

**CONCESSION LICENSE**

**CONTRACT NUMBER: X001350**

**AT**

**JONES BEACH THEATER  
JONES BEACH STATE PARK  
WANTAGH, NEW YORK**



**Parks, Recreation  
and Historic Preservation**

Table of Contents

Section 1.	Contract Documents .....	1
Section 2.	Term .....	2
Section 3.	Grant of License .....	2
Section 4.	Fees and Other Payments; Performance Bond .....	3
Section 5.	Capital Investment.....	3
Section 6.	State Equipment.....	4
Section 7.	General Operating Requirements .....	5
Section 8.	Special Operating Requirements .....	8
Section 9.	Maintenance and Repairs.....	9
Section 10.	Qualified Staff .....	10
Section 11.	Licensee Responsibilities .....	11
Section 12.	Special Events; State Parks' Events .....	13
Section 13.	Sale of Alcoholic Beverages and Tobacco Products .....	13
Section 14.	Utility Service; Trash and Debris .....	14
Section 15.	Inspection .....	15
Section 16.	Financial Records .....	15
Section 17.	Reporting .....	16
Section 18.	Insurance.....	17
Section 19.	Workers' Compensation and Disability Benefits Insurance Coverage .....	18
Section 20.	Indemnity and Claims.....	18
Section 21.	Liens .....	18
Section 22.	Capital Projects.....	19
Section 23.	Intellectual Property .....	20
Section 24.	Sponsorships.....	20
Section 25.	Advertising .....	20
Section 26.	Coordination with State Parks .....	20
Section 27.	Sublicensing .....	21
Section 28.	Surrender .....	21
Section 29.	Rights of Entry and Re-Entry .....	22
Section 30.	Rights Upon Loss from Casualty.....	22
Section 31.	Notices; Consents by State Parks .....	23
Section 32.	Termination .....	24
Section 33.	Claims.....	26
Section 34.	Force Majeure; Waiver of Damages.....	26
Section 35.	Freedom of Information Law .....	27
Section 36.	Responsibility Determination by State Parks .....	27
Section 37.	Conflicts of Interest; Former State Employees.....	27
Section 38.	Rights of Third Parties.....	28
Section 39.	Agency.....	28
Section 40.	Integration Clause.....	28

**Index of Definitions**

Capital Bond.....4  
Capital Plan .....3  
Capital Project .....19  
Commencement Date .....2  
Ethics Requirements.....28  
Expiration Date.....2  
Financial Records .....15  
Gross Receipts .....9  
License Fee.....3  
Licensee.....1  
Licensing Requirements .....6  
Minimum Capital Investment.....3  
Minimum Maintenance Obligation .....9  
Minimum R&R Obligation.....9

New York Vendors.....12  
Normal Business Hours .....6  
Park.....1  
Performance Bond .....3  
Premises.....2  
Required Insurance.....17  
RFP .....1  
RFP Response.....1  
Special Event .....13  
State Auditors .....15  
State Equipment.....4  
State Parks .....1  
State Utility Infrastructure .....14  
Use.....2

**NEW YORK STATE  
OFFICE OF PARKS, RECREATION & HISTORIC PRESERVATION**

**CONCESSION LICENSE X001350**

This agreement is dated December 18, 2019, and is between the STATE OF NEW YORK, acting by and through the Office of Parks, Recreation and Historic Preservation (“State Parks”) and LIVE NATION WORLDWIDE, INC. (“Licensee”), a Delaware corporation.

**RECITALS:**

Section 3.09(2-a) of the Parks, Recreation and Historic Preservation Law, authorizes State Parks to contract for the operation and improvement of park facilities and concessions.

State Parks formally issued a request for proposals (“RFP”) for a concession license to operate Jones Beach Theater and related concession facilities in Jones Beach State Park in Wantagh, New York (the “Park”), on a turnkey basis.

Licensee has agreed to assume responsibility for the operation of the Jones Beach Theater and related concession facilities.

Now, therefore, the parties agree as follows:

**Section 1. Contract Documents**

- (a) This agreement is comprised of the following documents, all of which are hereby incorporated by reference:
- (i) Concession License #X001350
  - (ii) RFP #X001350 and any addenda thereto (the “RFP”)
  - (iii) Licensee’s Proposal and Proposal Form (collectively the “RFP Response”)
  - (iv) Attachment A – “Description of the Premises”
  - (v) Attachment B – “Inventory of Equipment”
  - (vi) Attachment C – “Requirements for Capital Improvement Projects”
  - (vii) Attachment D – “Capital Investment Work Plan”
  - (viii) Attachment E – “Liability Insurance Coverage Types and Minimum Policy Limits”
  - (ix) Appendix A – “Standard Clauses for New York State Contracts”
- (b) In the event of any inconsistency in or conflict among the document elements of the agreement identified herein, such inconsistency or conflict shall be resolved by giving precedence to the documents in the following order:
- (i) Appendix A
  - (ii) Concession License #X001350, including all attachments

- (iii) RFP
- (iv) RFP Response.

## **Section 2. Term**

The initial term of this agreement begins on January 1, 2020 (the “**Commencement Date**”) and terminates on December 31, 2039 (the “**Expiration Date**”), subject to the approval of the New York State Office of the State Comptroller, a term of 20 years.

## **Section 3. Grant of License**

- (a) State Parks hereby grants to Licensee the right to use and occupy the performing arts venue within the park known as the Jones Beach Theater, including its structures, facilities, and associated property, as shown in Attachment A (the “**Premises**”) for the exclusive purpose of operating an outdoor concert and performing arts venue on a turn-key basis including all repair and maintenance of the Premises as described in the RFP and proposed in the RFP Response (the “**Use**”).
- (b) Licensee acknowledges that the Premises are public, non-residential spaces within a State park and that for all purposes hereunder State Parks licenses the Premises “as is/where is” and without warranty. Licensee states that it has thoroughly examined and inspected the Premises that, unless and except as expressly set forth in this agreement, it has not relied upon any representation or statement of State Parks or its officers or employees as to the suitability of the Premises for the Use.
- (c) State Parks is not required to undertake any finishing work or preparation of the Premises for Licensee’s use. If any finishing work is required to fit up the Premises in a manner suitable for the Use, Licensee shall perform such work at its own expense. If such finishing work constitutes a Capital Project, such work is subject to the requirements of Section 22 of this agreement. Licensee shall not use any portion of the Premises that is in a condition unsafe or improper for the conduct of the Use.
- (d) Licensee and its business invitees may, in common with other State Parks’ invitees and with the public, use the public areas and pedestrian or vehicular ways of the Park for ingress and egress between the Premises and the public streets and park roads subject to the rules and regulations of State Parks.
- (e) Licensee shall not use any other portion of the Park or place any display tables, equipment, merchandise, or other items or property outside the Premises without the express written permission of the State Parks.
- (f) Licensee states that its RFP Response identified and accounted for all anticipated revenue sources and business opportunities sought to be capture by Licensee. Licensee shall not commercially exploit the Premises except through the Use. Notwithstanding the foregoing, State Parks may authorize new or additional revenue sources identified by Licensee; Licensee shall pay State Parks an equitable portion of such additional revenue, as determined by good faith negotiations between the parties.
- (g) State Parks reserves for its sole benefit the right to authorize the installation of wireless telecommunications infrastructure and related equipment at the Premises and the right to authorize the installation of any utility system at the Premises.

#### **Section 4. Fees and Other Payments; Performance Bond**

- (a) Licensee shall pay to State \$7,500,000 per calendar year, to be increased each calendar year by five percent or by the increase in the Consumer Price Index, whichever is less (the "License Fee"). Licensee shall pay the License Fee by March 1st of each year by check, wire transfer, or other method approved in advance by State Parks, as specified and directed in writing by State Parks.
- (b) To secure the payment of the License Fee and the expenditure of the Minimum Capital Investment in accordance with Section 5, Licensee shall provide an annual, renewable performance bond or letter of credit from a surety company or other security satisfactory to State Parks in the principal amount of US\$10,000,000 (a "Performance Bond") to be kept in full force and effect for the remaining term of this agreement.
  - (i) After Licensee has fully expended the Minimum Capital Investment or secured the unexpended portion as provided for in Section 5(b), the principal amount of the Performance Bond will be no less than US\$3,750,000.
  - (ii) If Licensee fails to make any annual License Fee payment, State Parks may in its sole discretion increase the required principal amount of the Performance Bond by an amount not to exceed the combined total of the full License Fee for that calendar year and the annualized estimate of the Minimum R&R Obligation and Minimum Maintenance Obligation for that calendar year. State Parks may in its sole discretion decrease the required principal amount of the Performance Bond in the calendar year following such an increase, such decrease not to exceed the preceding increase.
  - (iii) Licensee shall not terminate or reduce the principal amount of any Performance Bond without the prior written approval of State Parks.
  - (iv) A Performance Bond provided under this section must (i) name State Parks as the sole beneficiary, (ii) guarantee the faithful payment by Licensee of the License Fee and any other fees due and the expenditure of the Minimum Capital Investment in accordance with the requirements of Section 5 of this agreement, and (iii) require the issuer to give State Parks notice in writing not less than thirty (30) days prior to the expiration date thereof of the issuer's intention not to renew the Performance Bond. A Performance Bond covering the final year of the term of this agreement must extend at least one business day beyond the Expiration Date.
- (c) Licensee shall pay any other amounts due under this agreement as expressly provided for in this agreement or, if not specified, upon invoicing by State Parks.
- (d) Licensee is solely responsible for all fees and other amounts due until paid and delivered to State Parks.

#### **Section 5. Capital Investment**

- (a) Over the term of this agreement, Licensee shall expend no less than \$64,370,295 on capital improvements to fixed assets owned by State Parks at the Premises (the "Minimum Capital Investment") in accordance with the budget and work plan in Attachment D (the "Capital Plan"). Changes to the Capital Plan must be approved by State Parks in writing except that (i) Licensee may,

with notice to State Parks, adjust the scheduling of the projects identified in the Capital Plan as required so long as all required projects are completed by December 31, 2025 and (ii) Licensee may, if Licensee's credited expenditures on the Required Capital Improvements exceed US\$44,370,295, drop the projects identified in the Capital Plan as optional from the Capital Plan with notice to State Parks. All projects and the performance thereof are subject to mutual approval of plans/specifications and schedules.

- (b) Unless an approved change to the Capital Plan provides otherwise, Licensee shall expend US\$44,370,295 of the Minimum Capital Investment by December 31, 2025, and the full Minimum Capital Investment by December 31, 2034. If Licensee does not do so, at State Parks sole discretion, Licensee shall, by the close of business on the applicable deadline, either (i) provide State Parks with an annual, renewable performance bond or letter of credit from a surety company or other security satisfactory to State Parks in the principal amount of the unexpended portion of the Minimum Capital Investment (a "Capital Bond") or (ii) pay State Parks the unexpended portion of the Minimum Capital Investment in one lump sum.
  - (i) A Capital Bond provided under this section must (i) name State Parks as the sole beneficiary, (ii) guarantee the faithful performance or payment by Licensee of the Minimum Capital Investment, and (iii) require the issuer to give State Parks notice in writing not less than thirty (30) days prior to the expiration date thereof of the issuer's intention not to renew the Capital Bond.
  - (ii) If the term of any Capital Bond provided under this section include the Expiration Date, the term of such Capital Bond must continue for at least one business day past the Expiration Date.
  - (iii) Licensee shall not terminate or reduce any Capital Bond without the prior written approval of State Parks.
- (c) Licensee shall submit all proposed expenditures it wishes to credit against the Minimum Capital Investment to State Parks for approval in accordance with State Parks' capital expenditure approval process, which requires submission of proposed expenditures prior to making the expenditure, documentation of reasonable and competitive pricing, and proof of payment. Only expenditures approved by State Parks will be credited against the Minimum Capital Investment. Expenses eligible for credit against the Minimum Capital Investment include design, permitting, inspections, reports, studies, filings, labor, materials, and other similar costs; the costs of security instruments, attorney fees, and other similar costs are not eligible for credit against the Minimum Capital Investment.

## **Section 6. State Equipment**

- (a) Licensee may use the equipment, fixtures and other items listed in Attachment B, as such list is updated in accordance with this section, (the "State Equipment") for the Use at its option. Licensee acknowledges that the State Equipment is the personal property of State Parks and that by accepting the use of the State Equipment it accepts responsibility for the maintenance of upkeep thereof. Within 45 days of the Commencement Date, Licensee and State Parks shall finalize an actual written inventory of State Equipment accepted by Licensee, such inventory to be maintained by Licensee and reviewed and updated jointly by the parties on at least an annual basis.

