafe or emergency condition(s) shall be made by Licensee or Parks, as the case may be, in accordance with the allocation of responsibility for minor and major repairs otherwise set forth in this Section. Should Commissioner, in Commissioner's sole judgment, decide that an unsafe or emergency condition exists on the Licensed Premises, Licensee, after receipt of written notification of such facts from Commissioner, 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 Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. The Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure under such terms and conditions as appropriate.

5.9 Licensee shall immediately notify Parks' personnel of any unusual conditions that may develop in the course of the operation of this License of which Licensee becomes aware, including but not limited to, injury, death, property damage, theft, fire, flood, casualty, and substantial damage of any character. Licensee shall prepare and provide to Parks reports of major accidents or unusual incidents occurring at the Licensed Premises in a format reasonably acceptable to the Commissioner. Licensee shall immediately notify Parks, in writing, of any claim for injury, death, property damage, or theft, which may be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all claims for loss or damage including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

5.10 This License may be suspended in full or in part upon written notice from Parks due to circumstances as determined by the Commissioner, including but not limited to, acts of God, future pandemics, epidemics, other states of emergency declared by the federal, State or City government, riots, civil commotion, strikes, fire or other casualty. Such suspension shall be immediately effective upon the mailing, e-mailing, or hand delivery thereof. In the event of such notice, Licensee shall cease operations to the extent required by the notice. Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. The City and their officials, employees, and agents shall not be liable for damages to Licensee in the event that operations under this License are fully or partially suspended.

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

5.12 Notwithstanding anything to the contrary, Parks makes no representations that there is adequate storage space at the Licensed Premises. Licensee shall be responsible, at its sole cost and expense, for obtaining any additional storage space required for operation of the Concession granted

hereby. Licensee shall not store any equipment or supplies at the Licensed Premises without the prior written approval of Parks, which approval shall not be unreasonably withheld. 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 shall secure and store all outdoor equipment, if any, on a nightly basis and anytime its operations at the Licensed Premises are closed.

ARTICLE 6: ALTERATIONS

6.1 (a) 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, Licensee must:

(i) obtain the Commissioner's written approval (which shall not be unreasonably withheld) 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 6.1(b)(i), with high quality and worker-like 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: CAPITAL IMPROVEMENTS

7.1 The City has final authority over all capital projects and programs except capital expenditures ("Capital Improvements") undertaken at the Licensed Premises, and Licensee has final authority over deciding the capital projects and programs for which it will raise money from private donors and/or expend its own funds.

7.2 Licensee and Parks shall annually coordinate the preparation of operating, expense, fundraising, and capital budgets, including any amendments, for the Licensed Premises. Additionally, Licensee and Parks shall review and consult with each other concerning operating assumptions, major fundraising projects, budget allocations, maintenance, operation, program priorities, requests for proposals, or expressions of interest.

7.3 Licensee shall regularly update Parks on any potential capital projects Licensee contemplates advancing, including, but not limited to, capital projects stemming from any master plan. Parks shall in good faith work with Licensee in order to seek City capital support for capital projects upon which the two parties agree.

7.4 If Licensee seeks to pursue a capital project within the Licensed Premises, Licensee shall, in writing, request the written approval of Parks and obtain the necessary permits and any additional City

approvals, permits, and authorizations, and shall comply with such other processes that may be necessary prior to the development and implementation of such project. Parks shall respond to such a request within thirty (30) calendar days after either receipt thereof or receipt of any additional information Parks requests. Licensee shall coordinate all activities related to such project with Parks.

7.5 Subject to all legal requirements including, but not limited to, written approval of Parks and of the New York City Office of Management and Budget (“OMB”) and in compliance with all applicable prevailing wage requirements, Licensee may enter into contracts for approved Parks capital projects and may supplement Parks and/or other public capital funds with Licensee funds for the development of such approved projects. Capital Improvements shall become the property of the City, at its option, upon their attachment, installation, or affixing.

7.6 To guarantee prompt payment of monies due to a contractor or its subcontractors and to all persons furnishing labor or materials to the contractor or its subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post or cause to be posted a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion.

ARTICLE 8: FIXED AND EXPENDABLE EQUIPMENT

8.1 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.

8.2 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, Licensee shall, at the termination or expiration of this License, at the Licensee’s sole cost and expense and to the satisfaction of the Commissioner, be responsible for removing such equipment and restoring the Licensed Premises to Parks to a condition as good as or better than at the commencement of the Term.

8.3 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 that the Commissioner reasonably determines is necessary to the operation of this License.

8.4 Title to all Expendable Equipment obtained by Licensee 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.

8.5 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.”

8.6 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.

ARTICLE 9: UTILITIES

9.1 Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee shall, at its sole cost and expense, directly pay for all other utility costs associated with the operations of the Licensed Premises. Licensee, at its sole cost and expense, shall install or cause to be installed, and shall maintain, all utilities, service lines, meters, and supplies of power necessary for the proper operation of this License and shall pay all utility costs. Utilities, as described in this License, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, and all DEP water and sewer charges. 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. Parks does not make representation or warranty that existing cables, lines, meters, or supplies of power are adequate for Licensee's needs or that any entity can or will make such service available. If requested, Parks shall use reasonable efforts to assist Licensee in obtaining utilities for the Licensed Premises. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during Term. Licensee is strictly prohibited from use of utilities used, operated, or owned by the City, unless otherwise approved in writing by Parks. In performing duties under this Section, the parties shall comply with all applicable federal, State, and City laws, rules, and regulations.

ARTICLE 10: PERSONNEL

10.1 All experts, consultants, volunteers, and employees employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City, and Licensee alone is responsible for their work, direction, compensation, and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation,

or organization engaged by Licensee 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.

