

**LICENSE AGREEMENT**

**BETWEEN**

**TIMES SQUARE DISTRICT MANAGEMENT ASSOCIATION, INC.**

**AND**

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

**FOR THE MAINTENANCE AND OPERATION OF FATHER DUFFY SQUARE**

**MANHATTAN, NEW YORK**

**DATED:** \_\_\_\_\_, 2025

**NYLD's Approval No.:** \_\_\_\_\_

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**THIS LICENSE AGREEMENT** (“License Agreement” or “License” or “Agreement”) made this \_\_\_\_\_ day of \_\_\_\_\_, 2025 between the City of New York (the “City”), a municipal corporation of the State of New York acting by and through the New York City Department of Parks & Recreation (“Parks”), whose address is The Arsenal, 830 Fifth Avenue, New York, NY 10065, and Times Square District Management Association, Inc. d/b/a Times Square Alliance (the “Licensee” or “Alliance”), a Not-for Profit Corporation with its place of business at 1560 Broadway, New York, NY 10036.

**WITNESSETH:**

**WHEREAS**, New York City Charter § 533 (the “Charter”) charges the Commissioner of Parks (the “Commissioner”) with the duty to manage, care, maintain, and operate City parks, squares, buildings, structures, and recreation facilities under Parks’ jurisdiction, for the beneficial use of the people of the City, and the duty to plan, develop, conduct, and enter into arrangements on Parks’ behalf for the public’s benefit; and

**WHEREAS**, the City desires to encourage interested not-for-profit corporations to provide supplemental services, including maintenance and recreational, cultural, and educational programs for the public’s benefit; and

**WHEREAS**, the Commissioner has determined that arrangements with interested not-for-profit corporations are necessary and appropriate for the public’s benefit; and

**WHEREAS**, Father Duffy Square, located between West 46th and West 47th Streets and 7th Avenue and Broadway in the Borough of Manhattan, is property under Parks jurisdiction and control and is the site of a discount theater ticket booth and related signage (the “TKTS Ticket Booth”), the management and operation of which is subject to a license agreement between Parks and the Theatre Development Fund (“TDF”) dated January 6, 2006, as same may have been subsequently modified by the parties thereto (the “Ticket Stand License”);

**WHEREAS**, the Commissioner desires to provide for the maintenance of the Licensed Premises, as hereinafter defined and described in the attached Exhibit A, including the Public Stairs, the Statuary, and the Plaza during the Term of this License Agreement for the accommodation, enjoyment, and convenience of the public; and

**WHEREAS**, the Alliance is the district management association for the Times Square Business Improvement District (“District”), with a mission, inter alia, for improving and enhancing public spaces within the District; and

**WHEREAS**, under a Management and Operation Agreement dated November 16, 2015 Parks and the Alliance, the Alliance has maintained and operated the Licensed Premises; and

**WHEREAS**, Parks and the Alliance have collectively created an effective public-private partnership and complement each other’s efforts to improve and administer the Licensed Premises; and

**WHEREAS**, Parks and the Alliance desire that their coordinated efforts continue to serve the best interests of the public and enter into a License Agreement specifying rights and obligations with respect to the maintenance of the Licensed Premises, including the Statuary, Plaza, and the Public Stairs each as defined in Section 3.1 herein; and

WHEREAS, on July 10, 2024 the Franchise and Concession Review Committee (“FCRC”), authorized Parks to use a different procedure to enter into this Sole Source License Agreement with the Alliance.

**NOW THEREFORE**, in consideration of the promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

### **ARTICLE 1: GRANT OF LICENSE**

**1.1** Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner, this non-exclusive License to maintain and operate the Licensed Premises as shown on Exhibit A, including the Statuary, Plaza, and the Public Stairs, but excluding the TKTS Ticket Booth, for the public’s benefit and best interest, in accordance with the terms herein and to the reasonable satisfaction of the Commissioner. Licensee shall only have rights and obligations as set forth in this License Agreement.

**1.2** Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, New York State ("State"), and City laws, rules, regulations, and orders which are or may become necessary to operate and maintain the Licensed Premises under the terms of this License Agreement. To comply with this License Agreement, Licensee must fulfill all of the obligations in this Agreement. Failure to fulfill any of the obligations in this Agreement for any reason may, subject to notice and a reasonable opportunity to cure, if applicable, be deemed a default by the Commissioner. Any act, consent, approval, or permission required of the City, Parks, or the Commissioner under this License shall be valid only if it is, in each instance, in writing and signed by the Commissioner or Commissioner’s duly authorized representative. Any variance, alteration, amendment, or modification of this instrument shall only be valid or binding upon the City, Parks, the Commissioner, or their agents if it is in each instance in writing and duly signed by the Commissioner or Commissioner’s duly authorized representative.

### **ARTICLE 2: NO LEASE**

**2.1** It is expressly understood that the City has title to the Licensed Premises and no land, building, space, improvement, or equipment is leased to the Licensee. During the Term of this License as herein defined, Licensee shall have the use of the Licensed Premises for the purposes herein provided. Except as herein provided, Licensee has the right to occupy the Licensed Premises, and maintain the Statuary, the Plaza, and the Public Stairs only so long as each and every term and condition in the License Agreement is strictly complied with and so long as the Commissioner does not terminate this License Agreement. Licensee shall be deemed non-compliant following Licensee’s failure to comply with the written notice set forth in Section 4.3 of this License Agreement.

**2.2** Licensee shall at all times provide free access to the Licensed Premises to the Commissioner or Commissioner’s representatives and to other City, State, and Federal officials having jurisdiction for inspection and any other lawful purposes. Commissioner, Commissioner’s representatives, and such other officials shall have the right to enter and be present at the Premises to observe Licensee’s operations.

### **ARTICLE 3: DEFINITIONS**

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

**(a)** “Alterations” shall mean:

**(i)** Any restoration, rehabilitation, modification, renovation, or improvement to the Licensed Premises;

**(ii)** Any work or construction which would or might affect in any manner, or have any impact whatsoever upon the character, appearance, or design of any portion of the Licensed Premises or its adjacent areas;

**(iii)** Any work, excluding ordinary maintenance and repair, affecting the plumbing, heating, electrical, mechanical, ventilating, or other systems of the Licensed Premises or any major component of such systems;

**(iv)** Affixing or installing any equipment to any area of the Licensed Premises; and

**(v)** Any major landscaping that includes planting or removal of trees, flowers, or shrubbery on the Licensed Premises.

**(b)** “City” shall mean the City of New York, its departments and political subdivisions.

**(c)** “Commissioner” shall mean the Commissioner of the New York City Department of Parks & Recreation or the Commissioner’s designee.

**(d)** “Comptroller” shall mean the Comptroller of the City of New York.

**(e)** “Improvements” shall mean the TKTS Ticket Booth as defined below, the Plaza as defined below, the Public Stairs as defined below, and the Statuary as defined below, at Father Duffy Square. Improvements shall not include routine maintenance and repairs required to be performed in the normal course of business to the Licensed Premises.

**(f)** “Licensed Premises” shall mean the area so denoted as Father Duffy Square described in Exhibit A attached hereto and shall include within such area (i) the street level plazas

with new pavement (the “Plaza”), (ii) amphitheater-style seating on top of the TKTS Ticket Booth (defined below) (the “Public Stairs”), (iii) existing statuary (the “Statuary”). The Licensed Premises shall specifically exclude the TKTS building and related signage (the “Ticket Booth”).

