IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No.
District Court Case No. A-18-777762-C

Electronically Filed
Jan 22 2020 02:30 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

VENETIAN CASINO RESORT, LLC, a Nevada limited liability company;
LAS VEGAS SANDS, LLC, a Nevada limited liability company,
Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE KATHLEEN DELANEY in her capacity as District Judge,
Respondent,
JOYCE SEKERA, an individual,
Real Party in Interest

APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e)

Volume 3 (Exhibits 1-5)

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Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, by and through their counsel of record, Royal & Miles LLP, hereby submit is Appendix in compliance with Nevada Rule of Appellate Procedure 30.

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Tab	Document/Exhibit Description	Bate Number	Vol.
1	Defendants' Motion for Summary Judgment Pursuant to NRCP 56(c) Based on Statutory Immunity Under the Nevada Industrial Insurance Act (filed July 9, 2019)	VCR 001 - 246	1
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2	Plaintiff's Opposition to Defendant's Motion for Summary Judgment Pursuant to NRCP 56(c) based on Statutory Immunity Under the Nevada Industrial Insurance Act (filed July 19, 2019)	VCR 624 - 642	3
3	Reply to Plaintiff's Opposition to Defendants' Motion for Summary Judgment Pursuant to NRCP 56(c) Based on Statutory Immunity Under the Nevada Industrial Insurance Act (filed August 6, 2019)	VCR 643 - 693	3
4	Finding of Facts, Conclusion of Law and Order Denying Defendants' Motion for Summary Judgment Based on Statutory Immunity Under the Nevada Industrial Insurance Act (filed September 13, 2019)	VCR 694 - 701	3
5	Hearing Transcript of Defendant's Motion for Summary Judgment Pursuant to NRCP 56(c) Based on Statutory Immunity Under the Nevada Industrial Insurance Act (August 13, 2019)	VCR 702 - 732	3

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The Appendix shall be contained in 3 separate volumes in accordance with NRAP 30(c)(3) (2013), each volume containing no more than 250 pages.

DATED this 22 day of January, 2020.

ROYAL & MILES LLP

By: _____

Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
1522 W. Warm Springs Rd.
Henderson, NV 89014
(702) 471-6777
Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 22 day of January, 2020, I served true and correct copy of the foregoing APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e) (Volume 3), by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
and
Sean K. Claggett, Esq.
William T. Sykes, Esq.
Geordan G. Logan, Esq.
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Suite 100
Las Vegas, NV 89107

Attorneys for Real Party in Interest

Honorable Kathleen Delaney
Eighth Jud. District Court, Dept. 25
200 Lewis Avenue
Las Vegas, NV 89155
Respondent

Ashley Schmitt
An employee of Royal & Miles LLP

DocuSign Envelope ID: 3FBD4A77-3F16-4BE4-BEB9-827A24B82E02

Attachment C
Venue Modifications

TBD

DocuSign Envelope ID: 73E0B3C2-0013-4224-B8DE-121CAD72501D

VCR Contract No. 16-246

ASSIGNMENT OF ENTERTAINMENT AGREEMENT

This Assignment of Entertainment Agreement ("Assignment") is entered into and effective the date last signed below (the "Effective Date"), by and between Venetian Casino Resort, LLC ("VCR"), a Nevada limited liability company, located at 3355 Las Vegas Blvd. South, Las Vegas, Nevada 89109, HNLV LLC ("HNLV"), a Nevada limited liability company, located at 2250 Corporate Circle, Suite 390, Henderson, Nevada 89074, and Jukebox LV LLC ("JLV"), a Nevada limited liability company, located at 2250 Corporate Circle, Suite 390, Henderson, Nevada 89074. VCR, HNLV, and JLV may hereafter be referred to individually as the "Party" and collectively as the "Parties."

RECITALS

WHEREAS, VCR and HNLV have previously entered into the Entertainment Agreement, dated on or about December 31, 2015, for HNLV to provide the musical act known as "Human Nature" and perform a series of musical performances entitled "Human Nature: Jukebox" at the 742-seat Venetian Showroom (the "Agreement");

WHEREAS, as per Section 24 of the Agreement, HNLV may assign all of its rights and obligations under this Agreement without the prior consent of VCR if such assignment is to an entity wholly-owned directly or indirectly by Adam Steck and the Artists (the "Permitted Assignment Conditions");

WHEREAS, HNLV represents and warrants that JLV meets the Permitted Assignment Conditions;

WHEREAS, as of the Effective Date, HNLV desires to assign all of its right, title and interest in and to the Agreement, and be released and forever discharged from any obligations to VCR under the Agreement;

WHEREAS, JLV desires to accept this Assignment and is willing to assume the obligations of HNLV under the Agreement, subject to and in accordance with the terms of this Assignment; and

WHEREAS, subject to the terms and conditions of this Assignment, Venetian has consented to the above assignment;

WHEREAS, unless defined herein this Assignment, capitalized terms shall have the meaning ascribed to them in the Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth in the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree to amend the Agreement as follows.

1. Assignment. Effective the Effective Date, HNLV hereby transfers and assigns all right, title, interest, and liability in and to the Agreement, arising on, before or after the Effective Date, to JLV, and JLV hereby accepts all right, title, interest, and liability in and under the Agreement, regardless if such liability arose on, before or after the Effective Date. VCR hereby consents and accepts, (i) the assignment, transfer and conveyance to JLV of all of HNLV's rights, title and interest in and under the Agreement and; (ii) the assumption by JLV of all of HNLV's rights and obligations under the Agreement.

As of the Effective Date, all references to "HNLV" in the Agreement shall now be replaced with "JLV" and mean "Jukebox LV LLC."

3. Warranty. HNLV and JLV each represent and warrant to VCR that the execution, delivery and performance of this Assignment has been duly authorized and requires no further consent other than the consent of VCR.

4. Release of Liability of Assignor. HNLV shall be released and forever discharged from all obligations to VCR arising out of or relating to the Agreement on, before or after the Effective Date.

5. Miscellaneous.

5.1 Ratification. Except as modified hereby, the Agreement is ratified and remains in full force and effect.

5.2. Choice of Law and Venue. This Assignment shall be binding upon, and inure to, the parties hereto, their respective successors and assigns, and shall be governed by and construed and enforced in accordance with the law (including the law governing conflict of law questions) of the State of Nevada. All disputes arising from or related to this Assignment shall be resolved through binding arbitration located in Las Vegas Nevada.

5.3 Binding Nature. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

Except as otherwise set forth above, all other terms of the Agreement shall remain unchanged.

HNLV LLC

5/23/16

Signature Date

Adam Steck

Print Name

CEO

Title

Jukebox LV LLC

5/23/16

Signature Date

Adam Steck

Print Name

CEO

Title

Venetian Casino Resort, LLC

DocuSigned by:
Peter Boyd
F2280B59D9D94A3...

5/25/2016

Signature Date

Peter Boyd

Print Name

SVP OPS

Title

Approved To Form Only
Venetian Casino Resort, LLC
Legal Department

LV 420669570v2

1600 Division Street, Suite 300
Nashville, TN 37203
USA

Phone: +1 615-963-3350
email: BRR@WMEentertainment.com

DWIGHT YOAKAM — *VIA ENTERTAINMENT TOURS, INC.*

ARTIST RIDER AND ADDENDA ATTACHED HERETO HEREBY MADE A PART OF THIS CONTRACT

Agreement made 18 Dec 2015 between VIA ENTERTAINMENT TOURS, INC. (hereinafter referred to as "PRODUCER") furnishing the services of DWIGHT YOAKAM (hereinafter referred to as "ARTIST") and ~~THE VENETIAN RESORT HOTEL CASINO~~/~~George Kirkantonis~~ (hereinafter referred to as "PURCHASER") Venetian Casino Resort, LLC

It is mutually agreed between the parties as follows:

The PURCHASER hereby engages the PRODUCER to furnish the services of ARTIST for the engagement (as described herein) upon all the terms and conditions herein set forth, including, without limitation, Addendum "A" (Additional Terms and Conditions), the Artist Rider, and any other PRODUCER addenda referenced herein (if any), all of which are attached hereto and fully incorporated herein by reference.
(Addendum B - Artist's Rider/Addendum C - Additional Terms)

1. **ENGAGEMENT VENUE(S):**
   THE VENETIAN RESORT HOTEL CASINO
   3355 Las Vegas Blvd. South
   Las Vegas, NV 89109
   USA

2. **DATE(S) OF ENGAGEMENT:** Fri 03 Jun 2016 - Sat 04 Jun 2016
   a. Number of Shows: 2
   b. Show Schedule(s):
   Fri 03 Jun 2016
   TBA: Doors
   TBA: Support - TBA; (30-45 min.)
   08:00 PM: DWIGHT YOAKAM; (60-125 min.)
   Sat 04 Jun 2016
   TBA: Doors
   TBA: Support - TBA; (30-45 min.)
   08:00 PM: DWIGHT YOAKAM; (60-125 min.)

3. **BILLING** (in all forms of advertising):
   100% Sole Headline Billing

4. **COMPENSATION:**
   $120,000.00 USD (One Hundred Twenty Thousand U.S. Dollars) GUARANTEE

   BONUS(ES):
   $5,000.00 USD: If the total number of tickets sold is equal to or greater than 2792
   $5,000.00 USD: If the total number of tickets sold is equal to or greater than 2967
   $5,000.00 USD: If the total number of tickets sold is equal to or greater than 3141
   $5,000.00 USD: If the total number of tickets sold is equal to or greater than 3316
   $5,000.00 USD: If the total number of tickets sold is equal to or greater than 3490

   REIMBURSEMENT(S):
   $2,500.00 USD for Production due: 03 Jun 2016 — Artist-supplied monitors

*Production Reimbursement provided ON TOP of Artist Guarantee

DEPOSIT requirements and PAYMENT TERMS are further set forth below in Section 10.

5. **PRODUCTION AND CATERING:**

*Purchaser to provide HOUSE sound and lights.

*Purchaser to provide and pay for $100/day "room credit" for Dwight Yoakam and Manager. Additionally, Purchaser to provide $50/day "room credit" for Artist Entourage (band/crew). Buyout in lieu of meals (Breakfast, Lunch, and Dinner).
After Show Food: Purchaser to offer three options to Artist and Crew, Production to select one option.

Purchaser to provide ONE (1) PAYMENT OF $2,500.00 for Artist-supplied monitors ($2500 total for 2 shows). Local S&L to Artist exact specs. Show requires specific consoles and gear, which shall be covered in Artist rider and show advance. Producer agrees to use Purchaser's current Avid profile and software.

Production Contact: Scott Tabura

6. **TRANSPORTATION AND ACCOMMODATIONS:**

a) ~~Air transportation:~~
b) Accommodations: *Purchaser to provide and pay for hotel accommodations as required by Artist. and as set forth herein.
c) ~~Air freight and excess baggage:~~
d) ~~Ground transportation:~~
e) Meals and incidentals: as set forth above and Dressing Room and Production Office catering.
f) ~~Other:~~

Any changes to the above-mentioned arrangements are subject to the sole and exclusive prior written approval of PRODUCER.

7. **SPECIAL PROVISIONS:**

- VIP seating and Artist comp seating must be approved by Management at least one week PRIOR to on-sale. Please send venue map with seats indicated to Angie Griffith (griffith@rosr.la).
- Purchaser to pay for and utilize Artist-supplied admats, radio, and television spots from TourDesign. No other forms of advertising are permitted. Contact Debby Ferguson at (323) 217-1100 or fergy@tourdesign.com.
- All Meet & Greets must be approved by management and MUST NOT exceed 20 people. Please indicate location, time and operating details (backdrop, camera policy, etc). The meet & greet will take place pre-show in the private ~~members lounge~~ designated area.
- Purchaser agrees that Artist shall have the right to cancel this engagement at any time without any liability whatsoever upon notice of such cancellation to Purchaser in the event that Artist shall enter or has entered into a motion picture, television and/or theatrical obligation(s) which conflict in whole or in part with the engagement hereunder. Artist shall provide a minimum of thirty days notice unless otherwise agreed by Purchaser.
- Notwithstanding anything to the contrary set forth in this contract and/or any Purchaser's addendum, this contract is entered in to, and wholly governed by, the laws of California. The sole and exclusive jurisdiction should any dispute arise under this agreement shall be ~~(competent court in the State of California) resolved through binding Arbitration.~~ CST
- Still photographers may photograph Artist during the first three songs only, no flash. Video coverage will be considered and approved on a case by case basis. All media must obtain written approval from Liz Norris (Norris@rosr.la) for photographers and camera crews at least two (2) days prior to the engagement. Management-approved photographers will then be issued a photo pass by the Artist's Tour Manager prior to the show. Shooting, both still and video, is only permitted from the soundboard area (FOH), balcony, or areas in rear of House ALWAYS—no photos may be taken below eye-level of Artist (i.e. from pit, floor, etc). Artist will have complete control over the placement of any video cameras used for IMAG or video recordings. All cameras should be at chest height of the artist or higher. Please check with Artist's Production Manager and/or Tour Manager for camera placement on stage. ~~We are generally agree to this as it pertains to employees and agents of VEN, and will use commercially reasonable efforts to assist in the request. Please~~ The parties understand that some of this (e.g. Dwight, his band, his bus, or his gear) may be in public spaces, or able to be seen from public spaces, and as such there may be limitations as to enforcement upon the general public.
- Purchaser to provide ticket counts to WME Nashville on Mondays and Thursdays. Counts should be called in to (615) 983-3352 or emailed to nashticketcounts@wmeentertainment.com by 12:00PM CST on ticket count days.

Artist agrees not to make any public performance, or promote any other public appearance, within a one-hundred (100) mile radius of the Resort any time prior to show date.

8. **ARTIST RIDER:**

PURCHASER shall provide and pay for all terms and conditions contained in the ARTIST rider and shall fully comply with all provisions thereof as negotiated by and between the parties.

9. **CURRENCY AND EXCHANGE RATE:**

10. **PAYMENT TERMS:**

a. DEPOSIT in the amount of 50,000.00 USD shall be paid to and in the name of PRODUCER's agent, WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC, to be received not later than 03 May 2016; (*Must have fully executed agreement to issue payment*)

All deposit payments shall be paid via certified or cashier's check sent to:

WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC
ATTN: Brandon Rountree
1600 Division Street, Suite 300
Nashville, TN 37203
USA

OR via bank wire as follows:

CITY NATIONAL BANK 54 Music Square East Nashville, TN 37203	ABA no.: 064009445 William Morris Endeavor Account No.: 6840001426 ORG: The Venetian Resort Hotel Casino / REF: Dwight Yoakam / Jun. 03, 2016 WME booking code: PAC 752606

Please be sure to specify the following to avoid confusion and/or misapplication of funds: your company name, (or vendor), name of the artist, start date of the Engagement(s).

b. BALANCE of the monies shall be paid to and in the name of PRODUCER by wire or cashier's check or bank wire (as designated by PRODUCER), to be received by PRODUCER not later than prior to the first show of the Engagement.

company STET

"Via Entertainment Tours, Inc."

c. Earned percentages, averages and/or bonuses, if applicable, are to be paid to PRODUCER ~~in cash (if requested by PRODUCER, and to the extent permitted by law) or by certified or cashier's~~ check or bank wire (as designated by PRODUCER), ~~immediately~~ following the last show of the Engagement.

company Tuesday

~~d. In the event the full price agreed upon to be paid by PURCHASER does not include percentages or averages, and the actual gross box office receipts from the Engagement exceed the gross potential as stated herein, such amounts shall be paid in full to PRODUCER in cash (if required by PRODUCER and to the extent permitted by law) or by certified or cashier's check or bank wire (as designated by PRODUCER), immediately following the last show of the Engagement.~~

Purchaser shall not change ticket pricing/scale without Producer's Prior approval (not to be unreasonably withheld).

Notwithstanding the above, upon Purchaser and Producer's agreement, payments may be made to William Morris Endeavor Entertainment, LLC as Producer's agent, and for and on behalf of Producer.

11. **SCALING AND TICKET PRICES:**

	CAP. TYPE	PRICE	COMPS	KILLS	SELLABLE	FAC.FEE	PARKING	CHARITY	TIC.FEE	VIP	SCNDRY	OTHER	NET PRICE	GROSS POT.
Fri 3 Jan 8:00 PM	148 Reserved	$110.28	0	0	148				9.17				$101.11	$16,321.44
	844 Reserved	$75.84	40	0	804				9.17				$66.67	$60,975.36
	512 Reserved	$61.88	0	0	512				9.17				$52.71	$31,682.56
	311 Reserved	$49.68	30	0	281				9.17				$40.51	$13,960.03
Sat 4 Jan 8:00 PM	148 Reserved	$110.28	0	0	148				9.17				$101.11	$16,321.44
	844 Reserved	$75.84	40	0	804				9.17				$66.67	$60,975.36
	512 Reserved	$61.88	0	0	512				9.17				$52.71	$31,682.56
	311 Reserved	$49.68	30	0	281				9.17				$40.51	$13,960.03
	3,630		140	0	3,490									$245,878.88

SCALING NOTES:

*LET Tax INCLUDED in Ticket Prices
*Comps: 30 to Artist, 20 to Venue (comps will be backed out of capacities and provided at a mix of p2 and p1) (per show)

ADJUSTED GROSS POTENTIAL:	$213,875.58
LOCAL / CITY SALES TAX - 11.18%	($19,753.41)
	($19,753.41)
NET POTENTIAL:	$192,368.75

*Net Potential does not reflect event expenses, including without limitation Credit Card Fees; F&B; Hotel Rooms; Marketing; Etc.

12. **EXPENSES:**

TYPE	FLAT AMOUNT	% AMOUNT	PER TICKET	MAX AMOUNT	NOTES
Production	$2,500.00				
Support	$1,000.00	(opening Act)			Artist-supplied monitors 300/night
Expense Totals:	$3,500.00				

STET

~~PURCHASER understands that PRODUCER has veto on the above show expenses. PURCHASER agrees to furnish PRODUCER, no later than settlement of the Engagement(s) with a final statement of actual expenses, including certified paid bills, receipts, advertising tear sheets and venue contract. If the final actual expenses total less than the expenses stated herein then the split figure or total expenses used to determine the percentage of the net, will be reduced by the difference between the total expenses previously submitted by PURCHASER and the total actual expenses. Any increases to the above expenses are subject to PRODUCER's approval.~~

13. **MERCHANDISING:**

Venue sells; CD/DVD: 90.00% of proceeds to ARTIST. *Venue to be paid on NET merchandise sales - Artist pays fees, commissions, and taxes
Venue sells; T-Shirts/Soft: 85.00% of proceeds to ARTIST *Venue to be paid on NET merchandise sales - Artist pays fees, commissions, and taxes

14. **VISAS AND WORK PERMITS:**

15. **TAXES:**

ADDENDUM "A" (ADDITIONAL TERMS AND CONDITIONS), ARTIST RIDER, AND ANY OTHER PRODUCER ADDENDA REFERENCED HEREIN (IF ANY), ARE ALL ATTACHED HERETO AND FULLY INCORPORATED HEREIN BY REFERENCE. Additionally, Addendum B - Artist's Rider and Addendum C - Additional Terms are attached hereto and incorporated herein.

IN WITNESS WHEREOF, the parties hereto have hereunto set their names and seals on the day and year first above written.

