

REVOCABLE LICENSE AGREEMENT BETWEEN
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
AND GLOWCO, LLC

THIS REVOCABLE LICENSE AGREEMENT ("Agreement") is entered into and deemed effective as of and from the _____ day of _____, 2018 (the "Effective Date") by and between GLOWCO, LLC, a Tennessee limited liability company having an address of 1212 8th Avenue South, Suite 102, Nashville, Tennessee 37203 (hereinafter called "Licensee") and METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, a metropolitan form of government in the state of Tennessee having an address of 1 Public Square, Nashville, Tennessee 37201 (hereinafter called "Licensor" or "Metro").

WITNESSETH:

WHEREAS, Licensor is the owner and operator of a park on the West Bank of the Cumberland River in downtown Nashville generally known as Riverfront Park (the "Park");

WHEREAS, Licensor is also the owner of an amphitheater and associated structures located at the Park that is currently named Ascend Amphitheatre (the "Facility") and which is currently subject to an Amphitheater Management Agreement (the "Management Agreement") between Licensor and Live Nation Worldwide, Inc. ("LN");

WHEREAS, Licensee is in the business of operating entertainment events focused on creating a Holiday experience including, without limitation, lighting, decorations, walking tours, merchandise, ice skating (where available) and similar type of activities in metropolitan areas (the "Business Activity");

WHEREAS, Licensee has requested permission to use the Park and Amphitheater, together with associated ingress and egress and utility facilities for the time period for the Business Activities during the Term of this Agreement as herein below contemplated; and

WHEREAS, Licensor has agreed to grant Licensee a revocable license to use the Park and Facility for the Event Uses during the Use Interval (as defined below) during each year of the Term subject to the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants of the parties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, it is agreed as follows:

1. **LICENSE.** Subject to the other terms and conditions of this Agreement, Licensor hereby grants to Licensee a revocable license to use, during the Use Intervals of the Term, the Park and the Facility for the Event Use. The Park and Facility are referred to collectively herein as the

“Licensed Facilities.” The parties acknowledge and agree that the dog park at the Park shall be excluded from the Licensed Facilities. Accordingly, the dog park shall remain open to the public during the Use Interval.

2. USE.

(a) *Use Intervals.* Licensee's use of the Licensed Facilities during the Term shall be limited to the following days during each year of the Term:

- Season 1: 12:01 AM November 6, 2018 until 11:59 PM January 6, 2019
- Season 2: 12:01 AM November 6, 2019 until 11:59 PM January 6, 2020
- Season 3: 12:01 AM November 6, 2020 until 11:59 PM January 6, 2021
- Season 4: 12:01 AM November 6, 2021 until 11:59 PM January 6, 2022
- Season 5: 12:01 AM November 6, 2022 until 11:59 PM January 6, 2023
- Season 6: 12:01 AM November 6, 2023 until 11:59 PM January 6, 2024
- Season 7: 12:01 AM November 6, 2024 until 11:59 PM January 6, 2025
- Season 8: 12:01 AM November 6, 2025 until 11:59 PM December 31, 2025

The individual days referenced above are collectively referred to herein as “Use Days” and the period of each Use Days during a particular Holiday season referred to as a Use Interval.

(b) *Hours of Access.* Officers, employees, agents and other authorized persons of Licensor in the performance of their official duties shall have access to the Licensed Facilities at all reasonable times. Although Licensee shall have access to the Licensed Facilities 24 hours per day during the Use Intervals for operational purposes, the Licensed Facilities shall only be open to the public between the hours of 5 PM. until 11 PM.

(c) *Limitation of Use.* Licensee's use of the Licensed Facilities shall be limited to the Business Activity and ancillary activities (the “Event Use”).

3. TERM.

(a) *General.* Subject to the terms and conditions of this Agreement, the term (the "Term") of this Agreement shall commence on the Effective Date and continue until December 31, 2025. Notwithstanding the foregoing, Licensee shall have a one-time right to delay the first season/Use Interval until Season 2 referenced above (November 2019) by providing written notice to Licensor at least sixty (60) days in advance of the first Use Interval. If Licensee exercises this right, all obligations hereunder shall be deferred until Season 2. Licensee shall

surrender the Licensed Facilities upon expiration of each Use Interval, as well as upon the expiration or earlier termination of the Term of this Agreement, in good and broom clean condition as such was received by Licensee, normal wear and tear excepted, and otherwise in accordance with the provisions of this Agreement.