(g) “Parks” shall mean the New York City Department of Parks & Recreation.

(h) “Special Events” shall mean any event for which Parks has issued a Special Event Permit.

(i) “Year” or “Operating Year” shall both refer to the period between the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following calendar year.

#### **ARTICLE 4: TERM OF THE LICENSE**

**4.1** The term (“Term”) of this Agreement shall be ten (10) years and shall commence on Parks giving written Notice to Proceed to Licensee following registration with the Comptroller (the “Commencement Date”) and shall terminate on the tenth (10<sup>th</sup>) anniversary of this date (the “Expiration Date”), unless otherwise terminated sooner pursuant to the terms of this Agreement. Upon not less than one (1) year’s written notice from Licensee to Parks prior to the Expiration Date, this Agreement may be renewed, at the discretion of the Parties hereto, for two (2) additional five (5) year terms (“Renewal Term”). Such renewal shall be subject to the same terms and conditions contained herein. In no event shall the Concession become effective prior to registration with the Comptroller.

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

**4.3** Should Licensee breach or fail to comply with any of the provisions of this License Agreement, any Federal, State, or local law, rule, regulation, or order affecting this License Agreement or the maintenance of the Statuary, the Plaza, and the Public Stairs with regard to any and all matters, Commissioner may in writing order Licensee to remedy such breach or to comply with such provision, law, rule, regulation, or order. 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 fifteen (15) days from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee, then this License Agreement shall immediately terminate thereafter. If said breach or failure to comply is material, 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 Agreement, such revocation and termination to be immediately effective on the mailing thereof.

**4.4** Nothing contained in this Article shall be deemed to imply or be construed to represent an exclusive enumeration of the circumstances under which Commissioner may terminate this License Agreement.

**4.5** Upon expiration or sooner termination of this License Agreement by Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment, or any other payment whatsoever against Commissioner, Parks, or the City.

**4.6** Licensee agrees that upon the Expiration Date or sooner termination of this License Agreement, it shall immediately cease all activity pursuant to this License Agreement and shall promptly vacated the Licensed Premises without any further notice by the City and without resort to any judicial proceeding by or against the City.

**4.7** Licensee shall, on or prior to the expiration or sooner termination of this License Agreement, remove all its personal property from the Licensed Premises. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License Agreement is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any direct damages, including the cost of removal or disposal of such personal property should Licensee fail to remove all its personal property from the Licensed Premises on or before the Expiration Date or termination date of this License Agreement.

**4.8** If the Licensed Premises shall cease to be under Parks' jurisdiction and, instead, be transferred to another City agency, then this License Agreement shall terminate upon twenty-five (25) days' written notice to Licensee.

#### **ARTICLE 5: MAINTENANCE, OPERATIONS AND REPAIR**

**5.1 (a)** Licensee shall provide, or cause to be provided, services for the repair, maintenance, and improvement of the Licensed Premises, including the Statuary, Plaza, and the public Stairs, but excluding the TKTS Ticket Booth, to the Commissioner's reasonable satisfaction. Such services shall include keeping and maintaining the Statuary, the Plaza, and the Public Stairs in good condition and repair, all in accordance with the provisions of this License Agreement. All such work will be under the supervision of the Vice President of Operations for the Alliance. Notwithstanding anything to the contrary in this License Agreement, the Licensee shall not be responsible for repairing structural damage caused by TDF, Parks, another agency of the City, Special Events and demonstrations permitted by Parks, a utility company, a break in a water main, sewer, or steam line, flooding, fire, or other emergencies or catastrophes except as provided by the Licensee's indemnification requirements set forth in Article 21 herein.

**(b)** Licensee shall maintain or cause to be maintained the Licensed Premises, including the Statuary, the Plaza, and the Public Stairs, but excluding the TKTS Ticket Booth, for the accommodation of the public in such manner as the Commissioner shall prescribe and as permitted by the laws, rules, regulations, and orders of government agencies having jurisdiction. Licensee accepts the Licensed Premises in its "as-is" condition as of the date hereof and agrees to obtain necessary permits and approvals related to all operations at and maintenance of the Licensed Premises.



**5.2** Licensee shall comply with the rating standards for all applicable enumerated categories described in Parks' Inspection Program Manual ("PIP"), attached in Exhibit B, to the extent such standards and categories apply to those areas of the Licensed Premises that the Licensee is responsible for as described in this Article 5. Parks reserves the right in the future to extend the requirements of its existing rating system to the Licensed Premises.

**5.3** Licensee at its sole cost and expense shall render the following services in the Licensed Premises (excluding the TKTS Ticket Booth):

**(a)** Cleaning:

**(i)** Dirt, litter, and obstructions shall be removed as needed, and trash and leaves collected and removed as needed to maintain the Plaza and Public Stairs in a clean, neat, and good condition.

**(ii)** All walkways, sidewalks, and all other improvements and facilities of the Plaza and Public Stairs shall be routinely cleaned and maintained to keep such improvements and facilities in a clean, neat, and good condition.

**(iii)** Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface.

**(iv)** Drains, sewers, and catch basins shall be cleaned regularly to prevent clogging.

**(b)** Snow Removal:

**(i)** Snow and ice shall be removed from all walkways and paved surfaces in accordance with the City of New York Administrative Code § 16-123.

**(c)** Landscape Maintenance:

**(i)** All trees, shrubs, plantings, and grass-covered areas shall be watered as necessary to maintain such vegetation in a healthy condition.

**(ii)** Any weeds shall be removed or destroyed from paving blocks, pavement, cobbled and concrete areas.

**(d)** Repairs, which shall include but not be limited to the following:

**(i)** Benches or other seating: except for those benches on sidewalks, broken or missing bench slats shall be replaced and benches shall be painted as needed.

**(ii)** Pavements: All paved surfaces shall be maintained in a safe and attractive condition. To the extent feasible, replacement materials shall match existing materials.

(iii) **Painting:** All items with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

(e) **Statuary.** The Statuary shall be maintained on a periodic basis in accordance with the methods and standards as established in consultation with Parks' Arts and Antiquities Division.

(f) As provided below and in accordance with current practices, City employees may provide services in connection with such repairs in coordination with the Vice President of Operations for the Alliance. The Alliance shall provide, at its expense, appropriate materials required for the completion of such repairs.

(i) **Use of City Employees.** Subject to applicable laws, rules, regulations, and contractual provisions, nothing contained in this License Agreement shall preclude City employees from performing services required by Licensee. City employees, as well as Licensee's employees, will work in coordination with the Vice President of Operations for the Alliance, who reports to the President of the Alliance and the Parks Borough Chief of Operations.

(ii) **Use of City Equipment.** Licensee agrees, under supervision of the Parks' Borough Chief of Operations, to exercise reasonable care in the use, operation, and custody of City property, including property and equipment owned or leased by the City, used in the performance of services set forth in this License Agreement.

(g) **Public Stairs.** The Public Stairs shall be maintained in a safe and attractive condition. To the extent feasible, replacement materials shall match existing materials.

**5.4** Licensee shall provide an adequate number of staff members possessing the requisite qualifications to conduct all of its maintenance responsibilities with respect to the Statuary, Plaza, and the Public Stairs, and as the Commissioner shall reasonably approve.