- (b) Title to any equipment purchased by Licensee as part of a Capital Project, with funds credited against the Minimum R&R Obligation, or to replace any existing State Equipment will vest in State Parks upon installation and such equipment will be deemed State Equipment unless otherwise agreed to by State Parks in writing prior to the purchase. However, for the sole purpose of achieving depreciation over the term of this agreement in accordance with general accepted account principles, Licensee may retain legal title to replacement State Equipment for the duration of this agreement, title to vest in State Parks upon termination of this agreement. Licensee shall update the written inventory promptly upon the purchase of any such equipment and shall inform State Parks of the same. State Parks may place its own inventory labels on all State Equipment.
- (c) Licensee shall not remove any State Equipment from the Premises except for disposal approved in advance by State Parks or repair.

#### **Section 7. General Operating Requirements**

- (a) *Obligation to Operate.* Licensee shall undertake the Use and shall do so in an orderly manner and in compliance with the operating standards and restrictions contained in this agreement.
- (b) *General Operating Standards.* Licensee shall conduct a first-class operation and shall furnish and maintain all necessary and proper equipment, fixtures, personnel, supplies, and materials required to do so. Licensee warrants that any food, food products, merchandise, and other goods and services; sold or kept for sale under this agreement will be of high quality and standards and will conform in all respects to applicable federal, State and local laws, regulations, ordinances, and codes. All goods and services offered for sale must be in good taste and considered appropriate, proper, and consistent with the State of New York and State Parks' obligations and responsibilities to patrons of the Park. If in State Parks' judgement any good or service offered by Licensee is inconsistent with image, policies, or reputation of the State of New York or State Parks or otherwise unsuitable, at State Parks request, Licensee shall cease offering such good or service immediately.
- (c) *Housekeeping and Sanitation.* Licensee shall at all times keep the Premises in a clean and sanitary condition.
  - (i) Licensee shall keep all interior spaces within the Premises free from ants, flies, roaches, rodents, and all other insects and vermin its own cost and expense. Licensee shall keep use of rodenticide and other chemical pesticides to a minimum, consistent with State Parks' Pesticide Reduction Policy.
  - (ii) Licensee shall adhere to all applicable State and local health and sanitary codes, standards, and regulations, including sanitary standards established and issued by State Parks, at all times. If, during an inspection under Section 15 or at any other time, State Parks determines a violation of such codes, standards, or regulations exists, it will inform Licensee in writing. Within two days upon receipt by Licensee's on-site management of any notice, inspection report, and/or citation issued by any State or county health agency, Licensee shall forward a copy of the same to State Parks' Regional Headquarters and Counsel's Office. If Licensee fails to correct any health or sanitation deficiency within the period allowed in such notice, inspection report, or citation, then



State Parks may correct the deficiency and Licensee shall pay the actual cost thereof, including any expense for labor and materials.

- (iii) Licensee shall leave the Premises in broom clean condition at the end of each operating season, including but not limited to removal or storage of movable structures, carts, and roll-aways.
- (d) *Fire Safety Standards.* Licensee shall comply with all current and future regulations, requirements, orders, and directions of the National Fire Protection Association and the New York Fire Insurance Rating Organization, and of any other board or organization exercising similar functions, that apply to the Licensee's Use in the Premises.
- (e) *Operating Licenses.* Licensee shall obtain and maintain all necessary licenses, certificates, permits, or other governmental authorization for the Use, and shall provide for the inspection and review of such governmental authorizations by State Parks and other persons authorized by law. Licensee shall comply with all current and future governmental laws, regulations, codes, or orders applicable to the Licensee's conduct of the Use at or its occupancy of the Premises ("**Licensing Requirements**"). If any current or future Licensing Requirement requires a Capital Project, such work is subject to the requirements of Section 22 of this agreement. This provision does not constitute consent by State Parks to the application of any Licensing Requirements to State Parks or the State of New York.
- (f) *Method of Sales Transactions.* Licensee shall accept, at minimum, the following methods of payment:
  - (i) cash and (ii) at least two major credit cards
- (g) *Payment of Taxes.* Licensee is solely responsible for and shall pay in a timely manner all applicable taxes.
- (h) *Identifying Signage.* Licensee shall post signage within the Premises, in a place and manner that is easily visible to the public, signage approved by State Parks that identifies the Premises as operated and maintained by Licensee's under a license from State Parks and lists Licensee's corporate name and contact information.
- (i) *Hours of Operation.* Licensee shall conduct the Use only during a schedule mutually agreed upon by State Parks and Licensee that ends all concerts by 11:00 PM unless otherwise agreed to by State Parks ("**Business Hours**"). The Business Hours schedule will be created with the understanding that tractor trailers, tour buses, staff, and related operations equipment may arrive before sunrise and begin activities in keeping with the Use prior to standard operating hours of the Park. If Licensee desires to operate outside Business Hours, it may do so only with the express written permission of State Parks, such permission to be subject to the Park's operating hours and security staffing but not to be unreasonably withheld.
- (j) *Fireworks.* Licensee shall not undertake or permit any firework displays or performances involving pyrotechnics of any kind without the specific prior written approval of State Parks and a permit from the New York State Office of Fire Prevention and Control.
- (k) *Deliveries.* Licensee shall schedule and coordinate deliveries to the Premises by commercial vehicle with the Park's manager so as to not conflict with Park operations. State Parks' Park manager may

designate specific routes or ways for the delivery and removal of supplies and equipment by commercial vehicle.

- (l) *Closures.* Although State Parks shall make commercially reasonable efforts to avoid interference with Licensee's use of the Premises, State Parks may require Licensee to temporarily close in the following circumstances.
  - (i) State Parks may, with two weeks' notice to Licensee, require Licensee to temporarily close in order for State Parks to make repairs, alternations, changes, or improvements to the Premises or the Park.
  - (ii) State Parks may in its sole discretion, but in coordination with Licensee, delay performances or close the Park, or a portion of the Park encompassing the Premises, with little or no advance notice for the protection of public health and safety, including extreme weather threat.

In such event of closure, Licensee shall close until the Park or affected portion of the Park are re-opened and State Parks will have no liability to Licensee for such closures.

- (m) *Restriction on Vending.* Licensee shall not operate a vending facility or vending machine, as those terms are defined in Section 8714-a of the Unconsolidated Laws, without the prior written approval of State Parks in consultation with the New York State Commission for the Blind. Licensee acknowledges that all vending machine income, as that term is defined in Section 8714-a of the Unconsolidated Laws, obtained from the operation of vending machines at the Premises must accrue to the New York State Commission for the Blind.
- (n) *Information Security.* Licensee shall comply with the provisions of the New York State Information Security Breach and Notification Act, General Business Law Section 899-aa. Licensee shall be liable for the costs associated with such breach if caused by Licensee's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Licensee's agents, officers, employees or subcontractors.
- (o) *Park Regulations.* Licensee shall comply with all applicable State Parks' regulations and Park rules, except that if with respect to Licensee's use of the Premises such regulations and rules conflict with the provisions of this agreement, the provisions of this License will prevail.
- (p) *Exterior Signage.* State Parks has adopted a uniform style of signage for the Park and may erect, display, or change signage at the exterior of the Premises in its sole discretion. Licensee shall not erect, display or change any advertising, identifiers or other signs at or on the exterior of the Premises or elsewhere in the Park without the prior written consent of State Parks.
- (q) *Operation of Motor Vehicles and Heavy Equipment.* Licensee shall not allow the operation of a motor vehicle by anyone under the minimum age required by law or who does not hold a valid license for such operation. Licensee shall not permit the operation of heavy equipment, including trailers, by anyone other than a motor vehicle operator who is properly trained in the safe use and handling and the limitations of the equipment. Licensee shall not operate motor vehicles on any public use pedestrian/bicycle paths without written approval from State Parks.

- (r) *Automated External Defibrillators.* State Parks shall provide and maintain three automated external defibrillators at locations within the Premises of its choosing. Licensee may, along with any other person, use these automated external defibrillators and Licensee may, in consultation with State Parks as to the location, provide and maintain additional automated external defibrillators at the Premises.

#### **Section 8. Special Operating Requirements**

- (a) *Menus; Pricing.* Licensee acknowledges that its food and beverage pricing and menu are subject to review by State Parks. Licensee shall submit an initial menu and price list to State Parks prior to beginning the Use. Licensee shall modify its menu and price list if reasonably requested to do so by State Parks. State Parks may require Licensee's pricing be consistent with other similar concert venues in the greater metropolitan New York area.
- (b) *Public Health and Safety.* Licensee shall comply with all State of New York laws and regulations for ensuring public health and safety applicable to its activities at the Premises. Licensee is hereby advised of the potential applicability of the New York State Sanitary Code's provisions relating to gatherings of 5,000 or more people contained in 10 NYCRR Chapter I Parts 7 and 18 and of requirements imposed by the New York State Department of Labor, including those for structures such as tents, bleachers, and viewing stands.
- (c) *Emergency Management and Notifications.* The parties shall develop, and periodically update as necessary, a comprehensive emergency first response plan identifying the roles and responsibilities of each of State Parks and Licensee in case of emergencies requiring a response at the Premises. Such plan must include notification procedures that are consistent with State Parks' emergency management procedures, which are set forth in State Parks' Emergency Management Operations Protocol and Emergency Notification Protocol for Significant Incidents any updates thereto, which State Parks shall provide to Licensee.
- (d) *Security.* Licensee shall provide all necessary security measures, including armored car or courier service, to protect Licensee and its invitees, Park patrons and other State Parks' invitees, and State Parks' staff from any disturbance or other occurrence that attributable to Licensee's operation of the Premises. Licensee shall additionally provide all necessary security as determined and approved on a per-event basis by State Parks in coordination with Licensee. Licensee shall develop and implement an event security plan, including maritime security to limit water access to the Premises, in cooperation the New York State Park Police, which must approve such plan.
- (e) *Concert Performances.* Licensee shall present all performances at the Premises as complete in every respect and shall acquire and possess at the time of all performances any necessary rights and clearances for said performances. Prior to making any binding commitment, Licensee shall obtain the written approval of State Parks for all performers, performances, and events to be held at the Premises.
- (f) *Additional Responsibilities for High Capacity Concerts.* During high capacity concerts Licensee
  - (i) may, with the prior approval of State Parks, direct its customers to park in Parking Fields 4 and/or 5 at the Park;

- (ii) shall provide all post-show cleaning services for impacted Park areas outside the Premises, including litter and trash removal in the Zach's Bay area of the Park and in Parking Fields 3, 4, and 5; and
- (iii) shall, at State Parks' direction and as mutually agreed, provide enhanced security, emergency medical services, and portable toilets at its own cost.

