

**LICENSE AGREEMENT FOR 2019 VINEYARD HAVEN-LOCATED CONCERT FESTIVAL**

**By and**

**Between**

**THE TOWN OF TISBURY, MASSACHUSETTS**

**and**

**INNOVATION ARTS & ENTERTAINMENT, LTD.**

**DBA MARTHA'S VINEYARD CONCERT SERIES**

## EVENT AGREEMENT

This License Agreement ("Agreement ") regarding the MV Concert Series festival proposed to be held in Tisbury, MA, ("Festival") is effective as of the 21st day of May 2019 ("Effective Date") by and between the Town of Tisbury, Massachusetts, a Massachusetts municipal corporation (the "Town"), and Innovation Arts & Entertainment, Ltd., an Illinois corporation ("IAE"), each referred to herein as a "Party" and collectively as the "Parties".

Whereas, IAE, to facilitate its production of the Festival, has requested the assistance of the Town, and

Whereas, the Town recognizes the beneficial economic impact the Festival may have for businesses of Tisbury and Vineyard Haven and the public benefits of such an entertainment opportunity, and

Whereas an agreement is necessary to set forth the Parties' various duties and responsibilities, incident to IAE's production of the Festival,

NOW, Therefore, the Town agrees to grant IAE a license for use of Town-owned property and the Parties agree to the following terms and conditions of such license:

1. DEFINITIONS

1. "Applicable Law" shall mean any law, governmental rule, regulation or ordinance, bylaw, or judicial order or decree.
2. "Town" shall mean the Town of Tisbury, Massachusetts acting through its designated representative(s), including the Town Administrator or his authorized designee.
3. "Festival" shall mean a single-stage music, food, and art festival to be held in Vineyard Haven, MA at the Town-owned property known as Veterans Memorial Park, located adjacent to State Road and Lagoon Pond Road, on August 9 - 11, 2019.
4. "Festival Area" shall mean the performance, staging, parking, and pathway venues and other areas in which the Festival activities will primarily be taking place as shown in the site plan *Exhibit A* attached hereto.
5. "Subcontractor" shall mean any subcontractor, independent contractor, agent, artist, band, act, volunteer, or other party, including any third-party

engaged or authorized by IAE for alcohol service at the Festival, with whom IAE contracts or engages to perform IAE's responsibilities and actions provided for hereunder.

6. "IAE pre-festival payment" or "Deposit" shall mean IAE's required payment to the Town in the total amount of Eighty-Three Thousand dollars (\$83,000) to prepay the Town for the anticipated costs of the Town as a result of or related to the conduct of the Festival, all other Festival expenses of the Town, and a sum as security for payment to reimburse the Town for any restoration costs - \$25,000 being allocated to such payment security obligation. Said amount shall be considered a deposit per the estimate as outlined in Exhibit C hereto and not a cap on the amount for which IAE may be responsible to the Town to restore the Festival Area and other property affected by the Festival to pre-Festival conditions.

## 2. FESTIVAL

- 2.1. Name. The name of the Festival is to be determined
- 2.2. Festival Time and Festival Area. The time of the Festival and the area thereof shall be as shown on Exhibit A, running from Tuesday, August 6, 2019 through Monday, August 12, 2019. During said times and within said areas, the Town is granting IAE a license for access to and use of:
  - 2.2.1. the Festival Area, together with a right of use in the public ways, public sidewalks, and public rights-of-way of adjacent to and in the area of Veterans Memorial Park in the Town of Tisbury, as shown on Exhibit A and provided for herein, including the following:
  - 2.2.2. the access road to, and the property where a parking lot exists southwest of Lagoon Pond Road, and south of the ballfield in Veterans Memorial Park.
- 2.3. Compensation:
  - 2.3.1. Compensation for usage of the facilities, utilities, and site associated with the Festival as outlined in Exhibit A is summarized in Exhibit C.
- 2.4. Modifications. The dates, times, and areas of the Festival may be modified or changed by mutual agreement of the Parties. Furthermore, the times (but not the dates) and areas of the Festival may be modified or changed by the Town, if the Town in its reasonable judgment and after consultation with IAE,

believes that such modifications or changes are necessary to address health, safety, crowd control, or security concerns or to otherwise comply with any Applicable Law.