10.2 Licensee shall notify Parks in writing within ten (10) calendar days after any appointments to or resignations from any officer, including, but not limited to, the position(s) of any Executive Officer, including the President and Vice President of Licensee. In addition, Licensee shall notify Parks in writing, within ten (10) calendar days after the occurrence, of any change in the individuals who serve as directors and officers of Licensee's Board of Trustees.

10.3 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;
- (c) conducting and supervising all activities to be engaged in upon the Licensed Premises;
- (d) securing the Licensed Premises

10.4 Licensee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Sick Leave Law, as a licensee of the City of New York as set forth in the NYC Earned Safe and Sick Time Act Contract Rider annexed hereto as **Exhibit E**.

ARTICLE 11: RESERVATION FOR SPECIAL EVENTS

11.1 (a) For the purposes of this Article, the term "Parks' Special Event(s)" shall mean any event at the Licensed Premises for which Parks has issued a Special Event Permit. Licensee shall cooperate with Parks in connection with Parks' Special Events and unanticipated events and emergencies at the Licensed Premises. Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use which would prevent in any way Licensee from performing its obligations and realizing its rights under this License. It is expressly understood that this Article shall in no way limit Parks' right to sponsor or promote Parks' Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Parks' Special Event.

(b) Parks, acting on behalf of the City, reserves the right to host a number of annual events at the Licensed Premises, including benefits, and other non-profit or public events, without cost to Parks (except as explicitly set forth herein). The dates of such events shall be agreed upon by both parties and shall be reserved in writing not less than one month in advance. During any such Parks' Special Event, Licensee shall be obligated to operate the entire Licensed Premises without cost to Parks; however, the City shall pay for Licensee's costs for food and beverage items or such other operational costs connected with Parks' Special Events. Such costs for Parks' Special Events must be reported to Parks, but may be excluded from calculation of Gross Receipts.

11.2 (a) Subject to prior written approval from Parks, Licensee may conduct Licensee's Special Events or programs (e.g., either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Any ticketed events at the

Licensed Premises (including, but not limited to, payment of a fee at the door) also require prior written approval from Parks. Licensee shall submit to Parks for approval all plans for any Licensee's Special Events at the Licensed Premises. In no event shall the entire Licensed Premises be closed to conduct private activities during public hours of use except when such activities are specifically approved by Parks in advance in writing or sponsored by Parks, and such a closure has been announced to the public at least two (2) weeks in advance of such activities or events. Licensee must document each of Licensee's Special Events 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. All revenue generated through such special events must be reported to Parks as Gross Receipts. Notwithstanding anything to the contrary in this Section, Parks reserves the right to review Licensee's use of the Licensed Premises for Licensee's Special Events and require that Licensee obtain Parks' prior written approval for all Licensee's Special Events, of any type, if, in the reasonable determination of the Commissioner, the nature and frequency of Licensee's Special Events constitutes an unreasonable limitation on the use and enjoyment of the Licensed Premises by the general public.

(b) All Licensee's Special Events on any portion of the Licensed Premises must be approved in advance in writing by the Commissioner or the Commissioner's designee, which approval shall not be unreasonably withheld or delayed. Licensee shall give the Commissioner at least thirty (30) calendar days (or such lesser period as approved by Parks) advance written notice of any tentatively scheduled Licensee's Special Event. Licensee's Special Events may not restrict public access to the Licensed Premises, unless otherwise approved in accordance with this Section.

(c) Licensee's right to hold Licensee's Special Events and to retain revenue through fees and other charges as described herein shall be subject to all City authorization, approvals, permits and compliance with other processes that may be necessary. Any such authorizations, approvals, permits shall not be unreasonably withheld or delayed.

(d) Licensee must account for any funds from Licensee's Special Events at the Licensed Premises under Article 13 (Revenues & Accounts) of this Agreement. Licensee must account for any funds from services, any donations, grants, proceeds, and funds collected from Licensee's Special Events in compliance with Article 13 (Revenues & Accounts) of this License Agreement. All donations, proceeds, grants, and funds shall be used solely for the operation, maintenance, use, and repair of the Licensed Premises.

(e) All Licensee's Special Events at the Licensed Premises must comply with Parks' rules and regulations, including, but not limited to, obtaining ancillary permits where applicable. Licensee is responsible for securing all ancillary permits required by outside agency regulations, including but not limited to, NYPD Amplified Sound permits, DOB structural or temporary place of assembly permits, DOHMH permits and FDNY permits. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any and all required licenses or permits.

(f) Any sound or music equipment shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d), the Administrative Code of the City of New York, Title 24, Chapter 2, and only at times and at a sound level acceptable to the Commissioner. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises do not disturb or discomfort the surrounding community. Amplified sound and music must not exceed the decibel level allowed by City noise regulations.

(g) Licensee shall be responsible for payment of all fees or royalties to ASCAP, BMI or such other entities as may be required for any music or music programming during Licensee's Special Events.

(h) Licensee shall provide, at its sole cost and expense, all staff, equipment, furniture, materials and supplies necessary for the administration and operation of Licensee's Special Events.

ARTICLE 12: INTELLECTUAL PROPERTY

12.1 (a) Except as described in subparagraph (b) below, all intellectual property rights in the Licensed Premises' name, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to the Licensed Premises and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property (i) developed or designed by the City or its employees, contractors, or others on the City's behalf, or (ii) in the case of trademarks, used by the City in commerce unless Licensee is a prior user of any trademark in commerce are the property of the City ("City IP"). To the extent that Licensee uses any City IP in the course of performing its activities ("Licensee Activities"), Licensee shall obtain Parks' prior written permission and approval for this use. In the event that Parks grants permission for Licensee to use the City IP for non-commercial purposes, then Parks grants and will grant a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable license to Licensee to make non-commercial use of, display and maintain City IP for Licensee's activities in support of the Licensed Premises. To the extent that Parks' prior permission and approval had already been obtained to use City IP, it will be continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (a).