#### **Section 9. Maintenance and Repairs**

- (a) Licensee shall maintain the Premises in in safe, operable, and inviting condition at all times and maintain and keep the Premises in good and acceptable repair as determined by State Parks. Except as otherwise specifically set forth in this agreement, Licensee shall perform all capital, structural, and routine repairs, replacements, and maintenance as needed on a turnkey basis at its own cost, including such work that is required as a result of vandalism or other destructive acts.
- (b) Licensee shall at its sole cost repair, replace, rebuild, or repaint, as necessary, any part of the Premises or of the Park that is damaged or destroyed by the acts or omissions of Licensee, its customers, or other persons who are at the Premises at Licensee's invitation. In the event of such damage or destruction, Licensee shall notify State Parks within three business days. If such work constitutes a Capital Project, such work is subject to the requirements of Section 22 of this agreement.
- (c) Licensee shall maintain and keep the State Equipment in good and acceptable condition. Licensee shall be responsible for the repair of and, if necessary, the replacement in kind of any of the State Equipment at its sole expense during the term of this agreement.
- (d) Licensee shall maintain proper maintenance and repair records and make such records available to State Parks upon request.
- (e) In order to secure Licensee's maintenance obligations, Licensee must set aside and expend (i) for ongoing maintenance and improvement of the Premises, such as periodic painting, landscaping, and upkeep, at least three percent of its annual Gross Receipts (the "**Minimum Maintenance Obligation**") and (ii) for repairs, replacements, and refurbishment of the Premises and Equipment at least two percent of its annual Gross Receipts (the "**Minimum R&R Obligation**"). Licensee shall develop a plan for the expenditure of the Minimum Maintenance Obligation and Minimum R&R Obligation in cooperation with State Parks. Licensee shall expend the Minimum R&R Obligation in accordance with such plan. Licensee shall submit all proposed expenditures it wishes to credit against the required Minimum R&R Obligation to State Parks for approval in accordance with State Parks' R&R expenditure approval process, which requires submission of proposed expenditures prior to making the expenditure, documentation of reasonable and competitive pricing, and proof of payment. Only expenditures approved by State Parks will be credited against the Minimum R&R Obligation. If Licensee has not fully expended the Minimum Maintenance Obligation and the Minimum R&R Obligation by the end of this agreement, Licensee shall pay to State Parks the unexpended portions thereof at the same time as it makes its final License Fee payment.
  - (i) In this agreement "**Gross Receipts**" means the total amount received by or accruing to Licensee and its agents and employees, as a direct result of the operations of the Premises by reason of the privileges granted under this agreement, less the following allowable exclusions and deductions:

- (a) Excise, sales, or other taxes that are imposed upon the sale of goods or services and which are collected by Licensee, including any new taxes or other levies of a different character imposed on Licensee after the date of this agreement that are intended as substitute for or to complement any current taxes, but excluding any franchise fees or taxes, capital gains taxes, or income or similar taxes that are based upon Licensee's profit;
- (b) Refunds, discounts, items sold at cost, or other discounted per State Parks' request, rebate, or allowances received by Licensee from wholesalers or suppliers, and refunds or other approved adjustments paid or given to patrons;
- (c) Tips or gratuities that are included in the account or bill of a patron.

For the avoidance of doubt, the following are not allowable deductions or exclusions when calculating Gross Receipts: wages, salaries, and employee benefits; commissions or other considerations paid by Licensee to agents, travel agencies, group tour operators, or organizers, outside salesmen, or promotional or booking organizations or services; uncollectible patron accounts; theft; and commissions paid to credit card companies, collection agencies, or other outside parties engaged to assist in the collection of accounts receivable.

#### **Section 10. Qualified Staff**

- (a) Licensee shall employ all necessary staff in sufficient force to conduct the Use properly, efficiently, and to the high standards for operation required by this agreement. At least one person specifically designated as a supervisory manager must be on duty when the Premises is open for business. Licensee shall employ only duly qualified and competent staff, including professional and experienced managers to oversee and administer the operation of the Premises. State Parks reserves right of approval of Licensee's General Manager charged with oversight of the Premises and Use.
- (b) Licensee's employees and contractors must be able to communicate effectively with State Parks' officials, the public, vendors, media, public safety personnel, and all others with whom they must interact in the course of their employment.
- (c) Licensee is solely responsible for the recruitment and screening of personnel and verification of credentials.
  - (i) Licensee shall check each prospective personnel against the United States Department of Justice's national sex offender registry.
  - (ii) Licensee shall not hire or retain any person who:
    - (a) refuses to provide the names of references, documentation of credentials, information on criminal conviction records, or any other requested information that bears on the applicant's fitness to work with or in close proximity to the public, including children; or
    - (b) has not completely and truthfully reported information concerning their criminal convictions; or
    - (c) subject to and consistent with Article 23-A of the New York State Correction Law, whose criminal convictions record directly bears on their fitness to work with or in close proximity

to the public, including children, or whose employment would involve an unreasonable risk to the safety or welfare of the public, including children; or

- (d) has been the subject of, or who is the subject of an ongoing investigation pursuant to, an indicated child abuse and maltreatment report on file with the Statewide Central Register of Child Abuse and Maltreatment.
- (d) Licensee shall train its employees in appropriate operational procedures and standards, including, as applicable and without limitation, pricing definitions; item specifications; first aid, CPR, and the use of automated external defibrillators; evacuation of attendees; alcohol control;; housekeeping and maintenance standards; courtesy, guest relations, and speed and manner of customer service; personal appearance; safety; and individual job performance. Licensee shall additionally train its managerial employees in quality and cost controls; marketing and advertising; supervision; accounting and cash control procedures; and, through the Office of Fire Prevention and Control. specialized concert staff safety and operations.
- (c) Licensee shall arrange for all employees involved in the preparation and serving of food to be certified through the ServSafe® program offered by the National Restaurant Association or an equivalent industry standard approved by State Parks Line staff must be certified through a food handler module, and management-level employees shall be certified through a manager training module. Certifications shall be provided to State Parks upon request. Licensee shall arrange for all employees serving alcohol to receive industry-standard alcohol service training.
- (f) Licensee shall provide its employees with identification credentials and distinctive attire or uniforms that foster a neat and appropriate public image. The style of uniforms is subject to approval by State Parks.
- (g) Licensee shall take prompt and appropriate action in response to complaints about the conduct, demeanor, or appearance of its employees, contractors, customers, and other business invitees. Upon the request of State Parks, Licensee shall immediately take all reasonable steps necessary to remove or otherwise resolve the cause of such complaints, including to discipline, retrain, or replace any employee whose conduct or appearance is unprofessional and/or inconsistent with the standards of State Parks. To the extent commercially reasonable, any collective bargaining agreement between Licensee and any labor union or organization must recognize the foregoing right of State Parks, and no such collective bargaining agreement shall in any way affect or diminish the rights of State Parks hereunder.

#### **Section 11. Licensee Responsibilities**

- (a) Licensee shall comply with all federal and state laws, codes, regulations, and policy or guidance documents applicable to the conduct of the activities authorized by this agreement, including all applicable governmental regulations regarding the sale, use, and storage of foodstuffs, beverages, alcohol, and fuel.
- (b) Licensee shall, to the same extent required of State Parks own operations, comply with all State of New York and State Parks' policies implemented to address the environmental impacts of its operations, including, without limitation, those on the use of non-biodegradable material, the purchase

of "green" products, and the conservation of energy. Consistent with such policies, at a minimum Licensee:

- (i) shall use recyclable materials whenever practicable;
  - (ii) shall provide appropriate receptacles to allow for separation of recycling material and biodegradable waste from other trash and debris; and
  - (iii) shall not provide or distribute Styrofoam products or single-use plastic bags, condiment packets, drinking straws or drink stirrers, except that Licensee shall provide plastic drinking straws upon request to customers with a physical or medical need therefor.
- (c) Licensee shall make reasonable efforts to purchase goods and services from New York State businesses and suppliers sourcing products from New York State businesses, including minority- and women-owned businesses certified by Empire State Development, and service-disabled veteran owned businesses certified by the Office of General Services ("New York Vendors"). Licensee shall make reasonable efforts to participate in the New York State Department of Agriculture and Markets' TasteNY program.
- (d) Licensee shall not commit any nuisance on the Premises or do or permit to be done anything which may result in the creation or commission of a nuisance on the Premises. Licensee shall not cause or produce, nor allow to be caused or produced, any unusual, noxious, or objectionable smoke, gas, vapor, odor, or noise on the Premises, nor allow the same to permeate the Premises or emanate therefrom. The orderly conduct of the Use will not be deemed a violation of this section.
- (e) Licensee shall not use or connect any equipment or engage in any activity or operation that will cause or tend to cause an overloading of the capacity of any existing or future utility, mechanical, electrical, communication, or other system or portion thereof serving the Premises; nor shall Licensee do or permit to be done anything that might interfere with the effectiveness or accessibility of existing and future utility, mechanical, electrical, communication, or other systems or portions thereof on the Premises or elsewhere at the Park. Licensee shall connect all electrical appliances directly to an electrical outlet or fused power strip.
- (f) Licensee shall not overload any floor, roadway, passageway, pavement or other surface, or any wall, partition, column or other supporting member, or any elevator or other conveyance, within the Premises or at the Park.
- (g) Licensee shall not discharge any acids, vapors, or other harmful materials into the water lines, vents, or flues of the Premises. Licensee shall not use the water and wash closets and other plumbing fixtures for any purpose other than those for which the same were designed and constructed, and shall not throw or deposit any sweepings, rubbish, rags, acids, or other foreign substances therein. Licensee shall not store, sweep, or throw anything into the shared common or public areas of the Premises, or into or upon any heat or ventilating vents or registers in the Premises, or into any plumbing apparatus in the Premises, or onto any buildings or land adjoining the Premises.
- (h) Licensee shall not use or store, or permit the use or storage, at the Premises of any explosives of any kind, illuminating oils, oil lamps, turpentine, benzene, naphtha, or other similar hazardous materials

or substances. Licensee shall properly handle, store, and use all fuel, including propane tanks, Sterno or other portable warming fuel and apparatus.

- (i) Licensee shall not place objects against glass partitions, doors or windows, ceilings or floors, or walls in a manner that is unsightly from any exterior within the Premises and shall promptly remove the same upon notice from State Parks. Licensee shall not install or place, or permit to be installed or placed, any lights, fixtures, or decorations of any sort or any flashing, blinking, neon, or animated signs or lights in windows or other areas of the Premises visible to public view from the rest of the Park without the prior written approval of State Parks.

#### **Section 12. Special Events; State Parks' Events**

- (a) Licensee shall give State Parks at least six weeks' notice of any proposed event or activity outside of the Use (a "Special Event"). State Parks shall review proposed Special Events and on the basis of impacts on the Park and on public access, use, and enjoyment of the Premises and, in its sole discretion, approve or deny such proposals.
  - (i) If an approved Special Event is to be conducted outside the Premises, (i) Licensee must obtain a written special-use permit from State Parks; and (ii) Licensee is solely responsible for payment of any State Parks' staffing and security costs beyond normal Park operations.
- (b) State Parks hosts occasional high capacity events at the Park that might impact the Premises. State Parks shall, when possible, provide Licensee with two months' notice of any such event and make commercially reasonable efforts in coordinate with Licensee to mitigate impacts to the Premises and avoid interference with Licensee's previously approved and scheduled events.
- (c) In addition, State Parks reserves the right, upon one years' written notice or for events within the first year of this agreement upon notice given at the time of signing this agreement, to suspend Licensee's Use and have the exclusive use of the Premises for itself at least eight but not more than fifteen calendar days per calendar year, on which days Licensee shall not conduct the Use or any Special Event except with the express written permission of State Parks and shall provide two security staff members to monitor the Premises and gate access to Field 5A and the promenade during such State Parks' events.

#### **Section 13. Sale of Alcoholic Beverages and Tobacco Products**

- (a) Licensee may sell alcoholic beverages at the Premises in accordance with the approved comprehensive, written alcohol service plan and policy contemplated in subsection (b) of this section if (i) the conditions of this section are met and (ii) it obtains and holds the applicable New York State Liquor Authority license. Licensee must comply with the terms of its liquor license in all serving or sale of alcoholic beverages.
- (b) Prior to serving or selling alcohol at the Premises, Licensee shall:
  - (i) Objectively demonstrate to State Parks the engagement, support of, or partnership with known stakeholders, such as Mothers Against Drunk Driving; and
  - (ii) Develop a comprehensive, written alcohol service plan and policy specifically tailored to the Premises, to be reviewed and approved by State Parks, such plan to address:



- (a) a per event process to assess the risks of alcohol sales and review program performance;
  - (b) identification, scale, and extent of point of sale, beer garden, and VIP areas;
  - (c) prohibition and enforcement of prohibition on hawkers or roving sales of alcohol;
  - (d) TEAM Coalition and other industry standard certifications for all staff;
  - (e) operating protocols, signage, identification wristbands and checkpoints, proposed offerings, and limitations on service, including cut-off times and measures for preventing hand-offs;
  - (f) proximity to full service food, soft drink, and restroom facilities;
  - (g) overall security presence during shows with alcohol sales, including designated security force assigned to patrol parking fields and comfort station buildings to deter and curtail illegal alcohol consumption and limit tailgate alcohol consumption;
  - (h) provision of enhanced emergency medical services for alcohol-related incidents;
  - (i) a ride-home/designated driver program; and
  - (j) a publicity, public relations, and legislative relations plan to advance responsible consumption and zero tolerance for driving under the influence.
- (c) Licensee shall obtain the prior approval of State Parks for all alcohol-related signs, media messaging, advertisements, and sales promotions.
  - (d) Licensee shall not sell any vape, nicotine, or tobacco products, or faux-tobacco products (e.g., candy cigarettes, bubble gum cigars) at the Premises.