**5.5** An employee, officer, member, or a manager of the Licensee must be available by telephone during all hours of operation of the Licensed Premises, and Licensee shall continuously notify Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour email address or cellular telephone number through which Parks may contact the employee, officer, member, or manager in the event of an emergency. Licensee shall replace any manager, officer, employee, member, subcontractor, or sublicensee whenever reasonably requested by Commissioner.

**5.6** Installation of additional fixed lighting or fixed sound equipment by the Licensee on the Licensed Premises shall require the Commissioner's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

**5.7** Licensee shall provide Americans with Disabilities Act ("ADA") accessibility if and to the extent required by the ADA throughout the Licensed Premises (excluding the TKTS Ticket

Booth), including, but not limited to, installing ramps as needed and providing ADA signage. Licensee shall comply with all City, State, and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required.

**5.8** Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring on the Licensed Premises, on a regular basis and in a format acceptable to the Commissioner. In addition, Licensee shall immediately, or within twenty-four (24) hours of becoming aware, notify Parks, in writing, of any claim for injury, death, property damage, or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, 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.

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

**5.10** Licensee shall maintain close liaison with the Parks Enforcement Patrol ("PEP") and New York City Police Department ("NYPD"). Licensee shall cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises and adjacent areas. Licensee shall use its best efforts to prevent illegal activity on the Licensed Premises, but it is acknowledged that Licensee has no enforcement authority.

**5.11** The design, placement, and content of all signage, including signage which includes Licensee's name, trade name(s), or logo(s), placed on or about the Licensed Premises, is subject to Parks' prior written approval. Signage shall also comply with ADA standards. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. Licensee shall not advertise any product brands without Parks' prior written approval. Licensee is prohibited from displaying, placing, or permitting the display or placement of advertisements in the Licensed Premises without the prior written approval of Parks. Licensee shall be prohibited displaying, placing, or permitting the display or placement of advertising matter which contains tobacco, non-tobacco smoking product, electronic cigarette, or alcoholic beverage advertising, which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11. Licensee has no responsibility or liability with respect to TDF's signage. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks at Licensee's sole cost and expense.

**5.12** Notwithstanding Licensee's obligation to maintain, or cause to be maintained, the Statuary, Plaza, and Public Stairs as described herein, Licensee's right to receive revenues derived at the Licensed Premises shall be subject to any additional City authorization, approvals, permits, and compliance with other processes which may be necessary, including without limitation, any necessary approval by the Franchise and Concession Review Committee ("FCRC"). The Commissioner and Parks hereby agree to reasonably assist Licensee in obtaining, maintaining, and

renewing any such additional approvals, permits, authorizations, and compliance with other processes relating to the services described herein.

**5.13** Licensee and Parks acknowledge that all management and operational and other obligations at the TKTS Ticket Booth shall lie with TDF pursuant to the Ticket Stand License.

**5.14** Should the Commissioner decide that Licensee is not maintaining or operating or causing to be maintained or operated the Licensed Premises (other than the TKTS Ticket Booth) in a reasonably satisfactory manner, the Commissioner may, in writing, order Licensee to improve operations or correct such conditions as Commissioner may deem reasonably unsatisfactory. In the event that Licensee fails to comply with such written notice or fails to respond in a manner reasonably satisfactory to Commissioner, in the Commissioner's reasonable discretion, 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.

**5.15** Hazardous Conditions and Emergency Operations (excluding TKTS Ticket Booth):

(a) Licensee shall assist Parks with periodic inspections of the Licensed Premises, and shall promptly notify Parks of any known hazardous condition(s). Licensee shall, whenever feasible, institute reasonable measures to protect the public from harm from such known hazardous condition(s), including, but not limited to installing warning signs and temporary barriers. Licensee will promptly advise Parks whether the Licensee is able to perform the necessary work to correct the hazard, or whether the Licensee is unable to perform such work.

(b) Should Commissioner, in Commissioner's sole judgment, decide that an unsafe or emergency condition exists on the Licensed Premises, Licensee, after written notification, shall have twenty-four (24) hours to correct such unsafe or emergency condition, or advise Parks that the Licensee is unable to perform such work. 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 remedied within the specified timeframe, the Licensee shall notify the Commissioner in writing and indicate the amount of time needed to correct such condition. The Commissioner, in Commissioner's sole discretion, may extend such period-of-time to permit Licensee to cure the unsafe or emergency condition, under such terms and conditions as appropriate, such consent not to be unreasonably withheld or delayed. In the case of unsafe or emergency conditions arising from terrorism, crime, or utilities, the Licensee shall coordinate correcting such unsafe or emergency condition with the relevant City agency or the Metropolitan Transportation Authority ("MTA") and Parks.

## **ARTICLE 6: RECORDS AND AUDITS**

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

**6.2** Licensee will provide notice to the Commissioner of all meetings, hearings, and proceedings of Licensee's Board of Directors, and will make available for consultation any of its officers and employees whose work relates to the performance of this License. Licensee will also make available, upon reasonable prior notice, at its principal place of business, for audit, inspection, or removal of copies by Parks, the Comptroller, and a Parks-authorized independent auditor, Licensee's books and records relating to the performance of this Agreement, including, but not limited to, the following:

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

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

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

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

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

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

**6.3 (a) Financial Statement:** Licensee shall furnish to the Commissioner or Commissioner's designee an annual report in conformance with GAAP and its tax return for each fiscal year during the Term and any renewal thereof including but not limited to the Licensee's 990 filings. Such statements shall include the salaries of all paid staff. Such statements shall, if they involve amounts over ten thousand dollars (\$10,000.00), be prepared by an independent Certified Public Accountant retained at the cost and expense of the Licensee. Such annual statement shall be submitted to the Commissioner or Commissioner's designee no later than ninety (90) days after the close of each year of the Term of this Agreement.

(b) Licensee shall furnish to Parks a copy of Licensee's Form 990, as filed with the Internal Revenue Service. Such Form 990 shall be submitted to the Commissioner no later than the final filing deadline as mandated by the Internal Revenue Service during the Term and any renewal thereof of this Agreement.

**6.4 Monthly Operations Report:** The Licensee shall furnish to Parks a monthly report to be submitted within seven (7) days of the previous month's end. The report shall include, but not be limited to, operations activities (repairs, maintenance, etc.), capital projects and alterations, upcoming public programs and events, future and ongoing initiatives, personnel, incidents or unusual activity, inquiries or publications from press and media, and other relevant information that should be reported to Parks.

**6.5 LL28 Report:** Pursuant to the amendment to Local Law 28 of 2008 as codified in the Administrative Code Title 18 § 18-134, the form of which is in Exhibit C, the Licensee shall provide to Parks, in a form acceptable to Parks, data concerning any funds that the Licensee has expended at the Premises for the preceding period of July 1<sup>st</sup> to June 30<sup>th</sup> no later than October 31<sup>st</sup> each year. All information furnished to Parks shall be accurate and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by the Licensee at the Premises.

**6.6 Annual Operating Budget and Operating Plan:** Prior to the start of each fiscal year, Licensee will submit to the Commissioner or Commissioner's designee for review and written approval, its park operations budget and capital budget, which shall include all costs associated with the Licensed Premises' maintenance and operations. The Licensee shall describe in reasonable detail the amounts proposed to be allocated, but not limited, to general maintenance, public art, public programs, concessions and communications, including salaries and benefits of any employee primarily engaged in those activities.