(b) Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights that Licensee has or acquires that meet the following requirements ("Licensee Specific IP") are the property of Licensee: such intellectual property (i) was created by or on behalf of Licensee, its employees, contractors, or others, other than at the City's or Parks' specific direction, and (ii) includes no City IP (as defined in subparagraph (a) above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee's Specific IP. Licensee Specific IP shall be used exclusively in connection with Licensee's activities, as shall Licensee's ability to use any City IP that is incorporated into Licensee Specific IP with the City's permission. Any revenue that Licensee derives from the use, licensing, or other exploitation of Licensee Specific IP shall be used during the Term of this Agreement exclusively in connection with Licensee activities, but this restriction shall terminate on the expiration or termination of this Agreement. Licensee in this Agreement grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicenseable license to the City and Parks to make use of, display and maintain Licensee Specific IP. Parks shall make no commercial use of Licensee Specific IP (e.g., merchandise sales, licensing or other use intended to generate, or that does generate, revenue) without Licensee's prior written approval.

(c) All goodwill associated with the City IP, or Licensee Specific IP shall be the exclusive property of its respective owner and neither party shall take any actions inconsistent with such rights. Each party recognizes and acknowledges that the City IP and Licensee Specific IP are the exclusive property of the other and they communicate in the public, worldwide, a reputation for high standards of quality and services, which reputation and goodwill have been and continue to be unique to the owner. Each party further recognizes and acknowledges that all trademarks, service marks, trade names and service names included in the City IP and Licensee Specific IP have acquired secondary meaning in the mind of the public. Neither the City IP, nor Licensee Specific IP shall be used in connection with any illegal, illicit, or immoral purpose or activity, or in any manner that could be inconsistent with, or damaging to the owner's name and reputation. Either party shall have the right

to terminate this Agreement, upon written notice, if any part of the City IP or Licensee Specific IP is used by the other party in connection with any illegal, illicit, or immoral purpose or activity. If any of the City IP or Licensee Specific IP is used by the other party in any way that, in the reasonable judgment of the owner, is inconsistent with or damaging to the owner's name or reputation, the owner shall notify the other party in writing and, before exercising the right of termination provided for in this subparagraph (c), shall provide three (3) business days following receipt of such notice to the other party to immediately cease and halt all such uses.

(d) During the Term, each party may make only the uses described in subparagraphs (a) and (b) above. Each party acknowledges and agrees that all use of and goodwill in the City IP or Licensee Specific IP shall inure to the benefit of its owner. Neither the City nor Licensee shall acquire any rights in Licensee Specific IP or City IP, respectively, by virtue of any use it makes of it or any portion of it.

(e) The parties shall not use the name or logos 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.

(f) All provisions of this Article 12 will survive any termination of this Agreement except as otherwise set forth in this Article.

ARTICLE 13: REVENUES & ACCOUNTS

13.1 (a) Licensee shall maintain, and shall cause any sublicensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner 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. Regarding Licensee's Special Events, Licensee must also document each of Licensee's Special Events 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. Licensee shall ensure that all transactions and deposits related to this Concession's generated revenue are appropriately marked and identified, and further, Licensee shall make documentation of such transactions and deposits available to Parks upon written request. 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 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. 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.

(b) Licensee shall provide equipment which will provide security for all monies received. Licensee shall provide for the transfer of all monies collected to Licensee's banking institution(s). Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

(c) Licensee and any sublicensee shall open and/or continue to maintain an account or sub-account, accounted for separately and apart from all other funds, at a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation ("Special Account"). There shall be

deposited in the Special Account all revenues (“Operating Revenues”) collected in connection with or resulting from the rights and privileges granted to Licensee hereunder. Licensee may withdraw Operating Revenues from the Special Account to expend for ordinary and necessary expenses directly attributable to Licensee’s operation of the Licensed Premises, including programming expenses and operating, managing, maintaining, and repairing the Licensed Premises consistent with this License. No withdrawals shall be made from the Special Account other than as provided for in this License. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Articles 13 to 17 herein. Operating Revenues do not include funds collected or received by Licensee (such as grants, donations, bequests, and contributions) other than in the course of Licensee’s use or operation of the Licensed Premises. Licensee’s use of such other revenues is governed by applicable law.

ARTICLE 14: FINANCIAL RECORDS AND REPORTS

14.1 (a) Licensee will use all Gross Receipts and Operating Revenues, including Excess Revenue (as defined in Section 2.1(e)), exclusively to provide for the management, maintenance, operation, and programming at the License Premises.

(b) On or before the thirtieth (30th) calendar day following the end of each quarter of each Operating Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated from operations under this License Agreement. Licensee shall indicate on its statement of Gross Receipts whether or not these amounts 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.

14.2 On or before the sixtieth (60th) calendar day following the end of each Operating Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a detailed income and expense statement pertaining to operations under this License for the preceding period of July 1st to June 30th, signed and verified by an officer of Licensee.

14.3 Licensee shall account for any Excess Revenue for any Fiscal Year and any disbursements therefrom in a report to Parks in a clearly identifiable manner. Any Excess Revenue shall be used exclusively to pay: (i) accumulated expenses incurred in the prior Fiscal Year that exceeded Gross Receipts for that Fiscal Year; or (ii) expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the report described in this Section.

ARTICLE 15: RIGHT TO AUDIT

15.1 Parks, the Comptroller, and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of Licensee and any sublicensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee and any sublicensee shall also permit the inspection by Parks, the Comptroller, or other duly authorized representatives of the City of any equipment used by Licensee and any sublicensee, including, but not limited to, point-of-sale systems, and all reports or data generated from or by the point-of-sale system, cash registers and recording machines, and all reports or data generated from or by the equipment.