**Section 14. Utility Service; Trash and Debris**

- (a) State Parks shall provide and maintain infrastructure for water supply, electricity, and sewer or drain pipes to the boundary of the Premises for connection by Licensee (collectively, “**State Utility Infrastructure**”).
- (b) Although State Parks shall make commercially reasonable efforts to avoid interference with Licensee’s use of the Premises, State Parks may, upon 24 hours’ notice to Licensee or in the event of an emergency no advance notice, temporarily disrupt or disconnect any State Utility Infrastructure in order to make necessary or desirable repairs, alterations, or improvements to Premises or the Park. In such event, Licensee shall provide, at its own expense, its own sources of temporary power or other utilities as may be necessary.
- (c) Licensee shall provide for its own utility service at the Premises, establish all necessary accounts with utility providers, and maintain all utility infrastructure within the Premises. For the avoidance of doubt, this section does not require or authorize Licensee to install any wireless telecommunication equipment or any utility or wireless telecommunications infrastructure without the prior written approval of State Parks.
- (d) State Parks is not required to install any water supply, sewer, or drain pipes or fixtures or electric, fuel oil, or gas lines or fixtures at the Premises beyond those already in place on the date of this agreement. If the installation, upgrade, or maintenance of any utility infrastructure within the Premises is necessary, Licensee shall undertake such work at its own cost. If such work constitutes a Capital Project, it must be completed in accordance with Section 22.

- (c) Licensee shall contract a service or otherwise provide for the timely and orderly disposal of trash and debris, including recycling and biodegradable waste. Licensee shall collect all trash and debris in sanitary and adequate closed containers until transferred to dumpsters.

#### **Section 15. Inspection**

- (a) *Annual Engineer's Inspection.* Licensee shall hire a competent professional engineer, duly licensed in New York State, to perform (i) a visual inspection of the Premises, including more detailed inspection as conditions require, on an annual basis and (ii) a full structural inspection of the Premises, including marine and underwater structures, at least every five years. Licensee shall coordinate such inspections with State Parks in advance and shall submit the full results of all each inspection to State Parks upon completion in the form of a professional engineer's written report.
- (b) *Fire Prevention Inspection.* Licensee shall arrange with the local fire department for periodic fire prevention inspections.
- (c) *State Inspection.* State Parks may, upon 24 hours' notice and during Business Hours, enter the Premises to making an inspection. If, as a result of such inspection, it is the determination of State Parks that any deficiencies exist in the condition of the Premises, State Parks shall inform Licensee of said deficiencies in writing and Licensee shall correct said deficiencies within ten calendar days of such notice, after which period State Parks may conduct a follow-up inspection and correct any outstanding deficiencies itself at Licensee's expense. For any deficiencies corrected by State Parks, State Parks shall invoice Licensee for the actual cost thereof, including any labor and materials used. If the work undertaken by Licensee to make any such corrections would ordinarily qualify to be credited against either of the Minimum Maintenance Obligation or the Minimum R&R Obligation, Licensee may credit the cost of such work against such obligation in accordance with the requirements of Section 9(e) and so long as Licensee's contractor and work meet the substantive requirements of State Parks' crediting process, Licensee shall not be denied credit for such expenditures by reason of State Parks' delay in reviewing and approving Licensee's submissions.

#### **Section 16. Financial Records**

- (a) Licensee shall keep books and records of account for its Use at the Premises ("**Financial Records**") in an electronic format in accordance with generally accepted accounting principles. Licensee shall keep its Financial Records for the balance of the calendar year in which they were made and for six additional years thereafter.
  - (i) During the term of this agreement and for six years thereafter, State Parks, the Office of the State Comptroller, the Office of the Attorney General, and their authorized representatives and contractors (collectively, "**State Auditors**") may inspect and audit Licensee's Financial Records during at any time during Business Hours upon at least 24 hours' notice. As part of such an inspection or audit, the inspector or auditor may make copies of Licensee's Financial Records.
- (b) Licensee shall immediately and properly record all sales of any nature within the Premises using a point of sale system approved by State Parks that has industry standard features or controls to prevent or limit theft and fraud to the fullest extent practicable. Licensee shall record sales from remote,

mobile, or third-party operations transacted outside the Premises as soon as commercially reasonable, and shall use only a process pre-approved by State Parks for such sales.

- (i) If Licensee uses cash registers, Licensee shall take consecutive daily readings from each cash register in each sales and tax category, post the same to a daily sales report for each register location; and provide such daily sales reports to State Parks on a schedule set by State Parks. Licensee shall not reset cumulative cash register readings and shall turn over all keys for cash register reset purposes to State Parks.
- (ii) If Licensee uses an automated point of sale system, Licensee shall provide full and complete transaction reports to State Parks on a schedule set by State Parks.
- (iii) If a point of sale system, requires repair or service off the Premises, Licensee shall record, and State Parks shall verify all transactions, readings, and data reports before the system or any part thereof is removed and upon its return to service at the Premises.
- (iv) If readings or data reports are not recorded or stored on a point of sale system, or of the system is cloud-based, Licensee shall undertake all commercially reasonable efforts to comply with the requirements of this section.
- (v) State Auditors may audit point of sale transactions at any time and Licensee shall provide State Auditors access to all such systems for audit purposes.

#### **Section 17. Reporting**

- (a) *Monthly Reporting.* During the term of this agreement and for one month thereafter, Licensee shall on the first day of each month provide State Parks a report of the following information:
  - (i) Monthly, for the month immediately preceding the report date, and cumulative account of Gross Receipts, showing revenue activity in all categories of sales;
  - (ii) Monthly, for the month immediately preceding the report date, and cumulative account of Minimum Maintenance Obligation funding and expenditures; and
  - (iii) Monthly, for the month immediately preceding the report date, and cumulative account of Minimum R&R Obligation funding and expenditures.
- (b) *Annual Reporting.* During the term of this agreement and for one year thereafter, Licensee shall on or before April 15<sup>th</sup> of each year provide State Parks with:
  - (i) a certified financial statement in a format approved by State Parks covering Licensee's Use for the preceding calendar year; and
  - (ii) a list of Licensee's New York Vendors, the type of goods and services purchased therefrom, and the approximate dollar value of purchases from each New York Vendor for the preceding calendar year; and

## **Section 18. Insurance**

- (a) On or before the Commencement Date, Licensee shall procure liability insurance coverage that complies with the policy requirements, coverage types, and liability limit minimums set forth in Attachment E (the "**Required Insurance**"). Licensee shall name "the State of New York; its Office of Parks, Recreation and Historic Preservation; and their officers, employees, and agents" as additional insureds.
- (b) On or before the Commencement Date, Licensee shall provide State Parks with evidence it holds the Required Insurance in the form of a certificate of insurance or other written confirmation of insurance coverage, including declarations of insurance and endorsements. Such evidence must, at minimum:
  - (i) reference the agreement number;
  - (ii) be issued to "New York State Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, New York, 12238";
  - (iii) be completely filled out with the date of issuance, name(s) of the insured, carrier, carrier's National Association of Insurance Commissioners number, policy number(s), coverage period, any deductible or self-insured retention amounts, each occurrence and aggregate limits, and exclusions or additional insured endorsements to the policy;
  - (iv) be signed by an authorized representative of the referenced insurance carriers; and
  - (v) be either an original copy or an electronic version of the same that can be directly traced back to the insurer, agent, or broker via email distribution or similar means.
- (c) During the term of this agreement, Licensee shall maintain in force the Required Insurance. At least 30 days before the expiration of any policy of Required Insurance, Licensee shall provide State Parks with evidence of the renewal or replacement of such policy; such evidence must meet the requirements of subsection (b) of this section.
- (d) If at any time during the term of this agreement Licensee does not hold the Required Insurance, State Parks may prohibit Licensee from using and occupying the Premises until Licensee holds the Required Insurance and provides acceptable evidence of insurance.
- (e) Licensee shall notify State Parks of any potential claims under the policies of Required Insurance as soon as practicable, but in no event more than three days from Licensee's receipt of notice of the accident or claim.
- (f) Licensee shall require any of its contractors retained in relation to this agreement to hold the Required Insurance, except that no contractor or Licensee will be required to hold property insurance or liquor liability insurance. Prior to any such contractor beginning work at the Premises, Licensee shall provide State Parks with evidence such contractor holds the insurance required by this subsection; such evidence must meet the requirements of subsection (b) of this section.
- (g) Licensee may, with the written permission of State Parks, self-insure for the risks covered by a policy of Required Insurance. If granted such permission, Licensee shall promptly provide a statement of self-insurance to State Parks.

## **Section 19. Workers' Compensation and Disability Benefits Insurance Coverage**

Licensee acknowledges that pursuant to Workers' Compensation Law Section 57 and 220(8), State Parks cannot enter into this agreement without receiving proof of Licensee's compliance with or exemption from the coverage requirements of the Workers' Compensation Law. Unless otherwise determined by the Workers' Compensation Board, the following forms are the only acceptable means of proof of compliance: for workers' compensation, the C-105.2, U-26.3, or SI-12; for disability benefits, the DB-120.1 or DB-155.

## **Section 20. Indemnity and Claims**

- (a) Licensee assumes all risks in its performance under this agreement and agrees to defend, indemnify and hold harmless the State of New York, State Parks, and their officers, employees, agents, and assigns ("the Indemnitees") from and against all claims, suits, losses, damage, or injury to persons or property of whatsoever kind and nature, whether direct or indirect, that are caused or contributed to by Licensee or Licensee's contractors, vendors, employees, agents, and invitees and that arise out of Licensee's conduct or Licensee's performance of this agreement.; provided, however, that Licensee's indemnity will not extend to any claims, suits, losses, damage, or injury to persons or property directly caused by and but for the negligence of any Indemnitee.
- (b) For all purposes hereunder, State Parks will not be liable for any injury, loss, or damage to Licensee or to Licensee's contractors, vendors, employees, agents, and invitees or to any person happening on, in, or about the Premises or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Licensee or to any other person, that may be caused by fire, theft, breakage, vandalism, or any other use or misuse or abuse of any portion of the Premises, including but not limited to any common areas, sidewalks, roads, or water in or adjacent to the Premises, or that might arise from any other cause whatsoever, unless and only to the extent of the proportion of which any such injury, loss or damage is determined to be directly caused by and but for the negligence of State Parks.
- (c) For all purposes hereunder, State Parks will not be liable to Licensee or to Licensee's contractors, vendors, employees, agents, and invitees or to any other person for any failure of water supply, gas supply, or electric current, nor for any injury or damage to any property of Licensee or any other person or to the Premises caused by or resulting from spill or release of gasoline, oil, steam, gas, or electricity; leakage of any substance from pipes, appliances, sewers, or plumbing works; hurricane, flood, tornado, wind, or similar storm or disturbance; water, rain, or snow that might leak or flow from the street, sewers, or subsurface areas, or from any part of the Premises or any body of water within or adjacent to the Premises; or any public or quasi-public work, unless and only to the extent of the proportion by which any such injury, loss, or damage is determined to be directly caused by and but for the negligence of State Parks.

## **Section 21. Liens**

- (a) Licensee shall not create or cause to be created any lien, encumbrance, or charge upon the Premises, the Park, or any part thereof.

- (b) If any mechanics, laborers, or similar statutory or common law lien (including tax liens, provided that the underlying tax is an obligation of Licensee by law or by a provision of this agreement) caused or created by Licensee is filed against the Premises, or if any public improvement lien created or caused to be created by Licensee is filed against any assets of, or funds appropriated by State Parks, then Licensee shall, within 45 days after receipt of notice of the lien, cause it to be vacated or discharged of record by payment, deposit, bond, court order, or otherwise.
  - (i) Licensee will not, however, be required to discharge any such lien if Licensee has: (i) furnished State Parks with, at Licensee's option, a cash deposit, bond, letter of credit (from an institutional lender in a form satisfactory to State Parks), or other security reasonably satisfactory to State Parks in an amount sufficient to discharge the lien and all applicable interest, penalties, and/or costs; and (ii) brought an appropriate legal proceeding to discharge the lien and is prosecuting such proceeding with diligence and continuity; except that if despite Licensee's efforts to discharge the lien State Parks reasonably believes the lien is about to be foreclosed and so notifies Licensee, Licensee shall immediately cause such lien to be discharged of record or State Parks may use the security furnished by Licensee in order to discharge the lien.