**6.7** Licensee's failure or refusal to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal to maintain adequate internal controls or to keep any of the records required by this Article 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 entitled Parks, at its option, to terminate this License.

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

## **ARTICLE 7: REVENUES & ACCOUNTS**

**7.1** Licensee shall open and/or continue to maintain an account or sub-account, accounted for separately and apart from all other funds, in 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 including any funds collected under a marketing or sponsorship or donor recognition agreement described in Articles 10 and 20. 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 expenses for programming, operating, managing, maintaining, and repairing the Licensed Premises and as described in Article 5. No withdrawals shall be made from the Special Account other than as provided in this Agreement. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Article 6. 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. Applicable law governs Licensee's use of such other revenues.

### **ARTICLE 8: INTENTIONALLY OMITTED**

### **ARTICLE 9: REVENUE GENERATING ACTIVITIES**

**9.1** Licensee's right to receive any revenues derived from within the Licensed Premises shall be subject to the Commissioner's review and approval any and all City authorization, approvals, permits, and compliance with other processes which may be necessary, including without limitation, any necessary approval by the FCRC. Revenue generating activities shall include, but not be limited to, sales of any goods or services and fundraising activities for any purpose. The Commissioner must expressly authorize each specific revenue generating activity at the Licensed Premises in writing. In addition to obtaining the Commissioner's written approval, Licensee must also obtain a permit from Parks' Revenue Division prior to selling or bartering any items as the Licensed Premises. Notwithstanding anything to the contrary, Parks shall not charge Licensee a fee for Parks-approved fundraising events or civic events celebrating Times Square organized and held by Licensee (excluding functions, events, or programs for which all or part of the Licensed Premises is reserved through Licensee by a third party). For the purposes of this Section, a civic event shall mean an event sponsored by the Licensee that is open to the public and does not have a fundraising component, but that includes an artistic, cultural, or educational component that supports Licensee's mission and celebrates Times Square.

**9.2** It is expressly understood that Licensee shall use all revenues generated pursuant to this Article only for the operation and maintenance of the Premises in accordance with the terms herein. All revenue generated in accordance with this Article shall be subjected to the provisions of Article 7 herein. Licensee shall provide Parks with an annual audited financial statement of such revenues and related expenditures made during the previous year in a form acceptable to Parks. Such statement shall be provided to Parks by the end of the calendar year.

### **ARTICLE 10: SPONSORSHIP AGREEMENTS, PUBLICATIONS, ADVERTISING, AND PUBLICITY**

**10.1** Licensee must obtain Parks' prior written approval before entering into any marketing or sponsorship agreement regarding the Licensed Premises and must account for any funds from these agreements under Article 7 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.

**10.2** Smoking of any tobacco products or non-tobacco smoking products and use of electronic cigarettes are strictly prohibited at the Licensed Premises. The display, placement or promotion of any tobacco products, non-tobacco smoking products, or electronic cigarettes shall not be permitted at the Licensed Premises. Licensee shall not accept sponsorships of any kind for the Licensed Premises on behalf of any tobacco products, non-tobacco smoking products, or electronic cigarettes. Licensee shall follow and comply with these policies.

### **ARTICLE 11: USE OF NAME & LOGO**

**11.1 (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 ("City IP") are the property of the City. To the extent that Licensee uses any City IP in the course of performing its non-profit activities ("Licensee Activities"), Licensee shall obtain Parks' prior written permission and approval for this use. In the event that Parks grants permission for the 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 the 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)** City IP shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner, which could be inconsistent with, or damaging to the City's name and reputation. Parks shall have the right to terminate this Agreement, upon written notice, if any part of the City IP is used by Licensee in connection with any illegal, illicit, or immoral purpose or activity. If any of the City IP is used by the other party in any way which, in the reasonable judgment of the owner, is inconsistent with or damaging to the City's name or reputation, Parks shall notify Licensee in writing and, before exercising the right of termination provided for in this subparagraph (b), shall provide three (3) business days following receipt of such notice to the Licensee to immediately cease and halt all such uses.

## **ARTICLE 12: COMPLIANCE WITH APPLICABLE STATUTES & REGULATIONS**

**12.1** Licensee shall faithfully perform and carry out the provisions of this License Agreement and cause its agents, employees, and invitees to conform to all rules, regulations, and orders prescribed as of this date or which may in this Agreement be reasonably prescribed by the Commissioner or Commissioner's designee, provided Commissioner or Commissioner's designee shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders prescribed by Parks, and comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Premises including Licensee's use and occupation. This provision includes, but is not limited to, the Parks Rules and Regulations as set forth in 56 RCNY §1-01 et seq., New York City Administrative Code §18-137, the New York State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

## **ARTICLE 13: ALTERATIONS BY LICENSEE**

**13.1** Licensee may alter Licensed Premises only in accordance with the requirements of this Article. Alterations shall become the City's property, at its option, upon their attachment, installation or affixing.



**13.2** To alter the Licensed Premises, Licensee must:

(a) Obtain the Commissioner's or Commissioner's designee's prior approval for all designs, plans, specifications, cost estimates, agreements, and contractual understandings relating to contemplated purchases and/or work;

(b) Ensure that work performed and alterations made on the Licensed Premises are undertaken and completed according to submissions approved under Subparagraph (13.2)(a) above, in a good and workmanlike manner, and within a reasonable time;

(c) Notify the Commissioner or Commissioner's designee of the completion and the date of final payment for Alteration(s) within ten (10) days after the completion or final payment;

(d) Comply with existing City and Parks procedures, as may be amended from time to time during the Term and Renewal Term(s), for review of landscape redesign, renovation, and rehabilitation projects in the Licensed Premises.

**13.3** In order to guarantee prompt payment of moneys due to a contractor or to contractor's subcontractors and to all persons furnishing labor and materials to the contractor or subcontractor in the prosecution of any alteration with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000.00), Licensee, or a contractor engaged by Licensee, will be required to post a payment bond or other form of undertaking approved by Parks for one hundred percent (100%) of the cost of such Alteration(s). To the extent that an Alteration is funded in whole or in part through a separate contract with the State or City, Licensee will comply with the terms of this contract regarding payment bonds for the work to be performed, including any requirements to obtain a payment bond under State Finance Law § 137 or § 5 of the Lien Law, as applicable.

**13.4** All alterations to the Licenses Premises undertaken by the Licensee, its agents, employees, or contractors shall be at the Licensee's sole cost and expense (other than any agreed contribution from the City, and contributions from other public or private sector partners or donors) and this work shall not commence until the Licensee obtains the Commissioner's prior written approval, or Commissioner's designee, and any City or other governmental authorizations, permits, and approvals that may be required.

#### **ARTICLE 14: CONSTRUCTION OR OTHER WORK BY PARKS**

**14.1** Parks reserves the right to make additions, alterations, repairs, decorations, or improvements or perform maintenance or safety work deemed necessary by Commissioner in the Commissioner's sole reasonable discretion at or throughout the Licensed Premises at any time during the Term. Parks shall not be obligated or required to make any additions, alterations, repairs, decorations, or improvements or perform any maintenance or safety work, nor shall this provision in any way affect or impair Licensee's obligations in any respect. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and

construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use reasonable efforts to give Licensee at least fourteen (14) days' notice of any such work and not to interfere substantially with Licensee's or TDF's operations or use of the Licensed Premises. Parks shall use reasonable efforts to perform such work in a way which minimizes interference with Licensee's and TDF's operation at 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 security of all Licensee's property on the Licensed Premises at all times. 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 willful misconduct of Licensee.