Licensee shall cooperate fully and assist Parks, the Comptroller, or any other duly authorized representative of the City in any examination or audit thereof. In the event that Licensee's books and records, including supporting documentation, are situated at a location fifty (50) miles or more from the City, the records must be brought to the City for examination and audit, or Licensee must pay the food, board, and travel costs incidental to two (2) auditors conducting such examination or audit at said location.

15.2 Licensee's failure or refusal to permit Parks, the Comptroller, or any other duly authorized City representative to audit and examine Licensee's records, books of account and data, or the interference in any way by Licensee in such an audit or examination, is presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder which shall entitle Parks to terminate this License following the giving of notice and expiration of applicable cure periods.

15.3 Notwithstanding the foregoing, both parties acknowledge and agree that the Comptroller's powers, duties, and obligations under the New York City Charter shall not be diminished, compromised, or abridged in any way.

ARTICLE 16: RETENTION OF RECORDS

16.1 Licensee agrees to retain all books, records, and other documents relevant to each Year covered by this Agreement for ten (10) years after the termination of this Agreement. 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 17: INSPECTIONS AND AUDITS

17.1 Licensee shall 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 Licensee's conduct under this Agreement.

17.2 Licensee shall establish and maintain accurate records and documents that 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 documents shall conform to generally accepted accounting principles ("GAAP").

17.3 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.

17.4 Licensee's failure or refusal to furnish any of the statements required to be furnished under this Article within thirty (30) calendar 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.

17.5 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.

17.6 The parties acknowledge and agree that the Comptroller's powers, duties and obligations under the New York City Charter shall not be diminished, compromised or abridged in any way.

ARTICLE 18: PROHIBITIONS ON USE

18.1 Nuisance and Waste. Licensee shall not create, nor allow to be created, any nuisance or danger to the public safety or public property in, on or about the Licensed Premises and shall not commit or cause any waste, damage, disfigurement, or injury to the Licensed Premises.

18.2 Smoking, Alcohol, Packaging

(a) Under no circumstances may Licensee sell or cause to be sold on or about the Licensed Premises cigarettes, cigars, electronic cigarettes or other tobacco products and non-tobacco smoking products. No signs or any other kind of advertising for tobacco products, non-tobacco smoking products, or electronic cigarettes shall be permitted at the Licensed Premises. Smoking of any tobacco product, non-tobacco smoking product, use of electronic cigarettes, and the presence of firearms are strictly prohibited at the Licensed Premises. Licensee shall adhere to and enforce this policy.

(b) Licensee may not place advertisements for alcohol at the Licensed Premises but Licensee may display signage approved by Parks setting forth its offerings of alcoholic beverages. Service of alcohol at the Licensed Premises is strictly prohibited without Parks' prior written approval and the appropriate license(s) from the State Liquor Authority (SLA) and all other agencies having jurisdiction, as applicable. Alcohol is permitted at the Licensed Premises pursuant to Section 4.1 of this License Agreement, and/or with prior written approval from Parks. Licensee must make all efforts to keep alcohol consumption discreet.

(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.

18.3 No Combustibles and Inflammables. Except for properly stored fuels in accordance with FDNY regulations, Licensee shall not use or permit the storage of any kerosene, illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances or explosives of any kind or any other substance or thing prohibited in the standard policies of fire insurance companies in the State of New York

18.4 Licensee shall adhere to and enforce the prohibitions contained in this Article 18.

ARTICLE 19: SECURITY

19.1 Pursuant to a plan approved in writing by Parks, Licensee shall, at its sole cost and expense, be responsible for all security for the Pavilion year-round and shall provide a 24-hour-a-day security system at the Concession. Licensee shall secure the Concession and any equipment every evening . Licensee shall be responsible for providing or causing there to be provided appropriate security for any Licensee Special Events or activities undertaken pursuant to this License. Licensee, at its own expense, may install locks, door controls, security cameras, intercom system and/or alarm systems for the Concession provided that all keys and/or codes for such locks and systems are provided to Parks.

19.2 The City shall not be responsible for any loss or damage to any property of Licensee or any other person that is used or stored at the Licensed Premises.

19.3 Licensee shall be responsible for securing all entrances and exits of the Concession at all times.

ARTICLE 20: SIGNAGE

20.1 The design and placement of all signage, including signage that includes Licensee's name, trade name(s) and/or logos, is subject to Parks' prior written approval.

20.2 Licensee shall display signs needed to guide and inform the public as to the name, location, purpose, hours of operation, and any related fees for the use of the Licensed Premises. Signs shall be maintained in good condition and repair and shall also include the Parks logo following the design guidelines set by Parks, unless Parks otherwise approves in writing, and may indicate that Licensee, in cooperation with Parks, maintains the Licensed Premises through a License Agreement.

20.3 Licensee, at its sole cost and expense, shall post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. The signs shall include the necessary wording and arrows to appropriately direct patrons. Licensee shall obtain necessary approvals or permits from any governmental agency having jurisdiction over any nearby highways, streets, or other specified location contemplated for the placement of any signs off-site of the Licensed Premises.

20.4 Licensee shall maintain all graphics in a first-class condition, and promptly clean all vandalized or damaged signs or replace such vandalized or damaged signs with new signs that match other installed signs. An overall signage plan for the Licensed Premises is subject to the written approval of

Commissioner or Commissioner's designee. Signage at the entrances and elsewhere where mutually agreed by Licensee and the Commissioner, shall acknowledge Parks.

20.5 Any and all signage is subject to Parks' prior written approval, and subject, as required, to approval by DOB and PDC. Signage shall comply with ADA standards. The design, placement, content of all signage, including signage which includes Licensee's name, trade name(s) and/or logo(s), as well as the amount of signage placed and/or installed is subject to Parks' prior written approval.

ARTICLE 21: APPROVALS

21.1 Licensee is solely responsible for obtaining all government approvals, permits and licenses required by federal, State and City laws, regulations, rules, and orders to fulfill this License. Parks shall provide Licensee with reasonable cooperation in obtaining the necessary approvals, permits, and licenses.