## **Section 22. Capital Projects**

- (a) Licensee shall not erect any structures; make any modifications, alterations, additions, improvements, repairs, or replacements; or do any construction work on, to, or affecting the Premises or the Park, or install any non-removeable fixtures in or on the Premises (a "Capital Project") without the prior written consent of State Parks. Licensee shall remove or modify any Capital Project undertaken without State Parks' consent if State Parks so directs. No review or approval of any Capital Project is made by the virtue of the granting of this agreement. State Parks reserves the right to condition the approval of any Capital Project that would materially increase the capacity or expand the traditional operating season of the Premises upon financial terms that directly address any new cost to State Parks associated with enhanced police or emergency services.
- (b) Any Capital Project undertaken by Licensee must be in accordance with the provisions of Attachment C and comport with the State Parks' planning documents for the Park, unless otherwise agreed to by State Parks in writing.
- (c) Capital Projects undertaken by Licensee, whether with or without the consent of State Parks, will become the property of State Parks upon completion unless the consent of the State Parks expressly provides otherwise. Licensee shall not remove or modify any Capital Project during the term of this agreement or at its expiration or termination without the prior written consent of State Parks.
- (d) All of Licensee's consulting, construction or other contracts for a Capital Project must be in accordance with the terms of this agreement and must not impair the rights of the State or of State Parks under this agreement or create or be deemed to create a contractual or third-party beneficiary relationship between State Parks and any contractor of Licensee.
- (e) In addition to requiring insurance coverage under Section 18 and Attachment C, Licensee shall require all its Capital Project consultants and contractors to indemnify the Indemnitees as set forth in Section 20.

- (f) If a Code Compliance Certificate for the Premises has been issued by State Parks, nothing in this section will prohibit Licensee from operating prior to or during the completion of a Capital Project.

### **Section 23. Intellectual Property**

Except for the descriptive use of the Park and Premises names in its advertising, Licensee shall not use any State Parks or State of New York logo, trademark, or other intellectual property without entering into a separate intellectual property license with State Parks.

### **Section 24. Sponsorships**

- (a) Licensee shall not sell, lease, license, market, or otherwise offer so-called “naming rights” to the Premises without the express written permission of State Parks in its sole discretion. Naming rights includes, without limitation, recognition of contributors and donors of money, property, services, or anything of value to Licensee.
- (b) Except with respect to naming rights, as addressed in subsection (a) above, sponsorship of the Premises or the Use is subject to the reasonable approval of State Parks and Licensee shall not enter into any sponsorship agreement without the prior written approval of State Parks. Sponsorship by companies, interests, or organizations that are directly identified with the sale or use of vape, nicotine, or tobacco products is strictly prohibited. Sponsorship opportunities include, without limitation, program inserts, product sampling, and advertising displays at the Premises.

### **Section 25. Advertising**

- (a) Licensee shall use commercially reasonable efforts to promote its Use. Prior to undertaking the Use, Licensee shall develop, and submit to State Parks for review and approval, a marketing plan describing media and promotional tools to be used in promoting the Use and the Premises. Licensee shall implement such plan as approved by State Parks and submit any material change in such plan to State Parks for review and approval prior to implementing such change.
- (b) State Parks reserves the right to require Licensee to use a standard design, style, template, or format in all advertisements and other promotional materials, including website design and social media. State Parks may prohibit any advertising sign by Licensee that, in the sole judgement of State Parks, impairs the aesthetics of the Park or that restricts the movement of patrons in the area.
- (c) Licensee shall not advertise or offer for sale, hire, or use any Park amenities, areas, or activities outside of the Premises without the prior approval of State Parks.

### **Section 26. Coordination with State Parks**

Licensee shall cooperate with State Parks and comply with all reasonable requests made with respect to the operation and maintenance of the Premises. Licensee shall meet with State Parks on a regular basis to review, plan, and discuss the potential improvement, development, construction, maintenance, and operation of the Premises.

## **Section 27. Sublicensing**

- (a) Licensee may, with the prior written approval of State Parks and, if required by law, the New York State Office of the State Comptroller, and subject to the terms and conditions of this agreement, sublicense its rights and obligations under this agreement to an independent third-party. Such third-party must meet State Parks' vendor responsibility requirements and have demonstrable qualifications and experience for the sublicensed obligations.
- (b) Licensee shall require its sublicensees to comply with the provisions of this agreement and shall name the State of New York, through State Parks, as the sole intended third-party beneficiary of the sublicense. State Parks reserves the right to review and approve or reject the sublicense, as well as any amendments thereto; this right does not make State Parks or the State of New York a party to any sublicense or create for the sublicensee any right, claim, or interest in the sublicense against State Parks.
- (c) If Licensee sublicenses as provided for in this section, it shall require in addition to compliance with the provisions of this agreement that any sublicensee providing food and beverage service at the Premises commence service at least one hour prior to any performance and continue service through 11:00PM.
- (d) Licensee shall give State Parks immediate written notice of the initiation of any legal action or claim arising out of a sublicense that may affect Licensee's performance under this Agreement.
- (e) No sublicense will relieve Licensee of any duty, obligation, or responsibility owed to State Parks under this agreement.

## **Section 28. Surrender**

- (a) Licensee shall yield and deliver peaceably to State Parks possession of the Premises on the date of expiration or termination of this agreement. Licensee shall return the Premises to State Parks in the condition in broom clean condition, reasonable wear excepted as would not adversely affect or interfere with the efficient and proper utilization of the Premises or any part thereof, or in compliance with an alternative agreement reached by the parties at the time of surrender.
- (b) On or before the expiration or termination of this agreement, Licensee shall:
  - (i) remove its equipment, removeable fixtures, and other personal property and all property of third parties for which it is responsible from the Premises;
  - (ii) remove any advertising, identifiers, or other of its signs from the interior and exterior of the Premises and from any other location within the [building] and the Park; and
  - (iii) repair all damage caused by such removals.

State Parks may lawfully remove or dispose of any personal property remaining at the Premises after the expiration or termination of this agreement.

- (c) No agreement of, or to accept a, surrender will be valid unless and until the same is reduced to writing and signed by the duly authorized representatives of the parties. Except as expressly provided in this section, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or



employees of State Parks will be deemed an acceptable of a surrender of the Premises or this agreement. Without limiting the foregoing, no officer or employee of State Parks is authorized to accept the keys of the Premises as an act of surrender prior to the expiration or termination of this agreement and no delivery of the keys to State Parks by Licensee will constitute a termination of this agreement or acceptance of surrender.

#### **Section 29. Rights of Entry and Re-Entry**

- (a) In addition to any other rights of entry in this agreement, State Parks may, upon 24 hours' notice and during Business Hours, enter the Premises for the purposes of observing the performance by Licensee of its obligations under this agreement or for the doing of any official act or things which State Parks may be obligated or have the right to do under this agreement or in accordance with law. In case of emergency or exigent circumstances threatening the health, safety, or welfare of the public or the physical integrity of the Premises or the Park, State Parks reserves an unrestricted right of entry to the Premises at all times.
- (b) State Parks may, as an additional remedy upon the giving of a notice of termination as provided this agreement, re-enter the Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of Licensee under this agreement, and shall in no event constitute an acceptance of surrender.

#### **Section 30. Rights Upon Loss from Casualty**

- (a) If the Premises suffers a loss or damage from casualty, Licensee shall notify State Parks as soon as practicable.
- (b) If the loss or damage from casualty does not substantially interrupt or impede Licensee's Use, Licensee shall proceed with performance of this agreement, including Licensee's affirmative responsibility for all capital repair and replacement of any and all elements of the Premises. In such event, State Parks and Licensee shall negotiate an equitably proportionate abatement of the License Fee to the extent reasonably feasible and proportionate to the extent that Licensee's operations are impeded or interrupted by such loss or damage.
- (c) If the loss or damage from casualty is to the extent that Licensee's Use is substantially interrupted or impeded, State Parks shall consult with Licensee prior to making a determination of whether or in what manner the loss or damage can or should be restored to substantially the same condition as existed prior to such loss from casualty. State Parks shall make a preliminary determination within 24 hours of the Premises being sufficiently safe to access and make it final determination within 45 days.
  - (i) If State Parks determines that the loss or damage cannot or should not be restored, State Parks shall inform Licensee of such determination and set a date on which the agreement will terminate. In such event, Licensee shall pay State Parks the unamortized amount of Licensee's Minimum Capital Investment out of its share of any insurance proceeds. For purposes of this paragraph,

Licensee's Minimum Capital Investment will be amortized on a straight-line basis over the term of this agreement.

(ii) If State Parks determines that the loss or damage can and should be restored, Licensee may, within thirty days of State Parks' determination and by written notice to State Parks, elect to restore the Premises at Licensee's sole cost and expense, in which case this agreement shall continue in force. Licensee may apply the proceeds of its required policy of property insurance to the restoration of the Premises. Any restoration work will be deemed a Capital Project. If Licensee does not wish to undertake its own restoration of the Premises, Licensee shall, within thirty days of State Parks' determination, provide State Parks with written notice of its decision and pay to State Parks the full proceeds it received under its required policy of property insurance and this agreement will terminate upon written confirmation of receipt of such funds by State Parks.

(d) If this agreement is terminated because of loss or damage from casualty Licensee shall pay to State Parks all fees and other amounts due for the period through and including the date of casualty and the parties shall otherwise finalize all open matters and obligations between them.

(c) Nothing in this section releases Licensee from its obligation to carry the property insurance required by Section 18 and Attachment E.

### Section 31. Notices; Consents by State Parks

(a) All notices permitted or required under this agreement shall be in writing and shall be transmitted:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by personal delivery;
- (iii) by expedited delivery service; or
- (iv) by e-mail.

(b) Such notices must be addressed as follows or to such different address as the parties may from time-to-time designate:

If to State Parks:  
OPRHP – Long Island Region  
PO Box 247  
Belmont Lake State Park  
Babylon, New York 11702  
ATTN: Long Island Regional Director  
Telephone: 631-321-3501  
Email: <mailto:George.Gorman@parks.ny.gov>

and

Office of Parks, Recreation and Historic Preservation  
625 Broadway, 10th Floor  
Albany, NY 12238

If to Licensee:  
Live Nation Worldwide, Inc.  
c/o Live Nation  
9348 Civic Center Drive  
Beverly Hills, California 90210  
Attn: President

and

Live Nation Worldwide, Inc.  
c/o Live Nation  
2000 West Loop South, 13th Floor  
Houston, Texas 77027  
Attn: James Tucker

ATTN: Director of Regional Operations and Resource  
Development  
Telephone Number: 518-486-2932  
Email: concessions@parks.ny.gov, with a copy to  
counsel@parks.ny.gov

- (c) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address, or in the case of email, upon receipt.
- (d) Any consent by State Parks permitted or required under this agreement shall be given by State Parks' Long Island Regional Office unless the provision permitting or requiring such consent expressly provides otherwise. State Parks shall not unreasonably withhold or delay any consent or approval requested by Licensee.
- (c) Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues, and problems and/or for dispute resolution.

### **Section 32. Termination**

- (a) If Licensee is in breach of this agreement in any of the following ways and such failure is not commenced to be cured within 30 days from Licensee's receipt of notice of default issued by State Parks and thereafter diligently pursued to a cure, State Parks may terminate this agreement for cause by notice to Licensee:
  - (i) Licensee fails to conduct the Use as required by Section 7(a);
  - (ii) Licensee's operation of [the concession] significantly departs from the description in the RFP and Licensee's proposal in the RFP Response and such departure is done without the written approval of State Parks;
  - (iii) Licensee fails to pay the License Fee in accordance with Section 4(a);
  - (iv) Licensee fails to meet its capital investment obligation in accordance with Section 5;
  - (v) Licensee fails to hold the security required under any of Section 4(b), Section 5(b), or Section 9(e).
  - (vi) Licensee fails to pay for utility services in accordance with Section 14(c) resulting in termination or shut-off of utility service to the Premises;
  - (vii) Licensee fails to hold the Required Insurance in accordance with Section 18;
  - (viii) Licensee attempts to assign or sublicense its rights and obligation under this agreement in contravention of either Section 27 or Paragraph 2 of Appendix A;
  - (ix) Licensee fails to hold the additional insurance and bonds required by Attachment C in connection with any Capital Project.
- (b) If State Parks that Licensee is not a responsible vendor as required under Section 36, State Parks may terminate this agreement for cause upon notice to Licensee after providing Licensee notice of the basis for the finding of non-responsibility and 15 days to challenge the finding.

