



**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## **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, licenser, 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, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**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, citizenship or immigration status, 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 and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

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 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.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 May 2023, 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 899-bb and State Technology Law § 208).

**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/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.



## APPENDIX D

### GENERAL CONDITIONS FOR REVENUE AGREEMENTS NON-FAIR NEW YORK STATE FAIR, A DIVISION OF THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

**These general conditions apply to the administrative aspects of the agreement and reflect New York State's contract record keeping and payment procedures. These general conditions cannot be changed.**

#### ORDER OF PRECEDENCE

The Order of Precedence for this **Agreement** is as follows: 1) Appendix A – Standard Clauses for New York State Contracts; 2) Cover Page; 3) Appendix D – The Department's General Conditions; 4) Appendix E – The Department's Special Conditions (where indicated on the Cover Page); 5) Appendix G - Sales Addendum (where indicated on the Cover Page); 6) Appendix H – Horse Show Health Records Affidavit (where indicated on the Cover Page); 7) Appendix B – Budget or Invoices (where indicated on the Cover Page); and 8) State Finance Law Disclosure Forms (where indicated on the Cover Page).

#### DEFINITIONS

**STATE** shall mean the State of New York and shall also refer to the Department of Agriculture and Markets and the New York State Fair, a division of the Department, and may be used interchangeably with **Department** or **Licensors**.

**CONTRACTOR** shall mean the entity listed on the cover page of this Agreement and may be used interchangeably with **Licensee** or **Sponsor** or **Concessionaire** or **Exhibitor** throughout this Agreement.

**LICENSEE** shall mean the **Contractor**, when the purpose of the Agreement is to secure a License to operate as an Exhibitor, Concessionaire, or Sponsor, or to rent space on the Fairgrounds.

**LICENSED PREMISES** shall mean the space identified on the Cover Page or in Appendix B of this Agreement.

#### RECORDS MAINTENANCE, EXAMINATION AND RETENTION

The **Contractor** shall maintain the records required under this paragraph as set forth in Appendix A to this Agreement.

#### INDEMNIFICATION

The **Contractor** agrees to indemnify and hold harmless the State of New York and the **Department** from all liability incurred by the **Department** for bodily injury (including death) and real and personal property damage resulting from the negligent acts, errors or omissions of the **Contractor**, its officers, agents or employees in the provision of services under this Agreement, provided that the **Department** timely notifies the **Contractor** of any such claim and affords the **Contractor** an opportunity to defend such claim and cooperates fully with the **Contractor** in the defense of any claims.

#### CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT

Neither the **Contractor**, nor its agents, employees, suppliers nor subcontractors shall be in any way deemed to be employees or agents of the **Department** or of the State of New York in performing the work under this Agreement.

#### COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

The **Contractor** is responsible for complying with all local, state and federal laws applicable to work performed under this Agreement.

#### MODIFICATION

This Agreement may not be modified unless such modification is made in writing, executed by the **Department** and the **Contractor**, and approved by the Attorney General and the Comptroller of the State of New York.

#### TERMINATION OR CANCELLATION

The **Department** may terminate this Agreement for convenience upon giving thirty (30) days written notice to the **Contractor**. This Agreement may be terminated at any time upon mutual written consent of the **Department** and the **Contractor**. Upon termination, the **Contractor** shall immediately cease work and prepare a statement of costs, expenses and non-cancelable commitments incurred as of the date of such termination.

The **Department** may terminate this Agreement for cause upon giving one (1) day written notice.

The **Contractor's** failure to perform in accordance with the terms of this Agreement due to circumstances reasonably beyond the **Contractor's** control should not constitute cause for termination pursuant to this provision. In the event of such failure to perform, the **Department** may, at its option, either grant the **Contractor** a specified period in which to correct its performance, or terminate this Agreement in accordance with this paragraph.

The **Department** reserves the absolute right to terminate this Agreement for cause, if, in its sole and absolute discretion, it determines that: 1) **Contractor's** operation is mismanaged or unsafe; 2) the products, merchandise, supplies and items offered are of no merchantable quality; 3) **Contractor's** operation substantially deviates from the approved activities; 4) **Contractor** fails to comply with designated hours of operation or any other administrative or safety requirement of the **Department**; 5) **Contractor** violates the Code of Conduct referenced within this Appendix D; 6) **Contractor** fails to comply with all applicable local, state, and federal laws, codes, rules and regulations; or 7) **Contractor** fails to make payments or return required documentation by the designated due date.

Should this Agreement be terminated for any of the above stated reasons, all sums of money paid to the **Department** hereunder shall be forfeited as liquidated damages to the **Department**. In addition, should the **Department**, in its sole and absolute discretion, find it necessary to postpone or cancel the dates of the annual New York State Fair, for any cause whatsoever, the **Department** shall not be liable for any damages occasioned as a result of such postponement or cancellation.

Contractor may cancel this Agreement upon receipt of written notice to the **Department** at least 60 days prior to the start date listed on the cover page of this Agreement. The **Department** may refund any payments received prior to the receipt of written notice of cancellation less the non-refundable deposit. Cancellations received with fewer than 60 days prior notice may result in forfeiture of all payments made to the **Department** at the **Department's** discretion.

### **PAYMENTS AND DEPOSITS**

All payments must be made with a cashier's check, money order, cash, in person or credit card. Payments shall be made according to the due date or schedule shown on the invoice(s) annexed to this Agreement as Appendix B. **Contractor** may not receive tickets or occupy premises until payment is made in full and all required documentation is received. As additional consideration **Contractor** shall furnish, install and maintain, at no cost to the **Department**, all signs, banners, devices, equipment, machines and other **Contractor** identification or **Contractor**-identified equipment provided for in this Agreement.

### **WORKERS' COMPENSATION INSURANCE AND NYS DISABILITY BENEFITS**

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption may result in the termination of the Agreement.

- A. Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:
  - a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
  - b. Obtain such coverage from an insurance carrier; or
  - c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the **Department**:

- 1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not required. This form can be requested online at the Workers' Compensation Board's website:  
[http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)
- 2. Certificate of Workers' Compensation Insurance:
  - a. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Fair, or
  - b. Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Fair.
  - c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
  - d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

- B. Proof of Compliance with Disability Benefits Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- a. Be legally exempt from obtaining disability benefits coverage; or
- b. Obtain such coverage from an insurance carrier; or
- c. Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the **Department**:

1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required. This form can be requested online at the Workers' Compensation Board's website:  
[http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)
2. Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Fair; or
3. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: New York State Fair, a Division of the Department of Agriculture and Markets, 581 State Fair Boulevard, Syracuse, NY 13209 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder)

## LIABILITY INSURANCE

**Contractor** shall obtain and maintain public liability insurance for loss, damage and personal injury arising from its operations under the License.

### The insurance certificate must:

- Identify the **Contractor** by legal business name, sole proprietor name and address and, if applicable, the legal status, i.e., corporation, limited liability company, partnership, limited partnership or unincorporated association.
- Show insurance coverage in the minimum amounts of \$1,000,000 General Liability and \$1,000,000 Product Liability and, if applicable, \$1,000,000 Liquor/Golf Cart Liability.
- Include insured endorsement (Acord 101) naming the New York State Department of Agriculture and Markets as an additional insured.
- Policy coverage must be effective on the date of first entry onto the Fairgrounds, either the event date or move in date, whichever is earlier. Coverage must remain in force through the end of the event or move out date, whichever is later. If the policy expiration date falls within the term of the Agreement, the Contractor must provide proof of both the current and replacement policies.
- Certificate Holder: New York State Fair - Dept. of Agriculture & Markets  
581 State Fair Blvd., Syracuse, NY 13209

**Contractor** shall immediately inform the New York State Fair of any insurance cancellation or material change in coverage. Certificates of Insurance (or exemptions) shall be provided to the **Department** within ten (10) days from the date on which **Contractor** executes the Agreement.

## NOT FOR PROFIT LICENSEES

Not-for-profit entities with IRS classifications of 501(c)(3), 501(c)(5), and 501(c)(19) are eligible for a 15% discount on the Consumer/Trade Show Facilities published rates. Prospective exhibitors must provide proof of tax status (copy of organization's IRS letter recognizing status or current IRS Form 990) or proof of registration with the Attorney General's Charities Bureau.

The space allotted to each organization is for the use by that organization only. The space may not be subdivided in any way and the members agree to utilize only the space designated for their use. Only those items necessary to exhibit are allowed. No retail sales, order taking, deposit acceptance, contribution solicitation or product or service deliveries are allowed. Only the organization's name may be prominently displayed. Any other advertising is prohibited, except to acknowledge the donor of a portion of the display. A donor maybe acknowledged with a small placard on the item.

Any proposed promotional tie-ins to be featured on the Fairgrounds during the Fair are subject to the prior approval of the **Department** via the Concessions and Exhibits Office. Each organization agrees to provide the Concessions and Exhibits Office with notice of any other planned activities or events. Admission and parking credentials will be the responsibility of the organization. The organization may purchase admission credentials at the current Concessionaire and Exhibitor rates. The organization agrees to staff its location at all times during the open hours of the New York State Fair, unless otherwise approved by the Concessions and Exhibits Office.

## SALES TAX

**Contractors** making taxable sales of goods or services shall obtain and maintain a valid Certificate of Authority to collect sales tax in New York State.

## CONTRACTOR STATUS

### Individuals and Sole Proprietors

It is mutually agreed that this Agreement shall be and is a personal agreement by and between you and the **Department** and shall not inure to the benefit of your heirs, personal representatives, successors or assignees and in the event of the death of yourself during the term of the agreement, it shall be automatically terminated.

### Partnership

If Contractor is a partnership and during the term hereof one partner shall die then this Agreement may be terminated at the sole and complete discretion and option of the **Department**.

### Corporations

If Contractor is a corporation, and during the term of this agreement any changes in Management occur, then that shall be made immediately known to the **Department**.

## SAVINGS/FORCE MAJEURE

Neither party shall be liable to the other for failure to perform any part of this agreement due to a force majeure occurrence. A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, epidemics or pandemics, or other similar causes beyond the control of the Contractor or the **Department** in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

## NEW YORK LAW

The parties to the Agreement agree that the laws of the State New York shall apply to the contract and to all claims, actions and other proceedings arising out of the Agreement. Both parties agree that this agreement is performable in Onondaga County.

## NOTICE

All notices given to the New York State Fair, a division of the **Department**, may be served only by mailing same by certified mail to New York State Fair, 581 State Fair Blvd., Syracuse, New York 13209. Notice to **Contractor** shall be given to **Contractor** at the address stated on the face page of this agreement.

## REMOVAL OF PERSONAL PROPERTY

Upon the expiration of this agreement or early termination thereof, **Licensee** agrees that the licensed premises shall be surrendered free of all personal property of **Licensee** including but not limited to any tents, merchandise, equipment, vehicles, trailers, and supplies stored onsite ("personal property"), unless otherwise agreed upon in writing between the **Department** and **Licensee**. Any personal property of **Licensee** remaining on or at the licensed premises after the expiration or early termination of the contract term is hereby agreed to be abandoned by **Licensee** and may be removed and/or disposed of by **Licensors**, in **Licensors**' sole discretion, without obligation or liability of any kind to **Licensee**, at **Licensee's** sole cost and expense. In the event the **Department** agrees to allow **Licensee** to store personal property onsite beyond the expiration or early termination of this agreement, **Licensee** shall procure and maintain adequate insurance as prescribed by the **Department** and **Licensee** hereby agrees to waive any claim for damage to any personal property stored onsite.

## SAFETY REQUIREMENTS

### Fire Safety

**Licensee** must comply with the current Fire Code of New York State and current Building Code of New York State available at <https://codes.iccsafe.org/codes/new-york>.

### Food and Beverage Safety

All food and beverage operations must comply with Subpart 14-2 of the NY State Sanitary Code. All Food and Beverage **Contractors** that fail to comply with Subpart 14-2 of the NY State Sanitary Code, including failure to obtain and maintain a Temporary Food Service Establishment permit from the NYS Department of Health Syracuse Regional Office for the present year, will result in termination of this contract agreement. Regulations for Temporary Food Service Establishments are available at <https://regs.health.ny.gov/volume-title-10/1651173225/subpart-14-2-temporary-food-service-establishments>.

## MISCELLANEOUS

### Entertainment

**Contractor** must receive prior approval from the **Department** to host any type of live entertainment on the Fairgrounds. Request

must be made in writing to the **Department** at least 30 days prior to the start of the New York State Fair or Event. The request must include name of band, time, date and type of music. Decisions are determined by location, type of entertainment, time and date. The **Department** will notify **Contractor** of its decision in writing. Entertainment must not be within or interfere with public access. **Contractor** shall assume sole responsibility for the production and costs of same.

#### **Exclusivity Contracts**

Any exclusivity contracts that the Department has entered into will apply to affected Concessionaires, Exhibitors, and Sponsors. This information will be provided to **Contractor**, if applicable.

#### **Government Regulations**

**Contractor** may not use its licensed space for any unlawful or illegal purpose or for any purpose in violation of any federal, state or municipal law, ordinance, government rule, order or regulation and shall comply with all rules of the **Department**.

#### **Violations**

**Contractor** will be informed of any instance(s) of non-compliance with these General Conditions. The most serious violations may result in not being invited to return to future events or an immediate order to cease operation and vacate the Fairgrounds.

#### **MASS GATHERING**

If an Event is likely to attract 5,000 people or more and continue for 24 hours or more, the Licensee must contact the New York State Department of Health (DOH) to determine if a Mass Gathering Permit and/or a Part 18 permit is required. As directed by DOH, the **Licensee** will obtain the following:

- i. A mass gathering permit as required by 10 NYCRR Sub-Part 7-4 entitled "*Mass Gatherings*" no later than 30 days before the event. The **Licensee** shall provide a copy of the application upon submittal and a copy of the permit upon receipt; and
- ii. A Part 18 permit as required by Emergency Health Care Facilities 10 NYCRR Part 18 entitled "*Public Function with Attendance of Over 5,000 people*" no later than 30 days before the event. **Licensee** shall submit to the Department a copy of the permit upon receipt.

#### **RESPONSIBILITY REQUIREMENTS**

- A. The **Department** is required to undertake an affirmative review of the responsibility of any **Contractor** to which it proposes to make a contract award. Such review shall be designed to provide reasonable assurances that the proposed **Contractor** is responsible. In undertaking such review, the **Department** must comply with the following standards:
  - a. In all cases, the **Department** must consider any information that has come to its attention from the proposed **Contractor** or any other source that would raise issues concerning the proposed **Contractor's** responsibility.
  - b. In the case of any contract valued at \$100,000 or more, the **Department** must affirmatively require disclosure by the proposed **Contractor** of all information that the **Department** reasonably deems relevant to a determination of responsibility by completing a Vendor Responsibility Questionnaire.
- B. The **Contractor** shall at all times during the **Agreement** term remain responsible. The **Contractor** agrees, if requested by Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- C. The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this **Agreement**, at any time, when he or she discovers information that calls into question the responsibility of the **Contractor**. In the event of such suspension, the **Contractor** will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the **Contractor** must comply with the terms of the suspension order. **Agreement** activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the **Agreement**.
- D. Upon written notice to the **Contractor**, and a reasonable opportunity to be heard with appropriate Commissioner officials or staff, the **Agreement** may be terminated by Commissioner or his or her designee at the **Contractor's** expense where the **Contractor** is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

#### **PROCUREMENT LOBBYING LAW (Contracts over \$15,000)**

Pursuant to State Finance Law Sections 139-j and 139-k, certain restrictions on communications between the **Department** and prospective **Contractors** are imposed during the procurement process. Prospective **Contractors** are restricted from making contacts from the earliest notice of intent to solicit bids/proposals through final award and approval of the Procurement Contract by the **Department** and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j(3)(a). Designated staff persons have been identified in the solicitation. **Department** employees are also required to obtain certain information when contacted during the restricted period and make determinations regarding the responsibility of prospective **Contractors** pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a period of four years; the prospective

**Contractor** will be debarred from obtaining governmental Procurement Contracts.

The **Department** reserves the right to terminate this Agreement in the event it is found that the certification filed by the **Contractor** in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the **Department** may exercise its termination right by providing written notification to the **Contractor** in accordance with the written notification terms of this Agreement.

#### **ADVERTISING**

Advertising and/or marketing is prohibited on the Fairgrounds other than in the Licensed Premises designated pursuant to this Agreement; all business must be conducted within the Licensed Premises. False or misleading advertising is prohibited.

#### **CODE OF CONDUCT**

The New York State Fair strives to work with **Contractors** who treat their workers, customers, and Fairgoers with dignity and respect, maintain just and decent working conditions, and adhere to all applicable laws and regulations.

Accordingly, each **Contractor** must comply with the following Code of Conduct. The Code of Conduct defines the **Department's** minimum expectations. No code of conduct can be all-inclusive, but the **Department** expects those with whom it does business to act reasonably in all respects and to ensure that no abusive, exploitive, or illegal conditions exist. Failure to comply with the Code of Conduct may result in termination of this Agreement.

KEY EXPECTATIONS – All New York State Fair **Contractors** must:

- Work cooperatively with the Fair attendees and staff.
- Not discriminate against customers, other vendors, or State Fair staff based on their race, gender, religion, ethnicity, sexual orientation, or gender identity.
- Treat each employee, **Department** staff, State Fair regulatory personnel, customer, and Fairgoer with respect and dignity and must not subject anyone to physical, sexual, psychological, or verbal abuse, or any other form of harassment or threatening behavior.
- Not engage in behavior that disparages another participant or actions that unnecessarily interfere with another participant's set up, sales, or activities, or any other action or behavior that State Fair staff determines in their sole discretion to be uncooperative in nature.
- Comply with the State Fair's non-smoking policy available at <https://nysfair.ny.gov/your-visit/rules-of-conduct/>.
- Refrain from bringing any pets onsite due to health and safety risks, unless they are approved by the **Department** as part of the exhibit or are a service animal.
- Refrain from engaging in any behavior not appropriate for a public setting including, but not limited to, use of obscene or abusive language and/or physical violence.

#### **FIREWORKS**

"Fireworks" shall mean and include any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, day glow bombs, sparklers, or other devices of like construction and any device containing any explosive substance, except that the term "fireworks" shall not include auto flares, paper caps containing not in excess of an average 25 hundredths of a grain of explosive content per cap, and toy pistols, toy canes, toy guns, or other devices for use of such caps, the sale and use of which shall be permitted at all times.

The manufacturing of fireworks is prohibited within the Fairgrounds. Except as hereinafter provided, it shall be unlawful for any person to store, to offer for sale, expose for sale, sell at retail, or use to explode any fireworks, provided that upon review by the New York State Fair and the New York State Office of Fire Prevention and Control. The Office of Fire Prevention and Control shall have the power to grant permits for supervised public displays of fireworks.

#### **GREASE**

**Contractors** are responsible for disposing of all grease or solid wastes resulting from food production within their licensed space. The New York State Fair will place grease receptacles at designated areas for **Contractor** use. The Fair will provide **Contractors** with the locations of grease receptacles upon arrival. Under no circumstances is grease or any solid waste material to be poured into rubbish barrels, dumpsters, sink drains or storm water drains. **Contractors** will be held financially responsible for all costs incurred due to violation of these conditions, fined \$500 per incident, and removed from consideration for future Fairs and events.

#### **ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE)**

**Contractors** occupying recreational vehicles may not deposit any refuse or empty any graywater, fluid waste, water, or other liquids onto the ground or into the streets, gutters, or catch basins. Fluids (not grease and oil) and wastewater must be discharged into approved sanitary sewer systems only. When sanitary sewer access is not available, holding tanks must be used until such waste can be properly discharged at an acceptable sanitary sewer access point. Grease and oil must be deposited in approved recycling containers. It is illegal to dump waste or pollution into storm drains. Fine of \$500 per incident.

#### **LABOR REGULATIONS AND STANDARDS**

**Licensee** shall comply with all local, federal, and New York State labor regulations and standards.

## **CANNABINOID HEMP PRODUCTS**

Any **Contractor** planning to sell cannabinoid hemp products (both online and in person) are required to obtain a Cannabinoid Hemp Retail License or Temporary Retail Permit from the New York State Office of Cannabis Management (OCM) before selling cannabinoid hemp products to consumers at the New York State Fairgrounds. A copy of the license or permit must be provided to the **Department** before any agreement is approved by the **Department** for the sale of cannabinoid hemp products onsite. **Contractors** found to be selling cannabinoid hemp products that are not licensed/permitted, will be asked to immediately remove those products from their licensed space. Failure to remove cannabinoid hemp products that are not licensed/permitted by OCM or failure to obtain the required license/permit from OCM will result in termination of this Agreement. For more information visit: <https://cannabis.ny.gov/system/files/documents/2023/04/cannabinoid-hemp-program-retail-license-notification.pdf>

## **MICROPHONES**

**Licensee** must receive prior approval from New York State Fair Management to use amplified sound. Decisions are made during the application and approval process.

If approved, sound-producing devices used shall not annoy or inconvenience other licensees or patrons. The **Department** reserves the right, in its sole discretion, to require the reduction of volume or removal of sound producing devices. Undue noise made in the operation of exhibits, or noisy or unseemly methods employed in sales or demonstrations are not permitted. The decision of what constitutes undue noise or unseemly method shall rest with the **Department** whose decision will be final.

## **OFFENSIVE ITEMS**

The **Department** reserves the right to ask **Licensee** to remove any material or merchandise from the Licensed Premises that the **Department** deems offensive or inappropriate.

## **ALTERATIONS AND IMPROVEMENTS**

**Licensee** shall not make any alterations or improvements to the Licensed Premises without the prior written consent of the **Department**.

**Licensees** occupying permanent structures are required to clean and maintain the Licensed Premises and always keep their seating areas and tables clean and neat.

All installations including electrical, water, plumbing, or similar construction, shall be made only with the prior written approval of the **Department** and shall comply with all local building and health regulations.

A set of keys for the licensed building or structure must be given to the Fair Maintenance Department & Security Office for access to such facilities in the event of an emergency.

## **PRICING**

It is mandatory that prices for all products including food, drink and novelties are posted. The designated price charged must be the same throughout the duration of the Fair or Event.

## **RECYCLING**

Concessionaires, Exhibitors, and Sponsors are required by law to recycle those items that have been identified as recyclable. These items should be placed in a clear trash bag (cardboard should be broken down and stacked) and left for pick-up by New York State Fair personnel in an out-of-public view location. The following recyclables are designated in this program:

Plastic bottles with the recycling symbol and the #1 or #2 on the bottom and stackable, wide-mouthed #5 plastic containers (e.g. butter tubs): please rinse, flatten and discard tops and caps.

Metal containers (including all food and beverage cans and lids), empty aerosol cans (which did not previously contain hazardous waste such as pesticides), aluminum foil and aluminum baking tins. No other metal items are allowed. Please remove food particles by rinsing. It is not necessary to remove paper labels.

Glass containers, including all clear and colored glass food and beverage bottles. Rinse bottles and discard caps. It is not necessary to remove paper labels. Excluded are ceramics, window glass, auto glass, mirrors and kitchenware.

Table top containers, including milk and juice cartons: please rinse and flatten.

Corrugated cardboard (grooved cardboard commonly used for packing boxes): flatten into lengths no larger than 3' by 3'. Pizza boxes can be placed in with your other corrugated boxes. Please remove food, plastic, foil and paper, and flatten boxes.

Please visit <https://ocrra.org/> for more recycling details and requirements.

## **SIGNAGE**

In order to enhance the appearance of Concessions and Exhibits in general, no homemade or handwritten signs are allowed. Pencil, crayon, cardboard or handwritten signs are not permitted. All signs must be neatly and professionally printed and displayed in

a conspicuous place on or within **Contractor's** Concession or Exhibit.

Any signage that is not affixed to or within the footprint of Contractor's Concession or Exhibit rental space is prohibited.

#### **SUBLETTING**

No sub-licensing is permitted. Any attempt to sub-license or assign **Licensee's** licensed space pursuant to this Agreement shall be grounds for immediate termination for cause.

#### **UTILITIES**

The **Department** shall provide water, sewer, and electric service. In the event of interruption of utility services under the control of the **Department**, the **Department** shall undertake to repair such interruption promptly and **Contractor** waives any and all claims for compensation from any loss of revenue incurred by **Contractor** as a result of such interruption.

#### **SECURITY PLAN**

**Licensee**, at its own expense, shall provide security within buildings and other places on the grounds as directed by the **Department**. Thirty (30) days prior to the Event, **Licensee** shall provide to the **Department** a detailed security plan outlining, among other things, the plan for traffic control and the number of and placement of security throughout the Event. The security plan will be subject to review and approval by the **Department**. **Licensee** shall directly hire any police road detail or reimburse the **Department** for the cost of a police road detail and uniform gate officers necessary to conduct the Event.

#### **COVID-19 SAFETY COMPLIANCE**

**Licensee** must comply with all New York State and Onondaga County Department of Health COVID-19 mandates and guidance applicable to the Event.

#### **NECESSARY SIGNATURES**

If the financial limit under this Agreement is Twenty-Five Thousand Dollars (\$25,000) or less, this Agreement shall not be binding and effective upon the **Department** unless and until it is executed by the **Department** and the **Contractor**. If the financial limit under this Agreement exceeds Twenty-Five Thousand Dollars (\$25,000), this Agreement shall not be binding and effective upon the **Department** unless and until it is executed by the **Department** and the **Contractor** and approved by the Attorney General and the Comptroller of the State of New York.



## APPENDIX G

### SPECIAL CONDITIONS FOR AGREEMENTS

#### NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

These special conditions apply to the administrative aspects of this particular agreement. These special conditions cannot be changed.

### PERCENTAGE CONTRACT SPECIAL CONDITIONS

#### CONSIDERATION

Licensee is granted permission to provide temporary food and beverage and/or catering service at the New York State Fairgrounds for the period [REDACTED] through [REDACTED]. Licensee will pay the Department:

- 12 (%) of gross receipts arising from the sale of all food, including non-alcoholic beverages and water.
- 12 (%) of gross receipts arising from the sale of all alcoholic beverages.
- 12 (%) of gross receipts arising from the sale of all catering

#### REVENUE ACCOUNTABILITY

The Licensee shall establish and follow sound business practices regarding revenue accountability using generally accepted accounting principles and internal controls to ensure that the assets of both the Licensee and Department are protected. The Licensee shall conform to the Department's policies and procedures for reporting revenue sales. The current percentage revenue procedures are listed below.

Gross receipts shall be the total amount of money, excluding any taxes imposed by any taxing authority and any gratuities, received, realized by, or accruing to the Licensee from the sales operations.

Menus with prices must be posted by the operator at all restaurant locations. It should be noted if these prices are pre-tax or if sales tax is included.

#### TIMELINE AND REPORTING REQUIREMENTS

##### **Thirty (30) days prior to event:**

The Licensee will complete Part 1 of the Percentage Event Summary form (form will be provided to Licensee with contract) and return to Fiscal Management no later than thirty (30) days prior to the start of the event along with backup to support the type of sales being conducted (menus, ticket item list, etc. If cash registers are being used the number of registers that will be operated must also be provided).

##### **Five (5) days after conclusion of event:**

The Licensee will complete Part 2 of the Percentage Event Summary form and send to Fiscal Management along with the supporting documentation (Register Z Tapes for each register, itemized invoice for catered events, ticket sales report for ticket sales or other approved documentation to support the sales).

#### CONTROLS

Licensee is required to account for all of Licensee's sales. The approved method for accountability is the use of a cash register. All points of sale must have a cash register. Gross sales are defined as revenue from sales after the deduction of sales tax. Sales tax, if included in the prices, must be deducted from total sales by dividing total sales by 1.08% (based on current sales tax rate). The resulting amount is then multiplied by the percentage rate to determine the amount payable to the Department.

At the conclusion of the event; the sales report must be summarized on the Fair's "Percentage Event Summary Form". To assist with the computation of the percentages due, sales totals must separately list sales of food/non-alcoholic beverage, and beer. If wine or liquor sales are permitted under your contract, those sales must also be reported separately. Required back-up documentation should be attached to the report and discrepancies, if any, explained on the report.

All restaurants should have written cash operation procedures and practice segregation of duties to assure effective internal controls. A copy of Licensee's operational procedures may be requested by the Department. Examples of effective controls and procedures: restaurant management should balance out and reconcile cashiers at the end of each shift, supervisors should verify and approve any over-rings or voids, and management should document that staff has been trained on proper cash operation procedures in accordance with the terms of the contract. The Department may at its discretion request that restaurants prepare or provide additional cash operation reports.

There are 4 typical types of percentage sales:

#### 1. CASH REGISTER/ POS SYSTEM

Cash registers must be electronic or a Point of Sale (POS) system. Each point of sale in the restaurant must have a cash register. It is recommended that restaurants have available an additional cash register in case one malfunctions. The number of cash registers must be provided to the Fair's Fiscal Management Division prior to operation as part of the Percentage Event Summary. The beginning grand total and "z" numbers must be provided.

- A single register should have the ability for multiple operators.
- All registers should have multiple payment keys – cash/credit/check. The acceptance of sales by credit card is required. If credit card transactions are entered into a separate system a summary report for these sales must also be provided.
- All registers must have multiple department keys to be able to account for different % rates. Each department/key must be defined and a list provided to the Fair (for example, department #1 = alcohol sales, Item #1 = top shelf, Item #2 = wine, Item #3 = beer).
- Manually totaling separate items and entering one grand total sale is not permitted, each item must be rung individually.
- All complimentary transactions must be rung into the registers as part of the total sales and should have a key to account for the transaction. The gross sales reported must include all complimentary transactions.
- The register should have the ability to print a receipt for customers if requested.
- Funds should not be comingled between registers or drawers.
- All register drawers must be closed after every transaction and the registers must have drawer compulsion capability that prevents operation of the cash register if the drawer is not closed.
- A register should have more than one (1) cash drawer to give the Fair the ability to conduct a cash count by removing a drawer and replace it with the second so that sales can continue.
- All registers should be capable of running a continuous grand total of sales since operation commenced. There should be no ability for this number to be reset to zero or adjusted to any other number.
- All registers must be able to produce summary reports that show departments and item sales totals. All reports must include date and time. Report must indicate whether an entry is a sub-total or final total.
- Cash Registers should have a journal tape of all transactions must be maintained. Register tapes must be legible, i.e. there should be no faint tapes due to lack of ink. Submission of the continuous journal tape is not required, but may be requested.
- All registers should be capable of providing a report on over-rings/voids.
- Any corrections for over-rings, voids or refunds should be noted in the Percentage Event Summary form.
- Online POS programs must provide reports that show the dates of the transactions in the Percentage Event Summary form. Additional reports may be required by the Department including daily reports, reports by employees, etc.
- Reports and payment must be completed according to the terms of the contract.

#### 2. CATERED EVENTS

The Licensee shall provide to the Department a menu with Part 1 of the Percentage Event Summary form thirty (30) days prior to the event and an itemized invoice for all catered events with Part 2 of the Percentage Event Summary form within five (5) days of the conclusion of the event. Any taxes, gratuities and service

fees must be recorded separately from food/beverage and alcohol prices. The Licensee shall also provide the Department a copy of the customer's check or credit card receipt.

### 3. TICKET SALES

For an event that uses ticket sales for accountability the following applies:

- Tickets must run in sequential order and each price level must have a separate ticket.
- Tickets must be submitted to Fiscal Management for inventory and recording of serial numbers. Ideally, tickets should be delivered directly to the Fair by the printer. Fiscal Management will release the tickets to the vendor after inspection.
- A ticket manifest from the printer should be provided. The manifest should include the quantity, description and number sequence of the tickets.
- After the conclusion of the event all unsold tickets must be returned to Fiscal Management to conduct an ending inventory count. The vendor must agree with Fiscal Management on the ticket quantity of the remaining inventory.
- If tickets are sold through a professional ticketing system, then the tickets do not have to be inventoried. A final report from the ticketing system will suffice.

### 4. OTHER

- For a license agreement that does not allow for the use of cash registers or tickets, another method of accountability will be determined. An example of this type of event would be catering or the sale of novelties at a concert. Accountability methods could include receiving copies of invoices provided to customers describing sales or an inventory report of items on hand before and after an event.
- Invoices should include: event name, date of event, contract name and address of the customer. Quantity of items sold, price of items and a grand total of sales. If an all-inclusive price is charged to the customer, the vendor must separate the fee into individual components. Examples of components include sales tax, service fees, additional rental fees, food and alcohol.
- If necessary random verifications of payments made to this type of vendor may be requested if deemed necessary by Fair management.
- Other methods of accountability should be reasonable and should not impose any un-do hardships on the vendor or the Fair. Approval for alternate methods of accountability will be reviewed on a case by case basis.

## INVOICING FOR EVENTS

Sales summary sheets shall be remitted to the New York State Fair Fiscal Management Office within five (5) business days of the conclusion of each event. Upon review and verification of sales summary sheets, the State Fair shall issue an invoice to the Licensee. The invoice shall list the payment amount and due date. Payments shall be net fifteen (15) days.

## PAYMENT TERMS

Payments may be made by standard business check, cashier's check, money order or credit card (or cash, in person). A copy of all documentation and State Fair invoices relating to each event shall accompany the payment. Payment shall be remitted to the State Fair's Licensing Office. A penalty of 10% of the amount of the payment may be imposed on any late payments.

## AUDITS

To be prepared for cash audits by State Fair personnel, each register must contain a signed receipt detailing the starting bank that is dated and signed by both the register operator and manager/supervisor. Starting banks should be consistent for each point of sale and should be standard for each event. In the event that change is needed, the register operator is to "buy" change from the manager/supervisor. Each cash pickup from the register by the manager/supervisor must include a signed receipt for the amount of the pickup. The receipt must be kept in the register.

For year-round operations - If the Fair observes that sales are not being rung as required or other activities that would defraud the contractor or State Fair of revenue, the contractor will be issued a written contract violation notice using the Food Concession Spot Audit/Inspection – Non-Compliant Form. There will be no financial penalty for the first written violation, but for every additional written violation notice, the State Fair

Director has the option of imposing a penalty of \$100.00. After four (4) written violation notices within a year, the contract will be subject to termination.

For temporary operations - If the Fair observes that sales are not being rung as required or other activities that would defraud the contractor or State Fair of revenue, the contractor will be issued a violation notice using the Food Concession Spot Audit/Inspection – Non- Compliant Form and may be asked to close and not allowed to re-open for other events.