21.2 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 her duly authorized representative; provided that, in each case, such act, consent, 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 her duly authorized representative.

ARTICLE 22: SPONSORSHIPS, PUBLICATIONS, ADVERTISING AND PUBLICITY

22.1 Licensee must obtain Parks' prior written approval before entering into any marketing plan or sponsorship agreement and must account for any funds from these agreements under Article 13 (Revenues & Accounts) of this Agreement. If Licensee breaches this provision, the City shall take any action that the City may deem necessary to protect the City's interests. Licensee shall not accept sponsorship of or on behalf in any kind of alcohol, firearms, tobacco products, non-tobacco smoking products, or electronic cigarettes. The display, placement, advertising, or promotion of alcohol, firearms, cigars, cigarettes, tobacco products, non-tobacco smoking product and electronic cigarettes is strictly prohibited.

22.2 Licensee may establish programs or brochures for activities at the Licensed Premises, subject to Parks' prior approval. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing promotional matter for the Licensee's programs and sponsorship acknowledgments, except for promotional matter and sponsorship acknowledgments that, in the Commissioner's sole discretion, are indecent, in obvious bad taste, demonstrate a lack of respect for public morals or conduct, or adversely affects the reputation of the Licensed Premises, Parks, or the City. The Commissioner shall have prior approval as to design and distribution of all promotional materials and sponsorship acknowledgments. All requests for consent by Licensee shall be directed to Parks' Chief Marketing and Development Officer (or any successor thereto, or any other person as the Commissioner may designate).

22.3 (a) Licensee shall obtain the Commissioner's prior written approval for any advertisement or promotional material concerning the Licensed Premises.

(b) If in the Commissioner's discretion any release, advertisement, or statement made to the public relating to Licensee's services at the Licensed Premises is incorrect or unacceptable for any reason, Licensee agrees to alter or cease such release, advertisement, or statement as directed by the Commissioner in writing.

(c) Revenue from sponsorships shall be included in Gross Receipts, whether in cash or as discounts against purchase price of materials, equipment, or commodities.

ARTICLE 23: DONOR RECOGNITION

23.1 Licensee may propose donor recognition agreements for Parks' approval. All forms of recognition are subject to Parks' prior written approval (which shall not be unreasonably withheld or delayed), including approval over the size, quantity, and term, and are subject to applicable laws, rules, and regulations. All revenues from donor recognition shall be restricted for the maintenance and operation of the Licensed Premises, accounted for separately and apart from all other funds as required by Article 13 (Revenues & Accounts) of this Agreement.

ARTICLE 24: TRANSFERS, ASSIGNMENTS, AND SUBLICENSES

24.1 (a) Licensee shall not sell, transfer, assign, mortgage, sublicense or encumber any interest provided for herein, ten percent (10%) or more of the shares of or interest in Licensee, or consent, allow or permit any other person or party to use any part of the Licensed Premises, 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 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 Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed sublicense/assignment documents as provided herein.

(b) 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 the 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 Article.

24.2 No assignment or other transfer of any interest in this Agreement shall be permitted that, 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 (10%) or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to the Commissioner the assignment 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 Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations that are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises.

24.3 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, including payment to the City, shall be subject to the prior written approval of Parks. Any such sublicense that 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 operation and maintenance of the Licensed Premises shall be equally applicable to any sublicensee. All sublicensees shall be subject to the same internal control requirements as Licensee. 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 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 Articles 29 and 30 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) shall be subject to the terms and conditions as set forth in this License. The Commissioner may request any additional information deemed necessary, and Licensee shall promptly comply with such requests.

24.4 Licensee shall issue a solicitation in the basic form of a request for proposals ("RFP"), with terms and conditions approved by Parks, to select a sublicensee, subject to Parks' approval. This RFP shall be advertised in the City Record and other appropriate publication(s) approved by Parks. Parks shall require Licensee to conduct background check of the selected sublicensee in accordance with Parks' usual procedures and requirements, and subject to Parks' approval. Parks' disapproval of the successful proposer shall be deemed reasonable if the successful proposer fails the background check. Should Licensee request, and Parks grant, approval for a different sublicensee to take over the operation of the Concession, Licensee shall solicit for interest through a new RFP process as described in this Article and any proposed sublicensee selected through this process is subject to Parks' approval. Any subsequent sublicense agreement will also be subject to the terms and conditions set forth in this License.

24.5 Licensee and proposed assignee, transferee, and sublicensee shall comply with all applicable PASSPort procedures in connection with any such assignment/transfer.

24.6 No consent to or approval of any assignment, transfer, or sublicense granted pursuant to this Article 24 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.

ARTICLE 25: PARKS CONSTRUCTION

25.1 Parks reserves the right to perform construction or maintenance work at the Licensed Premises deemed necessary by the Commissioner in the Commissioner's sole discretion, at any time during the Term. Licensee agrees to cooperate with Parks and to accommodate by providing public and construction access through the Licensed Premises. Parks shall use its best efforts to give Licensee at least fourteen (14) calendar days prior written notice of such work and not interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close

part or all of the Licensed Premises for a Parks purpose, as determined by the Commissioner. Licensee shall be responsible for the security of all Licensee's property prior to Parks' construction work. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions of Licensee and/or its sublicensee.

ARTICLE 26: COMPLIANCE WITH LAWS

26.1 Licensee shall comply and cause its employees, agents, sublicensees, and volunteers to comply with all laws, rules, regulations, and orders now or hereafter prescribed by the Commissioner, and to comply with all laws, rules, regulations and orders of any federal, State or City agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

26.2 Licensee shall not use or allow the Licensed Premises, or any portion thereof to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to occupancy or use during the Term of this License.