### 3. IAE RESPONSIBILITIES

3.1. General. IAE shall be responsible for organizing, producing and holding the Festival and for the payment of all costs and expenses related thereto.

3.2. Responsibilities. Any service or action which is to be performed or taken in connection with the Festival and which is not specifically designated the responsibility of the Town under Section 4 shall be the responsibility of IAE. IAE may enter into subcontracts with subcontractors for performance of its responsibilities. Without limiting, and in furtherance of, the foregoing, IAE shall be responsible for providing the following services as they relate to or are required by the Festival:

- 3.2.1. Booking and coordination of all artists, coordinating and interfacing with artists' management;
- 3.2.2. Promoting the Festival through radio, print, interviews, and other means;
- 3.2.3. Managing the box office and ticket sales;
- 3.2.4. Producing the Festival including coordination and management of all aspects of the stage, sound, lights, employees, , and stagehands;
- 3.2.5. Securing, supervising and coordinating vendor sales, including sales of food, art, t-shirts and all sales of beverages, including sales of alcohol if hereafter authorized.
- 3.2.6. Contracting with all suppliers, including but not limited to those for tents, fences, portable toilets and showering facilities, garbage collection and disposal (must be deposited at the Town-contracted transfer station facility - Oak Bluffs transfer station at 16 Pennsylvania Avenue, Oak Bluffs), clean-up, building and electrical supplies, catering, etc.;
- 3.2.7. Providing, placing, maintaining, and removing perimeter fencing and such barricades as are reasonably required to secure the Festival Area and as otherwise requested by the Town for security, safety or public order reasons;

- 3.2.8. Developing, managing and coordinating all wayfaring and transportation in consultation with, and approval by, the Town and any other governmental agency who has jurisdiction over and for traffic control, to ensure safe and timely traffic routing to, from, and around the Festival, to include supplying and installing all wayfaring signage, traffic cones, barricades, etc., and providing ongoing maintenance of same during the Festival Times and removal after the Festival in consultation with and approval by the Town, and any other governmental agency who has jurisdiction;
- 3.2.9. Developing, designing, and producing all creative work, including branding identification, posters and flyers, sponsorship package, and other creative work;
- 3.2.10. Selling tickets, signage, advertisement and other marketing rights;
- 3.2.11. Providing safe and efficient load-in and load-out of persons and property to and from the Festival Area, an outline for which is included in Exhibit B hereto, all subject to the requirements of the Town - to be established by the Board of Selectmen and administered by the following officers or their designees: Chief of Police, Fire Chief, Public Works Director, Ambulance Director;
- 3.2.12. Should IAE seek to provide a shuttle system to transport Festival attendees to the Festival Area, it must do so according to a Town determined route and subject to the Town's approval, and such parking and shuttle arrangement is the responsibility of IAE and shall be in place no later than June 1, 2019.
- 3.2.13. Coordinating clean-up and trash removal during and at the completion of the Festival from the Festival Area and other areas impacted by the Festival, with the additional objective of best management practices related to achieving "zero waste" to the maximum extent feasible;
- 3.2.14. Providing portable toilets with hand cleaning units, and monitoring the same to ensure that they are clean and free of waste, have paper towels in adequate supply, have soap dispensers which are full of soap and in working condition, have

- sufficient running water and have drains which are not clogged and are draining properly;
- 3.2.15. Not used.
- 3.2.16. Paying the Town for providing such security, public safety, traffic and crowd control services for the Festival as the Town may reasonably require after consultation with IAE;
- 3.2.17. Providing security of the Festival Area during the load-in and load-out periods which occur before, during and after the Festival;
- 3.2.18. Cleaning up and restoring the Festival Area and other areas affected by the Festival to at least their "preFestival" condition, as determined by the Town in its reasonable judgment, by no later than 9 p.m. on Monday, August 12, 2019;
- 3.2.19. Providing such other services in connection with the Festival as reasonably requested by the Town after consultation with IAE;
- 3.2.20. Hiring of all labor and the purchasing of all materials necessary to provide its required services hereunder;
- 3.2.21. Obtaining all applicable permits and licenses from the Town of Tisbury and any other governmental bodies and agencies having jurisdiction required for the holding of the Festival; and Tisbury shall notify IAE of all Town-issued permits required no later than May 15, 2019, and offer its reasonable assistance in complying with the application process.
- 3.2.22. On or before June 1, 2019 IAE shall provide 50% of the Deposit to the Town in the amount of Forty One Thousand Five Hundred Dollars (\$41,500).
- 3.2.23. On or before August 1, 2019 IAE shall provide the remainder of the Deposit to the Town in the amount of Forty One Thousand Five Hundred Dollars (\$41,500). A brief summary of the justification for and allocations within this amount is provided in Exhibit C attached hereto.
- 3.2.24. In the event that the amount of the Deposit shall exceed the amount of the expenses incurred for services provided by the Town; the Town's cost of restoring Town-owned and controlled property and other areas affected by the Festival to their pre-