### **ARTICLE 15: ASSIGNMENTS & SUBLICENSES**

**15.1 (a)** Licensee shall not sell, assign, sublicense, mortgage, or otherwise transfer any interest provided for, or consent, allow, or permit any other person or party to use any part of the Licensed Premises, except as provided or reasonably approved in writing by the Commissioner or Commissioner's designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to Licensee.

**(b)** No assignment of this License by the Licensee, in whole or in part, will be effective unless it is agreed to, in writing, by Parks and signed by a duly authorized representative of Parks.

**(c)** As used in this Article, the term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of, or change in more than ten percent (10%) in stock or voting control of the Licensee, including any transfer by operation of law. No sale or transfer of the stock owned by Licensee or its nominee may be made under any circumstance if such sale will result in a change of control violative of the intent of this Article.

**15.2 (a)** Any sublicense, as authorized under this Agreement, shall be subject and subordinate to the terms and conditions of this License and Licensee shall require its sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by its terms. All provisions of this License applicable to Licensee with respect to the operation, management, and maintenance of the Premises shall be equally applicable to any sublicensee.

**(b)** Licensee shall require any sublicensee to agree in writing that it will comply with the directives and provisions of this License that are applicable to Licensee with respect to the operation, management, and maintenance of the Premises, including, but not limited to, obtaining the required insurance coverages in Article 22 and indemnification in Article 21 of this Agreement, and shall be responsible for assuring such compliance.

**(c)** 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 Parks' prior written consent. Any subsequent sublicense agreement(s) will be subject to the terms and conditions in this License.

(d) Notwithstanding the foregoing, Licensee may contract for the maintenance and repair of the Licensed Premises, including the Statuary, the Plaza, and the Public Stairs directly with a third party contractor or contractors without such contract being deemed an assignment or sublicense of Licensee's obligations hereunder, provided such contractors procures insurance in the type and amounts as specified in Article 22 herein, naming the City, their agents and employees as additional insureds and such contractor agrees to indemnify the City, its agents and employees, as specified in Article 21 herein.

**15.3** No consent to or approval of any assignment or sublicense granted pursuant to this Article 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 Agreement.

#### **ARTICLE 16: PROHIBITIONS OF USE**

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

#### **16.2 Smoking, Alcohol, Firearms, Packaging:**

(a) No drugs or alcohol may be grown, produced, used, consumed, stored, sold, or distributed at the Licensed Premises.

(b) 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 this policy.

(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. 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.

**16.3 No Combustibles and Inflammables:** Except for properly stored fuels in accordance with the Fire Department of the City of New York ("FDNY") regulations, or other properly stored solvents necessary for the maintenance of the Premises, Licensee shall not use or permit the storage of any 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.

**16.4** Licensee shall not use or grant permission to others to use the Licensed Premises, or any portion, for any unlawful purpose or in violation of any existing certificate of occupancy or the provisions on the use of the Licensed Premises as set forth in this License.

#### **ARTICLE 17: NO DISCRIMINATION**

**17.1** Licensee shall not unlawfully discriminate against any employee, applicant for employment, or patron because of race, creed, color, national origin, age, sex, disability, marital status or sexual orientation. Licensee shall comply with the ADA and regulations as applicable. Any violation of this Article shall be a material breach of this License.

**17.2** All advertising for employment shall indicate the Licensee is an Equal Opportunity Employer.

### **ARTICLE 18: RETENTION OF RECORDS**

**18.1** Licensee agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever it later. City, State, and Federal auditors shall have full access to and the right to examine any of these materials during this period, upon reasonable prior notice. Notwithstanding the foregoing, the Parties acknowledge and agree that the New York City Comptroller's ("Comptroller") powers, duties, and obligations under the Charter shall not be diminished, compromised, or abridged in any way.

### **ARTICLE 19: PERSONNEL**

**19.1** All experts, independent contractors, servants, agents, specialists, trainees, consultants, volunteers, and employees of the Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor 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. Nothing included in this Article or in any other provision of this License Agreement shall be construed to impose any liability or duty upon Parks or the City to the persons, firms, or corporations employed or engaged by Licensee as employees, servants, agents, consultants, specialists, trainees, volunteers, experts, or independent contractors or in any other capacity whatsoever or to render Parks or the City liable to any persons, firms, corporations, associations or to any government for the acts, omissions, liabilities, obligations, and/or taxes of any nature, including, but not limited to, unemployment insurance of Licensee or its consultants, experts, employees, servants, agents, volunteers, specialists, trainees, or independent contractors. Nothing in this Article shall limit the indemnification provisions enumerated herein.

**19.2 (a)** Licensee will notify Parks, in writing, within thirty (30) days after any appointments to or resignations from any office, including, but not limited to, the position(s) of any Executive Officer, including the President and Vice President of the Licensee. In addition, Licensee will notify Parks in writing, within ten (10) days after the occurrence, of any change in the individuals who serve as directors and officers of Licensee's Board of Directors.

**(b)** The manager of the Licensed Premises for Licensee shall be subject to Parks'

reasonable approval.

(c) All supervisory personnel at the Licensed Premises shall be subject to Parks' reasonable approval.

**19.3** 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; and

(c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

**19.4** As a Licensee of the City, Licensee is required to comply with the Earned Safe and Sick Time Act, also known as the Paid Safe and Sick Leave Law attached in Exhibit D.

## **ARTICLE 20: EVENTS**

**20.1** Parks agrees to use reasonable efforts to notify and consult with Licensee at least fourteen (14) days in advance of any Special Event (as defined in 56 RCNY § 1-02 of Parks' Rules and Regulations) scheduled at the Licensed Premises. It is expressly understood that this Article 20 shall in no way limit Parks' right to itself sponsor or promote Special Events, as defined herein, at the Licensed Premises, or to enter in agreements with third parties to sponsor or promote such events.

(a) In connection with any Special Event at the Licensed Premises, Parks agrees:

(i) to notify any third-party operator or sponsor of Special Events of Licensee's access rights to the Licensed Premises and to provide same with the name and telephone number of Licensee's Manager;

(ii) to use its reasonable efforts to ensure that such third parties will be responsible for maintenance, repairs, and clean-up associated with any Special Event;

(iii) that Licensee may collect sixty percent (60%) of the Special Event concession fees ("Fees") from third parties under Section 2-10 of Parks Rules and Regulations. For example when the Fees charges are Ten Thousand Dollars (\$10,000), Licensee shall collect Six Thousand Dollars (\$6,000) and Parks shall collect Four Thousand Dollars (\$4,000). These payments must be issued in two separate checks;

(b) Licensee shall use all Fees it collects to offset Licensee's costs of providing maintenance and operation services under this License Agreement.

(c) Should the management of Special Events at the Licensed Premises be performed by a City agency other than Parks including, but not limited to, the Mayor’s Street Activity Permit Office, and fees for Special Events at the Licensed Premises would no longer be payable to Parks, then Section 20.1(a) shall no longer be applicable.