DWIGHT YOAKAM
THE VENETIAN RESORT HOTEL CASINO
Seq.: 2501892

DocuSigned by:
George Markantonis

By: [illegible]

THE VENETIAN RESORT HOTEL CASINO* Venetian Casino Resort, LLC
George Markantonis
3355 Las Vegas Blvd South
Las Vegas, NV 89109
Date: 5/17/2016
Title: President and COO
Care of: Joe Zimmerle
The Venetian

By: [illegible]

VIA ENTERTAINMENT TOURS, INC
Fed ID: 95-4084071
Print Name: Matt Maher
Date: 5/19/16
Title:

Return all signed contracts to WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC at the address above: Attention: Business

Approved To Form Only
Venetian Casino Resort, LLC
Legal Department

ADDENDUM "A"

ADDITIONAL TERMS AND CONDITIONS

A. COMPENSATION

(1) Unless otherwise specified, all payments shall be made in full without any deductions whatsoever. If not already indicated on the face page of this Agreement, PURCHASER will advise PRODUCER, or PRODUCER's agent, promptly upon request (but in no event later than the on-sale date), of the net admissions prices for the entertainment presentation and shall further disclose any added charges and applicable tax in connection therewith.
(2) ~~In the event the payment to PRODUCER shall be based in whole or in part on receipts of the performance(s) hereunder, PURCHASER agrees to deliver to PRODUCER a certified statement of the gross receipts of each performance within two (2) hours following each performance. PRODUCER shall have the right to have a representative present in the box office at all times and such representative shall have access to box office records of PURCHASER relating to gross receipts of the Engagement.~~ STET
(3) ~~In the event that the payment of PRODUCER's share of said performance(s) receipts is based in whole or in part upon expenses related to the Engagement, PURCHASER shall verify by paid receipts, cancelled check or similar documents all such expenses, or they shall not be included as an expense of the Engagement.~~
(4) ~~In the event the payment to PRODUCER does not include a percentage payment, if the actual gross box office receipts from the Engagement exceed the gross potential as stated on the face of this Agreement or as otherwise agreed in writing between the parties, such excess shall be immediately paid in full to PRODUCER in cash.~~

B. TICKETS

(1) PURCHASER shall not announce, advertise, promote or sell tickets to the Engagement until authorization in writing has been received from PRODUCER.
(2) ALL TICKETS MUST BE NUMBERED. NO TICKETS SHALL BE PRICED AT MORE THAN THE AGREED UPON PRICE EXCLUSIVE OF VALUE ADDED TAX OR OTHER SALES-BASED TAX WITHOUT PRODUCER'S PRIOR APPROVAL.
(3) If ticket price scaling shall be varied in any respect, the percentage of compensation payable to PRODUCER shall be based upon whichever of the following is more favorable to PRODUCER: (i) the ticket price scaling set forth on the face page of this Agreement or as otherwise agreed in writing by the parties, or (ii) the actual ticket price scaling in effect for the Engagement.
(4) ~~The PRODUCER's representative shall have the right to inspect ticket stubs and all box office and other records with respect to such receipts, including, but not limited to unsold tickets, printed but unsold tickets (so called "deadwood") and stubs of tickets sold, for the purpose of verifying the statements. PRODUCER's representative will upon request be admitted to the box office at all times during the sale of tickets for the Engagement hereunder.~~ STET
(5) There shall be no dynamic ticket pricing unless mutually agreed upon by PRODUCER and PURCHASER in writing. In the event the parties agree to participate in dynamic ticket pricing all terms thereof shall be subject to mutual written approval including, without limitation, all ticket prices and adjustments thereto, scaling, gross box office potential and additional ticketing charges (if any). All elements thereof, including, without limitation, all ticket pricing/scaling/adjustments, ticketing charges (if any) and final gross revenue must be transparent and presented at settlement in writing to PRODUCER to evidence compliance with the foregoing.
(6) PURCHASER agrees that any inclusion of ARTIST's performance hereunder in a subscription or other type of series is subject to the prior written consent of PRODUCER.
(7) PURCHASER shall not commit ARTIST to any interviews, promotional appearances, meet & greets, or otherwise without PRODUCER's prior, written consent, which shall be given or withheld in PRODUCER's sole discretion. Not withstanding the above, Artist shall be available as agreed in Artist's Rider (Section 21 and 22) and Section 7 above.

C. FACILITIES

(1) PURCHASER agrees to furnish at its sole cost and expense on the date(s), time(s) and place(s) of the performance(s) all that is necessary for the proper and lawful presentation of the Engagement, including, without limitation, a suitable venue, well-heated, ventilated, lighted, clean and in good order, stage curtains, properly tuned grand piano or pianos and all necessary first class sound equipment in perfect working condition including amplifiers, microphones in number and quality required by PRODUCER, dressing rooms (clean, comfortable, properly heated and air-conditioned and near the stage), all necessary electricians and stage hands, all necessary first class lighting, tickets, house programs, all licenses (including musical performing rights licenses), adequate security, ushers, ticket sellers, ticket takers, appropriate and sufficient advertising in all media and PURCHASER shall pay all other necessary expenses in connection therewith.
(2) PURCHASER shall also provide at its sole cost and expense all necessary equipment for the Engagement hereunder as provided on the face of the Agreement, or as designated in the attached ARTIST Rider, unless otherwise agreed by PRODUCER and PURCHASER in writing. Exact requirements to be advised if same differs from ARTIST Rider specifications.
(3) PURCHASER will pay all music royalties in connection with PRODUCER's use of music, and in addition, the costs of any musicians (including contractor) other than those furnished by PRODUCER as part of PRODUCER's regular company.
(4) PURCHASER agrees to pay all amusement taxes, if applicable.

STET

(5) ~~PURCHASER shall comply with all regulations and requirements of any union(s) that may have jurisdiction over any of the said materials, facilities and personnel to be furnished by PURCHASER and PRODUCER.~~

(6) If PRODUCER so requires, PURCHASER will furnish at its expense all necessary facilities, electricians, stage hands and other personnel for lighting and dress rehearsals. ~~PURCHASER shall furnish at its own expense all other items and personnel including, but not limited to, any and all personnel, including musicians, as may be required by any national or local union(s) required for the proper presentation of the performance hereunder, and any rehearsals therefore, except for those items and personnel which PRODUCER herein specifically agrees to furnish.~~

(7) PURCHASER shall ensure compliance with all applicable requirements of laws and regulations as to health and safety, licensing, insurance, hygiene, fire, access, egress, security, and generally in relation to the performance(s) and the venue(s) for such performance(s).

(8) PURCHASER shall be solely responsible for providing a safe environment for the Engagement, including but not limited to with respect to the staging, stage covering, grounding, supervision and direction of the Engagement, and security, so that the Engagement and all persons and equipment are free from adverse weather and other conditions, situations and events ("Adverse Conditions"). PRODUCER/ARTIST shall not have any liability for any damage or injury caused by such Adverse Conditions.

D. PRODUCTION CONTROL

(1) PRODUCER shall have the sole exclusive creative control over the production and presentation of ARTIST's performance at the Engagement hereunder, including, but not limited to, the details, means and methods of the performance of the performing artists hereunder, and PRODUCER shall have the sole right, as PRODUCER may see fit, to designate and change at any time the performing personnel other than the ARTIST herein specifically named.

(2) ARTIST shall at all times be the headline act and will be the closing act of each show, unless otherwise specified herein. PURCHASER agrees that no performers other than those to be furnished by PRODUCER hereunder will appear on or in connection with the Engagement hereunder. ~~PURCHASER agrees to supply and pay for all supporting acts, if any, which must be requested and/or approved by PRODUCER.~~

(3) PURCHASER agrees to promptly comply with PRODUCER's directions as to stage settings for the performance hereunder.

(4) It is understood that no stage seats are to be sold or used without PRODUCER's prior written consent.

E. EXCUSED PERFORMANCE

If, as the result of a Force Majeure Event (as defined below), PRODUCER or ARTIST is unable to, or is prevented from, performing the Engagement or any portion thereof or any material obligation under this Agreement, then PRODUCER's and ARTIST's obligations hereunder will be fully excused, there shall be no claim for damages or expenses by PURCHASER, and PURCHASER shall bear its own costs and expenses in connection with this Agreement. Notwithstanding the foregoing: (i) PURCHASER shall be obligated and liable to PRODUCER for such proportionate amount of the payment provided for herein as may be due hereunder for any performance(s) which PRODUCER may have rendered up to the time of the inability to perform by reason of such Force Majeure Event; and (ii) in the event of such non-performance as a result of a Force Majeure Event, if ARTIST is ready, willing, and able to perform (but for the occurrence of such Force Majeure Event), then PURCHASER shall nevertheless pay PRODUCER an amount equal to the full GUARANTEE plus all other payments and compensation due hereunder. For clarification, in the event of cancellation due to any Force Majeure Event, ~~and whether or not~~ ARTIST is ready, willing and able to perform, PURCHASER shall remain responsible for all transportation, accommodations, expense reimbursements and any other payments or compensation for PRODUCER/ARTIST and entourage pursuant to the terms of this Agreement. STET

A "Force Majeure Event" shall mean any one or more of the following acts which makes any performance(s) by PRODUCER or ARTIST contemplated by this Agreement impossible, infeasible or unsafe: acts of God; act(s) or regulation(s) of any public authority or bureau, civil tumult, epidemic, act(s) of the public enemy, act(s) or threats of terrorism; threats; insurrections; riots or other forms of civil disorder in, or around, the Engagement venue or which PRODUCER and/or ARTIST reasonably believe jeopardizes the safety of ARTIST, any of ARTIST's equipment, musicians or other performers, or any of PRODUCER's key personnel; embargoes; labor disputes (including, without limitation, strikes, lockouts, job actions, or boycotts); fires; explosions; floods; shortages of energy or other essential services; failure of technical facilities; failure or delay of transportation; death, disability, illness, injury or other inability to perform of ARTIST, any of ARTIST's musicians, other performers, crew, representatives or advisors, any of ARTIST's family members, any of PRODUCER's key personnel, or any other person personally known to ARTIST whose death, disability, illness or injury adversely impacts ARTIST's ability to perform in connection with the Engagement; or other similar or dissimilar causes beyond the control of ARTIST or PRODUCER which make any performance(s) contemplated by this Agreement impossible, infeasible or unsafe.

F. INCLEMENT WEATHER

Notwithstanding anything contained to the contrary herein, inclement weather shall not be deemed a Force Majeure event and PURCHASER shall remain liable for payment to PRODUCER of the full GUARANTEE plus all other compensation due hereunder if the performance(s) is rendered impossible, infeasible or unsafe by such weather conditions. For clarification, PURCHASER shall remain responsible for all other terms and conditions of this Agreement, including, without limitation accommodations, transportation, and expense reimbursements for ARTIST and touring party. The above Purchaser obligation shall be conditioned on Artist being ready, willing, and able to perform at the location of the shows.

G. PRODUCER'S RIGHT TO CANCEL
See Agreement, Section 7 Special Provisions above.

~~PURCHASER agrees that PRODUCER may cancel the Engagement hereunder without liability by giving the PURCHASER notice thereof at least thirty (30) days prior to the commencement date of the Engagement hereunder. Upon termination of the Agreement in accordance with this Section G, PRODUCER shall return to PURCHASER any deposit previously received by PRODUCER in connection with the Engagement. Subject to the foregoing, upon such termination, the parties shall have no further rights or obligations hereunder, and each of the parties shall bear its own costs incurred in connection with this Agreement.~~

H. BILLING

(1) ARTIST shall receive billing in such order, form, size and prominence as directed by PRODUCER in all advertising and publicity issued by or under the control of the PURCHASER, including, but not limited to, displays, newspapers, radio and television ads, electric lights, posters, housebounds and announcements.
(2) PURCHASER may only use ARTIST's name and pre-approved: voice, likeness, materials, pictures, photographs, image, or other identification of ARTIST (collectively, "ARTIST's Likeness") in connection with PURCHASER's advertising and publicizing of the Engagement, however PURCHASER's use of ARTIST's Likeness shall not be as an endorsement or indication of use of any product or service and no corporate or product/service name or logo shall be included in any such advertising and publicity absent PRODUCER's prior written approval in each instance. Notwithstanding the foregoing, the placement, form, content, appearance, and all other aspects of PURCHASER's use of ARTIST's Likeness shall at all times be subject to the prior written approval of PRODUCER.

I. MERCHANDISING

PRODUCER shall have the exclusive right to sell souvenir programs, ballet books, photographs, records and any and all types of merchandise including, but not limited to, articles of clothing (i.e. T-shirts, hats, etc.), posters, stickers, etc., on the premises of the place(s) of performance without any participation in the proceeds by PURCHASER subject, however, to concessionaire's requirements, if any, as specified in this Agreement. Notwithstanding the above, all sales must be made through and approved by Purchaser's Retail Dept. (Tina Peatris - (702) 607-4040) Subject to Contract Face terms

J. NO RECORDING/BROADCAST

PURCHASER shall not itself, nor shall it permit or authorize others (including, without limitation, PURCHASER or venue employees, representatives or contractors) to record, broadcast, televise, film, photograph, webcast, or otherwise reproduce the visual and/or audio performances hereunder (or any part thereof) and/or ARTIST and/or PRODUCER's personnel at any time during the Engagement.

K. PURCHASER DEFAULT material material

(1) In the event PURCHASER refuses or neglects to provide any of the items herein stated or comply with any provisions hereunder, and/or fails to promptly make any of the payments as provided herein and/or fails to proceed with the Engagement and/or fails to furnish PRODUCER or ARTIST with any documentation, tickets or notice or proof thereof as required hereunder, at the times herein specified, then any such failure shall be deemed a substantial and material breach of this Agreement and PRODUCER shall have the right (in PRODUCER's sole discretion), without prejudice to any other rights and remedies to: (i) immediately terminate this Agreement and cancel any or all remaining Engagement hereunder; (ii) retain all amounts already paid to PRODUCER by PURCHASER as partial compensation for such breach; (iii) receive the full GUARANTEE (or the unpaid balance thereof) plus all other payments and other compensation due pursuant to this Agreement ~~and all out-of-pocket expenses incurred by PRODUCER and ARTIST in connection with the Engagement or the transactions contemplated by this Agreement~~; and (iv) PRODUCER and ARTIST shall have no further liabilities and/or obligations in connection with the Engagement or the transactions contemplated by this Agreement. ~~For the avoidance of doubt, in all instances PURCHASER shall remain responsible for all~~ RET transportation, accommodations, and expense reimbursements for PRODUCER/ARTIST and entourage pursuant to the terms of this Agreement.
(2) If, on or before the date of any scheduled Engagement, PURCHASER has failed, neglected, or refused to perform any contract with PRODUCER/ARTIST, and/or any contract with any third party relating to this Engagement, and/or any other contract with any other performer for any other engagement (whether or not related), or if the financial standing or credit of PURCHASER has been impaired or is in PRODUCER's opinion unsatisfactory, PRODUCER shall have the right to demand payment of the full GUARANTEE and all other compensation due pursuant to this Agreement. If PURCHASER fails or refuses to make such payment forthwith, then any such failure shall be deemed a substantial and material breach of this Agreement, and PRODUCER shall have the right (in PRODUCER's sole discretion), without prejudice to any other rights and remedies, to: (i) immediately terminate this Agreement and cancel any or all remaining Engagement hereunder; (ii) retain all amounts already paid to PRODUCER by PURCHASER as partial compensation for such anticipatory breach; (iii) receive the full GUARANTEE (or balance thereof) and all other compensation due pursuant to this Agreement and all out of pocket expenses incurred by PRODUCER and ARTIST in connection with the Engagement or the transactions contemplated by this Agreement; and (iv) PRODUCER and ARTIST shall have no further liabilities and/or obligations in connection with the Engagement or the transactions contemplated by this Agreement. For the avoidance of doubt, in all instances PURCHASER shall remain responsible for all transportation, accommodations, and expense reimbursements for PRODUCER/ARTIST and entourage pursuant to the terms of this Agreement. Notwithstand the above, Producer and/or Artist shall provide Purchaser with written notice a minimum of fifteen (15) days Prior written notice, and opportunity to cure before exercising their rights under this Section K.

but in no event shall any such cure occur later than within a reasonable time prior to performance.

L. INSURANCE/INDEMNIFICATION

(1) PURCHASER shall obtain and maintain, from the date hereof through completion of the Engagement, commercial general liability insurance coverage, including a contractual liability endorsement as respects this Agreement, liquor liability (either from PURCHASER, if PURCHASER is furnishing liquor, or from PURCHASER's designated concessionaire), in an amount of not less than ~~Five~~ Million Dollars ($5,000,000) per occurrence (but in no event in amounts less than the limits required by the venue and/or as set forth in the ARTIST rider, if any); business automobile liability insurance covering all owned, non-owned and hired vehicles used by or on behalf of PURCHASER with a minimum combined bodily injury and property damage liability limit of Five Million Dollars ($5,000,000) per occurrence, and workers compensation and employer's liability insurance (including stop gap liability where applicable) with minimum limits of One Million Dollars ($1,000,000) per claim (but in no event in limits less than those required by law and/or less than the limits required by the venue and/or as set forth in the ARTIST rider, if any.)

~~Notwithstanding the foregoing, for any Engagement at which the allowable capacity is in excess of Twenty-Five Thousand (25,000) attendees, but less than Fifty Thousand (50,000) attendees, the required commercial general liability insurance coverage limit shall be in an amount of not less than Ten Million Dollars ($10,000,000) per occurrence, and for any Engagement at which the allowable capacity is Fifty Thousand (50,000) or more attendees, the required commercial general liability insurance coverage limit shall be in an amount of not less than Fifteen Million Dollars ($15,000,000) per occurrence. All of the insurance requirements set forth above shall not be construed as a limitation of any potential liability on behalf of PURCHASER. All such insurance required above shall be primary and non-contributory, and shall be written by insurance companies qualified to do business in the state(s) of the Engagement(s) with A.M. Best ratings not less than A minus or better. Such insurance policies shall contain a waiver(s) of subrogation with respect to the PRODUCER, ARTIST and their respective officers, directors, principals, agents, employees and representatives and shall provide that the coverage thereunder may not be materially changed, reduced or cancelled unless thirty (30) days prior written notice thereof is furnished to PRODUCER/ARTIST (but less than ten (10) days prior to each Engagement). PURCHASER shall furnish PRODUCER/ARTIST with an appropriate certificate(s) of insurance evidencing compliance with the insurance requirements set forth above and naming PRODUCER, ARTIST and PRODUCER/ARTIST's respective officers, directors, principals, agents, employees and representatives as additional insureds. PRODUCER's failure to request, review or comment on any such certificates shall not affect PRODUCER's rights or PURCHASER's obligations hereunder. Upon request, PURCHASER shall immediately furnish to PRODUCER/ARTIST a full and complete copy of all insurance policies required to be maintained by PURCHASER herein.~~

(2) PURCHASER hereby agrees to save, indemnify and hold harmless PRODUCER and ARTIST, and their respective agents, representatives, principals, employees, officers and directors, from and against any claims, suits, arbitrations, liabilities, penalties, losses, charges, costs, damages or expenses, including, without limitation, reasonable attorney's fees and legal expenses, incurred or suffered by or threatened against PRODUCER or ARTIST or any of the foregoing in connection with or as a result of any claim including without limitation, a claim for death, personal injury or property damage or otherwise brought by or on behalf of any third party person, firm or corporation as a result of or in connection with the Engagement, or any acts or omissions of PURCHASER or its employees, agents, or other representatives in connection with the transactions contemplated by this Agreement, which claim does not directly result from the ~~gross~~ negligence of the ARTIST and/or PRODUCER.

M. ROLE OF AGENT

WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC acts only as agent for PRODUCER and assumes no liability hereunder and in furtherance thereof and for the benefit of William Morris Endeavor Entertainment, LLC, it is agreed that neither PURCHASER nor PRODUCER/ARTIST will name or join William Morris Endeavor Entertainment, or any of its officers, directors, principals, agents, employees and representatives as a party in any civil action or suit anywhere in the world, arising out of, in connection with, or related to any acts of commission or omission pursuant to or in connection with this Agreement by either PURCHASER or PRODUCER/ARTIST.

N. NOTICES

All notices required hereunder shall be given in writing at the addresses stated in the preamble of this Agreement. Producer shall provide copies of all notice to Purchaser TO: Venetian Casino Resort, LLC, ATTN: General Counsel, 3355 Las Vegas Blvd. South, Las Vegas, Nevada 89109.