(b) *Revocation without Cause.* Licensor acknowledges that the Business Activity requires substantial advance cost and planning prior to participating in the Event Use during the Use Intervals and that locating a new location for the Event Use would require substantial advance planning and additional costs incurred by Licensee. Accordingly, revocation by Licensor without cause shall be limited to the Licensor providing written notice of termination to Licensee at least six (6) months prior to the first Use Day of the year in which such notice is provided. Similarly, Licensee shall have the right to terminate the License by providing written notice of termination to Licensor at least six (6) months prior to the first Use Days of the year in which such notice is provided. Notwithstanding the foregoing, Licensor agrees that it shall not have the right to exercise its rights pursuant to this provision (Revocation Without Cause) with respect to the first two (2) years of the Term (the "Protected Period").

(c) *One-Time Revocation for Select Event.* The parties acknowledge that Licensor wishes to reserve the right to revoke the license for a particular year due with reduced notice due to the possibility of Licensor's opportunity to host a national-type select event (i.e., NHL winter outdoor classic, etc.). Accordingly, Licensor shall have one (1) opportunity to revoke the right to use the Licensed Facilities during a particular year's Use Interval by providing less than six (6) months advance written notice but at least four (4) months advance written notice. Notwithstanding the foregoing, Licensor agrees that it shall not be entitled to use the revocation with substituted location during the first Use Interval. For the avoidance of doubt, Licensor's ability to revoke a particular season's Use Interval shall be a one-time right during the Term.

(d) *Termination for Breach.* In addition to the other grounds for revocation or termination, either party may terminate the Agreement for a material breach by the other party which has not been materially cured within sixty (60) days after the non-breaching party provided detailed notice of facts underlying the purported breach to the breaching party.

4. CONDITIONS TO LICENSE. The parties agree that this this Agreement is conditioned upon Licensee entering into the following agreements with respect to each Use Interval:

(a) A binding agreement or work order with Golf Management Group, another entity affiliated with turf consultant Lynn Ray, or another vendor with express prior written consent by Licensor ("Approved Turf Vendor") to repair any damage to the sod/turf as a result of use by Licensee. The parties acknowledge and agree that Licensee shall satisfy its repair obligations hereunder by engaging the Approved Turf Vendor to replace the sod/turf in the Licensed Facilities; and

(b) Licensee shall enter into a separate agreement with LN to permit Licensee's use of the Facilities and related concessions during the Use Intervals consistent with this Agreement which shall address Licensee's use of the Facilities and concession rights.

5. **COMPENSATION.** In exchange for the rights granted to it herein, Licensee shall account and pay to Licensor the following fees:

(a) *Flat Fee.* For each Use Interval of the Term during which Licensee uses the Licensed Facilities for the Event Uses, Licensee shall pay to Licensor a flat fee of Seventy Five Thousand Dollars (\$75,000.00)(the "Flat Fee") with Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) allocated for use of the Riverfront Park Bowl and Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) allocated for use of the Riverfront Park Green. Licensor agrees that, if Licensee only uses the Riverfront Park Bowl (does not utilize the Riverfront Park Green for the event), then the Flat Fee shall be reduced to Thirty Seven Thousand Five Hundred Dollars (\$37,500.00).

(b) *Concession Share.* On a prospective basis after Licensee has earned the Recoupment Amount (as defined below), Licensee shall account and pay to Licensor an aggregate amount equal to fifty percent (50%) of all net revenues if Licensee exploits concessions directly (or fifty percent (50%) of the fee to be paid to Licensee by a concessionaire as part of the Event Use) generated and received by Licensee through the sales of concessions at the Licensed Facilities at all times during the Use Intervals during the Term (the "Concession Share"). For the purposes of this provision, "net revenues" means actual income from sales of concessions net of actual expenses incurred in the acquisition, preparation, and sales of such concessions; provided that if Licensee receives a fee or percentage of net sales from a concessionaire relating to the Event Use, then net revenues shall mean such fee or percentage. Licensee warrants and represents that Licensee shall have the ability to grant the right to the Concession Share addressed herein.

(c) *Ticket Share.* On a go-forward basis after Licensee has earned the ROI Amount (as defined below), Licensee shall account and pay to Licensor One Dollar (\$1.00) per ticket sold at face value to the Event Use for up to thirty-five thousand (35,000) tickets sold and not refunded after the ROI Amount. For tickets above thirty-five thousand (35,000) tickets sold and not refunded after the ROI Amount, Licensee shall account and pay to Licensor an aggregate amount equal to (\$2.00)for each such ticket sold at face value and not refunded (the "Ticket Share"). Solely for illustration purposes, if the ROI Amount is satisfied with Two Hundred Forty Thousand (240,000) tickets sold and not refunded, then the following Ticket Share shall apply prospectively:

--Tickets 240,001 to 275,000 sold:	\$1.00
--Any tickets sold above 275,000 sold:	\$2.00

Accordingly, under this illustration, if 280,000 tickets were sold at face value and not refunded, Licensee would be obligated to account and pay to Licensor Forty-Five Thousand Dollars (\$45,000.00)(35,000 x \$1.00 +5,000 x \$2.00). For the avoidance of doubt, Licensor acknowledges and agrees that the Ticket Share shall not apply to any free tickets or tickets for which Licensee pays a refund. For any reduced price tickets sold and not refunded, the parties agree that the applicable Ticket Share (\$1 or \$2) shall be reduced in the same proportion to the reduction of the ticket price from face value.

(d) *Recoupment Amount.* For the purpose of this Agreement, the term “Recoupment Amount” means the portion of gross revenue from the Event Use that equals the costs incurred by Licensee relating to planning and operation of the Event Use. Such costs include but are not limited to: purchase or leasing of lighting and decorations; construction costs; insurance costs; the Flat Fee; personnel-related costs; utility costs; merchandise manufacturing costs; tax obligations; shipping costs; personnel costs; de-construction costs; insurance deductibles; and other operational costs.

(e) *ROI Amount.* For the purposes of this Agreement, the term “ROI Amount” means the portion of gross revenue from the Event Uses that equals the sum of the Recoupment Amount plus an amount equal to fifty percent (50%) of the Recoupment Amount. Solely for illustration purposes, if the Recoupment Amount for a particular season equaled Five Million Dollars (\$5,000,000.00), then the ROI Amount would equal Seven Million Two Hundred Fifty Thousand Dollars (\$7,500,000.00). The amounts payable to Licensor hereunder is referred to collectively as the Licensor Fees.

(f) *Reserves.* Licensee shall have the right to hold back an amount not to exceed ten percent (10%) of the earned and payable Licensor Fees for a particular year (“Reserves”) to account for potential additional costs or liabilities for the applicable year. If such reserves are not exhausted within sixty (60) days, Licensee shall account and pay over such reserves, or the amount remaining of the reserves, to Licensor.

(g) *Accounting.* Licensee shall account and pay to Licensor the Licensor Fees earned for the applicable Use Interval, reduced by the Reserves, within one hundred twenty (120) days after the last Use Day of a particular Use Interval. On no more of one occasion for each Use Interval, Licensor shall have the right to have a third party accounting firm audit Licensee’s relevant documents and records to verify the accuracy of Licensee’s accounting provided hereunder. If the results of such audit reflects an underpayment of ten percent (10%) or more, then, in addition to any other remedies available to Licensor, Licensee shall reimburse Licensor the costs of the audit. Licensor shall have the right to review copies of Licensee’s records directly relating to the underlying accounting to verify the correctness of such accounting. Licensor shall provide Licensee at least fifteen (15) days advance written notice of its request for such review. Such review shall take place during normal business hours at Licensee’s normal

place of business and shall be conducted to avoid unnecessary interruption of Licensee's business operations.

(h) *No Participation in Other Activities of Licensee.* Licensor acknowledges and agrees that its rights to the Licensor Fees relate only to the Event Uses at the Licensed Facilities.

(i) *No Competitive License.* During the Term and for one (1) year thereafter, Licensor agrees that it will not issue a license or a lease to a third party entity for the purpose of operating an event similar to and in competition with the Event Use. Licensor acknowledges that Licensee has invested substantial costs and incurred significant risk of loss in order to produce the Event Use and that the Event Use will bring visitors to the downtown area and result in substantial payments to Licensor through this Agreement. Accordingly, Licensor acknowledges and agrees that the non-competitive license covenant is reasonable under such circumstances.

(j) *Repair of Damage to Park.* Licensee agrees that it will take the necessary steps to repair damage resulting from the Event and ensuring that the Park is "show ready" by April 15 of each year following a season's Use Interval. These steps will include, without limitation, as required: replacement of damaged turf; repair to any damaged irrigation heads lines, valves, valve boxes, etc.; repair to structural or cosmetic damage to hardscape such as sidewalks, curbs, bollards, railings, steps, lighting, electrical components, and staging; and repair of damaged landscaping such as beds, shrubs, and trees. Licensor acknowledges and agrees that Licensee shall not be responsible for repairing damage not resulting from the event, installation of the event, or tear down from the event.

(k) *Live Nation.* Licensee acknowledges and agrees that Live Nation may charge the Licensee the Amphitheater Operating Expenses for such event.

6. TAXES. Licensor shall not be responsible for any taxes that are imposed on Licensee. Furthermore, Licensee understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Licensor.

7. MAINTENANCE OF TRAFFIC AND PUBLIC STREETS. Not less than sixty (60) days prior to the first Use Day of a year's Use Interval, Licensee shall provide to Licensor a Maintenance of Traffic and Public Streets ("MOT") Plan containing a construction and traffic flow schedule detailing the opening and closing times for all streets, lanes, traffic corridors, and/or pedestrian paths for Licensor's review and approval. Licensee agrees that the MOT plan will include mutually agreed upon pedestrian and bicycle flow and access to paths surrounding the Park during each Use Interval. At all times during the Use Interval, Licensee agrees to provide Licensor, or related agencies, with emergency access to all areas of the Licensed Facilities to ensure the safety and welfare of the community.

8. SECURITY PLAN. Not less than sixty (60) days prior to the first use Day of a year's Use Interval, Licensee shall provide to Licensor a Security Plan containing plans for security of

the event including, without limitation, staffing plans for security for Licensor's review and approval. Licensor at all times shall be responsible for on-site security at the Licensed Facilities and, when not open to the public, the Amphitheater Public Access Areas.

9. INSURANCE. Prior to the start of the Term, Licensee shall, at its sole expense, obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement.

- a.) Commercial General Liability Insurance occurrence version commercial general liability insurance or equivalent form, Liquor Liability Insurance, and Professional Liability Insurance, each form with a limit of not less than one million (\$1,000,000.00) dollars each occurrence for bodily injury, personal injury, and property damage. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than two times the occurrence limit. If coverage is written on a claims-made form, (1) the "retro date" must be shown and must be before the date of the first Use Day of the initial Use Interval; (2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after termination of the contract; (3) if coverage is cancelled or non-renewed and not replaced with another claims-made policy form with a "retro date" prior to the contract effective date, Licensee must purchase "extended reporting" coverage for a minimum of three (3) years after the termination of the contract.

Licensee shall provide its certificates of insurance to this License Agreement to the Metro Director of Insurance and Safety. Such insurance shall contain or be endorsed to contain a provision that includes Licensee, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of Licensee's use of the Licensed Facilities. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

Licensee's willful failure to comply with the requirements of this section shall constitute a default of this Agreement, if such failure continues after 10 business days' notice and opportunity to cure.

- b.) Licensor is a metropolitan form of government as set out under the Governmental Tort Liability Act in Tennessee Code Annotated § 29-20-101, et seq., and as such has its liability defined by law. The Metropolitan Government of Nashville and Davidson County carries no liability insurance; however, it is self-insured in an adequately funded Self-Insurance Program, up to the limits as set out in the

statute. This self-insurance is for the benefit of the Licensor only and provides no indemnification for any other entity whatsoever.

10. WAIVER OF LIABILITY. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR SHALL NOT BE RESPONSIBLE OR LIABLE FOR DEATH OR INJURIES TO PERSONS OR DAMAGE TO OR THEFT OF PROPERTY ARISING FROM OR IN ANY WAY CONNECTED WITH THE USE OF THE PROPERTY BY LICENSEE FOR THE PERMITTED USE. LICENSOR HEREBY EXPRESSLY DISCLAIMS AND NEGATES ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. Licensor makes no warranties or representations whatsoever, either express or implied, to Licensee or to any other third person that the Property is safe and suitable for Licensee's intended use or purpose or that the Property is free from any latent or patent defects. Licensee hereby agrees to accept the Property in its "AS-IS, WHERE-IS, WITH ALL FAULTS" condition on the commencement of the Term and shall not make or allow to be made any permanent alterations, additions or improvements whatsoever to the Property or any part thereof. Licensee acknowledges that its representatives have thoroughly investigated and inspected the Property and that all potential hazards have been identified and addressed by Licensee.

Licensee agrees to hold Licensor harmless from any damage or loss of Licensee's property located within the Licensed Facilities.

11. INDEMNIFICATION. Licensee agrees to indemnify, defend and hold harmless Metro, its agents, officers, employees, representatives and members, from and against any and all claims, liability, loss, property damage, personal injury or death, interest, judgments, liens, costs and expenses that arise out of, or are incurred in connection with any and all claims, demands, suits, actions or proceedings which may be made or brought against Metro.

12. NOTICES. Any notices required pursuant to this Agreement shall be in writing. Addresses to which notices shall be sent are as follows:

TO LICENSOR:

Metropolitan Government of Nashville and Davidson County
Attn: Executive Director, Parks and Recreation
P.O. Box 196300
Nashville, TN 37219

TO LICENSEE:

Glowco, LLC
1212 8th Avenue South, Suite 101

Nashville, Tennessee 37203

with a courtesy copy to:

Safford Motley PLC

Attn: Jonathan Motley

PO Box 120788

Nashville, Tennessee 37212

All notices, demands and requests which are addressed as provided above and are (i) deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, or (ii) deposited with a nationally recognized overnight courier service (e.g., FedEx, UPS or Airborne Express) for next business-day delivery, or (iii) hand delivered, shall be deemed to have been given for all purposes hereunder upon receipt. Either party may change their respective notice addresses hereunder in the same manner as contemplated for other notices under this Agreement.

13. RELATIONSHIP OF PARTIES. Licensee and Licensee's representatives and employees shall perform their professional work free of any direction or control by Licensor. Licensor shall neither have nor exercise any control or direction over the methods by which Licensee or Licensee's subcontractors, representatives or its employees shall perform their work and functions. Nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, partnership or a joint venture relationship between Licensor and/or Licensee's subcontractors, representatives and employees and Licensee.

14. LAW GOVERNING. This Agreement shall be construed and interpreted according to the laws of the State of Tennessee.

15. VENUE. Any action between the parties arising from this Agreement shall be maintained in the courts of Davidson County, Tennessee.

16. GENERAL. This License Agreement does not and shall not be deemed to constitute a lease or a conveyance of the Property by Licensor to Licensee or to confer upon Licensee any right, title, estate or interest in or to the Property. This License Agreement grants to Licensee only a personal privilege to use the Property for the Term hereof on the terms and conditions set forth herein and may be terminated or revoked in accordance with the terms hereof. This Agreement may not be altered or amended, except by an instrument in writing signed by the parties hereto. Neither this Agreement nor any short-form or memorandum hereof shall be recorded in public real estate records. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties, but Licensee may not assign or sublicense, in part or in whole, this Agreement or the rights and privileges granted to Licensee hereunder or in the Licensed Space without the express prior written permission of Licensor, which consent shall be in Licensor's discretion. Notwithstanding the foregoing, Licensee shall be entitled to assign

this Agreement to any entity that acquires all or substantially all of Licensee's assets, upon approval of Metro, which approval shall not be unreasonably withheld. This Agreement contains and embodies the entire agreement of the parties hereto as to the subject matters hereof and supersedes all prior oral or written agreements, negotiations, proposals, representations and warranties between the parties hereto as pertains to the Facility and Licensed Space, or any portions thereof. Any and all obligations and liability of Licensee existing hereunder as of the expiration or earlier termination of this Agreement for matters predating such expiration or termination date shall survive such expiration or earlier termination. If any term or provision of this Agreement or any application thereof shall be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. No course of dealing or course of performance between Licensor and Licensee, or any failure or delay on the part of either of them in exercising any rights or remedies hereunder, shall operate as a waiver of any rights or remedies, and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder. As applicable, both parties each represent and warrant on their respective behalf that: (a) it is in good standing as an entity in all legally required jurisdictions and has authority to enter into and perform the obligations under this Agreement and (b) the individual executing and delivering this Agreement individually or on behalf of its respective party has been properly authorized to do so and such execution and delivery shall bind the parties hereto.

17. ENTIRE CONTRACT. This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

18. EFFECTIVE DATE. This Agreement shall not be binding upon the parties until it has been signed first by the Lessor and then by the authorized representatives of the Metropolitan Government and approved by the Metropolitan Council. When it has been so signed and filed, this Agreement shall be effective as of the date first written above.

19. SEPARATE COUNTERPARTS. This Agreement may be executed in separate, duly-executed counterparts and copies of the underlying counterparts shall be as effective as the originals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of and from the Effective Date first above written.

THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY:

Monique N. Odom

Monique Odom, Director
Department of Parks and Recreation

APPROVED AS TO AVAILABILITY OF
FUNDS:

Julia L. Odom
Director of Finance *IC #*

APPROVED AS TO INSURANCE:

BCW
Director of Insurance

APPROVED AS TO FORM AND
LEGALITY:

Mary Ann Smith
Metropolitan Attorney

FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:

Date: _____

GLOWCO, LLC

BY: [Signature]
Chris Stacey, CEO

Sworn to and subscribed to before me a

Notary Public, this 18th day of

June, 2018.

[Signature]
Notary Public

My Commission Expires 9/10/2018