ARTICLE 27: NON-DISCRIMINATION

27.1 Licensee shall not unlawfully discriminate against any employee, applicant for employment, volunteer, youth apprentice, or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act ("ADA") and regulations pertaining hereto as applicable. Any violation of this Section 27.1 shall be a material breach of this License.

27.2 All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

ARTICLE 28: NO WAIVER OF RIGHTS

28.1 No acceptance by Commissioner of any compensation, fees, penalty sums, charges, or other payments in whole or in part for any periods after a default of any terms and conditions herein shall be deemed a waiver of any right on the part of the Commissioner to terminate this License. No waiver by the Commissioner of any default on the part of Licensee in the performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

ARTICLE 29: INDEMNIFICATION

29.1 Licensee Responsibility

(a) Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, volunteers, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors, sublicensees, 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 Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, volunteers, sublicensees, 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 City 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 that is now, or becomes in the future, listed, defined or regulated in any manner by any Environmental Laws based upon, directly or indirectly, its properties or effects.

29.2 Indemnification and Related Obligations

(a) **Indemnification by TBC.** To the fullest extent permitted by law, TBC shall indemnify, defend and hold the City and its officials and employees (a "City Indemnified Party") harmless against any and all claims and demands of third parties for injury, including death, or property damage arising out of TBC's operations under this License Agreement ("City Claims"), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) arising from any City Claims (together with City Claims, "City Liabilities"), arising out of or related to any of TBC's operations under this License and/or TBC's respective employees, agents, servants, contractors or subcontractor's failure to comply with the law or any of the requirements of this License; provided, however, that the foregoing indemnification shall exclude City Liabilities to visitors to the Licensed Premises where such City Liabilities do not arise out of or are not related to specific TBC actions or conduct, or actions or conduct of TBC's respective employees, agents, servants, contractors or subcontractors. Insofar as the facts or law relating to any of the foregoing would preclude a City Indemnified Party from being completely indemnified by Licensee, the City Indemnified Party shall be partially indemnified by TBC to the fullest extent permitted by law. TBC's obligation to defend, indemnify and hold the City and its officials and employees harmless shall not be (i) limited in any way by TBC's obligation to obtain and maintain insurance under this License, nor (ii) adversely affected by any failure on the part of the City or its officials and employees to avail themselves of the benefits of such insurance.

(b) **Indemnification by City.** To the fullest extent permitted by law, the City shall indemnify, defend and hold TBC and its trustees, directors and employees (a "TBC Indemnified Party") harmless against any and all claims and demands of third parties for injury, including death, or property damage arising out of the City's operations in the Licensed Premises ("TBC Claims"), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) arising from any TBC Claims (together with TBC Claims, "TBC Liabilities"), arising out of or related to any of the City's operations in the Licensed Premises and/or the City or its respective employees, agents,

servants, contractors or subcontractor'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 a TBC Indemnified Party from being completely indemnified by City, the TBC Indemnified Party shall be partially indemnified by City to the fullest extent permitted by law. With respect to the City's defense obligations hereunder, TBC consents to having any such defense provided by the New York City Law Department.

(c) **Indemnification by sublicensee(s).** Notwithstanding the foregoing, if TBC sublicenses this License Agreement to a third party, then to the fullest extent permitted by law, the sublicensee(s) shall indemnify, defend and hold TBC and the City, and their 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 the sublicensee itself has been negligent) and/or the sublicensee'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 TBC and the City, or their officials and employees from being completely indemnified by the sublicensee, TBC and the City, and their officials and employees shall be partially indemnified by the sublicensee(s) to the fullest extent permitted by law. Sublicensee's obligation to defend, indemnify and hold TBC and the City and their officials and employees harmless shall not be (i) limited in any way by sublicensee's obligation to obtain and maintain insurance under this License, nor (ii) adversely affected by any failure on the part of TBC or the City or their officials and employees to avail themselves of the benefits of such insurance.

ARTICLE 30: INSURANCE

30.1 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 herein. Licensee agrees that it shall, and with respect to the maintenance and operations of the Concession and Licensed Premises, require any sublicensee(s) and/or any other subcontractor(s) who perform work for Licensee pursuant to this License and in connection with Licensee's responsibilities in the Licensed Premises to comply with all the provisions set forth in this Article. The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, Licensee's operations warrant it.

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

30.2 Commercial General Liability Insurance

(a) Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) 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 Five Million Dollars

(\$5,000,000). 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) The 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 Agreement. Coverage shall be at least as broad as the most recent edition 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 also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 20 26 and CG 20 37.

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

30.4 Commercial Automobile Liability Insurance With regard to all operations under this Agreement or any approved sublicense in which automobiles are used, if any, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least \$1,000,000 each accident (combined single limit) for liability arising out of the ownership, maintenance, or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the most recent edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

30.5 Property Insurance

(a) Licensee shall maintain comprehensive, broad-form property insurance (such as an “All Risk” policy) covering all buildings, structures, equipment and fixtures on the Licensed Premises (“Concession Structures”), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind, subsidence and earthquake. Such insurance shall be “occurrence” (rather than “claims-made”) based and shall designate Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

(b) This Section 30.5 does not require coverage for damage caused by flooding.

(c) The limit of such property insurance shall be no less than the full Replacement Cost of all Concession Structures, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an “all risk” or “special perils form” insurance

policy. If such insurance contains an aggregate limit, it shall apply separately to the Concession Structures.

(d) In the event of any loss to any of the Concession Structures, Licensee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With regard to any Concession Structure that the City owns or in which the City has an interest, Licensee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner's discretion, allow the City itself to adjust such claim.

30.6 Liquor Law Liability Insurance In the event Licensee or any sublicensee or contractor shall serve alcohol on the Premises, Licensee shall carry or cause to be carried liquor-law liability insurance in an amount not less than Three Million Dollars (\$3,000,000) per occurrence, and name the City, together with its officials and employees, as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service. The Commissioner may increase or decrease the limit(s) if the Commissioner reasonably believes that the nature of such operations merits an increase or decrease.