- (c) If any one or more of the following events occurs, State Parks may, upon the occurrence of such event or at any time thereafter, terminate this agreement by giving Licensee at least 10 days' notice in writing:
- (i) Licensee becomes insolvent; or takes the benefit of any present or future insolvency statute; or makes a general assignment for the benefit of creditors; or files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof; or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all its property.
  - (ii) by order or decree of a court, Licensee is adjudged bankrupt or an order is made approving a petition filed by any of the creditors seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof.
  - (iii) a petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against Licensee and not be dismissed within 45 days after the filing thereof.
  - (iv) the interest or estate of Licensee under this agreement is actually or purportedly let to, transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, or corporation except upon the express written approval of State Parks.
  - (v) a receiver, trustee, or liquidator takes possess or control of all or substantially all of the property of Licensee by, pursuant to, or under authority of any legislative act, resolution, or rule or any order or decree of any court or governmental board, agency, or officer and such possession or control continues for a period of 20 days
  - (vi) any execution or attachment is issued against Licensee or any of its property whereupon possession of the Premises or any portion thereof is taken by someone other than Licensee and such possession or control continues for a period of 20 days.
  - (vii) any lien is filed against the Premises because of any act or omission of Licensee and is not removed or bonded as provided for in this agreement.
  - (viii) Licensee ceases to be duly authorized to conduct business in the State of New York and does not become authorized to conduct business in the State of New York within 30 days of written notice by State Parks.
  - (ix) Licensee is found by State Parks to have intentionally falsified any information provided to State Parks, and corrected information is not provided within 20 days of written demand by State Parks therefor, or Licensee is found by State Parks to have provided intentionally false or incomplete certifications or other representations in its RFP Response.

- (d) State Parks may also terminate this agreement without advance notice to Licensee if
  - (i) any member, partner, director, or officer of the Licensee is convicted of any of the following offenses: Bribery Involving Public Servants and Related Offenses, as defined in Article 200 of the New York State Penal Law; Corrupting the Government, as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law;
  - (ii) in State Parks' discretion an actual or potential conflict of interest cannot be cured; or
  - (iii) Licensee or any of its employees violates any of the Ethics Requirements.
- (c) No waiver by State Parks of any default on the part of Licensee in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by Licensee is or will be construed to be a waiver by State Parks of any other or subsequent default in performance of any of the said terms, covenants, and conditions. No acceptance by State Parks of Rent or other amounts due under this agreement will be construed to be a waiver by State Parks of any right of the State to terminate this agreement.
- (f) Licensee hereby waives its right to trial by jury in any summary proceeding, ejectment, or other action that may hereafter be instituted by State Parks against Licensee in respect of the Premises or in any action that may be brought by State Parks to recover fees, damages, or other amounts payable under this agreement. Licensee shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment that may be brought by State Parks unless such claims would be deemed waived if not so interposed.
- (g) The rights of termination described in this section are in addition to any other rights of termination provided in this agreement and any rights and remedies that State Parks would have at law consequent upon any breach of this agreement by Licensee. The exercise by State Parks of any right of termination will be without prejudice to any other such rights and remedies.
- (h) Licensee hereby waives all rights of redemption arising if it is evicted or dispossessed for any cause set forth in this agreement or if State Parks obtains or retains possession of the Premises in any lawful manner.

### **Section 33. Claims**

- (a) Any and all claims against State Parks arising out of this agreement are limited to money damages and will be commenced exclusively in, and subject to the jurisdiction of, the New York State Court of Claims.
- (b) Any and all claims against Licensee for damages brought by State Parks and/or any actions to enforce the terms and conditions of this agreement shall be enforceable in any appropriate court in Albany County, New York, which shall be the sole venue.

### **Section 34. Force Majeure; Waiver of Damages**

- (a) If either State Parks or Licensee is delayed or prevented from performing any act required by this agreement by reason of acts of God, weather, earth movement, lockout or labor trouble, acts of war or

terrorism, civil commotion, public emergency, or other similar causes without fault and beyond the reasonable control of the party obligated, performance of such act will be excused for the period of the delay and the period for the performance of such act will be extended for a period equivalent to the period of such delay. Nothing in this section however, excuses Licensee from the prompt payment of any all fees and amounts due to State Parks.

- (b) Licensee waives any and all claims for compensation from the State of New York and State Parks for any and all loss or damage sustained by Licensee resulting from acts of God, weather, earth movement, lockout or labor trouble, acts of war or terrorism, civil commotion, public emergency, or other similar causes without fault and beyond the reasonable control of State Parks.

#### **Section 35. Freedom of Information Law**

Licensee acknowledges that State Parks is subject to the requirements of the Freedom of Information Law and that any information or records submitted by Licensee to State Parks are presumptively subject to disclosure unless specifically exempted by statute. In accordance with Public Officers Law Section 89(5)(a)(3), State Parks will maintain any information or records that Licensee requests be exempted from disclosure pursuant to Public Officers Law 87(2)(d) apart from all other information or records and, in the event of a request under the Freedom of Information Law for such information or records, shall contact Licensee to determine the extent to which such information or records might properly be exempted from disclosure.

#### **Section 36. Responsibility Determination by State Parks**

- (a) Licensee acknowledges that State Parks' execution of this License is contingent upon the State Parks' determination that Licensee is responsible. State Parks relies in part upon the Licensee's responses to the Vendor Responsibility Questionnaire developed by the Office of the State Comptroller to make its responsibility determination but may make its determination based on any information available to it.
- (b) Licensee shall remain responsible throughout the term of this agreement. Upon request by State Parks, Licensee shall present evidence of its continuing legal authority to do business in New York State and its business integrity, legal authority, experience, ability, prior performance, and organizational and financial capacity.
- (c) If State Parks discovers information that calls into question Licensee's responsibility, State Parks may suspend any or all activities under this agreement by written notice to Licensee outlining the basis of the suspension and listing activities to be suspended. Upon the issuance of such suspension notice, Licensee shall not engage in or undertake the listed activities unless and until State Parks issues a written notice ending the suspension and Licensee shall comply with all reasonable requests from State Parks to cure the basis for suspension.

#### **Section 37. Conflicts of Interest; Former State Employees**

- (a) Consistent with its attestation made in the RFP Response, Licensee states there is no actual or potential conflict of interest that could prevent Licensee's satisfactory and ethical performance of its obligations under this agreement. Licensee shall notify immediately State Parks of any actual or potential conflict of interest that arises after the signing of this agreement.

- (b) Licensee shall not hire former State Parks employees in violation of the New York Public Officers Law, other laws applicable to the service of State employees, or the rules, regulations, opinions, guidelines, or policies of the New York State Joint Commission on Public Ethics or its predecessors (the “Ethics Requirements”). Consistent with its certification made in the RFP Response, Licensee shall not assign any of its employees in violation of the Ethics Requirements or allow any of its employees to provide services in violation of the Ethics Requirements. Licensee shall identify to State Parks all of its employees who are current or former employees of State Parks; State Parks may require Licensee to provide reasonably necessary information to determine whether any such employee’s work is consistent with or violates the Ethics Requirements and may require Licensee to seek the opinion of the New York State Joint Commission on Public Ethics or its successor. Licensee acknowledges that any person who is disqualified from providing services under this agreement by the Ethics Requirements is prohibited from sharing in any net revenues derived by Licensee from the Use.

#### **Section 38. Rights of Third Parties**

Nothing contained in this agreement creates or gives to third parties any claim or right of action against the Indemnitees, or any interest in real or personal property of the State of New York, beyond that as may legally exist without regard to this agreement.

#### **Section 39. Agency**

Nothing contained in this agreement constitutes or will be construed to create or constitute a legal or *de facto* partnership or joint venture or an agency relationship between the parties.

#### **Section 40. Integration Clause**

This agreement shall not be materially amended or otherwise modified except in writing signed by both parties and approved by the Office of the State Comptroller. Except to the extent that documents are incorporated herein by reference, this agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith. No covenant, representation, or condition not expressed herein shall be effective to interpret, change, or restrict the express provisions of this agreement. This agreement shall be interpreted without construing any provision in favor of or against either party by reason of the drafting of the provision.

**\*Signature Page Follows\***

In witness whereof, the parties are signing this agreement on the date stated in the introductory clause.

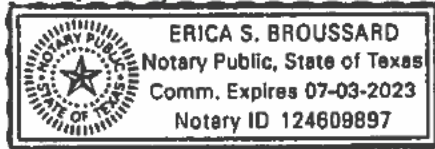
LIVE NATION WORLDWIDE, INC

By: [Signature]  
Name: James Tucker  
Title: Senior Vice President Legal Affairs  
Federal EIN: [REDACTED]

ACKNOWLEDGEMENT

STATE OF Texas )  
) SS:  
COUNTY OF Harris )

On this 8<sup>th</sup> day of November in the year 2019 before me, the undersigned a notary public in and for said state, personally appeared James Tucker, personally known, to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is described within the instrument and acknowledged to me that he/she executed the same in his/her capacity as the SVP of Legal Affairs of Live Nation Worldwide, Inc. and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.



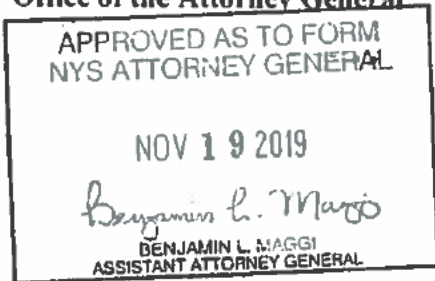
[Signature]  
Notary Public

STATE OF NEW YORK, OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

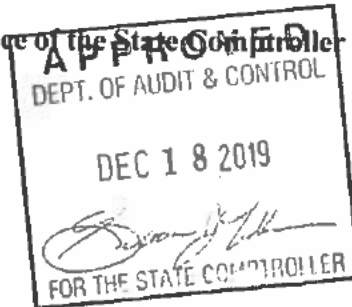
Recommendation of Regional Director: George Gorman Jr  
George Gorman, Long Island

By: [Signature]  
Melinda Scott, Deputy Commissioner for Finance and Administration