**20.2** Licensee must provide Parks with written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License Agreement. In any statement, publication or press release made to the public relating to the subject of this License Agreement, Licensee will clearly identify Parks and prominently feature Parks’ name and logo. Parks and Licensee agree to communicate and coordinate regarding press releases, statements or any advertising materials concerning the Licensed Premises. If the Commissioner reasonably finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Premises is incorrect or unacceptable, Licensee and the Commissioner agree in good faith to make such release, advertisement, or statement accurate and acceptable to both parties.

**20.3** If Licensee publishes a work discussing any aspect of performance of any service covered by this License Agreement, Licensee will acknowledge therein the involvement, if any, of Parks, when appropriate, and Parks will have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize other to use such publication.

**20.4** Licensee shall not hold any private or public function at the Licensed Premises or use the Licensed Premises to hold fundraisers to benefit Licensee and/or Licensee’s other efforts to support the area surrounding the Statuary, Plaza, and the Public Stairs without receiving Parks’ prior written approval. In addition to the foregoing, Licensee’s right to hold such a function or fundraiser is subject to any additional City authorization, approvals, permits, and compliance with other processes, which may be necessary, including without limitation, any necessary approval by the FCRC. Licensee shall not hold more than two (2) private functions/fundraisers, which shall be subject to Parks’ prior written approval, at the Licensed Premises annually during times when public events are not scheduled, unless otherwise approved by Parks at Parks sole discretion. Any net proceeds from such functions/fundraisers shall be used solely to benefit the Licensed Premises

**20.5** The Mayor’s Office of Media and Entertainment (“MOME”) may issue permits for filming on the Licensed Premises, as well as other commercial photography on the Licensed Premises. The terms of such permits shall be acceptable to Parks in consultation with Licensee.

**ARTICLE 21: RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE & INDEMNIFICATION**

**21.1 Licensee Responsibility**

(a) The 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) The 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, excluding the TKTS Ticket Booth.

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

(d) The Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state, or local environmental, health and safety-related laws, regulations, standards, decisions of the courts, permits, or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the 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 the Licensee’s personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated, or disposed of on the Licensed Premises. As used herein, “Hazardous Materials” means any chemical, substance, or material, which is now or becomes in the future listed, defined, or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects. Licensee has no responsibility or liability with respect to TKTS Ticket Booth.

## **21.2 Indemnification and Related Obligations**

### (a) Licensee Indemnification

(i) Notwithstanding any other provisions of this License, the maximum amount for which the Licensee is liable per policy year for third party bodily injury (including death) and property damage caused by the Licensee’s operations under this License shall not exceed the Commercial General Liability limits required in Article 22 below, (“Limitation of Liability”). The Limitation of Liability shall not apply to Licensee’s contractors, subcontractors or agents.

(ii) Subject to the Limitation of Liability but notwithstanding any other provisions of the License, Licensee shall indemnify, defend and hold the City and its officials and employees (“Indemnified Parties”) 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) (hereinafter called “Liabilities”), relating to or arising out of, or alleged (by a person other than the City) to relate to or arise out of the following:

(1) Licensee’s or any sublicensee(s)’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ negligence or failure to comply with any of the requirements of this License, including Licensee’s maintenance and/or repair obligations set forth in Article 5 herein;

(2) Licensee's or any sublicensee(s)'s or any of their employees', servants', contractors', subcontractors' or agents' failure to comply with any applicable federal, state, or local laws, rules or regulations; and

(3) Licensee's or any sublicensee(s)'s or any of their employees', servants', contractors', subcontractors' or agents' infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(iii) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Parties from being completely indemnified by Licensee, the Indemnified Parties shall be partially indemnified by Licensee to the fullest extent permitted by law.

(iv) Upon receipt by any Indemnified Party of actual notice of a claim to which such Indemnified Party is entitled to indemnification in accordance with this Section, Parks shall give prompt written notice of such claim to Licensee. Licensee shall assume and prosecute the defense of such claim at the sole cost and expense of Licensee. Licensee may settle any such claim in its discretion without consent of Parks and the Corporation Counsel only if (i) the sole relief under the settlement is monetary damages, (ii) the Licensee indemnifies the Indemnified Parties for the full amount of the settlement, (iii) the settlement involves no admission by the Indemnified Parties or finding of guilt and (iv) such settlement includes an unconditional release of the Indemnified Party. Any other settlement of a claim shall require consent from Parks and the Corporation Counsel.

(v) Licensee's obligation to defend, indemnify and hold the Indemnified Parties harmless shall not be (i) limited in any way by Licensee's obligations to obtain and maintain insurance under this License except as expressly provided in Section 21.2.A.1, nor (ii) be adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

#### (b) City Indemnification

(i) To the fullest extent permitted by law, Parks shall, or shall cause its contractors, licensees, or permittees to indemnify, defend and hold the Licensee harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of any Special Events not sponsored by the Licensee.

(ii) To the fullest extent permitted by law, Parks shall or shall cause its contractors, licensees, or permittees, including utilities and the MTA, when contracting with Parks, to list the Licensee as additional insured and indemnify, defend and hold the Licensee harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of their presence, operations or work in and around the Licensed Premises. Parks will contractually require this obligation from Parks contractors with presence, operations or doing work in the Licensed Premises.



(iii) To the fullest extent permitted by law, Parks shall, or shall cause its contractors, licensee, or permittees to indemnify defend and hold the Licensee harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of: (i) any subsurface conditions at the Licensed Premises, such as utilities and subways; (ii) the negligence of the Indemnified Parties except for any negligence imputed to the Indemnified Parties arising from the negligence of Licensee; and (iii) any other cause outside the scope of Licensee's responsibilities under this License, including any events of force majeure.

(iv) To the fullest extent permitted by law, Parks shall or shall cause its contractors, licensees, or permittees to indemnify defend and hold the Licensee harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of any City infrastructure, amenity, item or equipment other than the Public Stairs, Plaza or Statuary that is located in or around the Licensed Premises.

(v) The Licensee is only responsible for snow removal to the extent set forth in this License.

(vi) Licensee is not responsible for injury, including death, or property damage to the extent arising out of the TKTS Ticket Booth, except to the extent arising from Licensee's negligence.

## **ARTICLE 22: INSURANCE**

### **22.1 Licensee's Obligation to Insure:**

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

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

### **22.2 Commercial General Liability Insurance:**

(a) The Licensee shall maintain Commercial General Liability insurance for three million dollars (\$3,000,000.00) per occurrence for bodily injury (including death) and property damage and one million dollars (\$1,000,000) per occurrence for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least five million dollars (\$5,000,000). However, with the permission of Parks, the requirement that the aggregate limit apply on a per-location basis may be omitted, provided that the aggregate limit shall be at least ten million dollars (\$10,000,000). 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) Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an **Additional Insured** for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent editions of ISO Form CG 20 26 and CG 20 37. "Blanket" or other forms are acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

### **22.3 Workers Compensation Insurance, Employers Liability and Disability Benefits Insurance:**

(a) The Licensee shall maintain and shall cause any sublicensee to 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.

### **22.4 Commercial Automobile Liability Insurance:**

(a) With regard to all operations under this License, Licensee shall maintain or cause to be maintained Commercial Automobile Liability Insurance in the amount of at least one million dollars (\$1,000,000.00) each accident (combined single limit) for liability arising out of the ownership, maintenance, or use of any owned (if any), non-owned, or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(b) 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.