30.7 General Requirements for Insurance Coverage and Policies

(a) Policies of insurance required under this Article 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 Article 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 the 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 or self-insured retention with regard to any insurance required under this Article 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 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, City of New York Department of Parks and Recreation, Arsenal, 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, New York 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, Employers Liability, Disability Benefits shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

30.8 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, Employers Liability Insurance, Disability Benefits insurance policies, the Licensee shall submit one of the following: C-105.2 Certificate of Worker's Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation and disability benefits insurance.

(c) For all insurance required under this Article other than Workers Compensation, Employers Liability and Disability Benefits, Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in 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 required by the Commissioner, attached hereto as **Exhibit F**, or certified copies of all policies referenced in such Certificate of Insurance.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this License. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

(e) Acceptance or approval by the Commissioner 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 Article is secured and maintained, nor does it waive Licensee's liability for its failure to do so.

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

30.9 Miscellaneous

(a) 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) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 30.2, and such insurance shall include the City, including its officials and employees, as an Additional Insured with coverage at least as broad as ISO Forms CG 20 26 and 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 and requires such entity to name Licensee as an Additional Insured under such insurance, Licensee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability Insurance at least as broad as ISO form CG 20 26).

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

(d) Where notice of loss, damage, occurrence, accident, claim, or suit is required under a policy maintained in accordance with this Article, 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 Licensee's own employees) in the time required by the insurance policy. 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 the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

(f) Insurance coverage in the minimum amounts provided for in this Article shall not relieve 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.

(g) 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 Article, Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(h) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, 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 Article (whether or not such insurance is actually procured, or claims are paid thereunder) or any other insurance applicable to the operations of Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(i) In the event 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, Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Parks and Recreation,

Arsenal, 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, New York 10007. Notwithstanding the foregoing, Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

ARTICLE 31: WAIVER OF COMPENSATION

31.1 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 Licensed Premises, 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 discharges Commissioner, her agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes described aforesaid.

31.2 Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by the Commissioner sooner than the fixed Term because the Licensed Premises are required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

ARTICLE 32: INVESTIGATIONS

32.1 (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:

(1) 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.

(2) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 32.1 (d) below without the City incurring any penalty or damages for delay or otherwise.

(c) The penalties which may attach after the Commissioner or agency head's final determination 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 32.1(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 32.1(d) (iii) and (iv) below in addition to any other information that 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 (b) (ii)(1) 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 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 that may be related to the procurement or obtaining of this agreement by Licensee, or affecting the performance or this Agreement.

ARTICLE 33: CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

33.1 This 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.

33.2 Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") 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 Agreement and its intent, Licensee agrees:

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

(b) With respect to any action between the City and Licensee in New York State Courts, Licensee hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of *forum non conveniens*, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

33.3 With respect to any action between the City and Licensee in Federal Courts 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.

33.4 If Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, Licensee shall either 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 34: WAIVER OF TRIAL BY JURY

34.1 (a) Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this License.

(b) No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this 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.

(c) No action shall lie or be maintained against the City 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.

(d) In the event any claim is made, or any action brought in any way relating to this Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City without additional compensation any and all reasonable assistance that the City may reasonably require of Licensee.

ARTICLE 35: CUMULATIVE REMEDIES - NO WAIVER

35.1 The specific remedies to which the City may resort under the terms of this License are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any other default hereunder. The failure of the City to insist in any one or more cases upon the strict performance of any of the covenants of this License, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

ARTICLE 36: INDEPENDENT STATUS OF LICENSEE

36.1 Licensee is not an employee of the City and in accordance with such independent status neither Licensee nor its employees or agents will hold themselves out as, nor claim to be officers, employees, or agents of the City, or of any department, agency, or unit thereof, and they will not make any claim, demand, or application to or for any right or privilege applicable to an officer of, or employee of, the City, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

36.2 All experts, independent contractors, consultants, specialists, trainees, servants, agents, and employees of Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor are they under contract with the City, and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee 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 37: CONFLICT OF INTEREST

37.1 Licensee represents and warrants that neither it nor any of its directors, officers, members, partners or employees, trustees, 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 part, from the City treasury, shall participate in any decision relating to this License which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she 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 38: PROCUREMENT OF AGREEMENT

38.1 Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee, or any other compensation. Licensee further represents and warrants that no payment, gift, or thing of value has been made, given or promised to obtain this or any other agreement between the Parties. Licensee makes such representations and warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

38.2 For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this License without liability, entitling the City to recover all monies paid hereunder, if any, and Licensee shall not make any claim for, or be entitled to recover, any sum or sums due under this License. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided by law or pursuant to this License.

ARTICLE 39: NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

ARTICLE 40: ALL LEGAL PROVISIONS DEEMED INCLUDED

40.1 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 41: SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

41.1 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 42: JUDICIAL INTERPRETATION

42.1 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 43: MODIFICATION OF AGREEMENT

43.1 This License 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 may be modified from time to time by agreement in writing, but no modification of this License 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 44: NOTICES

44.1 Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License, or to any other address that Licensee shall have filed with the Commissioner. Notices may also be given by electronic mail to the electronic mail addresses for each party provided at the beginning of this License.

ARTICLE 45: LICENSEE ORGANIZATION, POWER AND AUTHORITY

45.1 Licensee and the individual executing this License on behalf of Licensee each represents and warrants that 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 the power and authority to enter into this License and perform its obligations hereunder. This is a continuing representation and warranty.

ARTICLE 46: MISCELLANEOUS

46.1 The headings of articles, sections and paragraphs are inserted for convenience only and shall not be deemed to constitute part of this License or to affect the construction thereof. The use in this License of singular, plural, feminine, masculine, 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 the Commissioner and Licensee.