Festival condition; and all other Festival expenses of the Town due the Town hereunder, the Town shall refund such excess portion of the Deposit to IAE. In the event that the amount of the Deposit shall be insufficient to pay the expenses incurred for services provided by the Town, the Town's cost of restoring Town-owned and controlled property and other areas impacted by the Festival to at least their pre-Festival condition, and all other Festival expenses of the Town due the Town hereunder, IAE shall pay the amount of any such insufficiency then remaining due to the Town on or before August 30, 2019. In the event the Town documents to IAE any insufficiency in the Deposit prior to the Festival Time, IAE shall pay to the Town the amount of insufficiency before the start of the Festival, provided, however, that this shall not relieve IAE for responsibility of any insufficiency in the Deposit determined to exist after the Festival.

3.2.25. In the event that the Festival does not occur on account of a cause attributable to the Town and not otherwise provided for in this Agreement, the Town of Tisbury agrees to return the Deposit, less any planning, logistical, and administrative expenses, including reasonable attorneys' fees, actually incurred in connection with the Festival. If the Town takes action so as to prevent the Festival from taking place for a reason other than as provided for in this Agreement, IAE shall have, and reserves, the right to seek recovery of its costs and expenses on account thereof from the Town.

3.2.26. Conducting, in coordination with the Board of Selectmen, at least two (2) community information meetings in advance of the Festival to address questions of residents regarding the carrying out of the Festival and all related activities and logistics. Such meetings shall be held on jointly selected dates, and the last such meeting shall occur no later than July 19, 2019.

3.3. Costs and Expenses. Any cost or expense incurred in connection with the Festival and which is not specifically designated the responsibility of the

Town under Section 4 shall be the responsibility of and paid or reimbursed by IAE, including, but not limited to the following:

- 3.3.1. Costs and expenses of performing services and other obligations that are the responsibility of IAE.
- 3.3.2. Costs associated with any necessary sidewalk, street or public way closures and other public works items, including but not limited to costs and expenses associated with traffic control, and maintenance of traffic control devices and measures during the event.
- 3.3.3. Costs associated with providing Town Police and Fire/ Ambulance Department personnel, also including officers hired in from other governmental body police, ambulance and/or fire departments.
- 3.4. Reimbursement Obligations. The Parties agree that the Town will perform certain Festival-related functions (e.g. some site preparation, police service, emergency services, fire services, public works), and that from time to time IAE may request additional services from the Town, which the Town may, in its sole discretion, agree to provide. IAE shall directly pay and/or reimburse the Town, as mutually agreed upon, for performing such services, and the cost of restoring Town-owned property and other areas impacted by the Festival to at least their pre-Festival condition. Said payment shall be made per Sections 3.2.23 and 3.2.24.
- 3.5. Acts and Activities. IAE shall, by not later than July 1, 2019, inform Town as to the acts, activities and events that are scheduled to occur at the Festival.
- 3.6. Subcontractors. To the best of IAE's actual knowledge, all Subcontractors which IAE may use in connection with performing its responsibilities or services hereunder shall not (i) be delinquent on the payment of any taxes or licensing fees or other fees owed to the Town, County of Dukes County, or the Commonwealth of Massachusetts, (ii) within the past five (5) years either have been convicted of a criminal offense or had a civil judgment rendered against it for improperly obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (iii) be disqualified from entering into a contract with the Town, or (iv) be under investigation for any of the foregoing. In the event that the Town, in its reasonable judgment,



finds a Subcontractor objectionable, then the Town shall notify IAE and in such notice shall state the reasons for its objections. If the Town and IAE cannot resolve the Town's objections, IAE shall immediately cause such Subcontractor to stop providing services for the Festival and at the Festival Area.

- 3.7. **Beer and Wine Sales.** As of the date of this Agreement IAE has not obtained a license to serve or sell beer and wine at the Festival, and the Town has informed IAE that under Applicable Law the Town does not have the authority to issue a license for such service or sale, whether under M.G.L. c. 138, §14 or otherwise. The Town acknowledges that IAE is exploring whether other options exist for the licensing of such service or sale. If it is determined by a governmental authority having jurisdiction that a beer and wine license may be issued for the Festival, the Parties will confer regarding application for such a license and exercise of any such license which may be issued, including the terms and conditions thereof. Regardless of licensure, it is expressly agreed that no alcohol may be served or sold at or for the Festival without the Town's separate, written consent and subject to such conditions as the Town may impose. Further, IAE acknowledges that if beer and wine service or sale is authorized the Town may, for reasons of public safety, reduce the period of time during which and/or the areas in which beer and wine may be sold or consumed. IAE agrees to comply with any such limitations.
- 3.8. **Restoration to pre-Festival Condition.** IAE shall be financially responsible for all costs related to repairing and restoring the Festival Area, and other areas impacted by the Festival, to their pre-Festival condition.

#### 4. TOWN RESPONSIBILITIES

- 4.1. **Services.** As requested by IAE, the Town will be responsible for providing the following services with respect to the Festival:
- 4.1.1. Lawn and landscape preparation of the Town-owned or -controlled Festival Area in advance of the Festival (e.g., perform limited tree pruning and lawn mowing, and if pumping of water is required IAE will bear the cost);
  - 4.1.2. Removal of the wood open picket fence dividing Veterans Park from the dirt parking area off of Lagoon Pond Drive, 100 linear feet plus

or minus, and bleachers and open picket fence at Causeway Street, approximately 70 linear feet plus or minus;

- 4.1.3. Temporary water connections at the current Town rate, where needed, if available and accessible;
- 4.1.4. Temporary connections to electricity to the extent that the power can be safely provided. IAE agrees to augment power available to the park with generators sufficient to provide additional electricity as needed.
- 4.1.5. Access to its wastewater treatment facilities during normal business hours unless special accommodation is made at the current rates for the disposal of waste generated from the portable toilets and/or showering facilities during the Festival, provided IAE shall comply with the requirements of the Town through its Wastewater Treatment Superintendent or designee and wastewater ordinances. The Town states and IAE acknowledges that the wastewater treatment facilities will be staffed for at least the normal 2-hours on the weekend. Staffing required outside the normal hours staffed will be at the applicable rate of \$150.00 charge for off hour emergency calls for employee overtime cost. The present charge for septage is \$0.20/gallon.
- 4.1.6. Access to its Town-contracted transfer station (during normal business hours unless special accommodation is made) at the current rate for disposal of solid waste generated during the Festival, provided that IAE shall comply with the requirements of the Town through its Solid Waste Manager or designee and solid waste bylaws and regulations. If the Town performs any of the above trash pickup, the compensation rate is based on a 2 hour minimum (\$30/HR) per person for a scheduled callback (24 Hour notice to the employee) or a 4 hours guaranteed-callback (\$30/HR) if an emergency call in.
- 4.1.7. Shut off of irrigation system(s) on Town property in areas affected by the Festival;
- 4.1.8. All labor and materials necessary to handle its services; and
- 4.1.9. Police, fire, ambulance, harbor, facilities, public works and emergency personnel, as determined by the Town to be necessary for the Festival. Although the Town in making such determination shall consult with IAE, the Town shall make the

final determination of the number and assignment of such personnel.

- 4.2. Cost and Expenses. IAE shall be responsible for the payment of the costs and expenses incurred by the Town in its delivery of services provided in connection with the Festival. Changes to the estimated costs outlined in Exhibit C herein shall require suitable written justification.
- 4.3. Town Service Rates. The Town will use its best efforts to obtain accurate rates for the Town's services, including police, fire, harbor, streets, wastewater, sanitation, transportation, engineering and emergency services in advance of the Festival, so that IAE can prepare accurate budgets. However, nothing in this Section shall be construed as a guarantee of actual costs by the Town.

## 5. DISAPPROVAL RIGHTS

- 5.1. Acknowledgement. IAE acknowledges the importance and significance of the Festival Area to the Town and to the people of the Town, and accordingly, IAE agrees that the Town shall have certain disapproval rights in connection with the Festival, as outlined in Section 5.2 below.
- 5.2. Disapproval Rights. Notwithstanding any other provision contained herein, the Town shall have disapproval rights in connection with the Festival, as to:
  - 5.2.1. The decibel level of sound at the Festival; and
  - 5.2.2. The activities and events to occur at the Festival, and the times and duration thereof.
- 5.3. Exercise. The Town may exercise its disapproval rights in its sole discretion, but agrees to use its reasonable judgment and to consult with IAE regarding any disapproval. The Town shall provide prompt notice to IAE if it intends to exercise its disapproval rights. IAE represents that the sound system to be used for the Festival will be a so-called 'line array' system; and IAE agrees that it shall conduct or coordinate a venue sound and volume check on Saturday morning, August 10, prior to the first performance of the day, at approximately 10:30 a.m., and that the Town's designated representatives shall have the right to be present for and reasonably participate in such check. If the Town determines that any amplification or direction adjustments are required for purposes of preventing, to the extent possible, excessive or unreasonable decibel levels in connection with the performances, IAE shall take such action as is required to implement those adjustments.

- 5.4. Effect. IAE shall not take or fail to take any action inconsistent with the Town's exercise of its disapproval rights.
- 5.5. Notice. IAE shall provide such prior notice and information as is reasonably required for the Town to effectively exercise its disapproval rights and as the Town may request.

## 6. TERM AND TERMINATION

- 6.1. Term. The term of this License Agreement (the "Term") will commence on the Effective Date and will terminate upon the completion of the Festival. However, IAE's duties and responsibilities hereunder shall survive until they are completed in accordance with the provisions hereof.
- 6.2. Termination Upon a Default. A non-defaulting Party may terminate this Agreement upon a Default (as defined below) by the other Party hereto by providing written notice thereof. "Default" shall mean any of the following;
  - 6.2.1. A failure by any Party to timely make any payments due hereunder and such failure is not cured within five (5) days after notice thereof;
  - 6.2.2. A material breach (other than non-payment) of the terms of this Agreement which breach is not cured by the breaching Party within thirty (30) days after notice thereof by the other Party;
  - 6.2.3. Making a general assignment for the benefit of creditors, or filing for bankruptcy, reorganization or similar proceedings;
  - 6.2.4. A bankruptcy, reorganization or similar proceeding is filed against a Party and is not vacated or discharged within forty-five (45) day after such filing;
  - 6.2.5. A receiver or trustee is appointed for all or any part of a Party's assets;
  - 6.2.6. A violation of Applicable Law by a Party related to or in connection with the Festival.
- 6.3. Mutual Termination. This Agreement may be terminated at any time upon the written mutual agreement of the Parties hereto.

## 7. INDEMNIFICATION

- 7.1. By IAE. IAE will indemnify, hold harmless and defend the Town and its officers, employees, volunteers and agents from and against any loss, damage, cost, expense, action, claim, demand or liability (including reasonable attorneys' fees) to the extent related to or arising from the

Festival. This obligation to indemnify, hold harmless and defend shall not extend to any loss, damage, cost expense, action, claim, demand or liability (including reasonable attorneys' fee) arising out of the sole negligence or willful acts or omissions of the Town or its officers, employees, volunteers, or agents.

- 7.2. Survival. This Article 7 and IAE's obligations hereunder shall survive the termination of this Agreement.
- 7.3. Additional Obligations. IAE acknowledges that the requirements set forth in this Section to indemnify, hold harmless and defend the Town are separate and apart from, and not limited by, IAE's other obligations under the Agreement, including the requirement of maintaining certain insurance.

## 8. INSURANCE

- 8.1. The Town. The Town will maintain its current insurance through its regular insurance provider.
- 8.2. IAE. IAE shall maintain the following insurance coverages for the duration of the Agreement and for a period of one year thereafter:
  - 8.2.1. Commercial General Liability (CGL) coverage on an occurrence basis, with no limits less than \$2 million per occurrence, \$5 million general aggregate. Such coverage limits may be satisfied through the use of limits included on a master policy maintained by IAE. This insurance shall be primary with respect to claims arising out of IAE's negligence or wrongful acts or omissions.
  - 8.2.2. Automobile Liability coverage covering IAE's owned, non-owned and hired automobiles with limits no less than \$1 million combined single limit for bodily injury and property damage per accident. Such coverage limits may be satisfied through the use of limits included on a master policy maintained by IAE.
  - 8.2.3. IAE agrees to carry at its own expense, any necessary Workers' Compensation Insurance for its employees per Illinois State worker compensation statute and as may be required by the Commonwealth of Massachusetts. All other labor retained or contracted by IAE will be provided by companies registered to do business in the Commonwealth of Massachusetts, and such

companies shall provide workers' compensation for their employees in compliance with all Applicable Law.

8.2.4. Additional Insured: The Town and its respective, officers, employees and volunteers shall be covered as Additional Insureds on the CGL and auto liability policies maintained by IAE against claims for injuries to persons or damages to property which may arise from or in connection with IAE's negligence or wrongful acts or omissions in association with the Festival.

8.2.5. Verification of Coverage: IAE shall furnish the Town with a copy of the insurance policy(ies) and certificate(s) of insurance evidencing the coverages required herein by no later than June 1, 2019. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements required herein at any time.

8.2.6. All of the insurance required of IAE shall be subject to the terms, conditions and exclusions of the pertinent policy forms, but shall provide coverage of at least the scope and amount as set forth herein.

## 9. COMPLIANCE WITH LAWS, AND RESTRICTIONS ON USE

- 9.1. General Compliance with Laws. Each of the Parties shall comply with Applicable Law in connection with this Agreement and the Festival.
- 9.2. Alcoholic Beverages. IAE specifically agrees not to engage in or permit the sale or distribution of alcoholic beverages at the Festival except as authorized pursuant to a license issued in accordance with Applicable Law and the Town's consent as provided for in Section 3.7.
- 9.3. No Illegal Drugs. IAE shall use its best efforts to ensure that illegal narcotics, stimulants and other banned or illicit substances are not being used, sold or distributed at the Festival.
- 9.4. Illegal Acts. IAE shall not permit any of its employees or volunteers to engage in any illegal conduct at the Festival Area or within the Town of Tisbury. IAE will use its reasonable efforts to ensure that no Festival attendees engage in any illegal conduct at the Festival Area or in any manner affecting performance of their responsibilities in connection with the Festival.

- 9.5. No Endangerment of Public Safety. IAE shall take all action reasonably necessary to ensure the safety of Festival attendees.
- 9.6. Compliance with Food Safety Laws. IAE shall take all action reasonably necessary to ensure that all food, beverages and other concessions offered at the Festival are being stored, prepared and sold in compliance with food and safety laws and all other Applicable Law.
- 9.7. Compliance with Environmental Laws. IAE shall take all actions reasonably necessary to ensure that IAE and its Subcontractors comply with all environmental laws as are applicable to IAE in the production and presentation of the Festival and the performance of its obligations and exercise of its rights under this Agreement.
- 9.8. Anti-Discrimination. IAE shall not discriminate on the basis of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military service, parental status with respect to employment practices, in providing access to the Festival and providing services and fulfilling its obligations under this Agreement.

## 10. MISCELLANEOUS

- 10.1. Amendments; Waivers. No amendment, modification, termination, discharge or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by each of the Parties hereto, and then such waiver or consent shall be effective only for the specific purpose given. The making or failure to make any payment, take any actions or waive any rights shall not be deemed an amendment of this Agreement nor a consent to such action or to any future action or failure to act, unless the Party required to so consent or act expressly agrees in writing. No waiver by any Party of any breach of any provision of this Agreement shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, any Party in any case shall, of itself, entitle such Party to any other or further notice of demand in similar or other circumstances.
- 10.2. Choice of Law and Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to the choice of law provisions of the Commonwealth of Massachusetts. Any lawsuit that may arise out of the

enforcement of this agreement must be brought in the Superior Court for Dukes County.

10.3. No Agency or Partnership Relationship. Nothing in this Agreement is intended nor shall it be deemed to create a relationship of agency, partnership, or joint venture between IAE on the one hand, and the Town on the other hand. Nothing in this Agreement is intended nor shall it be deemed to grant to IAE any power, right or authority to bind or otherwise contractually obligate the Town within or outside of this Agreement. Nothing in this Agreement is intended nor shall it be deemed to grant to the Town any power, right or authority to bind or otherwise contractually obligate IAE within or outside this Agreement. No employee of IAE shall be deemed an employee of the Town. No employee of the Town shall be deemed an employee of IAE.

10.4. Notices: Communication. All notices, requests, demands and other communications provided for hereunder shall be in writing, sent by certified or registered mail, postage prepaid, or nationally recognized overnight carrier, or delivered in person, and addressed as follows:

If to IAE: Innovation Arts & Entertainment, Ltd.  
ATTN: Adam Troy Epstein  
111 N Wabash Avenue  
Suite 919  
Chicago, IL 60602

If to the Town: The Town of Tisbury  
ATTN: Town Administrator  
51 Spring Street  
Tisbury, MA 02568

10.5. Severability. In the event that any provision of this Agreement or the application thereof is held to be invalid, illegal or unenforceable by a court or governmental body of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of this Agreement and the application thereof shall not be affected thereby.

10.6. Third Party Beneficiaries. Except for the indemnity provisions inuring to the benefit of the Parties set forth therein, this Agreement, whether express or implied, is not intended to confer upon any person or entity any rights or remedies under or by reason of this Agreement on any persons other than the Parties hereto and their respective successors and assigns.



- 10.7. Force Majeure. Except as otherwise provided herein, neither Party shall be obligated to perform hereunder and neither Party shall be deemed to be in default if performance is prevented by (a) fire, hurricane, flood, tornado, act of God, terrorist act, major mechanical or structural failure not the fault of the Party claiming force majeure, or civil commotion materially and adversely affecting the operation of the Festival, or (b) any law, rule, regulation or order of any public or military authority stemming from the existence of economic or emergency controls, hostilities, or war; provided, however, that any such occurrence or the adverse effects of such occurrence are not reasonably foreseeable and are beyond the reasonable control of the affected Party; provided further that each Party shall take reasonable actions to mitigate any unforeseen events.
- 10.8. Strikes and Labor Matters. Neither Party shall be obligated to perform any of its obligations hereunder, nor shall either Party be deemed to be in default, to the extent performance is prevented by strikes or labor disputes, provided that such Party has not committed unfair labor practices and provided further, that such Party shall take reasonable steps to mitigate such strike or labor dispute.
- 10.9. Interpretation. The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of the Agreement. Words importing the singular shall include the plural and vice versa, unless the context shall otherwise indicate. Words of any gender include the correlative words of the other gender. All references to any Exhibit shall be deemed to include all supplements and/or amendments to such Exhibits.
- 10.10. Successors and Assigns. Subject to the provisions set forth herein, this Agreement shall bind and inure to the benefit of IAE, the Town and their respective successors and assigns. Neither IAE nor the Town shall assign, transfer or otherwise convey all or any portion of this Agreement without the prior written consent of the other parties.
- 10.11. No Personal Interest. No member of the governing body of the Town or other unit of government and no other officer, employee, or agent of the Town or other unit of government who exercises any functions or responsibilities in connection with the carrying out of the Festival shall have any personal interest, direct or indirect, in this Agreement.

- 10.12. Timeliness of Performance. The Parties shall satisfy their respective obligations in compliance with any specific time limits required by this Agreement. The Parties acknowledge that TIME IS OF THE ESSENCE.
- 10.13. Non-Liability of Public Officials. IAE shall not charge any official, employee or agent of the Town personally with any liability or expenses of defense or hold any official, employee or agent of the Town personally liable under any term or provision of this Agreement or because of the Town's execution, attempted execution, or any breach of this Agreement, except in connection with or related to misappropriation, fraud or other financial misconduct. The limitation on liability survives termination of this Agreement.

By their authorized representatives' signatures, the Parties agree to and accept this Agreement as of the date above written.

Innovation Arts & Entertainment, Ltd.  
*an Illinois corporation*

THE TOWN OF TISBURY  
*a Massachusetts municipal corporation*  
By its Board of Selectmen

By: \_\_\_\_\_

Name: Adam Epstein

Title: CEO

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Approved as to form:

\_\_\_\_\_

Town Attorney

Attest:

\_\_\_\_\_

Town Clerk

# Exhibit A

## Details of the License:

### Location:

- a) Tisbury, MA

### Event Date:

- a) August 9-11, 2019

### Event Times:

- a) August 9 7:00-10:15pm; Doors at 5:00pm
- b) August 10 1pm-9:00pm; Doors at 11am
- c) August 11 1pm – 8:30pm; Doors at 11am

### Event Setup:

- a) August 6-9, 2019

### Site:

- a) Veterans Memorial Park;
  - a. Ballfields will be available for use by the Town until August 5, 2019.
- b) parking lot adjacent to Park; and access road to parking lot;

# Exhibit B

## Load in, Performances, and Load Out schedule

### **Tuesday, August 6, 2019**

Power & Generator installation

Plywood "Road" installation for stage trucking to be driven on field

### **Wednesday, August 7, 2019**

Stage arrival and installation

Removal of plywood "road"

Fence installation for perimeter of field, excluding ballfields (to enable intramural play to continue)

### **Thursday, August 8, 2019**

Food and merchant tent installation

Fencing installation thru outfield of ballfields

Sound and Light mix position installed

Installation of field flooring for seating area

### **Friday, August 9, 2019**

#### ***Morning:***

Food and merchant load in

Finalizing of staging plans and projection screen installation

Load in of projection gear and symphony equipment

#### ***Afternoon:***

Sound and projection equipment checks for symphony

#### ***Evening:***

Screening of the movie *Jaws*, with accompaniment by Cape Cod Symphony

### **Saturday, August 10, 2019**

Noon-8:30pm

Musical Performances

### **Sunday, August 11, 2019**

Noon-8pm

Musical Performances

8:15pm-11:00pm

Load out and site breakdown, plus cleanup

### **Monday, August 12, 2019**

7am

Load out finishes, trucks load ferry

Access to one ballfield restored by 5pm

Clean up completed by 9pm

# Exhibit C

## Financial Compensation and Reimbursement to Town of Tisbury

### Compensation for site usage:

- 1) IAE agrees to pay Town of Tisbury for the use of Veterans Memorial Park, and all other areas identified as “Site” in Exhibit A and the right to conduct the Festival on Town-owned property as follows: \$25,000 for the Festival without any sale of beer and wine and \$40,000 if the Festival includes the sale of beer and wine
- 2) IAE agrees to additionally pay, either to Town of Tisbury or to the applicable provider as reasonably directed by the Town, for all costs for identified services as outlined below and in the body of the Agreement.

# Town of Tisbury – MV Concert Series

## Festival 2019

The following annotated estimate of Town of Tisbury out-of-pocket expenses is associated with the 2019 MV Concert Series Festival scheduled for August 9-11, 2019. These estimates have been developed by the Town departments planning to provide their respective services before, during and perhaps after the event. They reflect those departments' understandings of the nature and quantity of their respective services required to serve the Festival based on the information provided by IAE, the promoter, and the promoter's various subcontractors supporting the event. The Town will endeavor to effectively and efficiently match department manpower and other resources with the needs of the Festival. As set forth in Section 1 of the Agreement, the total reimbursable expenses are subject to change to reflect actual costs incurred.

Police	\$ 19,184
Fire/Ambulance	\$ 13,200
Public Works	\$ TBD
Pre-event preparation	\$ TBD
Site Usage	\$ 25,000
Damage Deposit	\$ 25,000
Total	\$ 82,884

### Police

Provision of approximately 280 hours of commissioned police officers and another 12 hours of administrative staff. In addition to the Town of Tisbury Police Department, this level of security dedicated to the Festival may require supplemental personnel from other jurisdictions.

### Fire and Ambulance

Provision of approximately 240 hours of Fire, Emergency Medical Technician, and Paramedic services. In addition to Town of Tisbury Fire and Ambulance Departments, the emergency services manpower dedicated to the Festival may include personnel from Dukes County and other area jurisdictions. Costs for ambulances, fire response equipment, and other support equipment and materials are included.

### Public Works

Provision of the electrical supply, standby workers for maintenance of temporary parking & traffic control; standby water services support; traffic control planning and design; and extra sanitation services in the park and surrounding area. This provision should also include removal of obstacles in Veterans Memorial Park that may obstruct the stage, our equipment, or any installation.