### **22.5 Property Insurance:**

(a) The Licensee shall maintain comprehensive "All Risk" or "Special Perils" form property insurance covering all buildings, structures, equipment, and fixtures, excluding the Statuary, on the Licensed Premises, excluding the TKTS Ticket Booth ("License 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 License 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 the Licensee as Named Insured and the City as Additional Insurance and Loss Payee as their interests may appear. This Section does not require coverage for damage caused by flooding.

(b) The limit of such property insurance shall be no less than the full Replacement Cost of all License Structures, including, without limitation, the costs of post casualty debris removal and soft costs, to the extent 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 License Structures.

(c) In the event of any loss to any of the License 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 License Structure that the City owns or in which the City has an interest, the 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 adjustment for claims or, at the Commissioner’s discretion, allow the City itself to adjust such claim. Licensee’s liability for loss to any of the License Structures is limited to the amount paid under such property insurance.

## **22.6 General Requirements for Insurance Coverage and Policies:**

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

(b) With the exception of coverage required by the Workers’ Compensation Law, policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(c) There shall be no self-insurance program 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 to, the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

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

## **22.7 Proof of Insurance:**

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

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

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

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

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

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

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

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

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

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

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

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

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

## **22.8 Miscellaneous:**

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

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

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

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

(d) The Licensee's failure to secure and maintain insurance in complete conformity with this 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 the City's action or inaction at any time.

(e) Subject to Section 21.2(a)(i), insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this License, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this License or the law.

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

(g) Subject to Section 21.2(b), and apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, the Licensee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article, whether or not such insurance is actually procured or claims are paid thereunder, or any other insurance applicable to the operations of the Licensee and/or its employees, agents, servants of its contractors, or subcontractors.

(h) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 22.2, 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 CG 20 37. In the event Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License Agreement and requires such entity to name Licensee as an Additional Insured under such insurance, Licensee shall ensure that such entity also names City, together with its officials and employees, as Additional Insureds (with coverage for Commercial General Liability Insurance) at least as broad as ISO form CG 20 26).

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

## **ARTICLE 23: INVESTIGATIONS**

**23.1 (a)** The parties to this License shall cooperate fully and faithfully with any investigation, audit, or inquiry conducted by a 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) If any person

(i) 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, 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 State of New York laws; or

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

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. 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 under Section 23.1(c) 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 the 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 before 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 before the cancellation or termination shall be paid by the City.

**(d)** The Commissioner or agency head shall consider and address in reaching a determination and in assessing an appropriate penalty the factors in Section 23.1(d)(i) and (ii) below. The Commissioner or agency head may also consider, if relevant and appropriate, the criteria established in Sections 23.1(d) (iii) and (iv) below in addition to any other information that may be relevant and appropriate.

**(i)** A person'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 Section 23.1(c) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 23.1(b) 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)** The following definitions apply within this provision of the Agreement:

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

**(ii)** The term "person" as used here 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 here 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 here 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 the Commissioner's sole discretion terminate this



Agreement upon not less than three (3) days' written notice if Licensee fails to promptly report in writing to the City's Commissioner of Investigation, any solicitation of money goods requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City of other person, firm, corporation, or entity for any purpose which may be related to the procurement or obtaining of this License Agreement by the Licensee, or affecting the performance or this License Agreement.

#### **ARTICLE 24: CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE**

**24.1** This License Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of Licensee's domicile, and shall be governed by and construed under the laws of the State of New York.

**24.2** 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 License Agreement and its intent, Licensee agrees:

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

(b) With respect to any action between the City and the Licensee in New York State Court, the 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.

**24.3** With respect to any action between the City and the Licensee in Federal Court located in New York City, the 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.

**24.4** If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon the City's request, the 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, the Licensee shall consent to dismiss such action without prejudice and may later reinstitute the action in a court of competent jurisdiction in New York City.

#### **ARTICLE 25: WAIVER OF JURY TRIAL**

**25.1** Licensee expressly waives all rights to trial by jury in any action, proceeding, counterclaim, or cause of action brought by the City against Licensee directly or indirectly arising out of the

terms, covenants, or conditions of this License or the use and occupation of the Premises or any matter whatsoever in any way connected with this License, including but not limited to, the relationship between the City or Licensee. The provision relating to waiver of jury trial shall survive the expiration or termination or any renewals of this License.

#### **ARTICLE 26: INDEPENDENT STATUS OF LICENSEE**

**26.1** 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 or employees of the City, or of any department, agency, or unit thereof, 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.

#### **ARTICLE 27: CONFLICT OF INTEREST**

**27.1** Licensee represents and warrants that neither it nor any of its officers, directors, trustees, employees, or volunteers has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services provided. Licensee further represents and warrants that in the performance of this Agreement, Licensee shall not employ any person having this interest or possible interest. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects a personal interest or the interest of any corporation, partnership, or association in which said person is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in its proceeds.

#### **ARTICLE 28: ALL LEGAL PROVISIONS DEEMED INCLUDED**

**28.1** 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, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

#### **ARTICLE 29: SEVERABILITY**

**29.1** If any term or provision of this Agreement or the application thereof to any person or circumstances is, to any extent, 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 30: JUDICIAL INTERPRETATION**

**30.1** Should any provision of this License require judicial interpretation, it is agreed that the court interpreting or considering the provision shall not apply the presumption that the terms in this Agreement 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 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 31: INFRINGEMENTS**

**31.1** Licensee shall be liable to the City and hereby agrees to defend, indemnify, and hold the City harmless for any damage or loss or expense sustained by the City from any infringement by Licensee of any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications, or printed matter furnished or used by Licensee in the performance of this Agreement.

### **ARTICLE 32: REPRESENTATIONS, WARRANTIES & COVENANTS**

**32.1** Licensee makes the following representations and warranties:

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

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

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

(d) In procuring this License Agreement, Licensee has neither been asked to pay, offered to pay nor paid any illegal consideration, whether monetary or otherwise.

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

**32.2** Licensee covenants and agrees that during the Term and any renewal terms it shall maintain

its corporate existence under the State of New York laws as a not-for-profit corporation, and shall maintain its tax-exempt status under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended.

### **ARTICLE 33: CLAIMS AND ACTIONS THEREON**

**33.1** 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.

**33.2** 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.

**33.3** If any claim is made or any action brought in any way relating to this Agreement 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 assistance which the City may reasonably require of Licensee.

### **ARTICLE 34: WAIVER OF COMPENSATION**

**34.1 (a)** Except for Parks' obligations under Section 21.2.(b), 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, Commissioner's agents, and City from any and all demands, claims, actions, and causes of action arising from any of these causes.

**(b)** 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, if this License is terminated by 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 in this Agreement.

### **ARTICLE 35: NO CLAIMS AGAINST OFFICERS, AGENTS, OR EMPLOYEES**

**35.1** No claim whatsoever shall be made by Licensee against any officer, director, member, agent, employee, or volunteer of the City, nor shall any such officer, director, member, agent, employee, or volunteer have any personal liability for, or on account of, anything done or omitted in connection with this Agreement.

### **ARTICLE 36: MODIFICATION**

**36.1** This License may be modified from time to time by notice in writing duly executed by the parties hereto, but no modification of this License shall be effective unless it has been agreed to in writing and duly executed by the parties, and no other agreement, written or oral, regarding the subject matter of this License shall be deemed to exist or to bind any of the parties hereto.

**36.2** Licensee shall have the right to terminate this License in whole or in part and it shall provide Parks with no less than one-year written notice.