Office of the Attorney General



Office of the State Comptroller



\*Attachments Follow\*



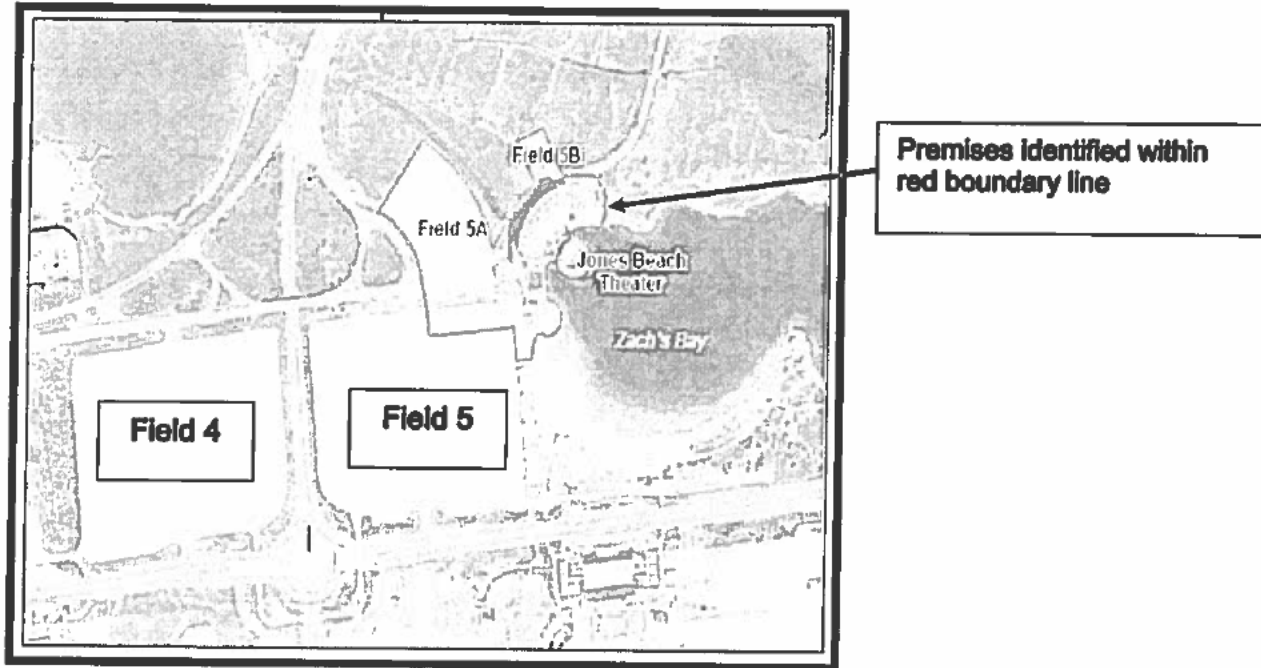
**Attachment A**

**DESCRIPTION OF THE PREMISES**

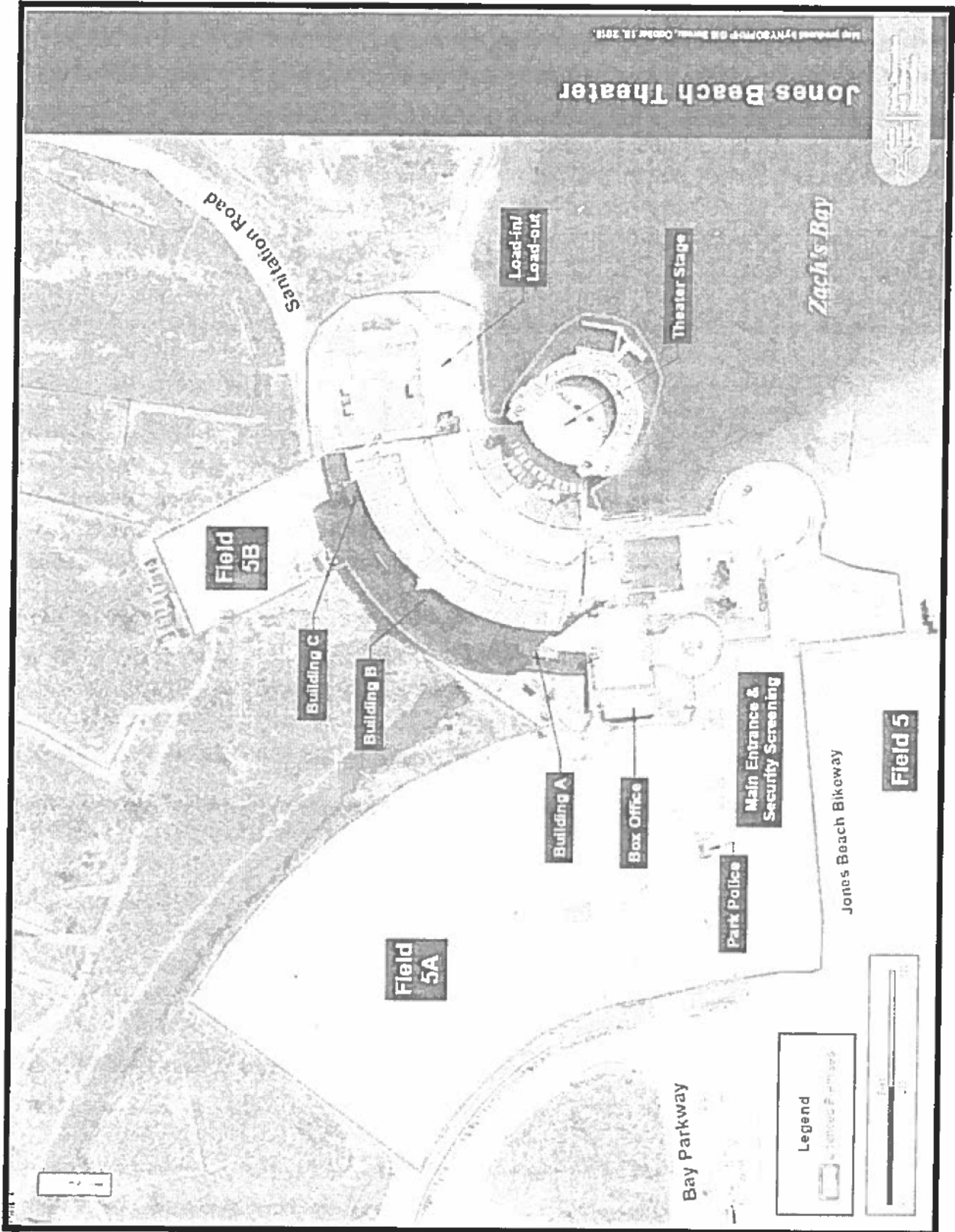
The Premises consists of the area depicted on the following maps, consisting of approximately 17 acres comprised of:

- (a) The amphitheater; seating and stage performance areas
  - (i) The main stage is approximately 114' wide and 60' deep bordered by two side towers mounted with video screens (measuring 26' X 30'). Backstage areas include various production offices, food preparation and service areas, principal dressing rooms, and administrative offices and work stations. The paved Load In/Load Out lot east of the stadium seating is designated for deliveries and loading of equipment.
  - (ii) Cumulative seating capacity is 14,335 (not including ADA-compliant seating – 13,817 manifest seats, seventy-eight (78) orchestra boxes (totaling three hundred and twelve (312) seats), and twenty-two (22) luxury suites (totaling two hundred and six (206) seats);
  - (iii) Includes all facility, utility, and service infrastructure; elevators; access tunnels; food pantry areas; audio-visual room; two light galleries; first aid station; and all comfort stations.
- (b) The box office
- (c) Buildings A, B and C with restrooms, retail, and food concession spaces
- (d) Multi-use parking fields 5A and 5B
  - (i) Field 5A is approximately nine and seven-tenths acres of paved, lined, and lighted parking designed for approximately 900 cars
  - (ii) Field 5B is approximately one and a quarter acres of unlined pavement accommodating approximately 50 cars and accessible via the side entry gate north of the main entrance);
- (e) Approximately one-third acre of green lawn space along Zach's Bay and southeast of the main entrance and adjacent concrete circular plaza esplanade;
- (f) The main entrance, patron queuing, and security screening area immediately outside of the main entrance front gates (approximately one and one-half acres);
- (g) A side gate north of the main entrance used to access Sanitation Road (which affords additional access for the Licensee but is not included with the Premises).

Two other multi-use parking fields at the Park are not included within the Premises but are routinely available upon permission from State Parks to accommodate parking for the Theater as necessary. These parking lots are designated "Field 5" (approximately 4,200 cars) adjacent to the Premises and "Field 4" (approximately 4,500 cars) located approximately one quarter (0.25) mile from the main entrance.



MAP 1: Jones Beach Theater



## Attachment B

## INVENTORY OF EQUIPMENT

Asset Tag Number	Asset Type	Description	Manufacturer	Serial Number	Model Number	Quantity
LI-JNB-01366	Sink	Countertop/Sink	Eagle	1303232437	SDTL-72-14/3	
LI-JNB-01367	Sink	Countertop/Sink	Eagle	1304240026	FN2472-3-36 14/3	
LI-JNB-01368	Sink	Double Sink	Eagle	1303990188	FN-2840-2-30 14/3	
LI-JNB-01369	Sink	Triple Sink	Eagle	130341692	FN-2860-3-30 14/3	
LI-JNB-01370	Sink	Triple Sink	Eagle	1303241663	FN-2860-3-30 14/3	
LI-JNB-01371	Sink	Triple Sink	Eagle	UNKNOWN	UNKNOWN	
LI-JNB-01372	Sink	Double Sink	Eagle	1303241653	FN-2840-2-30 14/3	
LI-JNB-01373	Sink	Triple Sink	UNKNOWN	UNKNOWN	UNKNOWN	
LI-JNB-01374	Sink	Triple Sink	UNKNOWN	UNKNOWN	UNKNOWN	
LI-JNB-01375	Sink	Triple Sink	UNKNOWN	UNKNOWN	UNKNOWN	
LI-JNB-01376	Oven	Oven/Grill Combo	Vulcan	UNKNOWN	UNKNOWN	
LI-JNB-01377	Oven	Oven	Blodgett	071715CS128S	SHO-100-E	
LI-JNB-01378	Oven	Oven	Blodgett	071715CS129S	SHO-100-E	
LI-JNB-01379	Oven	Oven	Blodgett	06291CR019B	SHO-100-E	
LI-JNB-01380	Oven	Oven	Vulcan	54-1062205	VC4GD-21D1	
LI-JNB-01381	Oven	Oven	Vulcan	54-1062206	VC4GD-21D1	
LI-JNB-01382	Stove	Stove	Vulcan	650094788	VCRH36-1	
LI-JNB-01383	Fryer	Fryer	Vulcan	69-1000056	ML-136404	
LI-JNB-01384	Fryer	Fryer	Cecilware Pro	180200217	FMS705NAT	
LI-JNB-01385	Fryer	Fryer	Cecilware Pro	180200223	FMS705NAT	
LI-JNB-01386	Fryer	Fryer	Cecilware Pro	180200229	FMS705NAT	
LI-JNB-01387	Fryer	Frialator-4 Compartment	PITCO	G13CD014544	SSH55	
LI-JNB-01388	Food Warmer	Food Warmer	WINCO	FWS60010023515	FW-S600	
LI-JNB-01389	Food Warmer	Food Warmer	WINCO	FWS60010018997	FW-S600	
LI-JNB-01390	Food Warmer	Food Warmer	WINCO	FWS60010023694	FW-S600	
LI-JNB-01391	Food Warmer	Food Warmer	WINCO	FWS60010023715	FW-S600	
LI-JNB-01392	Food Warmer	Food Warmer	WINCO	FWS60010023701	FW-S600	
LI-JNB-01393	Refrigerator	Fridge	MAXX Cold	MCR1A94K400005	MCRT-23FD	
LI-JNB-01394	Refrigerator	Fridge	MAXX Cold	MCR1A94G400007	MCRT-23FD	
LI-JNB-01395	Refrigerator	Fridge	Magic Chef	1007MCRR445B12394	MCBR445B1	
LI-JNB-01396	Refrigerator	Walk-In Fridge	Thermal Rite	13172477-2DT	E225993	
LI-JNB-01397	Refrigerator	Walk-In Fridge	Thermal Rite		E225993	
LI-JNB-01398	Refrigerator	Fridge	Kool-It	MV06A94HA00004	KTSR-2- MV126	
LI-JNB-01399	Refrigerator	Fridge	MAXX Cold	5013420	MXCR60U	
LI-JNB-01400	Refrigerator	Fridge	Kool-It	MV04A94HB00012	KBSF-2- MV126	
LI-JNB-01401	Refrigerator	Fridge	Kool-It	UNKNOWN	KBSF-2- MV126	

LI-JNB-01402	Refrigerator	Fridge	TRUE	9657231	T-23-HC	
LI-JNB-01403	Refrigerator	Fridge	TRUE	9675365	T-23-F-HC	
LI-JNB-01404	Refrigerator	Fridge	Kool-It	MV05A94G300003	KTSR-1-MV126	
LI-JNB-01405	Refrigerator	Fridge	TRUE MFR.	855681	TUC-60G	
LI-JNB-01406	Refrigerator	Fridge	TRUE MFR.	8573348	TUC-60G	
LI-JNB-01407	Refrigerator	Condiment Prep Station	TRUE MFR.	7693328	TSSU-60-24M-B-ST	
LI-JNB-01408	Server Cabinet	Heated Tray Server	FWE	164833202	TS-1826-18	
LI-JNB-01409	Server Cabinet	Heated Tray Server	Hot Logix	52013478394	HWU18A1GM	
LI-JNB-01410	Server Cabinet	Heated Tray Server	Hot Logix	52013478395	HWU18A1GM	
LI-JNB-01411	Server Cabinet	Heated Tray Server	Hot Logix	52013478390	HWU18A1GM	
LI-JNB-01412	Server Cabinet	Heated Tray Server	Hot Logix	52013478393	HWU18A1GM	
LI-JNB-01413	Server Cabinet	Heated Tray Server	FWE	185870501	TS-1826-18	
LI-JNB-01414	Server Cabinet	Heated Tray Server	FWE	154448402	TS-1826-18	
LI-JNB-01415	Server Cabinet	Heated Tray Server	FWE	164833203	TS-1826-18	
LI-JNB-01416	Popcorn Machine	Popcorn Machine		APW-T-1816	2002	
LI-JNB-01417	Popcorn Machine	Popcorn Machine		CW-6017	2025	
LI-JNB-01418	Cabinet	Cabinet	METRO	C5HME034135		
LI-JNB-01419	Cabinet	Cabinet	Eagle	1304230029	CBH3060-SE-BS	
LI-JNB-01420	ICE Machine	ICE Machine	Follett	UNKNOWN	UNKNOWN	
LI-JNB-01421	ICE Machine	ICE Machine	Hoshizaki	UNKNOWN	UNKNOWN	
LI-JNB-01422	ICE Machine	ICE Machine	UNKNOWN	UNKNOWN	UNKNOWN	
LI-JNB-01423	ICE Machine	ICE Machine	Follett	D90465-067 13	DB1000SA	
LI-JNB-01424	Under Counter Fridge	Under Cabinet Fridge	Beverage-Air	4703449	UCR72	
LI-JNB-01425	Under Counter Fridge	Under Cabinet Fridge	Beverage-Air	4700231	UCR72	
LI-JNB-01426	Stainless Steel Counter	Countertop	Eagle	1303232400	T36120EB	
LI-JNB-01427	Stainless Steel Counter	Countertop	Eagle	1303230768	CDTR-46-14/3	
LI-JNB-01428	Stainless Steel Counter	Countertop	AERO	UNKNOWN	A1-3096	
LI-JNB-01429	Stainless Steel Counter	Countertop	Regency	UNKNOWN	600ES30485	
LI-JNB-01430	Ceiling Fan	Decorative Fan	Unknown	UNKNOWN	UNKNOWN	17
LI-JNB-01431	Folding Chair	Folding Chair	UNKNOWN	UNKNOWN	UNKNOWN	1000
LI-JNB-01432	Stainless Steel Counter	12 Foot				16
LI-JNB-01433	Stainless Steel Counter	8 Foot				5
LI-JNB-01434	Stainless Steel Counter	6 Foot				3
LI-JNB-01435	Stainless Steel Counter	4 Foot				1