ARTICLE 48: COUNTERPARTS

48.1 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.

[SIGNATURE PAGE FOLLOWS]

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

**NEW YORK CITY DEPARTMENT
OF PARKS & RECREATION**

THE BATTERY CONSERVANCY, INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

APPROVED AS TO FORM AND CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

Date

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

On this ____ day of _____, 2025, before me personally came _____ to me known and known to me to be the _____ for the New York City Department of Parks & Recreation, and the said person described in and who executed the foregoing instrument, and s/he acknowledged that s/he executed the same in her/his official capacity and for the purpose mentioned therein.

Notary Public

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

On this ____ day of _____, 2025, before me personally came _____, who being duly sworn by me did depose and say that s/he is the _____ of The Battery Conservancy, Inc. and that s/he executed the foregoing instrument in her/his official capacity and for the purposes mentioned therein.

Notary Public

EXHIBIT A: MAY 23, 2024, LICENSE AGREEMENT

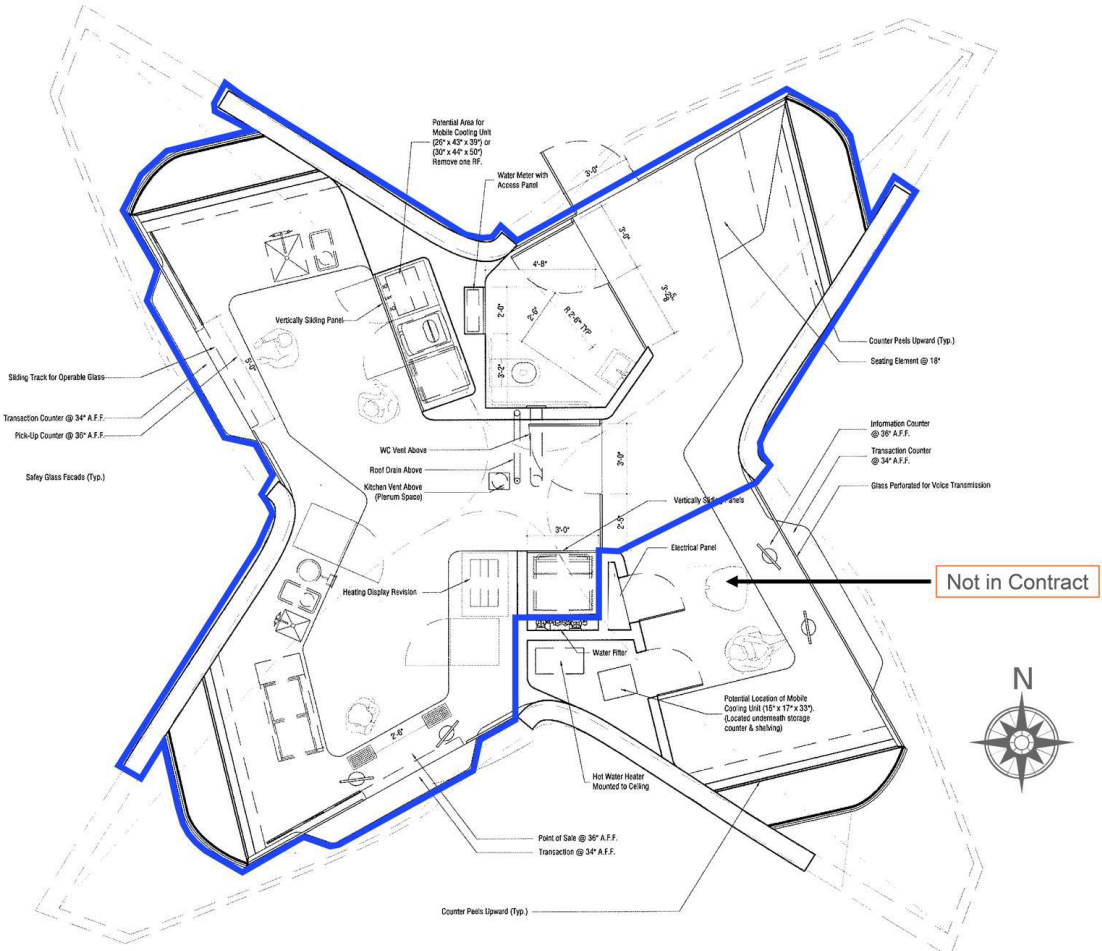
EXHIBIT B: LICENSED PREMISES



*The fourth wing of the Pavilion as noted directly below is not part of the Licensed Premises and is reserved by the City for other uses.

**Licensee shall maintain a circular area with a radius of at least fifteen (15) feet, or as otherwise approved by Parks, from the outer edge of the granite base of the Jewish Tercentenary Monument free and clear of furnishings, storage, and equipment including, but not limited to, tables, chairs, umbrellas, menu boards, and decorative lighting.

Food Concession Licensed Premises



New Amsterdam Plein and Pavilion at Peter Minuit Plaza

EXHIBIT C: SCHEDULE OF APPROVED HOURS AND RATES, FEES, AND PRICES

EXHIBIT D: PARKS INSPECTION (PIP) MANUAL

EXHIBIT E: NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Licensees of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 et seq. (“DCWP Rules”).

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

3. The Licensee must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Concession Manager in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Licensee must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Licensee will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Licensee will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee may go to www.nyc.gov/PaidSickLeave for 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 Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. 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;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;

3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

4. to file a complaint or domestic incident report with law enforcement;

5. to meet with a district attorney's office;

6. to enroll children in a new school; or

7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable

documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees 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 safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and 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 safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. 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 their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. 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

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and 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 safe and sick time. The ESSTA provides minimum requirements pertaining to safe and 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 safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT F: CERTIFICATION BY INSURANCE BROKER OR AGENT

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

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

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

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

[Signature of authorized official, broker, or agent]

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

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____