### **ARTICLE 37: NOTICE**

**37.1** All notices from Licensee to Parks shall be in writing and delivered by mailing a copy of such notice by registered or certified mail, return receipt requested, to the attention of the **First Deputy Commissioner for Operations, New York City Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065**, or such other address as Parks may designate, with copies sent to Parks' General Counsel at the same address. All notices from Parks to Licensee shall be dispatched in the same manner, and delivered to **Times Square Alliance, 1560 Broadway, Suite 1001, New York, NY 10036**, or such other address as may be notified from time to time.

### **ARTICLE 38: HEADINGS AND TABLE OF CONTENTS**

**38.1** The Article Headings and Table of Contents contained in this License are inserted for convenience only and shall not be deemed to constitute part of this License Agreement or to affect its construction. Unless the context requires otherwise, the use in this License Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others.

### **ARTICLE 39: THIRD PARTY BENEFICIARIES**

**39.1** This Agreement shall be binding upon and for the benefit of the parties and each of their respective successors and permitted assigns. The provisions of this Agreement shall be for the Parties' sole benefit and no other person or entity shall be a third-party beneficiary of this Agreement.

### **ARTICLE 40: COUNTERPARTS**

**40.1** This Agreement 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 Agreement.

**[SIGNATURE PAGE TO FOLLOW]**

***[NO FURTHER TEXT ON THIS PAGE]***

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

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

**TIMES SQUARE DISTRICT  
MANAGEMENT ASSOCIATION, INC.**

**By:** \_\_\_\_\_  
Iris Rodriguez-Rosa,  
First Deputy Commissioner

**By:** \_\_\_\_\_  
Tom Harris  
President

**Dated:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**APPROVED AS TO FORM**

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

\_\_\_\_\_  
**Date**

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

On this \_\_\_\_ day of \_\_\_\_\_, 2025 before me, the undersigned, personally appeared Iris Rodriguez-Rosa, First Deputy Commissioner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

---

**NOTARY PUBLIC**

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

On this \_\_\_\_ day of \_\_\_\_\_, 2025 before me, the undersigned, personally appeared Tom Harris, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity and that by her signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

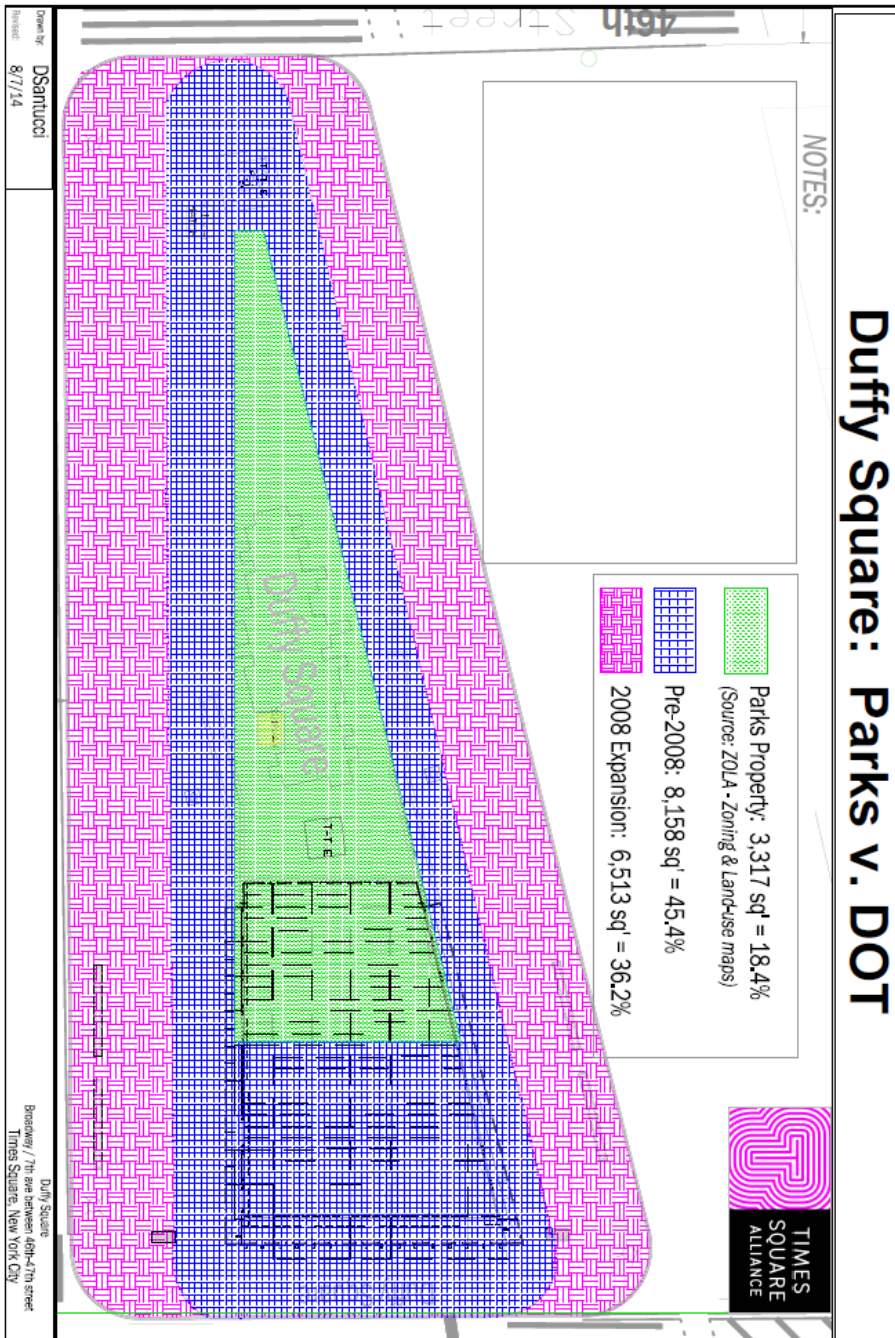
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**NOTARY PUBLIC**



## EXHIBIT A: LICENSED PREMISES MAP

- Note: The TKTS Ticket Booth located under the Public Stairs is not included within the Licensed Premises



# NYC Planning: Zoning & Land Use Map



**EXHIBIT B: PIP MANUAL**

NYC Parks to attach

**EXHIBIT C**

**FORM OF REPORT UNDER NYC ADMINISTRATIVE CODE § 18-134**

<b>Local Law 28 of 2008 Partnership Reporting Form</b>						
<b>Reporting Period: January 1 – December 31 Fiscal Year: XXXX</b>						
<b>Partner</b>	<b>Park Location</b>	<b>Borough</b>	<b>Fiscal Year- end</b>	<b>Total Spending - Maintenance and Operations</b>	<b>Total Spending - Program- ming</b>	<b>Total Spending - Capital</b>

## **EXHIBIT D**

### **NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER**

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

#### *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. Contractors 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 Contractor 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 Contractor 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 Contractor must notify (with a copy to DCWP at [ComplianceMonitoring@dcwp.nyc.gov](mailto:ComplianceMonitoring@dcwp.nyc.gov)) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting 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 Contractor 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, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor 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 Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to [www.nyc.gov/PaidSickLeave](http://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 Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor 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.<sup>1</sup> 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.

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

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<sup>1</sup> 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.

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 E**

**CERTIFICATES OF INSURANCE**

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 \_\_\_\_\_