Contract Number: X001350

LI-JNB-01436	Stainless Steel Counter	2 Foot				2
LI-JNB-01437	Stainless Steel Counter	3 Foot				3
LI-JNB-01438	Stainless Steel Counter	20 Foot				1
LI-JNB-01439	Stainless Steel Counter	16 Foot				1
LI-JNB-01440	Stainless Steel Counter	30 Foot				1

**Attachment C**

**REQUIREMENTS FOR CAPITAL IMPROVEMENT PROJECTS**

- (a) All capital improvement investment projects to be undertaken by Licensee shall be approved in advance by State Parks in accordance with the License. Upon approval of a capital improvement project by State Parks, the Licensee shall fully implement the approved project and all its individual elements at the direction of State Parks pursuant to the requirements contained herein. The Licensee shall be solely responsible for the full cost of implementing all approved projects, including all costs and expenses of construction that exceed the Licensee's minimum capital investment required by the License.
- (b) Designs for all projects proposed by Licensee shall be in compliance with the NYS Uniform Fire Prevention and Building Code (Building Code). Designs shall be developed and signed by a professional engineer or architect licensed to practice in New York State. All designs for capital improvements shall be subject to the written review and approval of State Parks with respect to aesthetics and compliance with the Building Code, the State Historic Preservation Act, and the State Environmental Quality Review Act, prior to any bidding or award of contracts for such construction, or commencement of construction.
- (c) All contracts for construction or improvement of the Premises shall provide for the payment of prevailing wage rates set by the New York State Department of Labor. The Licensee is solely responsible to ensure the payment of prevailing wage rates on all capital improvement projects. Upon request by the Licensee, State Parks shall provide prevailing wage rate sheets to the Licensee.
- (d) Copies of all contracts, subcontracts, change orders, progress payment documents and related material shall be provided to State Parks within five business days upon request by State Parks.
- (e) Throughout the construction phase of the project, the Licensee shall conduct regular "job meetings" to assess progress on the project, and produce written records of such meetings, with a copy to State Parks. At the discretion of State Parks, a representative may attend the job meetings at no cost to the Licensee.
- (f) A schedule of construction activity shall be recommended by Licensee and approved by State Parks. Licensee shall not unreasonably interfere with normal park operations. Licensee shall avoid construction on those days when large park attendance can be reasonably anticipated, including major holidays such as Memorial Day, Independence Day (4th of July) and Labor Day.
- (g) All construction and material costs and expenses in excess of original estimates for the approved project shall be the sole responsibility of the Licensee, and State Parks shall have no liability whatsoever for any additional expenses either to the Licensee or the Licensee's contractors, subcontractors, and/or suppliers. The Licensee assumes any and all additional and extra costs, including but not limited to costs and expenses associated with the upgrade of utilities, security and fire control systems, code compliance, delay for whatever cause, weather, and unknown or unforeseen conditions associated with the Premises. State Parks shall have no obligation in law or in fact to expend funds or undertake any capital improvements as a result or consequence of any project undertaken, or condition encountered by the Licensee.
- (h) Additional Insurance Required for Capital Improvements. In addition to the insurance required by the License, the Licensee shall require its contractors to carry Contractor's Liability Insurance which names State Parks

and the Licensee as additional insured. Licensee shall provide to State Parks a copy of all insurance certificates evidencing coverage in compliance with this section. Such insurance shall include the following coverage:

1. Liability (including contractual liability) and Protective Liability to protect the Licensee and State Parks from any suits, actions, damages and costs of every name and description, with respect to all work performed by the Licensee's contractors and subcontractors; and
2. Owner's Protective Liability to protect State Parks with respect to all operations undertaken by the Licensee's contractors and subcontractors, including omissions and supervisory acts; and
3. Completed Operations/Products Liability covering liability and damages arising between the date of final cessation of construction work and the date of final acceptance of the construction by State Parks; and
4. Builder's Risk Insurance:
  - i. Unless otherwise provided for in the License the Licensee's contractor shall maintain builder's risk insurance for the completed value of the Premises on the All Risk Form.

(i) Labor and Materials Bond

1. Prior to the commencement of any construction work hereunder, Licensee shall furnish State Parks with evidence that it has procured a labor and materials payment bond from a corporate surety authorized to transact business in the State of New York, in a form satisfactory to State Parks, naming Licensee as principal, in an amount not less than one hundred (100%) percent of the total cost of the construction work to be undertaken by Licensee as approved by State Parks. Such bond shall guarantee payment for all materials, provisions, supplies, and equipment used in, upon, for, or about the performance of said construction work, and/or labor performed thereon of any kind whatsoever, and which unconditionally protects State Parks from any claims, liability, losses, or damages arising therefrom.
2. As evidenced by certification by the engineer or architect of record for the project, State Parks shall authorize the reduction of the face value of the labor and materials bond on a monthly or other periodic basis to an amount equal to the remaining contract costs, including approved change orders.

(j) The Licensee shall notify State Parks immediately of any change in insurance or bonding status including, but not limited to, any change in carrier or surety.

(k) If there are any discrepancies between this Attachment and the License, the language of the License shall prevail.



Attachment D

CAPITAL INVESTMENT PLAN

**January 1, 2020 – Beginning of 2020 Concert Season**

- 1. (Rqd) Replacement/Removal of promenade screening walls
  - 2. Stage screen replacement
  - 3. Community relations kiosks
  - 4. (Rqd) Emergency generator at sewage pump house
  - 5. (Rqd) Solar-powered street lighting from Field 4 to Field 5
  - 6. (Opt) Reconfigured Field 5A entrance for improved access
- Project Cost Budgeted (Includes 10% Contingency) .....\$3,360,000**

**End of 2020 Concert Season – Beginning of 2021 Concert Season**

- 1. East Plaza (or other project as mutually agreed with State Parks)
  - 2. East Viewing Pavilion (including East Light Tower removal)
  - 3. West Viewing Pavilion (including West Light Tower removal)
  - 4. (Opt) Barrier system to control access from Zach’s Bay and hospitality area
  - 5. (Opt) New seawall and sealant at orchestra seating area
  - 6. (Rqd) Permanent entrance security screening system
- Project Cost Budgeted (Includes 10% Contingency) .....\$11,090,000**

**End of 2021 Concert Season – Beginning of 2022 Concert Season**

- 1. West VIP Club: Phase 1
  - 2. (Opt) Replacement of second tier stadium seating
  - 3. Bowl Suites
  - 4. Bowl mezzanine, middle tier, general admission, orchestra standing room pit
  - 5. Artist Relations / Backstage improvements
  - 6. (Rqd) Electric, water, sewage service for police substation
- Project Cost Budgeted (Includes 10% Contingency) .....\$9,920,000**

**End of 2022 Concert Season – Beginning of 2023 Concert Season**

- 1. West Plaza – Expanded Boundary: Phase 1
  - 2. West VIP Club: Phase 2
  - 3. Concourse Upgrades: Existing Concourse/Arcade
  - 4. (Opt) Redesigned and improved pedestrian access from Fields 4 & 5
- Project Cost Budgeted (Includes 10% Contingency) .....\$13,390,000**

**End of 2023 Concert Season – Beginning of 2024 Concert Season**

- 1. West Plaza – Expanded Boundary: Phase 2
  - 2. (Rqd) Upgrade emergency exit signage and lighting in theater
  - 3. (Rqd) Upgrade energy-efficient LED lighting on fields 4 & 5
- Project Cost Budgeted (Includes 10% Contingency) .....\$4,780,000**

**MINIMUM CAPITAL INVESTMENT ..... (\$64,370,295)**

Includes required RFP projects, suggested additional RFP projects, additional venue infrastructure and amenities, Jones Beach Theatre Capital Fund, Jones Beach State Park Capital Fund

**Notes**

- (1) Required projects (Rqd) and Suggested additional projects (Opt) from the RFP are identified as such. Dollar amounts are based on 2019 estimates and the actual cost thereof may change.
- (2) Capital projects are prioritized for the identified concert season completion timeline but may be reorganized and projects changed as deemed best in agreement with State Parks as part of State Parks' capital projects approval process for execution of the Capital Investment Plan.
- (3) General improvements allowance (\$550,000) to be used as needed throughout the five years of the project.
- (4) Investment (\$5,000,000) in mutually agreeable Jones Beach State Park improvement projects that facilitate the positive interrelationship between Jones Beach State Park and the Jones Beach Theatre. This component is for the Jones Beach State Park Capital Fund.
- (5) Investment (\$15,000,000) in mutually agreeable Jones Beach Theatre improvement projects from 2020 to 2025 that ensure the venue remains state of the art and the pre-eminent amphitheater. This component is for the Jones Beach Theater Capital Fund.”

**Attachment E**

**LIABILITY INSURANCE COVERAGE TYPES AND MINIMUM POLICY LIMITS**

The following types of liability insurance coverage with liability limits of at least the levels set forth below are required. State Parks, by written notice to Licensee, may modify the types or insurance coverage and minimum liability limits required to reflect updates to the New York State Office of General Services' insurance coverage guidelines for state agencies.

- (a) **Commercial General Liability Insurance** for claims that may arise out of ongoing and completed operations under the Cooperative Agreement. Such policy shall have a liability limit of at least \$1,000,000 each occurrence and at least \$2,000,000 general aggregate. Such policy shall include coverage for damage to plate glass resulting from vandalism or other destructive acts.
- (b) **Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile used in connection with performance under this agreement including owned, leased, hired, and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Law of the State of New York to bear license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000 each accident.

**This coverage is not required if no automobiles or motor vehicles are used in connection with the performance of this agreement.**

- (c) **Commercial Property Insurance** covering the Premises and insuring the same for replacement cost, with all risk coverage, in which State Parks is named as "loss payee". Such coverage must be written on the ISO Special Causes of Loss Form or substitute form providing equivalent coverage.
- (d) **Liquor Liability Insurance** with a liability limit of at least \$1,000,000 each occurrence.
- (e) **Environmental Liability Insurance** covering sudden and accidental pollution of all bodies of water with a liability limit of at least \$5,000,000 each occurrence.

The required insurance coverage limits may be met through a combination of primary and excess/umbrella liability policies, however, any excess/umbrella policies must be written on a "following form" basis.

All insured required by this section must:

- (i) be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and that have an A.M. Best Company rating of "A-", Class "VII" or better;
- (ii) provide that the required coverage shall be primary and non-contributory to other insurance available to the State of New York; and
- (iii) be written such that State Parks is afforded at least 30 days' prior notice of cancellation or modification of coverage.

The insurance coverage and liability limits set forth above are the minimum level of insurance required of Licensee. Licensee may procure additional insurance coverage to protect its business interests at the Premises, however, such additional insurance coverage is the sole responsibility of the Licensee.

## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this

contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal Business Hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is

for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State

or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue, New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnyccontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public

Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163



(4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the

person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence