

APPENDIX D

GENERAL CONDITIONS FOR REVENUE AGREEMENTS 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.

Due to the volume of contracts prepared on behalf of the Fairgrounds, be advised that not all of the terms and conditions listed below will apply to every contract issued. Please note the type and dollar amount of the contract when reviewing the terms and conditions which follow.

FOR ALL TYPES OF REVENUE CONTRACTS AND ALL DOLLAR AMOUNTS, THE FOLLOWING TERMS APPLY:

ORDER OF PRECEDENCE

The Order of Precedence for this **Agreement** is as follows: 1) Appendix A – Standard Clauses for all New York State Agreements; 2) Cover Page – Agreement Amount, Contents and Signature Page; 3) Appendix D – The Department's General Terms and Conditions; 4) Appendix E – The Department's Specific Terms and Conditions (where indicated on the Cover Page); 5) Appendix G - Sales Addenda (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.

CONTRACTOR shall mean the entity listed on the cover page of this Agreement, and may be used interchangeably with **Licensee** or **Sponsor** 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 to rent space on the Fairgrounds.

SPONSOR shall mean the **Contractor**, when the purpose of the Agreement is to purchase or trade in kind for Sponsorship rights for the New York State Fair.

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) days 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) your 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 has failed to comply with designated hours of operation or any other administrative or safety requirement of the **Department**; or 5) Contractor has failed to make payments or return required documentation.

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 an administrative fee of \$50.00. Cancellations received with fewer than 60 days prior notice will result in forfeiture of all payments made to the **Department**.

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/Sponsor** may not receive tickets or occupy premises until payment is made in full and all required documentation is received. As additional consideration Sponsor shall furnish, install and maintain, at no cost to the **Department**, all signs, banners, devices, equipment, machines and other Sponsor identification or Sponsor-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

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
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.

MEDIA LICENSEES

The **Department** is providing allotted space on the Fairgrounds without charge during the Fair in exchange for media services provided.

The space allotted to each media outlet is for the use by the outlet only. The space may not be subdivided in any way and the station agrees to utilize only the space designated for their use. Only those items necessary to broadcast are allowed on site; such as motor homes, vans, tents or units housing the broadcast facilities. Only the station's call letters may be prominently displayed. Any other advertising is prohibited, except to acknowledge the donor of the broadcast facility; i.e., motor home or van, which can be acknowledged with a small placard on the unit.

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 station will broadcast a moderate and acceptable sound level in keeping with the location and setting of the broadcast facility. The station agrees to abide by the direction of the Fair staff of sound levels. Each station agrees to provide the Concessions and Exhibits Office with an outline of broadcast hours scheduled throughout the Fair along with other planned activities or events. Admission and parking credentials will be provided by the Concessions and Exhibits Office based on a written request and will be filled subject to availability. Each station agrees to provide the Concessions and Exhibits Office with a report prior to the Fair outlining the non-paid media that the Fair received in exchange for the Fair providing free space and admissions and parking credentials. Public sale of any items, products, and the like unrelated to the station is prohibited.

NOT FOR PROFIT LICENSEES

Not-for-profit entities with IRS classifications of 501(c)(3), 501(c)(5) or 501(c)(6) with exhibits approved as educational or as offering a service to the New York State Fair and/or its patrons are eligible for a discount. Prospective exhibitors must provide proof of tax status or proof of registration with the Attorney General's Charities Bureau. Display-only exhibits are eligible for a site rental fee discount of 25% of the current per square foot location rate. Organizations may not collect any funds for any purpose.

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 may be 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**.

FORCE MAJEURE

Neither party shall be liable to the other for failure to perform any part of this Agreement when such failure is due to fire, flood, strikes or similar labor disturbances, industrial disturbances, war, riot, insurrection, or other causes beyond the control of either party.

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 Concessions Department, 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.

SAFETY REQUIREMENTS

Fire Safety

All Concessionaire Licensees must comply with the Department's minimum Fire Safety Requirements. The Department's requirements are consistent with the Uniform Code as prescribed by Regulations of the Secretary of the State of New York. The Department's Requirements are posted on the New York State Fair Website: <http://www.nysfair.org/contact-us/concessions-exhibits/>

Food and Beverage Safety

All operations must comply with Subpart 14-2 of the NY State Sanitary Code and obtain a permit from the New York State Department of Health. Failure to comply may result in revocation of permit and/or enforcement actions. The Department's requirements for food and beverage safety are posted on the New York State Fair Website: <http://www.nysfair.org/contact-us/concessions-exhibits/>

MISCELLANEOUS

Entertainment

Contractor must receive prior approval from the **Department** to host any type of live entertainment in a Permanent Concession Stand. Request must be made in writing to the Concession and Exhibits Manager at least 30 days prior to the start of the New York State Fair. The request must include name of band, time, date and type of music. Decisions are determined by location, type of entertainment, time and date. New York State Fair Management will notify you of their 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 and Exhibitors. This information will be provided to **Contractor**, if applicable.

Government Regulations

Contractor may not use its sponsorship location 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 Fair.

Violations

Contractor will be informed of any instance(s) of non-compliance with these Special Conditions. A violation note will be made to your file. 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 (Space Rental)

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 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 vendor 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.

NECESSARY SIGNATURES

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 approved by the Attorney General and the Comptroller of the State of New York.