O. CONTROLLING PROVISIONS

In the event of any inconsistency or conflict between the provisions of this Agreement and the provisions of any riders, addenda, exhibits or any other attachments hereto, the parties agree that the provisions most favorable to PRODUCER and ARTIST shall control.

P. LIMITATION OF LIABILITY

In no event shall PRODUCER and/or ARTIST (nor any of their respective agents, representatives, principals, employees, officers, directors and affiliates) be liable to PURCHASER (or any third party) for any indirect, incidental, consequential, special, punitive (or exemplary), or any similar damages, including, without limitation, lost profits, loss of revenue or income, cost of capital, or loss of business reputation or opportunity, as to any matter under, relating to, or arising out of the Engagement or the transactions contemplated by this Agreement, whether in contract, tort or otherwise, even if PRODUCER and/or ARTIST has been advised of the possibility of such damages. Under no circumstances shall the liability of PRODUCER and/or ARTIST (or any of their

respective agents, representatives, principals, employees, officers, directors or affiliates) exceed, in the aggregate, an amount equal to the lesser of (i) the amount of reasonably necessary out-of-pocket expenses directly incurred by PURCHASER in connection with the Engagement; or (ii) the amount of the GUARANTEE which ARTIST and/or PRODUCER have actually received in accordance with the terms of this Agreement. PURCHASER agrees that it shall not (and shall cause its affiliates not to) seek indirect, incidental, consequential, special, punitive (or exemplary), or any other similar damages as to any matter under, relating to, or arising out of the Engagement or the transactions contemplated by this Agreement. The above shall not be applicable to Producer or Artist's negligent or willful misconduct.

Q. MISCELLANEOUS PROVISIONS

(1) Nothing in this Agreement shall require the commission of any act contrary to applicable law ~~or to any rules or regulations of any union, guild or similar body~~ having jurisdiction over the services and personnel to be furnished by PRODUCER to PURCHASER hereunder. In the event of any conflict between any provision of this Agreement and any such law, rule or regulation, such law, rule or regulation shall prevail and this Agreement shall be curtailed, modified, or limited only to the extent necessary to eliminate such conflict.

(2) PURCHASER agrees that no activities governed by this Agreement may be undertaken contrary to United States law, including, but not limited to, the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, and regulatory and sanctions programs administered by the U.S. Department of Treasury's Office of Foreign Assets Control. PURCHASER warrants that neither it nor any financier, sponsor, or contributor to the Engagement is a person or entity on the U.S. Treasury Department's list of Specially Designated Nationals and Foreign Sanctions Evaders List, the U.S. Commerce Department's Denied Persons List or Entity List, or otherwise designated as subject to financial sanctions or prohibited from receiving U.S. services. Moreover, PURCHASER represents and warrants that it is not controlled by any such person or entity and is not controlled by a national or resident of any such country. PURCHASER further agrees to notify both PRODUCER and WME immediately in writing of any change in ownership or control that might violate this Section of the Agreement.

(3) This (and any ~~of PRODUCER's~~ riders, addenda, exhibits or attachments hereto) constitutes the sole, complete and binding agreement between the parties hereto, and may not be amended, supplemented, altered or discharged except by an instrument in writing signed by the parties. If any part of this Agreement is determined to be void, invalid or unenforceable, such invalid or void portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect, as though the void and invalid portions or provisions were never a part of this Agreement.

(4) ~~This Agreement shall be construed in accordance with the laws of the State of Tennessee applicable to agreements entered into and wholly to be performed therein. Unless stipulated to the contrary in writing, all disputes arising out of this Agreement, wherever derived, shall be resolved in Nashville, Davidson County in the State of Tennessee in accordance with the laws of that State; in the event of any such dispute, either party may effect service of process on the other party by certified mail, return receipt requested, and said service shall be equivalent to personal service and shall confer personal jurisdiction on the courts in Nashville, Davidson County in the State of Tennessee and shall be deemed effective upon the earlier of the recipient's mail receipt date or ten (10) days after the mailing of such process, provided that a duplicate of such process shall have been mailed to the other party by ordinary mail at the same time as the certified mailing.~~ See section 7 - Special Provisions above.

(5) PURCHASER shall not have the right to assign or transfer this Agreement, or any provision thereof, and Producer may not assign this Agreement without Purchaser's written consent.

(6) The waiver of any breach of any provision of this Agreement shall not be deemed a continuing waiver, and no delay in exercise of a right shall constitute a waiver.

(7) Nothing herein contained shall ever be construed as to constitute the parties hereto as a partnership, or joint venture, nor to make PRODUCER and/or ARTIST liable in whole or in part for any obligation that may be incurred by PURCHASER, in PURCHASER's carrying out any of the provisions hereof, or otherwise. THE PERSON EXECUTING THIS AGREEMENT ON PURCHASER'S BEHALF WARRANTS HIS/HER AUTHORITY TO DO SO, AND SUCH PERSON HEREBY PERSONALLY ASSUMES LIABILITY FOR THE PAYMENT OF SAID PRICE IN FULL.

(8) The terms "ARTIST" and "PURCHASER" as used herein shall include and apply to the singular and the plural and to all genders.

(9) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one (1) and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or electronic delivery (i.e. PDF format), including electronically signed versions of the same, shall be as effective as delivery of a manually executed counterpart of this Agreement and shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

R. AFM PROVISIONS

~~(1) Wherever the term "Federation" is used herein it shall mean the American Federation of Musicians of the United States and Canada. Whenever the term "Local Union" is used herein it shall mean the Local Union of the Federation with jurisdiction over the territory in which the engagement covered by this contract is to be performed.~~

~~(2) No performance of the engagement shall be recorded, reproduced, or transmitted from the place of performance, in any manner or by any means whatsoever, in the absence of a specific written agreement with the Federation relating to and permitting such recording, reproduction or transmission.~~

~~(3) It is expressly understood by the parties hereto that neither the Federation nor the Local Union are parties to this contract in any capacity except as expressly provided in 7 above, and therefore, neither the Federation nor the Local Union shall be liable for the performance of breach of any provision hereof.~~

~~(4) A representative of the Local Union, or the Federation, shall have access to the place of engagement covered by the contract for purposes of communicating with the ARTIST(s) performing the engagement and the PURCHASER.~~

*In the Event of any discrepancies, Artist Rider shall prevail.

Addendum C
Additional Terms

Notwithstanding any other term or condition in the Entertainment Agreement by and between Venetian Casino Resort, LLC ("Purchaser") and Via Entertainment Tours, Inc. ("Producer") dated on or about December 18, 2016 (the "Agreement") to which this Addendum is attached, the following shall be applicable thereto. **AS AMENDED**

1. Gaming; Regulatory Compliance; Ethics; Use of Funds and; Code of Conduct.

Producer understands and acknowledges that this Agreement, at the Purchaser's discretion, may be subject to Producer and/or William Morris Endeavor Entertainment, LLC ("WME") and its principals completing and submitting to Purchaser a due diligence compliance questionnaire (including an Authorization for the Release of Information) and being found suitable by the Purchaser's Gaming Compliance Committee. Notwithstanding any other provision in this Agreement to the contrary, Purchaser may immediately terminate this Agreement without further obligation or liability to Producer if, ~~in the judgment of Purchaser's Gaming Compliance Committee, or representatives thereof,~~ the relationship with Producer and/or WME could subject Purchaser to disciplinary action by gaming regulatory authorities or cause the Purchaser to lose or become unable to obtain or reinstate any federal, state and/or foreign registration, license or approval material to the Purchaser's business.

In connection with the its own business, each party shall comply, and cause its subcontractors to comply, with all applicable local, state, federal, and international rules, laws, and regulations related anti-corruption, anti-money laundering, and gaming, including those governing the providing of incentives, inducements, kickbacks, gratuities or bribes, including without limitation the U.S. Foreign Corrupt Practices Act of 1977 (FCPA) (15 U.S.C. §§ 78dd-1, e t seq.) which precludes giving, offering or agreeing to give anything of value to foreign government officials or holders of and candidates for public office or political parties, their families and agents, directly or indirectly, in connection with obtaining or maintaining contracts or orders or obtaining other benefits. The FCPA also requires complete and accurate record-keeping which records each party shall maintain. ~~to the extent applicable under the law~~

Producer represents that it has not ~~provided~~ knowingly, and shall not ~~provide~~ knowingly, directly or indirectly, funds or other consideration to any person or entity (including Purchaser and its employees and agents) to improperly procure special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing Producer's relationship with Purchaser. Producer shall cause all of its ~~officers, directors,~~ employees, ~~members, partners,~~ agents, ~~subcontractors and suppliers~~ to comply with the restrictions contained in this paragraph. ~~to the extent applicable under the law.~~

~~Producer has read, understands, and agrees to comply with, and not do anything in violation of Purchaser's~~ Supplier Code of Conduct, as available at: http://www.sands.com/files/LVS_SupplierCodeofConduct_Jan2013.pdf, ~~or as a hard copy of which may be requested in writing by Producer from Purchaser.~~

2. Personally Identifiable Information ("PII"). To the extent that the services under the Agreement requires Producer to have access to personally identifiable information about an individual hereinafter referred to as "PII"), Producer shall after receipt thereof, treat such PII as confidential and safeguard such information from unauthorized use and disclosure. Producer agrees to allow access only to those employees who need the PII to perform services under the Agreement, and agrees that PII will be used solely for the purpose of performing services under the Agreement. Producer shall ~~ancure that~~ take reasonable steps to prevent its employees ~~will not~~ from discuss, divulge or disclose any such PII to any person or entity except those persons ~~within Producer's organization directly~~ concerned with the performance of the Agreement. ~~Producer shall~~

~~administer a monitoring process to ensure compliance with the provisions of this section, promptly report in writing any breaches to Purchaser, and implement immediate, appropriate corrective actions to contain and prevent recurrence.~~ Protected PII is an individual's first name or first initial and last name in combination with any one or more of the following data elements including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts, etc. All electronic copies of Protected PII must be protected with NIST FIPS 140-2 compliant encryption while in transit. to the extent applicable under the law.

3. ~~Warranties. Producer hereby warrants to Purchaser that Producer shall perform the services provided hereunder in a timely and professional manner, consistent with industry standards, using individuals of suitable training and skill.~~ Producer shall perform according to its reputation.

4. Expense Reimbursement and Audit. Producer understands and agrees that all reimbursable expenses must be agreed and authorized by Purchaser, ~~in writing prior Producer's incurring such, subject to~~ Purchaser's policies regarding reimbursement as available ~~at http://www.sands.com/files/2015-Contractor-Expense-Reimbursement-Policy.pdf~~, or as a hard copy of which may be requested in writing by Producer ~~from Purchaser~~, and subject to Purchaser's audit at any time during the term of the Agreement ~~and for a period of three (3) years thereafter.~~

5. Indemnification. Producer shall indemnify, ~~defend~~ and hold harmless Purchaser and its ~~affiliates~~ agents and ~~subsidiaries, and each of their officers, agents and employees~~ employees (individually and collectively the "Indemnitees") from any ~~and all~~ liability, loss, damage or expenses (including attorney fees) they may suffer as the result of ~~claims, demands, costs or judgments which may be made or instituted against them or any of them by reason of Producer's breach of any representation, warranty, or obligation set forth in the Agreement.~~ Any third party claim for death, personal injury, or property damage where such claim is the direct result of the sole negligence or intentional misconduct of Producer or its (or their agents or employees) and such claim is reduced to a final judgment by a court of competent jurisdiction or as required in the course of business (e.g., attorneys, agents, consultants)

6. Confidentiality. Each Party shall hold all Confidential Information in trust and confidence and maintain the confidentiality of all of the proprietary information and data of the other Party. As used herein, "Confidential Information" shall mean any information relating to, disclosed or proprietary to either Party, including but not limited to data and information concerning the processes, product designs, sales, cost and other unpublished financial information, product and business plans, projections and marketing data; without limitation, any information designated "Confidential" shall be deemed Confidential Information. Each Party agrees it shall not use such information for any purpose other than as expressly set forth in this Agreement or disclose any confidential information to any person, company or entity, except to the extent necessary to comply with the law or the valid order of a court of competent jurisdiction. Each Party's confidential information shall remain their property and shall be considered furnished in confidence to the other Party. Confidential Information shall not include, and neither Party will be liable for disclosure of, any information received by the receiving Party under this Agreement if the information: (a) is generally available to or known to the public through no wrongful act of the receiving Party; (b) was previously known by the receiving Party through no wrongful act of the receiving Party; (c) was independently developed by the receiving Party; or (d) was disclosed to the receiving Party by a third Party under no obligation of confidentiality to the other Party.

Dwight Yoakam

2016 Contract & Technical Rider

Addendum B

CORPORATION:

Via Entertainment Tours, Inc.
c/o Etc. Etc. Communications
7920 Sunset Boulevard Suite 460
Los Angeles, Ca 90046
Phone: (323) 874-6464
Fax: (323) 874-6222
Email: etcetc@viaentertainment.net
Federal ID #: 95-4084071

~~Dwight Yoakam Rider~~

~~THE FOLLOWING SHALL CONSTITUTE THE RIDER TO ENGAGEMENT AGREEMENT NUMBER _____ DATED _____ BETWEEN _____ (HEREINAFTER REFERRED TO AS "PURCHASER") AND (HEREINAFTER REFERRED TO AS "ARTIST") WITH RESPECT TO ARTIST'S PERFORMANCE AND SERVICES AS VOCALISTS AND MUSICIANS RENDERED IN CONNECTION WITH A LIVE CONCERT PERFORMANCE SCHEDULED ON~~

~~_____ AT _____~~
~~(Date of Show) (Artist's Showtime)~~

~~_____~~
~~(Name of Venue)~~

~~_____~~
~~(Address of Venue)~~

~~(HEREINAFTER REFERRED TO AS THE "ENGAGEMENT").~~

STET

~~The Dwight Yoakam rider ("Rider") forms an integral part of the aforementioned Engagement Agreement to which it is annexed. This Rider, together with the Engagement Agreement, shall at times hereinafter be referred to as the "Agreement". The Agreement and any additional clause sheets must be signed, returned and agreed to by Artist in writing before the date of the Engagement.~~

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1. CONTACTS

MANAGEMENT:

Matt Maher, Kristina Tanner, and Angie Griffith
ROAR
1400 18th Ave South
Nashville, TN 37212
Phone (615) 858-1282
maher@roar.la
tanner@roar.la
griffith@roar.la

BOOKING AGENT:

Jay Williams & Lane Wilson
William Morris Endeavor
1600 Division Street, Suite 300
Nashville, TN 37203
Phone (615) 963-3000
jow@wmeentertainment.com
lwi@wmeentertainment.com

TOUR/PRODUCTION MANAGER:

Tim Durfey
Cell (310) 849-4532
timdurfey@aol.com

ROAD MANAGER:

Rich Modica
Cell (562) 884-7055
rmodica@me.com

INTERVIEWS & PROMOTIONAL MATERIAL:

Liz Norris, Austin Hegarty, & Amy Williams
ROAR
Liz Norris (917) 755-1005; norris@roar.la
Austin Hegarty (512) 468-9963; hegarty@roar.la
Amy Williams (415) 608-9634; norris_asst@roar.la

PROMO MATERIALS:

TourDesign Creative
http://www.tourdesign.com/dwight-yoakam/dwight-yoakam-81.html
WME
http://wmeclients.com/music/country/dwight-yoakam

MERCHANDISING:

Rob Suchan & Melanie Macaulay
Warner Music Group
Rob Suchan (615) 687-6655
Robert.Suchan@wmg.com
Melanie Macaulay (818) 953-3349
melanie.macaulay@wmg.com

BUSINESS MANAGERS:

Michael Walsh and Susan Schulberg
GELFAND, RENNERT AND FELDMAN
1880 Century Park East, 16th Floor
Los Angeles, CA 90067
Phone (310) 556-6623
mwalsh@grfllp.com / sschulberg@grfllp.com

2. **PAYMENTS** ~~See Section 10 - Payment Terms of the Agreement.~~

STET

~~Balance payment is to be made upon request the day of show PRIOR to the commencement of the performance by cashier's check or cash. No certified checks, company checks, personal checks, or ACH wires will be accepted. All cashier's checks should be made payable to: Via Entertainment Tours, Inc. The Federal ID number for Via Entertainment Tours is: 95-4084071. Artist reserves the right to request payment in cash. Casino checks will need to be cashed at the casino cage by the tour manager. The Via Entertainment W-9 will be provided at settlement, in addition to the incorporation papers. The Via Entertainment representative will only provide proof of identification and present their driver's license, no social security numbers will be provided. All international dates (including Canada) must be paid in full by wire transfer only no later than 72 hours prior to event.~~

3. **BILLING**

In all headline situations, Artist shall receive one hundred percent (100%) sole "star" billing in any and all publicity releases and paid advertisements, including but not limited to, programs, fliers, signs, lobby boards and marquees. No other name or photograph shall appear in the same type, size, thickness, boldness and prominence as that accorded to Artist and no other name or photograph shall appear on the same line as that of Artist, or above Artist's name. **When not headlining**, Artist shall always receive one hundred percent (100%) "special guest star" billing.

In all advertising and publicity, Artist shall be billed as:

Dwight Yoakam

When headlining, the Purchaser agrees to use only the admats supplied by the Artist to promote the Engagement. Promoter also agrees to use only the pre-produced radio and television spots, the cost of which will be considered a show expense. PLEASE VISIT TOURDESIGN CREATIVE: http://www.tourdesign.com/dwight-yoakam/dwight-yoakam-81.html

When not headlining, the Purchaser agrees to check with Artist's Management for any specified artwork before printing any posters and/or advertising for this Engagement. The Artist's logo(s), as provided, must be used at all times and a copy of the poster/advertising must be sent to Artist's management ("Manager") for approval before going to print.

Purchaser agrees to provide Agent with an accurate running order for the show, including playing times of all acts on the bill, at the time Artist is contracted to play the Engagement.

4. CONTROL OF PRODUCTION

Artist shall have the sole and exclusive control over the production, presentation and performance of Artist in connection with this Engagement, including but not limited to, the details, means and methods of the performance of Artist and each member thereof, and the persons to be employed by Artist in performing the provisions hereunder. **When headlining:** Artist shall have the sole right, as Artist may see fit, to designate and change the performing personnel other than Artist. It is specifically understood and agreed that the production staff of the Artist shall have sole and absolute authority in directing personnel operating all lighting and sound equipment during rehearsal and each performance scheduled herein.

Purchaser agrees to give Artist and Artist's production staff complete control as to where Artist's equipment is to be placed and at no time shall it be moved or tampered with by any persons other than Artist's production staff.

Artist MUST have FULL control over all audio system processing and at NO time shall Artist/FOH ever be routed through another* console (*another = third party, house, secondary console). The only routing acceptable is from our preferred FOH console DIRECTLY TO the system. If this chain is not to FOH/PM approval, Artist has the right not to perform. The Tour Manager, Production Manager and/or FOH engineer act as Artist's representatives and will determine if the audio routing complies with Artist's standards and specifications.

~~Artist shall have the final word on what time the doors to the place of performance are opened to the public~~. No member of the public shall be allowed to enter the place of performance unless clearance has been obtained from the Artist's Production Manager and/or Tour Manager.

Artist will not be using any video enhancement for the show and we request that there are no advertisements played on house video or that there are no banners placed in the building without prior approval. All lighted signs in the house must be turned off during Artist's performance.

Artist will have complete control over the placement of any video cameras used for IMAG or video recordings. All cameras should be at chest height of the artist or higher. Please check with Artist's Production Manager and/or Tour Manager for camera placement on stage.

SMOKE MACHINES ARE NOT PERMITTED TO BE IN USE on the stage or in the vicinity of the stage at any point during or immediately prior to the Artist's performance under any circumstances without prior written approval from management. If smoke machines are utilized at any point during Artist's performance, Artist has the right to vacate the area and cease to perform without any penalty whatsoever.

NOISE: For safety reasons, the use of any equipment (vacuums, blowers, etc.) that creates sufficient noise to render the Production Staff unable to communicate properly is prohibited. This will be in effect especially when any rigging or de-rigging is taking place. THIS IS A VERY IMPORTANT SAFETY ISSUE.

When headlining: Artist shall perform for a minimum of sixty (60) minutes and shall be permitted to perform for a greater duration at the option of the Artist without the interference of any kind from the Purchaser or its agents. Artist shall have sole and exclusive control of all elements of their performance, including staging, lighting, sound and creative and theatrical material. This is to

include the provision of taped music before and after any supporting acts and directly prior to Artist's performance.

Purchaser warrants that Artist's performance will be uninterrupted and that Purchaser shall, under no circumstances, bring about anything to affect the length of Artist's performance. In the event the show is running late and Artist has not directly caused said delay, Purchaser shall remedy the delay in the first half of the show so as not to affect Artist's full performance.

Under no circumstances shall the house lights be switched on or off without the express consent of Artist's tour manager and/or Production Manager.

5. APPROVAL OF OTHER PERFORMERS

When headlining: Artist reserves the right of approval over any other supporting persons or acts who appear in conjunction with the Engagement and the right to determine the length and nature of the supports' performance(s). A violation of this clause shall entitle Artist to refuse to furnish the performance described herein and Purchaser shall remain obligated to make all payments herein set forth.

Purchaser agrees that there will be no Master of Ceremonies, no welcoming speeches, no introductions, and no ceremonies at intermission except without the Artist and/or their management's prior written approval. All requests for Master of Ceremonies, welcoming speeches, introductions and/or ceremonies at intermission must be submitted in writing to Artist's management at least two weeks in advance of engagement for consideration.

In the event of any additional act(s) being employed, Artist shall have the first right to set up all instruments and properties used in the presentation of the Artist's performance, and the aforesaid instruments and properties shall not be moved, re-located, or used by anyone other than Artist or Artist's production staff. Artist also shall have the first right to soundcheck up to fifteen minutes before the official time of the opening of the doors to the public.

6. CANCELLATION

See section 7 - Special Provisions of Agreement.

~~Purchaser agrees that Artist may cancel the Engagement hereunder, at Artist's sole discretion, by giving Purchaser notice thereof at least thirty (30) days prior to the commencement date of the Engagement hereunder.~~

~~Purchaser agrees that Artist shall have the right to cancel this engagement at any time without any liability whatsoever upon notice of such cancellation to Purchaser in the event that Artist shall enter or has entered a motion picture, television and/or theatre obligation(s) which conflict in whole or in part with the engagement hereunder.~~

7. FORCE MAJEURE

See Addendum A, Section 8 of the Agreement.

~~Artist's obligation to furnish the performance(s) referred to herein is subject to the detention or prevention by sickness, inability to perform, accident, means of transportation, Act of God, riots, strikes, labor difficulties, war, epidemics and any act or order of any public authority or any cause, similar or dissimilar, beyond Artist's control.~~

~~Provided Artist is ready, willing, and able to perform, Purchaser agrees to compensate Artist in accordance with the terms hereof regardless of Act of God, fire, accident, riot, strike, war, or any events of any kind or character whatsoever, whether similar or dissimilar to the foregoing events which would prevent or interfere with the presentation of the show hereunder.~~

8. INCLEMENT WEATHER See Addendum A, Section F of the Agreement.

~~Notwithstanding anything contained herein, inclement weather shall not be deemed to be a force majeure occurrence and the Purchaser shall remain liable for payment of the full contract price even if the performance(s) called for herein are prevented by such weather conditions. Artist shall have the sole right to determine in good faith whether any such weather conditions shall render the performance(s) impossible, hazardous or unsafe.~~

~~When a performance is to take place outdoors, Purchaser shall ensure that the stage is covered by a roof, which can safely hold the weight of all sound and light equipment that will be hung from such roof. Purchaser will also ensure that the roof does not leak. Purchaser agrees to ensure that the sound and light boards, as well as Artist's equipment and instruments, will also be protected from inclement weather. PURCHASER ASSUMES LIABILITY FOR ALL EQUIPMENT AND INSTRUMENT DAMAGE DUE TO WEATHER.~~

9. REPRODUCTION OF PERFORMANCE

NO portion of the performance (this includes sound check, backstage, and side-stage) rendered hereunder may be broadcast, photographed, recorded, filmed, taped or embodied in any form for any purpose of reproducing such performance without Artist's prior written consent. Purchaser agrees to deny entrance to any persons carrying audio or video recording devices. Without limiting in any way the generality of the foregoing prohibition, it is understood to include members of the audience, press, support acts, and local staff and crew. UNAUTHORIZED PHOTOGRAPHY OF THE ARTIST, MEMBERS OF THE BAND, OR ANY GEAR AT ANY TIME IS STRICTLY FORBIDDEN.
The above shall not include approved PR and Marketing requests, or cell phones as being able to be taken into the venue.

Purchaser shall provide, at his sole cost, signs at each entrance to the venue stating "SORRY, NO RECORDING EQUIPMENT OR CAMERAS ALLOWED" in large, bold, visible letters. Also, the Purchaser shall provide security at each entrance to check that recorders or cameras are not allowed into the performance or backstage areas. (excluding cell phones).

In the event that the Purchaser, his agents, servants, employees, contractors, etc., reproduce, or cause to be reproduced, the performance in the form of films, tapes, or any other means of audio or audiovisual reproductions, upon demand by Artist, Purchaser shall deliver all of the same (together with any and all masters, negatives and other means of reproductions thereof) to Artist at Purchaser's sole cost and expense, in addition to all other legal or equitable remedies which Artist may have.

10. SPONSORSHIP AND ENDORSEMENTS

All forms of sponsorship, whether part of an ongoing series or specifically for Artist's show, must be authorized in writing by Artist or Management. The name **Dwight Yoakam** may not be used or associated, directly or indirectly, with any product or service without prior written consent of Artist.

Due to Dwight Yoakam's Gibson guitar endorsement, he is only allowed to sign the following instruments. All signing of instruments needs to be approved in advance with the Artist's Tour / Production Manager. No last minute requests please.

Gibson 1964 Texan - (Not McCartney) acoustic in sunburst or antique natural
Epiphone Masterbuilt - AJ-500R (R-rosewood) or AJ-500M (M-mahogany) if the "R" is not available.
Epiphone Casino electric - Japanese made version in natural or vintage sunburst
Gibson 185 - Natural Finish
Epiphone - Casino Sunburst
Epiphone - 1965 John Lennon Casino "Outfit"
Gibson - Limited Edition Ed Casino with Bigsby
Gibson - Southern Jumbo

11. PURCHASER ASSUMES LIABILITY

~~Except as otherwise herein specifically provided,~~ Purchaser hereby assumes full liability and responsibility for the payment of any and all costs, expenses, charges, claims, losses, liabilities, and damages related to or based upon the presentation or production of the Engagement. as set forth in the Agreement.

12. INDEMNIFICATION See Addendum A, Section L (2) of the Agreement.

~~The Purchaser agrees to indemnify and hold harmless Artist and Artist's employees, contractors and/or agents from and against any claims, costs (including lawyers' fees and court costs), expenses and damages, liabilities, losses or judgments arising out of, or in connection with, any claim, demand or action made by any third party, including but not limited to local, state, and Federal governmental entity, if such are sustained as a direct consequence of the Engagement.~~

~~The Purchaser shall also indemnify and hold harmless the Artist and Artist's employees, contractors and/or agents from and against all loss, damage and/or destruction occurring to Purchaser's employees, contractors or agents, instruments, and equipment at the place of the Engagement, including but not limited to, damage, loss, or destruction caused by Act of God.~~

~~Should any damage occur to Artist's equipment, or any other equipment hired by the Artist, due to mishandling of the equipment by the loaders, stagehands, and/or any person not employed fully and directly by Artist, the Purchaser agrees to accept sole responsibility and to compensate the Artist in full for the repair or replacement of any such damaged equipment.~~

13. CHOICE OF LAW/FORUM

This agreement shall be deemed made and entered into in the State of California and shall be governed by all of the laws of such state applicable to agreements wholly to be performed therein.

14. INSURANCE See Addendum A, Section L (1) of the Agreement.

STET

(a) ~~Notwithstanding anything to the contrary, PURCHASER shall ensure, and hereby warrants and represents that each concert event (including, without limitation, each performance therein), facility, and site of the performance hereunder (on the dates of load-in, each performance hereunder and load-out) shall be safe for all persons and property, free from any risks of or actual danger or hazards to life, health or property. PURCHASER shall be solely responsible for providing and maintaining such safe conditions. PURCHASER shall obtain and continually maintain insurance with respect to each concert~~

~~event (including, without limitation, each performance therein), facility and site of performance hereunder, for property damage, personal injury and third party claims, in the enforceable amount(s) of not less than One Million Dollars ($1,000,000.00) per performance, per occurrence with a One Million Dollar ($1,000,000.00) General Aggregate to apply per show (with a deductible to be mutually agreed upon by PRODUCER and PURCHASER, of no greater than Ten Thousand Dollars ($10,000), which shall be paid by PURCHASER), naming ARTIST and PRODUCER as primary insureds, and naming PRODUCER's and ARTIST's representatives as additional insureds thereunder. Such policy(ies) shall be written on an occurrence basis, such that claims made immediately prior, during, and/or after each concert event hereunder (including, without limitation, each performance therein with respect to act(s) and/or omission(s) during, immediately prior to, and/or immediately after each concert event hereunder (including without limitation, each performance therein), regardless whether in or about the facility or site, shall be fully covered thereunder.~~

~~As proof of such insurance, a fully paid Certificate of Insurance will be submitted to PRODUCER by PURCHASER for PRODUCER's prior approval at least four (4) weeks prior to the engagement hereunder. Such policy shall contain a provision requiring the insurance company to give PRODUCER at least ten (10) days written notice prior to any revision, modification, or cancellation thereof. Any proposed change in Certificate of Insurance or the underlying policy(ies) shall be submitted to PRODUCER for its prior written approval. PRODUCER shall be entitled to a copy of the then prevailing Certificate of Insurance, which shall be furnished PRODUCER by PURCHASER.~~

(b) ~~PURCHASER shall maintain in effect a policy of Worker's Compensation Insurance covering all of their employees, including those who are involved in the installation, operation and/or maintenance of the equipment provided by PRODUCER and/or PURCHASER.~~

STET

(c) ~~PURCHASER shall indemnify, save, and hold harmless PRODUCER, ARTIST, and PRODUCER's and ARTIST's present and future respective officers, principals, representatives, affiliates, licensees, agents, employees, musicians, crew, attorneys, accountants, successors, substitutes and assigns (the foregoing, including, without limitation, ARTIST and PRODUCER, "PRODUCER PARTIES") from and against any and all claims, demands, debts, liens, damages, liabilities, costs, expenses (including attorneys', paralegals', and accountants' fees and costs and court costs, whether or not litigation is commenced) and judgments arising out of or in connection with any breach or alleged breach by PURCHASER of any implied or actual representation, warranty or agreement made by PURCHASER herein, any claim by a third party with respect to PURCHASER's obligations pursuant to any agreement(s) directly or indirectly relating to and/or the advertising and promotion thereof, or any bodily injury, death, or loss of or damage to property in any way related to the concert event(s) (including without limitation, the concert performance(s) hereunder) or any authorized or unauthorized acts(s) or omission(s) of PURCHASER OR PURCHASER's employees, agents or independent contractors retained by PURCHASER (including the facility and site of concert event(s)), and all costs whatsoever in connection with the concert event(s) (including, without limitation, the concert performance(s) hereunder). Without limiting the generality of the foregoing, PURCHASER is responsible for security and safety of each concert, the facility and site and its immediate vicinity, including the security and safety of PRODUCER AND ARTIST, ARTIST's musicians and crew, ARTIST's entourage, audience members, the facility and site personnel and any invitees or attendees, and PURCHASER hereby indemnifies PRODUCER PARTIES from all claims with respect thereto. PURCHASER shall reimburse PRODUCER on demand for any payment made, or expense incurred, by any of the PRODUCER PARTIES at any time in connection with any liability or claim with respect to which the respective PRODUCER PARTIES are entitled to be indemnified.~~

STET

(d) ~~It is specifically understood that ARTIST's performance after any failure of PURCHASER or facility to provide either policies or certificates require hereinabove or the failure of PURCHASER to provide the same, shall not be deemed a waiver of PRODUCER's rights and remedies or of any of PURCHASER's obligations hereunder. PURCHASER shall still be solely responsible for providing or causing to be provided all of such insurance and PURCHASER shall be fully liable for its failure to provide or cause to be provided the same.~~

15. ANTICIPATORY BREACH

If, on or before the date of the Engagement hereunder, the financial standing or credit of Purchaser has been impaired or is unsatisfactory, or Purchaser has failed, neglected, or refused to perform any contract with any other performer for any earlier engagement, Artist shall have the right to demand payment forthwith of the guaranteed compensation specified above, and if Purchaser fails or refuses to make such payment forthwith, Artist shall then have the right to cancel this engagement by notice to Purchaser. In the event of such cancellation, Artist shall have no further obligation to Purchaser hereunder, and shall retain any monies theretofore paid to Artist by Purchaser. The Producer shall provide Purchaser with written notice and opportunity to cure prior to exercising any of its Rights under this Section 15.

16. FAILURE TO FULFILL OBLIGATIONS

Each one of the terms and conditions of this Rider is of the essence of the Agreement and necessary for Artist's full performance hereunder. In the event Purchaser refuses or neglects to provide any of the items herein stated, and/or fails to make any of the payments as provided herein, Artist shall have the right to refuse to perform under this Agreement, shall retain any amounts theretofore paid to Artist by Purchaser, and Purchaser shall remain liable to Artist for the agreed upon price herein set forth. The Producer shall provide Purchaser with written notice and opportunity to cure prior to exercising any of its Rights under this Section 16.

17. MODIFICATION OF CONTRACT

It is understood and agreed that the Agreement may not be assigned, changed, modified, or altered except by an instrument in writing, signed by the parties, in accordance with the law of the State of California. Nothing in the Agreement shall require the performance of any act contrary to the law ~~or to the rules or regulations of any union, guild, or similar body~~ having jurisdiction over services of Artist or over the performances hereunder. Whenever there is any conflict between any provisions of the Agreement and any law, ~~or any such rule or regulation of any such union, guild or similar body,~~ such law, ~~rule or regulation~~ shall prevail, and the Agreement shall be modified to the extent necessary to eliminate such conflict. This Rider, together with the Engagement Agreement referred to herein, is the sole and complete agreement between the parties with respect to the Engagement. Nothing in this contract shall be construed to constitute the parties as a partnership or joint venture, and Artist shall not be liable in whole or in part for any obligation that may be incurred by Purchaser in carrying out any of the provisions hereof, or otherwise.

STET

~~Any Agreement returned with the Rider unattached, unsigned or altered in any way, without the prior negotiation and written consent from the Artist or Manager or Agent, shall make the contract null and void and shall be deemed reason for immediate cancellation of the Engagement(s) specified hereunder and Purchaser will be liable for the Artist's full agreed upon fee. In case of any conflict of terms, the terms contained in this Rider shall prevail over all others including any printed, handwritten or typewritten terms located elsewhere in this contract, unless approved in writing by Artist's management.~~

18. INTERNATIONAL TRAVEL

~~In the event the place of performance is outside the continental limits of the United States, Purchaser agrees to procure, at Purchaser's sole expense, for Artist and Artist's production staff, the necessary visas, work permits, customs, immigration, and other documents of any nature whatsoever necessary or usually obtained to enable Artist to render its services hereunder.~~

~~When entering, and exiting Canada it is the artist's sole discretion whether to use the promoter's immigration and custom assistance. Should the artist opt to use their own company, all fees incurred will be charged back to the purchaser due at settlement. Immigration and customs assistance bill back shall not exceed the sum of $1,000 USD.~~

19. TAXES

~~Purchaser shall be responsible for, and indemnify and hold Artist harmless from and against, all local, municipal, country or government taxes, fees or levies on all income earned by Artist, or Artist's employees, while in the country or countries covered by this contract.~~

This is an independent contractor contract. No payroll, FICA, or any other employer/employee-related taxes shall be deducted.

20. MERCHANDISING See Addendum A, Section I of the Agreement.

STET

~~The Purchaser will need to provide a well-lit and secure place to erect a merchandising stall. The stall shall be in such a position as to be easily visible to the public using the main entrance. This is to be at no cost to the Artist. Purchaser agrees that its arrangement for presenting the Engagement provided for herein shall prohibit the sale of souvenir or similar merchandise on the premises in connection with this engagement other than Artist's official merchandise furnished by Artist and the receipts shall belong exclusively to Artist.~~ **Whether or not the Artist is headlining, Artist shall not be restricted as to the price, number of pieces or types of merchandise that Artist can sell.**

**All questions relating to merchandising should be directed to
Rob Suchan and Melanie Macaulay at WARNER MUSIC GROUP.**

21. INTERVIEWS

Purchaser shall not commit Artist to any personal appearances, interviews, promotions, meet and greets, sponsorships, radio station co-presents or welcomes, or any other media tie-ins, without the prior written consent of Artist and Management. Only bona fide press or broadcast interviews will be considered and must receive written approval.

22. MEDIA

Still photographers may photograph Artist during the first three songs *only*, no flash. Video coverage will be considered and approved on a case by case basis. All media must obtain written approval from Liz Norris (ROAR) for photographers and camera crews at least two (2) days *prior* to the engagement. Management-approved photographers will then be issued a photo pass by the Artist's Tour Manager prior to the show. Shooting, both still and video, is only permitted from the soundboard area (FOH), balcony, or areas in rear of House ALWAYS – no photos may be taken below eye-level of Artist (i.e. from pit, floor, etc).

Approved photographer may only publish 3 photos; a written request must be submitted to management for permission in order to post any additional photos. Each additional photo may be considered and approved by management in writing on a case-by-case basis.

Approved photographer may not link out to a photo stream, personal website, blog, Instagram, or any other social media account whatsoever. Photos may only be used in conjunction with the approved publication and/or its official website.

Please forward all press clippings related to the Engagement to:
Etc. Etc. Communications
7920 Sunset Boulevard Suite 460
Los Angeles, CA 90046

23. BOX OFFICE PROVISIONS

~~Purchaser agrees to have on hand at the place of performance the night of the show, for counting and verification by representative of the Artist, all unsold tickets. Artist shall be compensated for the difference between the number of unsold tickets on hand and shown to its representative and the number of tickets printed as shown by the ticket manifest (a notarized, signed statement from the printer of tickets setting forth the number of tickets sold in each price category). If Purchaser shall violate any of the preceding provisions of the paragraph, it shall be deemed that Purchaser has sold a ticket for each seat in the house (and any permitted standing room) at the highest ticket price for which the house is sealed. Purchaser further agrees to give said representative the right to enter the box-office at any time (prior to, during, and after the performance) and to examine and make extracts from the box-office records of Purchaser relating to the gross receipts of this Engagement. A written box-office statement, certified and signed by the Purchaser, will be furnished to Artist within one (1) hour following each performance. Purchaser may not sell tickets to the Engagement as part of a subscription or other type of series of other concerts, without written consent of Artist or Management. All tickets printed under the manifest shall be of the one-stub, one-price variety. There shall be no multiple price tickets printed. Examples of tickets prohibited under this Agreement are:~~ STET

~~a) One price for students and a different price for general admissions on the same ticket; or;~~

~~b) One price for tickets bought in advance and a different price for tickets bought at the gate on the same ticket.~~

~~Further, no tickets can be sold for seats located to the rear of the stage in which the stage and equipment on stage is obstructing normal eye-level viewing of Artist's performance, unless the location of the seat is clearly indicated on the ticket. Accordingly, all such tickets sold behind bandstand must be marked "impaired vision" or "behind stage".~~ STET

~~If Purchaser violates the above conditions, Purchaser shall be liable for the total amount of tickets sold at the highest price printed on the ticket. All tickets shall be printed by a bonded ticket house or computerized ticket agency. (Example - Globe Ticket, Arcus Simplex, Ticketmaster) or, if the performance is at a college or university, the official printing department of the university or college.~~

~~Purchaser agrees not to discount tickets or to offer tickets as a premium without first obtaining permission in writing from the Artist. If Purchaser does sell or distribute discount or complimentary~~ STET

~~tickets without Artist's prior approval, or in excess of the number printed, Purchaser shall be liable for the full ticket price of each such ticket sold or distributed.~~ STET

~~Expenses shall not exceed the original budget without prior authorization from Artist's representative. All payments to Artist are to be made in cash unless specific arrangements are made prior to the day of the performance with the Manager and Agent.~~ STET

~~Artist's Tour Manager shall have the right to be present in the box office prior to, during and after the performance.~~ STET

24. SCALING

Purchaser will clearly print the **specific capacity, gross potential, and ticket price breakdown** of the facility where Artist is to perform under this Agreement on the face of the Engagement Agreement to which this Rider is attached.

~~**In the event Artist is to receive a percentage of the gross receipts for this Engagement** pursuant to the terms hereof, the term "gross receipts" or "gross box office receipts" or similar phrases, shall mean all box office receipts computed on the basis of the full retail ticket price for all tickets sold and in no event less than the full retail ticket price for all persons entering the performance with no deductions of any kind, less only federal, state or local admissions taxes and allowable discounts as approved by Artist in writing.~~

25. PERCENTAGE ENGAGEMENTS N/A

~~With respect to performances where the Artist's fee, or a portion thereof, is based upon a percentage, the following provisions shall apply:~~

(a) ~~The purchaser shall keep all expenditures to a minimum and shall be liable for all payments whether or not mentioned herein. If a receipt from a payee is not produced, the Purchaser shall be deemed not to have paid the expense concerned. Should the Purchaser fail to make payments to the Artist promptly, this shall constitute a breach of the Agreement entitling the Artist, in addition to all other rights, to cancel any one or all concerts at Artist's sole discretion without liability or responsibility for such cancellation to the Purchaser. All sums paid up to that point to the Artist shall be non-returnable even though the concerts in respect thereof do not take place.~~

(b) ~~Purchaser shall furnish to the Artist or Agent, no later than two (2) weeks prior to the scheduled Engagement, a plot plan and printer's ticket manifest of the house and all tickets shall be sold accordingly with prices stated.~~ STET

(c) ~~If the actual amount of an item or expense mentioned on the schedule of expenses hereto is less than that specified herein, an amount equal to the difference shall immediately be paid by the Purchaser to the Artist. The Purchaser shall not be entitled to offset an actual increase in the specified expense of another item or to make the Artist in any way liable for an increase in the amount of expense unless agreed to in writing by the Artist.~~

(d) ~~Percentage payments provided for hereunder shall be accompanied by a written statement from the Purchaser, together with detailed accounts setting out all gross receipts and income from, and expenditures incurred in connection with the performance(s) to be delivered to Artist's authorized~~

~~representative on-site immediately following close of box office. In addition, Purchaser shall also make available to Artist, all documents, papers, vouchers, receipts, ticket books and all other matter to enable Artist to verify figures supplied and Artist or Artist's accountants shall be entitled at all times to inspect the books and accounting records of the Purchaser insofar as they relate to the Engagement and to take copies of or extracts from them.~~

26. COUNTERFEIT TICKETS

With respect to counterfeit tickets, the Purchaser is liable for any and all such tickets and under no circumstances should the Artist assume any loss on these tickets.

27. COMPLIMENTARY TICKETS AND VIP EXPERIENCE TICKETS

VIP Experience logistics/seating and Artist comp seating must be approved by Management at least one week PRIOR to on-sale. Please send venue map with seats indicated to Angie Griffith (griffith@roar.la).

Promoter agrees to provide Artist with the following tickets:

I. COMPLIMENTARY TICKETS PER SHOW

(a) ~~Fifty (50)~~ Thirty (30) complimentary tickets in P1 (rows 5 through 10) for Artist's personal use. Any unused tickets will be released at Management's discretion prior to the performance.

b) ~~Artist at minimum receives (75) tier 1 complimentary tickets and reserves the right to request additional complimentary tickets in the following markets: California, Ohio, Kentucky, New York City, and Tennessee. In Los Angeles specifically artist receives (150) complimentary tier 1 tickets and reserves the right to request more.~~

(c) ~~A minimum of twenty (20) tickets in a good location are to be held for Via Entertainment for purchase. Contact information for Via Entertainment is listed in the Contact section of this Rider.~~

(d) ~~Support ARTIST will be permitted to use an additional twenty (20) complimentary tickets in a good location.~~

~~When not headlining, Purchaser must provide Artist with up to thirty (30) complimentary tickets per performance in rows 10-20 directly in front of the stage.~~

It is understood and agreed that no surcharge will be added to price of any of the above-mentioned tickets. Any unused portion of tickets mentioned above may be placed on sale the day of the Engagement with the permission of Artist or Artist's representative.

Purchaser agrees not to offer tickets as a premium or "trade out" tickets without first obtaining permission in writing from the Artist's management. "Trade out" tickets shall refer to any tickets used in exchange for advertising time on radio or any product and/or service necessary to produce the Engagement.

Purchaser agrees that if NO ADMISSIONS is charged to any part of the audience for the Engagement hereunder, this condition must be so stated on the face of the attached Engagement Agreement. If, at

the Engagement, there is evidence that admission was or is being subsequently charged for Artist's performance, Purchaser agrees that Artist must receive 100% of the admission receipts collected.

II. VIP EXPERIENCE TICKETS
FIFTY (50) VIP Experience tickets in the first ten rows of P1 shall be sold through venue's ticketing system at $100.00 over ticket price and any taxes and fees, and the full $100.00 per ticket shall be paid directly to ~~WARNER MUSIC GROUP at show settlement by cash or casino check~~. VIP tickets shall be held for sale until release at Management's sole discretion IN WRITING. ~~**All VIP Experience payments should be made payable to WARNER MUSIC GROUP.**~~ STET

28. ACCOMMODATIONS

Purchaser is to provide ~~two~~ three nights accommodations in a 5 star hotel for Dwight Yoakam, his band, and his Road Manager. 1 (one) King Suite, 1 (one) Jr Suite, and 5 (five) king rooms are required for two (2) nights. The purchaser shall also provide a 4 star hotel for the crew which entails 10 (ten) King single rooms for ~~(2)~~ (3) nights. All rooms to be provided at The Venetian | The Palazzo, Las Vegas.

29. BACKSTAGE

(A) BACKSTAGE SECURITY & BACKSTAGE PASSES

It is essential that the Purchaser does not allow any persons in the backstage area and stage area once the Artist's equipment has been set up, without first consulting the Artist or the Artist's representative. This clause is to be respected until the Artist and Artist's equipment have left the venue following the performance. It is suggested that the Purchaser provide some form of identification (i.e. stickers or badges for the backstage area, to be distributed solely by the Artist's representative). **Should the Artist be headlining and have their own touring passes, these touring passes will be the only passes recognized as valid at the venue.** If the Purchaser requires any of the touring passes for Purchaser's staff, the passes should be obtained from the Artist's representative and requested seven (7) days prior to the show.

Purchaser agrees to provide the following security personnel:, to the extent mutually agree based on event needs.

1) **Backstage Security**
   - (a) One (1) person outside band dressing room area at 3:00 PM.
   - (b) One (1) person to secure bus and truck parking from start of load-in to end of load-out.
   - (c) One (1) person to be positioned at entrance leading to backstage from Artist's bus parking area from 3:00pm, staying until Artist leaves
   - (d) One (1) person to be positioned at entrance to backstage from any public area of venue.

2) ~~**Ticket Collection Points:** Security must be available to supervise the safety of the concert-goer prior to "Doors Open" outside the building.~~ STET

3) ~~**Show Security:** One hour prior to "Doors Open" time will take place to confirm detail of security. As a guide it is suggested that at least four men be positioned between the barricade and the stage and one (1) stationed at the sound mixer/light control position.~~ Should the nature of the venue require any special treatment with reference to security, it is the responsibility of the Promoter to use his own experience and provide adequate number of security personnel accordingly.

The parties shall work together in good faith to address all security concerns.
~~IT IS AGREED AND UNDERSTOOD THAT THE ARTIST AND/OR ARTIST'S REPRESENTATIVE MUST HAVE COMPLETE CONTROL OVER ALL SECURITY AT ALL TIMES.~~

(B) **PRODUCTION OFFICE** Venetian WIFI Available

PRODUCTION OFFICE AND DRESSING ROOMS MUST HAVE ACCESS TO INTERNET VIA HIGH SPEED WIRELESS AND OR DSL/CABLE SYSTEM(S). THERE MUST BE A PERSON AVAILABLE WHO HAS KNOWLEDGE OF THE SYSTEM ONSITE AT THE LOAD IN TIME. IF NO INTERNET/WI-FI IS AVALABLE, THE PROMOTER/PURCHASER WILL NEED TO PROVIDE HIGH SPEED 3G/4G USB MODEMS FOR TOURING PRODUCTION TEAM. THIS ITEM IS ESSENTIAL.

One (1) office for **ARTIST Production** use only. This office should have two (2) phone lines, two (2) phones, one (1) fax line, one (1) fax machine, and Broadband or High-speed internet connection. These phones are to be direct dial. Please have phone jacks marked with correct numbers prior to arrival. These numbers should be forwarded as soon as possible to the tour manager and production manager. It should also have two (2) 6' banquet tables, four (4) chairs, clean trash receptacles, and proper heating/air conditioning. This office must be clean and ready for use from the production load-in through the end of the production load-out. This office should be located as near to the stage area as possible.

One (1) office for **PURCHASER** use only, whenever possible. This office should have one (1) phone line and one (1) phone. Please have phone jack marked with correct number prior to arrival. It should also have one (1) 8' banquet table, three (3) chairs, clean trash receptacles, and proper heating/air conditioning. This office must be clean and ready for use from the production load-in through the end of the production load-out. This office should be located as near to the stage area as possible.

(C) **DRESSING ROOMS**

All dressing rooms are to be lockable and in the backstage area with a power point for tuning equipment and direct private access to the stage without having to go through the audience. The rooms must be well-lit, heated or air-conditioned as is appropriate, and have running water, electricity, and a restroom with a clean shower and clean toilet. The dressing rooms must be locked or guarded while Artist is on stage. Keys are to be handed to the Artist's representative upon arrival to the venue. It is essential that all rooms are thoroughly cleaned and have spotless bathroom facilities with a supply of fresh soap, toilet tissue, face tissue, paper towels, etc. If no dressing rooms are available, the purchaser is to provide (1) XL2 Prevost with a front lounge slide out.

1. **Band - dressing room requirements**
   (please also notice catering requirements [section E below]):
   a) Large team-sized room to comfortably hold six people and the following items:
   b) Two (2) couches (fabric, not vinyl)
   c) One (1) arm chair
   d) Four (4) folding chairs
   e) One (1) coffee table
   f) Two (2) 8' banquet tables
   g) One (1) end table
   h) One (1) table lamp

i) One (1) full length mirror
j) A selection of plants or trees
k) Room to be carpeted and draped

2. **Dwight Yoakam - dressing room requirements**
(please also notice catering requirements [section E below]):
a) One (1) small couch
b) One (1) arm chair
c) One (1) 8' table with cloth
d) One (1) coffee table
e) One (1) floor lamp
f) One (1) table lamp
g) One (1) full length mirror
h) ~~A selection of plants~~
i) Room to be carpeted and draped
j) Room must have access to a private bathroom

3. **Artist's Crew dressing room requirements:**
a) Large team-sized room to comfortably hold eight people and the following items:
b) Six (6) folding chairs
c) Two (2) 8' banquet tables
d) A minimum of four showers with hot and cold running water
e) Room to be available to Artist's crew 30 minutes prior to load-in.
f) Towels and soap to be available in Artist's production office 30 minutes prior to load-in
g) This room is for the sole use of Artist's crew. No local or Support Artist's crew use.

4. **Hospitality room requirements:**
a) Ten (10) folding chairs
b) Two (2) banquet tables

5. **Support Artist's dressing room requirements:**
a) Six (6) folding chairs
b) Two (2) banquet tables
c) Twelve (12) towels
d) If there are both male and female band members in Support Artist's band, then a second room is required for Support Artist with these same specifications.

(D) If there are no clean shower facilities with "reasonable" hot water capabilities, purchaser shall provide three (3) clean hotel rooms within reasonable distance to the venue, available to Artist's crew from 45 minutes prior to load-in to one hour after the end of load-out.

(E) **CATERING** See Agreement Section 5 - Production and Catering

~~When Artist is headlining, on-site catering will be strictly controlled. Only Artist's crew and essential working personnel who cannot leave the hall during shifts will be fed. Under no circumstances is anyone to change any of these requirements without the consent of Artist. All meals are to be served in a clean area with ample tables and seating with all utensils, seasonings, condiments, ice, and accouterments at hand (silverware and real plates, please; no plastic).~~

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL.

Note: There are vegetarians included in the touring entourage. Please provide quality meals to suit their needs.

Hot fresh ground coffee (regular and decaf), a variety of teas, a variety of ice cold sodas (regular and diet), spring water and juice drinks should be available from 1/2 hour prior to the first call until the completion of load-out.

~~1) BREAKFAST~~
~~Breakfast should be set up 30 minutes before load in, please check with tour or production manager for load-in time. Breakfast should be for twelve (12) band and crew.~~
~~Please do not break down breakfast without checking with Tour or Production Manager~~
~~COLD BREAKFAST SHOULD REMAIN UP ON A SEPARATE TABLE UNTIL AFTER LUNCH~~

~~Typical hot breakfast set-up including:~~
~~Eggs – Egglands Best Brand or organic eggs~~
~~(cooked to order or provide a hot plate and nonstick skillet)~~
~~Sausage and bacon~~
~~Hash brown potatoes~~
~~Waffle or pancake mix~~
~~Waffle maker~~
~~Assorted healthy organic cereals including Organic Granola, Raisin Bran, Shredded Wheat, Corn Flakes and Oatmeal~~
~~Assorted muffins, donuts and breakfast pastries~~
~~Sliced wheat and white bread, and English muffins~~
~~Butter, margarine, and jam~~
~~Electric toaster~~
~~Eight (8) Vanilla Dannon Activia yogurts~~
~~Eight (8) Fage 2% Total yogurts~~
~~One (1) gallon fresh orange juice~~
~~One (1) quart cranberry juice~~
~~One (1) gallon whole milk~~
~~One (1/2) gallon 2% milk~~
~~One (1/2) gallon skim milk~~
~~Assorted fresh fruit basket (including bananas)~~
~~Appropriate cups, bowls, plates utensils, napkins, salt and pepper~~
~~Two (2) Copies of the USA Today (please do not dispose after lunch)~~
~~One (1) Copy of the local paper~~
~~Tabasco sauce, assortment of hot sauces, mustards, spicy mustard, ketchup, real maple syrup, peanut butter, cream cheese.~~

2) ~~LUNCH~~
~~1:00 PM for twelve (12) touring band & crew.~~
~~Please do not break down lunch without checking with Tour or Production Manager~~

~~Mixed greens garden salad with selection of dressings (Annie's, Newman dressings, oil and vinegar)~~
~~Assorted hot sandwiches (meat, cheese and veggie)~~
~~Assorted deli meat and cheese tray (no pre-packaged meats, please.)~~
~~Tuna salad - albacore tuna packed in water, light on the Mayonnaise please.~~
~~Veggie tray~~

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL.

~~Kosher pickles, hot peppers, pickled yellow chilies~~
~~One (1) Assorted salads (pick one) Pasta, Potato, 3-Bean, Green Bean, Fruit, Cucumber, Artichokes, Avocado, Spinach, etc.~~
~~Assorted fresh sandwich breads~~
~~Vegetarian Hot Soup (please keep the soups simple)~~
~~One (1) gallon Fresh brewed ice tea and lemonade~~
~~Six (6) Gatorade (assorted flavors)~~
~~One (1) gallon whole milk~~
~~One (1/2) gallon 2% milk~~
~~One (1/2) gallon skim milk~~
~~Dessert Selection (cookies, brownies, cake, fresh fruit baskets)~~
~~All necessary condiments and utensils~~
~~Tabasco sauce, assortment of hot sauces, mustards, ketchup~~

~~3) DINNER~~
~~5:30 pm to approximately 8:00 pm for twenty (20) band and crew.~~
~~Please do not break down dinner without checking with Tour or Production Manager~~

~~Dinner shall include:~~
~~Mixed greens garden salad with selection of dressings (Annie's dressings)~~
~~One (1) hot meat entrée (beef, chicken or pork)~~
~~One (1) hot fish entrée (tuna, salmon or sea bass) steamed or grilled~~
~~One (1) hot vegetarian entrée (pasta, casserole, Asian stir fry)~~
~~Two (2) vegetable dishes (corn, green beans, broccoli, swiss chard)~~
~~Potato, rice, or pasta~~
~~Assorted fresh baked breads~~
~~One (1) gallon fresh brewed ice tea and lemonade~~
~~Six (6) Gatorade (assorted flavors)~~
~~One (1) gallon whole milk~~
~~One (1/2) gallon 2% milk~~
~~One (1/2) gallon skim milk~~

~~Assorted homemade desserts, fresh fruit basket.~~
~~All necessary condiments and utensils~~
~~Tabasco sauce, assortment of hot sauces, mustards, ketchup~~

~~4) IF THERE ARE NO FACILITIES AT THE VENUE TO EXECUTE A PROPER CATERING, THEN A MEAL BUYOUT CAN BE DISCUSSED WITH TOUR/PRODUCTION MANAGER. THIS DISCUSSION NEEDS TO TAKE PLACE AT THE TIME OF THE ADVANCE, NOT THE DAY OF THE SHOW.~~

5) DWIGHT YOAKAM DRESSING ROOM ~~Promoter understands tax parking locations are limited and as available TBD By Purchaser. Star dressing rooms available in performance theatre~~
Please have everything ready by **4:00 PM**. Please note that it is likely that Artist will use his tour bus as a dressing room. The tour/production manager will advise in advance.
All items must be completely sealed and unopened, ready to be placed in tour bus or dressing room.

Two (2) 10 lb. bags of ice (sealed)

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL.

Twenty four (24) 500ml bottles of VOSS water. No Substitutions.
Three (3) 16 oz bottles of Volvic, Fiji or Eternal water
One (1) six pack each of Diet Coke, Coke, 7-Up and Ginger Ale (4-six packs total)
One (1) Sealed bag of David's Sunflower seeds (roasted and salted in the shells)
One (1) bag of **DRY ROASTED, UNSALTED** almonds (**NOT RAW**; Whole Foods brand preferred if available)
One (1) sealed bag of ROASTED & salted pumpkin seeds (Pepitas) shelled
One (1) sealed bag or can of UNSALTED, ROASTED mixed nuts
One (1) sealed bag each of Applegate cheddar, provolone and Monterey jack cheese (3 bags of cheese total)
Six (6) pints of blueberries
Five (5) Red Fuji apples
One (1) large bag or box of black raisins (Whole Foods Red Flame brand preferred, 2nd choice Sunview black or red seedless, available at major grocery stores)
One (1) sealed bag or container of pre-washed carrot sticks (Cut)
Two (2) sealed bags or containers of pre-washed celery sticks (Cut)
Two (2) pints of cherry tomatoes
Two (2) sealed containers of hummus (Sambra brand hummus WITH ROASTED PINE NUTS preferred & available at most major grocery stores. If not available, PLAIN traditional hummus, no sugar/dextrose)
Two (2) Heads of Romaine lettuce
Two (2) bags of Baby Spring Mix Lettuce
Two (2) boxes of Carr's water crackers
One (1) bag of pretzels
One (1) large bag of Kettle style or Cape Cod potato chips
One (1) large bag of unflavored tortilla chips
One (1) bottle of Organic soy sauce (Kikkoman or equivalent)
One (1) bottle of Organic extra virgin olive oil
One (1) bottle of Organic balsamic vinegar
One (1) Quart half & half (Land o' Lakes, Knudsen or Horizon preferred)
One (1) Box of Starbucks Pike Place Roast or French Roast (Keurig cups)

Tea and coffee service to include:
Hot water tea kettle (NO THERMOS)
Six (6) large ceramic tea mugs
-English breakfast tea
-Premium grade coffee (Starbucks Pike Place Roast ground for drip)
-plates, bowls, cutlery, napkins and tissues, with small amount assorted sweeteners/honey/sugar, etc

6) BAND DRESSING ROOM
Please have everything ready by 4:00 PM.

One (1) bottle opener / cork screw
Two (2) cases of Fiji or Eternal water
One (1) ½ gallon 2% milk
One (1) ½ gallon fresh squeezed orange juice
Six (6) Labrada Lean Body Protein Bars or Hi-Protein Bars, any flavor
Six (6) KIND brand Nutrition bars – assorted flavor
One (1) deli platter for ten people with roast beef, turkey, chicken, and cheeses,

FRESH CUT MEATS ONLY, NO ROLLED MEATS PLEASE!
One (1) loaf bread (white, wheat or sourdough)
One (1) large family size bag of potato chips
One (1) cheese and cracker tray for ten (10)
One (1) bag of dry roasted, unsalted almonds
One (1) bag of unsalted assorted nuts
One (1) basket of assorted, **WHOLE** fruit
One (1) coffee / tea set-up with sugar, Equal, cream and Splenda sugar substitute
Tea and coffee service to include herbal teas and premium grade coffee
One (1) bag of Red Solo Cups
Two (2) rolls of Paper Towels
Twelve (12) Dixie Brand Paper Hot Coffee Cups
Four (4) Red Bull cans (regular & Sugar Free)
Large, Iced cooler with assorted Sodas: Diet Cokes, Coke, 7-UP etc.
Assortment of spoons, forks and knives, napkins, and tissues.
Mayonnaise, French's & Grey Poupon mustard, salt, pepper, etc.
Twelve (12) clean white bath size towels
Four (4) EAS Myoplex original **LIQUID** (not POWDER) drinks (42 grams of protein please – two [2] Chocolate & two [2] Vanilla preferred)

7) STAGE DRINKS
All drinks must be on ice and ready 1 hour prior to Artist's soundcheck.
Two (2) cases of Fuji water (soundcheck and stage waters)

8) PRODUCTION OFFICE
To be set up at load in.

Two (2) Liter Bottles of Mountain Valley **Sparkling** Water
Six (6) Diet Cokes
Six (6) **Coke Life (Green Cans)** where available – Regular Coke otherwise
Two (2) cases of Fiji water

9) TOWELS
All towels should be delivered to the production at load in.

Twenty four (24) pre washed **white** hand towels
Twelve (12) pre washed **white BATH** towels
Ten (10) small bars of Ivory soap
If towels are new, they must be washed prior to use. All towels should be delivered to the production manager at load in for use at our discretion.

10) CREW DRESSING ROOM (where applicable)
To be set up by 1:00 PM.

Twenty-Four (24) bottles of spring water 12 oz. size
One (1) ½ gallon fresh-squeezed organic orange juice
Twelve (12) cans assorted sodas, include Coke Classic and Diet Coke
Six (6) Lipton Iced Teas (un-sweetened)
One (1) deli platter for (6) people w/ one loaf bread (white, wheat or sourdough)

Mayonnaise & deli mustard, salt, pepper, etc.
One (1) large family size bag of Sun Chips
One (1) jar of peanut butter (preferably organic), chunky
One (1) jar of jelly/jam (strawberry or raspberry)
One (1) bag of **dry roasted, unsalted almonds**

~~THE AFTERSHOW FOOD AND BUS STOCK FOR 3 BUSES WILL ONLY BE NEEDED IF WE ARE ON A FULL PRODUCTION TOUR. PLEASE CHECK WITH TOUR MANAGER DURING ADVANCE.~~

~~11) AFTERSHOW FOOD~~

~~Cash is to be paid to tour/production manager. The runner may or may not be utilized to collect aftershow food orders paid for from the cash provided.~~

~~Star Bus——$100~~
~~Crew bus——$100~~
~~Total——$200~~

~~AFTERSHOW FOOD – DWIGHT YOAKAM~~

~~Two (2) orders: Grilled Fish (Halibut, Bass, Cod, Trout):~~
- ~~No dressings or Marinade, Extra Virgin Olive Oil or butter ok.~~

~~Three (3) orders: Entrée size (large) Salads:~~
- ~~Cut Romaine lettuce only (green leafs only, no white hearts)~~
- ~~Sliced cherry tomatoes~~
- ~~Diced red onions~~
- ~~No dressings, Extra Virgin Olive Oil and Balsamic vinegar on the side.~~

~~Three (3) orders: Entrée size (large) Salads:~~
- ~~Cut Romaine lettuce only (green leafs only, no white hearts)~~
- ~~Sliced cherry tomatoes~~
- ~~Sliced Cucumbers~~
- ~~No dressings, Extra Virgin Olive Oil and Balsamic vinegar on the side.~~

~~Four (4) orders: Vegetables:~~
- ~~Sautéed wild mushrooms or Shiitake –store bought (butter, garlic, salt and pepper)~~
- ~~Grilled Asparagus (salt and pepper)~~
- ~~Sautéed Spinach (butter, garlic, salt and pepper)~~

~~Six (6) orders: Grilled Fresh Artichokes hearts (cut in half or quartered and steamed before grilling)~~
- ~~Cooked well done to burnt~~
- ~~Cooked plain: no sauces, dressings, ok to use Extra Virgin Olive Oil~~
- ~~Please remove the choke from the artichokes~~
- ~~Please do not use canned or bottled artichokes, please use fresh only.~~

~~*Vegetables can be lightly seasoned with pepper and salt, but no sauces, marinates or dressings.~~

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL.

PLEASE HAVE A SELECTION OF LOCAL MENUS AVAILABLE IN THE PRODUCTION OFFICE AT LOAD IN.

~~12) BUS STOCK~~

~~THE FOLLOWING ITEMS AND BUS COUNT MAY CHANGE FROM DAY TO DAY. PLEASE CHECK WITH TOUR/PRODUCTION MANAGER DAY OF SHOW FOR UPDATED BUS STOCK LIST.~~

~~Star Bus:~~
~~Fresh ice~~
~~One (1) case VOSS water~~
~~One (1) pint 2% milk~~
~~One (1) case mixed sodas (must include 6 diet cokes & 6 regular cokes)~~
~~One (1) carton organic fresh squeezed unsweetened orange juice~~

~~Band Bus:~~
~~Fresh ice~~
~~One (1) case Fiji water~~
~~One (1) pint 2% milk~~
~~One (1) case mixed sodas (must include 6 diet cokes & 6 regular cokes)~~
~~One (1) box of granola~~
~~Six (6) Fage Total 2% yogurts~~

~~Crew Bus:~~
~~Fresh ice~~
~~Case Fiji Water~~
~~One (1) pint 2% milk~~
~~One (1) case mixed sodas must include 6 diet cokes & 6 regular cokes~~
~~One (1) box of Granola~~
~~Six (6) Fage Total 2% yogurts~~

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL.

(F) PARKING

It is the Purchaser's responsibility to make sure that the Artist's parking area and the load-in area are free and clear of all obstacles (i.e. snow and ice) from load-in through load-out at no cost to the Artist. In situations where the load-in is delayed due to obstacles in the load-in area, the Purchaser is responsible for paying any labor, union or teamster bills that accrue until the load-in area is cleared.

Purchaser agrees to provide the following:

Parking in or very near loading area for:
(a) One (1) semi with 53' trailer
(b) Two (2) 45' long buses
(c) One (1) runner vehicle (full-size car or van please)
(d) One (1) SUV for Artist

Dwight Yoakam's bus must be parked as close as possible to the stage door. Promoter/Purchaser must make all arrangements for this to happen.

~~Bus parking must have accessibility to power as detailed in this Rider.~~
Producer understands and acknowledges that there is limited parking and parking may not be closely proximate to venue or stage door.

All parking spaces should be reserved and clear in advance of the day of show so that vehicles may be placed as they arrive or as soon as reasonably possible. Procuring any and all required parking permits is solely the responsibility of the Purchaser.

30. PERSONNEL REQUIREMENTS

Purchaser will ensure that he or his designated representative empowered to make decisions, will be available at the venue from equipment arrival time until completion of the Engagement and will make him/herself known to the Artist's Tour Manager and/or Production Manager immediately upon his arrival at the venue. Load-in time determined at time of advance between Artist's Production Manager and Promoter Rep.

(a) Artist will require the following English-speaking, able-bodied, sober and experienced people:

1)	TBA	One (1) Runner
2)	Load-In @ TBD	Twelve (12) Stage Hands One (1) climbing riggers One (1) ground rigger One (1) electrician (all day) One (1) Genie lift
3)	Show Call @ TBD	Two (2) Stage Hands Four (4) follow spot operators (4 front of house) One (1) house light operator One (1) electrician
4)	Load-Out @ TBD	Twelve (12) Stage Hands Two (2) up riggers One (1) down rigger One (1) electrician One (1) Genie Lift (TBD)

(b) Where the load-in is not directly onto the stage, or at stage level, a large loading ramp, long enough to reach the stage at a reasonable angle will be required.

(c) Purchaser agrees to provide a qualified electrician for tying into the house electrical supply. The electrician must be on-site at the load-in, during set-up, soundcheck, performance and complete load-out.

(d) After the equipment is set up, all Stage Hands may be released at the discretion of Artist's Production Manager.

(e) Purchaser agrees to provide one (1) English-speaking, able-bodied production runner with an SUV and valid driver license, that is in good working order capable of transporting four (4) persons, to be available at the start of load-in. Runner will report to Artist's Production Manager and will be on call all day until he/she is dismissed by Production Manager. Runner must have adequate knowledge of area surrounding the venue including local music stores, laundry facilities, dry cleaners, etc.

(f) Stage Hands and Loaders will need to be available for load-out promptly at the end of the show. Stage Hands should report to Artist's Production Manager upon arrival.

(g) Labor requirements are subject to change at the discretion of Artist's Production Manager.

(h) ~~OFF DUTY POLICE OFFICER: An armed, plain clothes, off duty police officer will be required to travel with ARTIST from time of arrival at airport until ARTIST's return to hotel after performance. Tour Manager will advise if officer will be required the following day. Cost of officer will be a PROMOTER's show expense. Please provide officer cell number to Artist's Production Manager at least one week before show.~~ * Artist MUST have a dedicated security officer from arrival to departure.

~~31. TRANSPORTATION~~

~~Ground transportation will be required and will be included in settlement as a PROMOTER cost. A 15 passenger van, with back row removed, driven by a professional driver with a working knowledge of the venue locale will be needed the day before show, the day of show, and the day after show for total of three (3) days. This will include, but is not limited to airport pickup ups, drop offs, and day of show hotel/venue transportation. An additional van may be required for gear on the day before show, and the day after show. Tour manager will advise as to time of arrivals and departures. Purchaser will provide at purchasers own expense, three (3) days rental of an SUV is required for Dwight (full size Cadillac Escalade or comparable).~~

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER. FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING, THIS ARTIST RIDER SHALL PREVAIL.

32. STAGING REQUIREMENTS

(a) Stage Size: 40' wide x ~~44' deep~~ 40' Deep x no less than ~~5' high~~ 3' High.

(b) Sound wings:
Stage left: 12'wide x 20'deep x stage height high
Stage right: 12'wide x 16'deep x stage height high

(c) Rigging: If the sound and lights are to be flown from the roof above the stage, load points must be capable of supporting, at minimum, a continuous vertical load capacity of one (1) ton. Rigging must be performed by experienced riggers. Riggers will be supplied by Purchaser and in accordance with all local, state and federal safety regulations. Purchaser must be able to present, on demand of Artist, safety test certificates on the roof, chain hoists and steel rigging cable.

(d) Ground Support: If needed, ground support towers must be supplied by Purchaser.

(e) Stage and sound wings must be capable of supporting 400 lbs. per square foot. Stage must be completely level, free of tape, no holes and no protrusions.

(f) The stage set up must be completed, clean and clear prior to load-in time. If the stage is a permanent one, it must be clean and clear prior to load-in time. If temporary seating is used in front of the stage, the first ten (10) rows of seats must be left out until Artist's Production Manager approves their installation.

(g) Where applicable, stairs should be have rails, be well-lit, and must be provided from the floor to the stage at upstage-right and upstage-left positions.

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL.

(h) Safety railing is required on the offstage and upstage edges of the wings, and on the exposed offstage edges as well as the upstage edge of the stage.

~~(I) ARTIST REQUIRES A STEEL FRAME BARRICADE WITH A FOOT PLATE. ARTIST REQUESTS THAT IT BE AS CLOSE TO THE STAGE AS LEGALLY ALLOWED.~~

33. FRONT OF HOUSE MIX POSITION (one (1) FOH Position)

Sound: 12' wide x 8' deep x 1' high

Lights: 12' wide x 8' deep x 2' high

For Arenas: Mix position riser location to be determined with Artist's Production Manager during show advance. Risers are to be available at the start of load-in, but are not to be set in place until location is approved by Production Manager. Bike racks and or barricade should be supplied by Purchaser.

For fixed-Seat Houses: It is essential that mix position is discussed during show advance and approved by Artist's Production Manager. In the event of obstructed views created by sound and lighting control equipment, new seats, not in a lesser location, must be made available to relocate any patron with an obstructed view. It is agreed mix position is 100' from stage and under balcony.

34. SOUND

(A) SOUNDCHECK

A soundcheck will be required on the day of the performance. Soundcheck is to take place at approximately 5:00 PM and will last for up to two hours. Soundcheck will not be subject to any previous commitments the Purchaser may have made regarding any aspect of this soundcheck, such as soundchecks for support bands, etc. There must be ample time for Artist's soundcheck prior to the opening of the doors. Artist will be allowed a proper soundcheck when supporting.

No member of the public shall be allowed to enter the place of Engagement until soundcheck has been completed to the Artist's satisfaction and clearance has been obtained from the Artist's Production Manager or Tour Manager.

Artist will require the stage area to be cleared completely of people during this soundcheck, with the exception of personnel directly involved with the running of the show. During the soundcheck of the Artist, the stage area will be under the complete control of the Artist's Production Manager or Tour Manager.

The house electrician must be present for the entire soundcheck.

The sound pressure level (SPL measured in dB) will be ~~entirely~~ left up to the discretion of the Artist's Sound Engineer. The Purchaser must inform Artist's Production Manager of any sound restrictions regarding dB levels when advancing the show. However, the Purchaser, venue representative or local authorities must not attempt to dictate SPL levels at soundcheck or during the Artist's performance.

When headlining, Artist shall have the first right of set-up for all instruments and equipment used in the production. The aforementioned instruments and equipment shall not be moved or relocated and/or used by any person other than the Artist's production staff.

No other equipment of any sort shall be loaded into, or placed on the stage, until Artist's soundcheck is completed and clearance has been given by Artist's Production Manager or Stage Manager.

(B) **SOUND SYSTEM**

Artist carries his own monitor system, solely for Artist's use. Artist must use own monitor system. Purchaser is responsible for supplying all necessary equipment required to interface with Artist's monitor system and the house sound system. **It is the purchaser's sole expense to reimburse artist for the monitor rental fee of $2,500 dollars. The monitor rental fee is to be paid 7 days in advance to Via Entertainment Tours.** Purchaser is to supply Front of House equipment, including, but not limited to rigging, stacks and racks per Artist's specifications.

Space must be provided for Artist to set up their monitor console and sound processing racks. Sound company must provide sufficient power for Artist's monitor system. Artist's monitor power needs to be advanced by Artist's Production Manager.

Labor: Two sound engineers/technicians dedicated to assist Artist's sound engineers. One at front of house, one at the monitor position.

Monitor System and FOH Mixer is solely for Artist's use only. Purchaser will need to supply and pay for monitor and FOH consoles for the openers.
No risers are to be present on stage for any supporting acts unless written approval is granted from Management.

(C) **AUDIO REQUIREMENTS**

WHEN SHOW IS OUTSIDE, FOH, MONITOR AND GUITAR WORLDS MUST BE COVERED WITH WATER-PROOF ROOFING TO PROTECT FROM SNOW, RAIN OR SUN.

1) SOUND SYSTEM:

FOH CONSOLE
One (1) Avid D-Show Profile Surface
One (1) Avid FOH rack with Minimum 3x DSP. **Must have current software.**
*VENUEPack Pro 4.0 Plug-In Bundle *Plus Cranesong Phoenix ~~(Installed, we do not own license)~~
One (1) Avid Venue 48-Channel Stage Rack with a minimum of 1x Output card
~~One (1) Avid Venue MADI Option Card~~ (Do Not Have)
One (1) Avid ECx Ethernet Option Card
One (1) 15" LCD Flat Screen monitor
One (1) On-Line UPS
Drive rack for PA system must be at FOH mix position and fully accessible by Artist's engineer.
If Avid console is not available please contact Production Manager.

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER. FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING, THIS ARTIST RIDER SHALL PREVAIL.

PLAYBACK/RECORD/TB
One (1) CD Player / Recorder
One (1) TB Mic

ANALYTIC TOOLS
One (1) Rack-Mounted Computer w/ SMAART w/ calibrated mics

FOH DRIVE
~~Two (2) Dolby Lake LP4D12 Processors~~ Meyer Galileo 616 AES (3)
~~One (1) Lake PC Tablet~~ Wireless System Tablet
~~One (1) Lake / Cisco Wireless Router~~ Egenius Access Points

PA SPEC: Alternate manufactures are acceptable when approved by Artist's Production Manager. Under no circumstance will the primary cluster have low frequency components smaller than 10". The fowling PA spec is number one choice, and is example of the desired system:

PRIMARY CLUSTER - *2 Speaker Clusters, flown left & right, each containing:* (12) Meyer MICA per side
~~Ten (10) d&b J-8 Speakers~~
~~Two (2) d&b J-12 Speakers~~
~~One (1) d&b J Frame~~
~~One (1) 2-Ton Hoist w/ ancillary rigging, power & control~~
~~Two (2) 1-Ton Hoists w/ ancillary rigging, power & control~~

~~**SIDEHANG** - *2 Speaker Clusters, flown left & right, each containing:*~~
~~Eight (8) d&b Q1 Speakers~~
~~One (1) d&b Q Frame~~
~~One (1) 1-Ton Hoist w/ ancillary rigging, power & control~~

FRONTFILL / INFILL
~~Six (6) d&b Q7 or Q10 Speakers~~ (6) Meyer UPM - IP CAN Sub w/(6 - 8) UPJ - IP Front of Stage

SUBWOOFERS - *2 Ground-Stacked Clusters, each containing:*
~~Four (4) d&b J Subwoofers~~ (6) 700 HP Under Apron + (6) 1100LFL Flown Center
Placement of the subwoofers: must be on the ground, no subwoofers under the stage or in the center of the stage.

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TO BE ADVANCED IN DETAIL WITH YOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL.

2) MONITOR AND WEDGE SPECIFICATIONS:
a) **The purchaser is to provide the following additional Gear:** Meyer UM - IP or UM - Loop (12") or UMS - Loop (15")
~~Six (6) bi-amped wedges – 1-12" w/ 2" horn (Clair 12am or equivalent)~~
~~Four (4) bi powered, bi-amped mixes (Crown, Crest or equivalent)~~
~~One (1) designated line from FOH to monitors for intro/talkback~~

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The stage snake must be within 30' from the monitor console.
2 - 20 AMP 120 VOLT QUAD POWER DROP IS REQUIRED FOR MONITOR AREA. ALSO, PLEASE PROVIDE 6 - 20 AMP STAGE POWER DROPS.

b) ~~The purchaser is to provide the following additional Gear on FLY DATES ONLY:~~

~~Six (6) bi-amped wedges – 1 12" w/ 2" horn (Clair 12am or equivalent)~~
~~Four (4) hi powered, bi-amped mixes (Crown, Crest or equivalent)~~
~~One (1) designated line from FOH to monitors for intro/talkback~~
~~One (1) Digidesign SC48 Digital Console~~

~~MONITOR AMP RACK~~
~~One (1) stereo 1/3 Octave EQ (KT, BSS).~~
~~One (1) stereo 2-way crossover with variable control crossover point 1.5 or 2K~~
~~One (1) high amp-crown 2400 or equivalent~~
~~One (1) low amp-crown 3600 or equivalent~~
~~Two (2) long NL-4 Cables~~
~~One (1) short NL-4 Cable~~
~~Must terminate to a NL-4 speakon connector – lows 1+ 1-, highs 2+ 2-~~
~~This rack is to drive Dwight's 2 personal monitors~~

~~AUDIO STAGE REQUIREMENTS:~~
~~MISCELLANEOUS~~
~~One (1) Audio Work Box (Adapters, Turnarounds, Tools, Etc.)~~
~~Three (3) 20 lb. black theatrical double sided sand bags (we must have these for the performance)~~
~~All direct boxes, AC boxes, mic stands and mics requested on input list~~
~~All cables, sub-snakes as needed for performance~~
~~Please supply professional audio personnel for wiring~~

~~STANDS AND MICS~~
~~Five (5) extremely good condition tall tri-pod boom microphone stands (Beyer, AKG)~~
~~One (1) Shure beta 91 mic~~

~~SNAKE SYSTEM~~
~~One (1) 48 Channel Passive Splitter Snake System with 2 Outputs~~
~~Four (4) 12 Channel Sub Box's~~
~~One (1) 350' System Return Snake~~
~~Six (6) 350' FOH BNC Snake, including spare lines~~
~~One (1) 25' 56-channel FOH with Fan out~~
~~One (1) 25' 56-channel Monitor with Fan out~~
~~Forty Eight (48) Assorted XLR Cables~~

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL.

POWER REQUIREMENTS:
Monitor Backline Power - 8 X 110v 4 Way Power Drops

INTERCOM
One (1) 2-Channel Intercom PSU
Three (3) Stations Belt Packs
Three (3) Stations Handset and/or Headset
Three (3) Visual Call Beacons

CONTACT INFORMATION:
PLEASE CONTACT TOUR MANAGER TO INQUIRE IF THIS IS A FLY DATE.

Tim Durfey
Cell: (310) 849-4532
Email: timdurfey@aol.com

35. **LIGHTING:**

(a) Artist requires a high quality lighting system for the proper presentation of his performance. Artist's Production Manager will advance specific details.

(b) Followspots: Purchaser to supply four (4) followspots with operators for Artist's use. Four (4) of these shall be Xenon Super Troupers at front of house.

(c) Purchaser to supply a lighting designer/director to supervise the design and focus of house lighting system, and ~~to operate~~ Producer to operate lighting console during Artist's performance.

(d) HOUSE LIGHTING
All house lighting must be turned off during the show. The only house lighting that should remain on is the minimum amount of emergency lighting.

36. **POWER**

Power supply must be stable, safe, conform to all government and local regulations and be located not more than 50 feet from the stage.Power supplies must be clean and stable and meet with the approval of Artist's representatives. Separate power disconnects in "like-new" condition with appropriate lugs and other hardware are required for the Sound and Lighting systems. Should the power to any equipment used by the artist be turned off without the consent of the Artist's Production Manager or Tour Manager, the Purchaser is liable for the whole cost of any equipment damaged by this act.

All power supplies will be equipped with adequate fusing, spare fuses, terminals that can be entered and suitable for attachment of "tails" (bare wire ends). A separate ground must be provided for the sound power. All equipment furnished by contractors to the ARTIST must meet all US electrical codes.

(1) Light System:
Three legs three ø, 120V 60 Hz rated at 400A/leg, terminated in lugs.

(2) Sound System:
Three (3) legs three ø, 120V 60 Hz rated at 200A/leg, terminated in lugs

(3) Rigging:
Three (3) legs three ø, 120V 60 Hz rated at 100A/leg, terminated in lugs

(4) Bus Power:
~~Two legs single ø, 120V 60 Hz rated at 30A/leg within 50 feet of bus parking; terminated in a dryer plug or lugs for each bus.~~

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL.

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL

(5) All Power will be tied in by a qualified House Electrician. No Artist personnel will perform "tie-ins."

(6) ~~Any generators provided to meet above power requirements must be accompanied by a qualified technician who will remain on call at the discretion of Artist's Production Manager. Generators must arrive promptly at load-in time, fully fueled, with a sufficient supply of additional fuel and be checked for adequate fuel level periodically. The specific type of generator to be used is subject to approval by Artist's Production Manager.~~

37. SCHEDULE

When Artist is headlining, the schedule for the day of the performance will be determined by Artist's Production Manager.

When Artist is performing at a Festival or supporting, the following schedule is typical for a day of show and can be adapted with reference to time of Doors and Show. If soundchecks are provided for, Artist will take a soundcheck. These details will be advanced by Artist's Production Manager.

(1)	8 hours prior to Showtime:	Load-in
(2)	2 hours prior to Showtime:	Dressing room and catering ready
(3)	30 minutes prior to ~~Showtime~~ Doors:	Take stage and perform line check
(4)	Showtime	
(5)	Immediately following show:	Stage hands available for load-out

38. EQUIPMENT DAMAGE

Purchaser agrees that should the power to any of the equipment used by the Artist be turned off without the consent of the Artist's Production Manager or Tour Manager, then the Purchaser shall be liable for the whole cost of any equipment damaged by this act. The Purchaser should note and warn all necessary personnel of this condition, since the Artist uses sophisticated electronic equipment that could be prone to damage in the event of sudden loss of power and/or sudden reinstatement of power after loss.

39. PARAGRAPH HEADINGS

Paragraph headings are inserted in this Rider for convenience only and are not to be used in interpreting this Agreement.

40. GENERAL INFORMATION

Purchaser agrees to ensure that no glass containers will be allowed in the venue and all drinks will be served in plastic cups.

Purchaser shall provide to Artist, upon returning the signed Agreement, full postal address of the venue; a map of the town and country (where applicable) indicating the venue, hotel (where applicable), and primary routes; and a drawing of the venue showing equipment entrance, Artist's entrance, power supply and dressing room(s).

TO BE ADVANCED IN DETAIL WITH TOUR MANAGER.
FOR ALL DISPUTED TERMS NOT ADVANCED IN WRITING,
THIS ARTIST RIDER SHALL PREVAIL.

~~The above constitutes the sole, complete and binding contract between the parties hereto. Any breach of the Engagement Agreement and/or Rider will result in the non-appearance of the Artist and payment of the Artist's total, agreed-upon, fee in full by the Purchaser.~~

~~**THIS RIDER IS SUBJECT TO CHANGE BY ARTIST'S MANAGEMENT AND/OR TOUR MANAGER. THE AREAS OF SOUND, LIGHTS AND CATERING MAY CHANGE WHEN THE BAND IS CARRYING FULL PRODUCTION AND/OR SUPPORTING. ARTIST'S TOUR MANAGER OR PRODUCTION MANAGER WILL ADDRESS THE CHANGES WITH THE PURCHASER.**~~

~~AGREED TO AND ACCEPTED~~

~~PURCHASER~~

stet

~~VIA ENTERTAINMENT TOURS, INC.~~
~~D/b/a DWIGHT YOAKAM~~

STET

~~NOTE: FEDERAL ID NUMBER FOR VIA ENTERTAINMENT TOURS IS: 95-4084071~~

STET

DWIGHT YOAKAM 2014 INPUTS V1.0 (A RIG)

* WE SUPPLY ALL Yellow highlighted items

January 7, 2014

DWIGHT YOAKAM

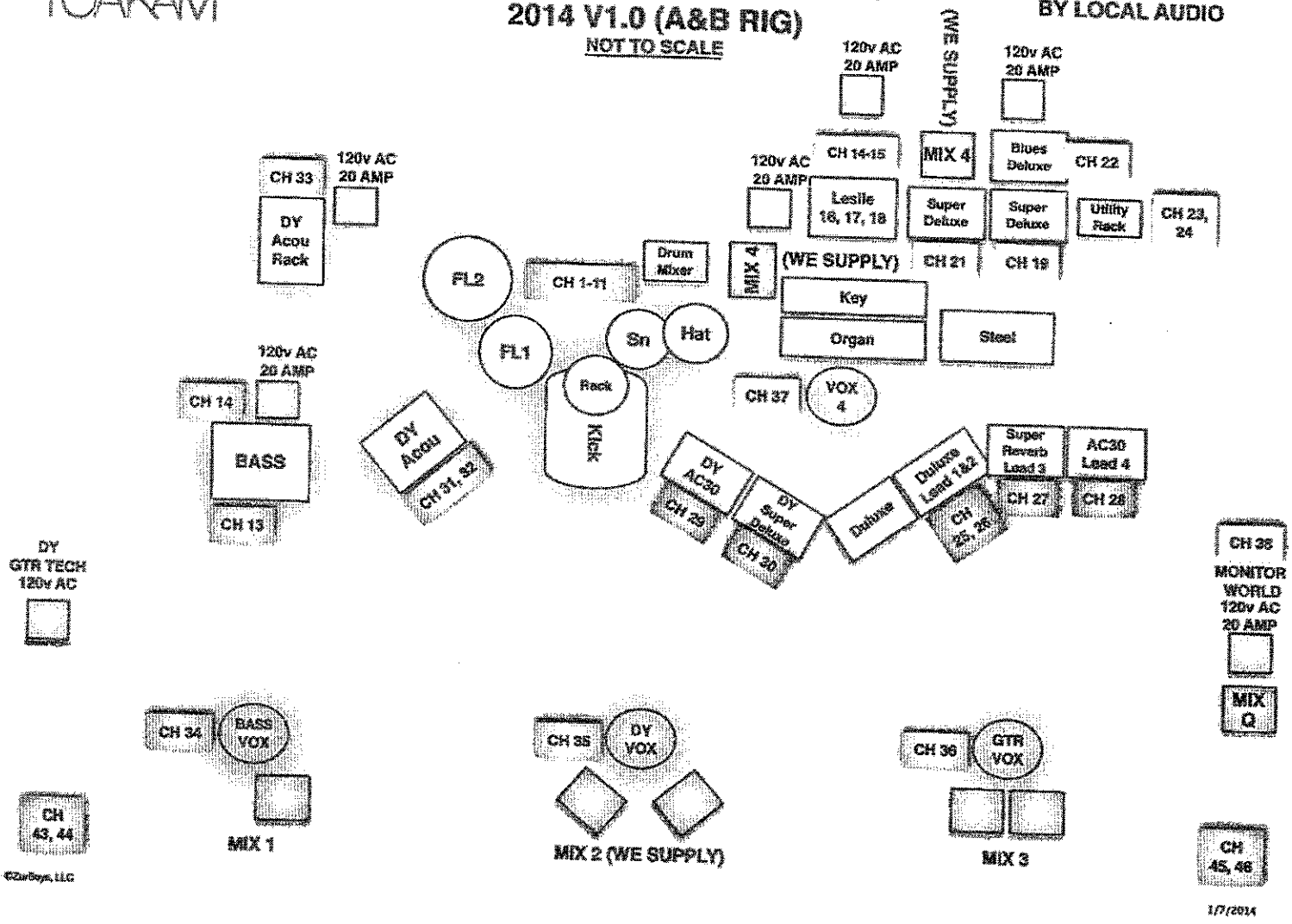
Chan	Input	Position	Input Device*	Stand	DRUMS	UTILITY	GTR	BASS/ACOU		HARD PATCH	
			* WE SUPPLY ALL Yellow highlighted items		Red	White	Blue	Green			NOTES
1	Kick In	DRUM	Beta 91a		1						
2	Kick Out	DRUM	Heil PR48	Straight Table Top	2						
3	Snare Top	DRUM	SM57	Short Tripod Boom	3						
4	Snare Bottom	DRUM	SM57	Short Tripod Boom	4						
5	Hat	DRUM	AT 4051B	Clamp	5						
6	Rack	DRUM	Sennheiser e904	Clip	6						
7	Floor 1	DRUM	Sennheiser e904	Clip	7						
8	Floor 2	DRUM	Sennheiser e904	Clip	8						
9	SR Overhead	DRUM	AT 4051B	Clamp	9						
10	SL Overhead	DRUM	AT 4051B	Clamp	10						
11	Percussion	DRUM	Shure Beta	Clip	11						
12	Bass Mic	SR	Audix f2	Straight Table Top	12						
13	Bass DI	SR	JDI48		13			1			
14	Piano L	USL	JDI48		14			2			
15	Piano R	USL	JDI48		15	1					
16	Lap Low	USL	AT853	Claw	16	2					
17	Lap Hi Left	USL	AT 450	Claw	17	3					
18	Lap Hi Right	USL	AT 450	Claw	18	4					
19	Steel (Super Deluxe)	USL	AT853	Claw	19	5					
20	Mando	USL	JDI48		20	6					
21	Utility Guitar (Super Deluxe)	USL	SM 57	Claw	21	7					
22	Utility Slide Guitar	USL	SM 57	Claw	22	8					
23	Accordian	USL	Avalon U5		23	9					
24	Banjo	USL	Avalon U5		24	10					
25	Lead-1 (Deluxe Reverb #1)	SL	Sennheiser e609s	Z-Bar	25	11					
26	Lead-2 (Deluxe Reverb #2)	SL	AT 4050	Z-Bar	26						
27	Lead-3 (Super Deluxe)	SL	Sennheiser e609s	Z-Bar	27						
28	Lead-4 (AC30)	SL	Sennheiser e609s	Z-Bar	28						
29	DY Elect 1 (AC30)	USC	Sennheiser e609s	Z-Bar	29						
30	DY Elect 2 (Super Deluxe)	USC	Sennheiser e609s	Z-Bar	30						
31	DY Acou MIC 1"	SR	DS201	Straight Table Top	31						
32	DY Acou MIC 15"	SR	Audix f2	Straight Table Top	32			3			
33	DY Acou DI	USR	JDI		33			4			
34	Bass VOX	SR	M88	Tall Tripod/With Sandbag	34			5			
35	DY VOX	C	M88	MS-2s Boom/With Sandbag	35						
36	Guitar VOX	SL	M88	Tall Tripod/With Sandbag	36						
37	Utility VOX	USL	Sennheiser e835	Tall Tripod/With Sandbag	37						
38	Spare VOX	MONS	M88		38						
39					39					1	
40					40						
41					41						
42					42						
43	Stage Audience Mic	DSR	AT 4051B	Short Tripod Boom	43						
44	Stage Audience Mic	DSR	AT 857	Claw/Clamp	44						FOH ONLY
45	Stage Audience Mic	DSL	AT 4051B	Short Tripod Boom	45						FOH ONLY
46	Stage Audience Mic	DSL	AT 857	Claw/Clamp	46						FOH ONLY
47	FOH Audience Mic	FOH		Tall Boom	47						FOH ONLY
48	FOH Audience Mic	FOH		Tall Boom	48						FOH ONLY

VEN 1315
VCR 541

DWIGHT YOAKAM

DWIGHT YOAKAM STAGE PLOT
2014 V1.0 (A&B RIG)
NOT TO SCALE

ALL 120V AC PROVIDED BY LOCAL AUDIO



VEN 1316
VCR 542

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered into by and between the parties set forth below - the individuals signing this Agreement represent that they are authorized to sign on behalf of their companies.

Company: Venetian Casino Resort, LLC	
Signature:	
Print Name:	GEORGE MARKANTONIS
Title:	PRESIDENT & COO
Date:	February 15, 2016
Address:	3355 Las Vegas Blvd. South Las Vegas, NV 89109
Notice Address:	Attn: SVP and General Counsel Venetian Casino Resort, LLC 3355 Las Vegas Blvd. South Las Vegas, NV 89109
Phone No.	(702) 607-4409
Fax No.	(702) 414-4421
State of Formation:	Nevada

Contractor: Baz Theatrical, LLC	
Signature:	
Print Name:	Blair Farrington
Title:	President
Date:	February 15, 2016
Address:	4350 S. Arville, B15 Las Vegas, NV 89103
Notice Address:	With a courtesy copy to: Law Offices of Marc Risman 10120 S. Eastern Ave Suite 206 Henderson, NV 89052
Phone No.	702-362-3000 ex. 208
Fax No.	
State of Formation:	Nevada

Effective Date:	2/15/2016
Expiration Date:	2/14/2018
Agreement No.:	CW2343217

Exhibit A	NDA (§5)
Exhibit B	Statement of Work (1.1)
Exhibit C	FCPA Certification (§10.2)
Exhibit D	Contractor Affiliates (§10.13)

Definitions.

"Company Affiliate" means an entity that controls, is controlled by, or is under common control with Company, including without limitation Las Vegas Sands Corp., Sands Expo & Convention Center, Inc., Sands Bethworks Gaming, LLC, Marina Bay Sands Pte Ltd and Venetian Macau Limited and its subsidiaries, Venetian Cotai Limited and Venetian Orient Limited.

"Intellectual Property Rights" means any patent, registered design, copyright, design right, topography right, trade mark, trade dress, mask work, service mark, application to register such rights, rights in nature of any of the aforementioned rights, trade secrets, rights to unpatented know-how, right of confidence and any other intellectual or industrial property rights of any kind whatsoever in any part of the world.

"Project" means the engagement of certain Services by Company from Contractor as identified in a SOW, and the discussions, exchange of information and negotiations between the parties preceding the execution of a SOW connected with such Services.

"Services" means any installation, integration, implementation, training, and consultancy services, and any other services as set forth in any SOW, and the creation, development and preparation of all Work Product derived from such services.

"SOW" means the document executed by the parties that sets forth a particular Project and the Services relating thereto, and pursuant to which Contractor shall engage in such Project.

"Work Product" means all programmed software (in source and object code form), procedures, work-flow methods, reports, manuals, visual aids, documentation, materials, magnetically or optically encoded media, ideas, concepts, know-how, techniques, inventions, designs, mask works, formulae, processes, content, artwork and works of authorship made, conceived or reduced to practice in connection with the Services performed in relation to any Project(s) engaged under this Agreement.

1. PROJECT

1.1 **SOW.** The Statement of Work governed by this Agreement is attached hereto as Exhibit B.

1.2 **Services.** Subject to the terms of this Agreement, Contractor shall complete the Project and fully perform the Services hereunder. In completing the Project, and unless otherwise specifically set forth herein, Contractor shall provide its own equipment, tools and other materials at its own expense, and to the extent necessary for Contractor to perform the Services. All Services shall be completed in a timely, professional and workmanlike manner consistent with industry standards.

1.3 **Location.** All Services will be performed in Clark County, Nevada.

2. NONEXCLUSIVE PROVIDER OF SERVICES AND NO CONFLICTS

Contractor shall be a non-exclusive service provider to Company, and no engagements between Contractor and other parties shall conflict with Contractor's duty to Company. In the event that Contractor continues, or proposes to establish, any consulting or employment relationship which may result in such conflict while this Agreement remains in effect, Contractor shall promptly notify Company of the name and address of the person or entity with which the Contractor has or proposes to have such relationship, and will disclose to Company the nature of such relationship. In the event that Company, in its sole discretion, considers the relationship a conflict of interest, and the conflict cannot be resolved between the parties in a timely manner, Company may terminate this Agreement on notice to Contractor without any further liability other than for compensation earned for Services performed through the date of termination.

3. COMPENSATION

3.1 **Fees, Charges and Expenses.** Contractor shall invoice, and Company will pay for the Services and expenses as further set forth in each individual SOW. Company will not be liable for any costs whatsoever in excess of that set forth in the SOW or otherwise agreed in this Agreement, unless approved by Company in writing prior to such.

3.2 **Taxes.** Company shall not be charged for, and Contractor shall pay any taxes based on the net or gross income of Contractor, or taxes imposed on Contractor in lieu of income taxes or income tax increases.

At no additional cost to Company (i.e., no cost in addition to the payment obligations expressly provided for in Exhibit B hereto), Contractor shall be responsible for, and shall indemnify and hold Company harmless against, any taxes based on the net or gross income of Contractor, or taxes imposed on Contractor in lieu of income taxes or income tax increases, as well as all payroll and employment related taxes and withholdings for Contractor's employees, contractors and other personnel levied upon or attributable to the Services, including but not limited to, all state and federal FICA, worker's compensation, disability and unemployment compensation insurance, and any compensation, contributions, dues, or other remuneration agreed to between Contractor and its employees, contractors and other personnel or as required by law.

3.3 **Invoicing.** Contractor shall submit invoices to the billing address on Company's SOW or as otherwise requested in writing by Company. Contractor may not issue an invoice dated prior to the SOW's Effective

Date or Purchase Order date. Except as otherwise expressly provided for in the applicable SOW, undisputed invoices will be paid within thirty (30) days after receipt of invoice by Company. Company shall have the right to issue multiple Statements of Work and/or Purchase Orders from different Company Affiliates comprising the fees in total, and Contractor shall submit invoices against those Purchase Orders.

Contractor shall provide the following information on each invoice: (a) Company's Purchase Order number, if applicable; (b) Contractor's invoice number; (c) description of Services and/or Work Product provided; (e) applicable sales/use tax based on final destination (if applicable); (f) other charges (if applicable); (g) total cost; (h) Company's contract number; (i) Contractor's remit-to address; and (j) any other information requested by either party for the oversight and administration of this Agreement.

Contractor's name and bank account information as shown on each invoice shall be the same as that information provided under the SOW and/or Purchase Order.

Each party shall pay its own banking fees in connection with payments made under this Agreement.

4. WORK PRODUCT AND INTELLECTUAL PROPERTY

Except as otherwise set forth in a SOW, Company shall have sole and exclusive right, title and interest in and to, and use of, any and all inventions, ideas, designs, concepts, techniques, discoveries, know-how, formulae, processes and improvements, whether or not patentable, which are conceived, created, developed, produced, written or first reduced to practice during the course of Contractor's performance of the Project and Services under this Agreement, whether by Contractor or its employees, contractors, or other personnel acting alone or in concert with one another or with Company or its employees, contractors, or other personnel or with Company materials or information of any nature furnished to Contractor. Company's sole and exclusive right, title and interest in and to, and to use, the foregoing shall include, without limitation, any and all trade secrets, utility and design patents and equivalent rights in and to such inventions and designs throughout the world, regardless of whether or not such legal protection is sought by Company. Company shall have sole and exclusive right, title and interest in and to, and use of, any and all copyright and moral rights in all works of authorship created by Contractor during the course of its performance under this Agreement. Contractor hereby specifically acknowledges and agrees that all copyrightable works of authorship created by Contractor under this Agreement shall be considered "works made for hire", as defined by the Copyright Law of the United States, and that any and all copyrights in and to such works shall, upon creation, be owned solely and exclusively by Company. Company shall have sole and exclusive contract, licensing, sales and distribution rights in and to the Work Product, without any impediments or restrictions of any kind on such rights, and all right, title and interest in and to all Intellectual Property Rights therein and thereto, including without limitation those Intellectual Property Rights not specified above. As per the Statement of Work attached hereto as Exhibit B, Contractor's Services will not include providing any creative or artistic services to Company.

Property (including all intellectual property rights) in and to Company's logo, and other Company identifications including but not limited to all copyrights, trademarks and other rights therein (collectively "Company Intellectual Property") shall be owned and controlled exclusively by Company or Company Affiliates, and Contractor shall not use any such Company Intellectual Property without Company's prior written consent.

5. CONFIDENTIALITY

The parties agree that the terms of this Agreement and all information provided in connection with this Agreement are subject to the terms and provisions contained in that certain Non-Disclosure Agreement entered into between the parties as of February 15, 2016, attached hereto as Exhibit A.

6. CONTRACTOR REPRESENTATIONS AND WARRANTIES

6.1 **Performance of Services.** Contractor hereby warrants to Company that Contractor shall perform the Services provided hereunder in a timely, professional and workmanlike manner, consistent with industry standards, using individuals of suitable training and skill.

6.2 **Additional Project Warranties.** Contractor represents and warrants that: (i) Services will be performed in accordance with any relevant and recognized professional and ethical standards; (ii) all work under this Agreement shall be Contractor's original work and none of the Services or Work Product or any development, use, production, distribution or exploitation thereof will infringe, misappropriate or violate any intellectual property or other right of any person or entity (including, without limitation, Contractor); (iii) Contractor has the full right to provide Company with the assignments and rights provided for herein; (iv) Contractor shall comply with all applicable laws in connection with its performance hereunder and Services do not involve a business arrangement or activity that violates any law; (v) If the Services to be performed require a license, Contractor has obtained such a valid license; (vi) Contractor has not been debarred, suspended or excluded, or convicted of any offenses which might lead to debarment, suspension or exclusion, from participation in any relevant professional or government program or body which would govern Contractor's provision of Services or have had civil monetary or other penalties imposed on Contractor by any such program or body; (vii) Services and Work Product provided hereunder do not violate or otherwise interfere with any corporate policies or any current or prior employment agreement or other agreement Contractor may have with any other party, or any other current or previous employers; and (viii) Contractor has the full right to enter into this Agreement and that there exists no impediments contained within or related to any agreements with third parties which would prevent Consultant from performing its obligations under this Agreement.

7. DEFENSE AND INDEMNIFICATION

7.1 **Defense and Indemnification Against Third Party Claims.** Contractor will defend, indemnify (including reasonable attorneys' and other professionals' fees and expenses), and hold harmless Company, and its subsidiaries and affiliates and their respective directors, officers, employees and agents, and Company's customers to the extent the customers are indemnified by Company (each a "Company Party") against any claim or action (collectively, "Claims") arising out of, resulting from, or related to (a) any actual or alleged act, error, or omission, or other conduct by Contractor, its employees or agents; (b) any actual or alleged breach by Contractor of any representation, warranty or other term of this Agreement, including without limitation those as set forth in Section 10.2 of this Agreement; or (c) any actual or alleged infringement or misappropriation of any Intellectual Property Right of a third party.

7.2 **Obligation to Modify Deliverables or Obtain IP Rights.** If a Company Party is prevented pursuant to an injunction, or in Company's opinion (which is notified to the Contractor) is likely to be prevented from using the Work Product by reason of any Claim, then Contractor will, at its sole expense, use its best efforts to (a) obtain all rights required to permit the use of the Work Product by the Company Party; or (b) modify or replace the Work Product to make it non-infringing, provided that the replacement of the Work Product is satisfactory to Company. If Contractor is unable to achieve either option (a) or (b) above, within thirty (30) days after issuance of an injunction or notice from Company, then Company may immediately terminate this Agreement and upon termination, Contractor will promptly refund Company the fees paid by Company for the Work Product

7.3 **Notification and Defense Obligations.** The non-indemnifying party will promptly notify the indemnifying party of any Claim for which it seeks indemnity under the terms of this Agreement; however, the non-indemnifying party's failure to give prompt notice will not relieve the indemnifying party of its indemnity obligation except to the extent that the indemnifying party shows that the failure actually prejudiced the indemnifying party. The non-indemnifying party will permit the indemnifying party to control, in a manner not adverse to the non-indemnifying party, the defense and settlement of any Claim using counsel reasonably acceptable to the non-indemnifying party, and the non-indemnifying

party may employ counsel at their own expense with respect to any Claim. If the non-indemnifying party employs counsel due to an indemnifying party conflict of interest or because indemnifying party does not assume control of the defense, then the indemnifying party will bear the expense. Then non-indemnifying party Company will give reasonable assistance and cooperation to the indemnifying party in the defense of the Claim. The indemnifying party will not admit liability or enter into any settlement that adversely affects the non-indemnifying party's rights or interests without the non-indemnifying party's prior written approval.

7.4 **Insurance.** Contractor shall obtain and maintain the following insurances, and provide evidence thereof to Company, as follows: (i) Comprehensive Commercial General Liability (bodily injury, property damage, etc.) Insurance in a policy limit of not less than one million dollars (US$1,000,000) per occurrence, and two million dollars (US$2,000,000) in the aggregate; (ii) Workers' Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of no less than $1,000,000 per accident, $1,000,000 disease each employee, and $1,000,000 policy limit. (iii) Commercial Umbrella Liability Insurance in the amount of four million dollars (US$4,000,000) each occurrence and in the aggregate. (iv) Automobile Liability Insurance for any vehicle assigned to activities performed under this agreement with a policy limit not less than $1,000,000 combined single limit each accident.

All required insurance coverages shall be primary coverages regardless of any coverage maintained by Company for any qualifying incident, and shall be issued by companies authorized to do business in the jurisdiction of where Services are performed. Required insurance policies in (i) and (iii) shall name include as Additional Insureds: Las Vegas Sands, LLC, Las Vegas Sands Corp ("LVS"), Venetian Casino Resort, LLC ("VCR"), Sands Expo & Convention Center, Inc. ("SECC"), Grand Canal Shops II, LLC("GCS"), and The Shoppes at the Palazzo, LLC ("TSAP"), , and each of their officers, directors, agents (excluding contractors), and employees in respects to the conduct of the named insured(s) in or about the property of LVS, VCR, SECC, GCS, TSAP, or that of their parent, subsidiaries and affiliates.

Company shall reimburse Contractor for the premiums of the required insurance coverages.

Prior to the delivery of any Services, Contractor shall provide Company with evidence of compliance with the terms of this Section, including a Certificate of Insurance. It is further agreed that Contractor and/or its insurance carrier shall provide Company with a thirty (30) day advance notice of material policy modification or cancellation.

8. TERM; TERMINATION

8.1 **Term.** The term of this Agreement shall commence on the Effective Date set forth above, and unless otherwise terminated as set forth herein, expire on the Expiration Date set forth above (the "Term"). Notwithstanding the preceding, this Agreement shall not terminate so long as any valid and open SOW exists unless it too is terminated at the time of this Agreement.

8.2 **Termination for Convenience.** Upon prior written notice by Company to Contractor, Company may terminate further performance of this Agreement, or any SOW hereunder, in whole or part, for any reason (including no reason). Such termination shall be effected by written notice from the Company to the Contractor specifying the effective date of the termination. On the effective date of the termination, Contractor shall terminate all services so terminated and take all reasonable actions to mitigate expenses. In the event of termination under this Section 8.2, Company's sole liability shall be for the payment of those goods and services requested by the Company and actually provided by the Contractor up to the effective date of termination.

8.3 **Termination for Cause.** In addition to any termination rights that may be provided in a SOW, each party may terminate this Agreement or any SOW for the following: (a) the other party commits a material breach of Sections 5, 6.2, 10.2, 10.3 or 10.4 of this Agreement; (b) if the other party commits a material breach of any term of this Agreement, which has not been remedied within thirty (30) days of a written request to remedy the same; (c) if the other party (i) has made or attempted to make any assignment for

the benefit of its creditors or any compositions with creditors; or (ii) has any action or proceedings under any bankruptcy or insolvency laws are taken by or against it which have not been dismissed within sixty (60) days; or (iii) has effected a compulsory or voluntary liquidation; or has undergone the occurrence of any event analogous to any of the foregoing under the law of any jurisdiction; or (d) if the other party fails to promptly secure or renew any license, registration, permit, authorization or approval for the conduct of its business necessary for performance of this Agreement, or if any such license, registration, permit, authorization or approval is revoked or suspended and not reinstated within sixty (60) days (or shorter period if required by any governmental or regulatory authority).

In the event that either party terminates this Agreement, or any SOW for cause, each party may exercise all remedies and defenses they may have in law and equity.

In the event that the Company terminates this Agreement, or any SOW hereunder for cause, and cause is not then found, the termination shall be automatically revised to be a Termination for Convenience by Company as allowed under Subsection 8.2 above, with such termination for convenience to be effective as if originally given when previously terminated for cause.

9. LIMITATION OF LIABILITY

EXCEPT FOR CLAIMS ARISING FROM THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 5 AND INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE DAMAGES, OR LOST PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

10. GENERAL PROVISIONS

10.1 **Relationship of the Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between Contractor and Company. Neither party nor its agents have any authority to bind the other party in any respect whatsoever, and the relationship of the parties is, and at all times shall continue to be, that of independent contractors.

10.2 **Gratuities; Inducement; Compliance with Laws.** The Contractor represents and warrants that it (or any agent or representative of Contractor) has neither paid, agreed to pay, nor will pay anything of value to any director, officer, employee, agent, or other representative of the Company in connection with this Agreement, nor has any such payment or agreement for payment been requested or solicited by any such director, officer, employee, agent or representative. The Contractor hereby acknowledges that it understands that any such payment or agreement would violate the Company's firm and undeviating policy, and that this representation and warranty constitutes a material inducement upon which the Company is relying in entering into and performing this Agreement. Contractor is also prohibited from soliciting or accepting kickbacks. Contractor warrants that it has not and will not pay or tender, directly or indirectly, any commission or finder's or referral fee to any person or firm in connection with its activities on behalf of the Company. Failure of Contractor to abide by these prohibitions may, at Company's option, result in immediate termination of this Agreement in accordance with the terms of this Agreement without provision for cure. Contractor will make its employees aware of the restrictions in this Section 10.2, and shall report any violation to Company's ethics hotline at (888) 469-1536, or by logging on to Company's website at www.lvscethics.com. In addition to the preceding reporting option, Contractor may at any time contact Company's management regarding any actual or alleged violation of ethics. Contractor shall cooperate fully with Company or any government agency investigating a possible violation of the above.

In connection with the its own business, each party shall comply, and cause its subcontractors to comply, with all applicable local, state, federal, and international rules, laws, and regulations related anti-corruption, anti-money laundering, and gaming, including those governing the providing of incentives,

inducements, kickbacks, gratuities or bribes, including without limitation the U.S. Foreign Corrupt Practices Act of 1977 (FCPA) (15 U.S.C. §§ 78dd-1, et seq.) which precludes giving, offering or agreeing to give anything of value to foreign government officials or holders of and candidates for public office or political parties, their families and agents, directly or indirectly, in connection with obtaining or maintaining contracts or orders or obtaining other benefits. The FCPA also requires complete and accurate record-keeping which records each party shall maintain. Additionally, Contractor shall review and acknowledge the Company's FCPA policy by separately executing the FCPA Acknowledgement set forth as Exhibit C to this Agreement.

Contractor further makes the following representations and warranties:

(a) Contractor warrants that all information supplied by Contractor is complete, truthful, and accurate, and that Contractor shall not obtain on Company's behalf or provide to the Company any information which is not legally available or which is procurement-sensitive, proprietary, or classified where there is reason to believe that possession of such information is unauthorized, illegal, or unethical.

(b) Contractor agrees to keep accurate books and records, including a full record of all expenses incurred in connection with any business in connection with Company, and that all payments to third parties shall be supported by written, detailed invoices.

(c) Contractor warrants that in performing the duties required hereunder, Contractor will comply with all laws, regulations, and administrative requirements, including but not limited to fair competition and anti-corruption laws, the Foreign Corrupt Practices Act (FCPA), Export Administration Act, as amended, the Anti-boycott Regulations and Guidelines issued under the Export Administration Act, as amended, and Section 999 of the Internal Revenue Code, as amended (Anti-boycott Regulations), and all U.S. laws regarding prohibited transactions under the Office of Foreign Assets Control (OFAC). Contractor further warrants that it shall take no action which would subject the Company to penalties under United States or Foreign laws, regulations, or administrative requirements.

(d) Contractor warrants that in providing its Services to the Company, Contractor is fully qualified to assist the Company under all laws, regulations, and administrative requirements, and that, to the extent required by applicable law, regulation, or administrative requirement, Contractor has obtained licenses or completed such registrations as may be necessary or required to perform its duties as set forth hereunder.

(e) Contractor represents and warrants that: (i) neither Contractor nor any of Contractor's employees or officers is an official, employee, or active member of the armed services; an official or employee of the government; or an official of a political party, or a candidate for political office; and, (ii) while performing hereunder, no government official, and no official of a government agency or instrumentality, is or will become associated with, or will own or presently owns an interest, whether direct or indirect, in Contractor, or has or will have any legal or beneficial interest in the Agreement or the payments made by the Company hereunder.

(f) Contractor is not engaged as a lobbyist, and therefore shall not represent itself on the Company's behalf or to the Company's benefit to the executive, legislative or administrative branches of governments.

(g) Contractor warrants that at all times Contractor will act in the best interests of the Company and will take no actions which are or may be detrimental to the Company.

(h) Contractor represents and certifies that Contractor has not been convicted of or pleaded guilty or nolo contendere to an offense involving fraud, corruption, or moral turpitude, and that it is not now listed by any government agency as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for government procurement programs.

(i) Contractor hereby acknowledges receipt of a copy of the Company's "Code of Business Conduct and Ethics" provided to Contractor via Contractor's access at http://s1.q4cdn.com/133622603/files/doc_downloads/Code-of-Business-Conduct-and-Ethics.pdf and Company's "Supplier Code of Conduct" provided to Contractor via Contractor's access at

http://www.sands.com/content/dam/corporate/sands/master/main/home/files/lvs_supplercodeofconduct_jan2013.pdf. Contractor warrants and certifies that it fully understands the Company's policies and will do nothing in the performance of the services required under this Agreement which will be in conflict with such policies. The codes are subject to change, and Contractor may at any time access a copy of the then current codes from the above referenced website link.

(j) In carrying out its obligations under its warranties, Contractor warrants that Contractor will, among other things, exercise diligence in selecting any employees or agents, provide appropriate training to them, and monitor their activities to ensure that such are consistent with the warranties made by Contractor hereunder, including reviewing both the Code of Conduct and Company's requirements hereunder with any employee of the Contractor performing services on behalf of the Company.

(k) Contractor will execute all of the certifications required by Company, and agrees to promptly furnish such further certificates as may be requested by the Company from time to time. Contractor's obligation under this subsection include a continuing commitment to furnish such additional information as necessary to ensure the completeness and accuracy of all such information previously requested or provided. Failure or refusal to promptly furnish any requested certificate or disclosure upon request from the Company or as required hereunder may be the basis for immediate termination of this Agreement.

(l) Contractor represents and warrants that they will obtain written pre-approval for all entertainment of Company personnel from the Company's Chief Compliance Officer and General Counsel, that all entertainment will comply with the Company's policy and its Code of Conduct, and that all requests for reimbursements for entertainment will be accompanied by valid receipts detailing persons in attendance, positions of same and purposes of the expense, and proof of written pre-approval of entertainment.

(m) Contractor agrees to give immediate written notice to the Company in the event that, at any time during the term hereof, (i) Contractor has or believes it may have failed to comply with, or has or believes it may have breached any of its warranties hereunder, or (ii) it is alleged that Contractor has made improper payments in connection with its performance hereunder. In the event Contractor has not so complied, or has breached any of Contractor's warranties hereunder, or such allegation of improper payments is made, this Agreement shall be null and void from the time of such non-compliance or breach.

The foregoing warranties shall survive the termination of this Agreement and shall continue in effect with respect to all business activities of the Company until all such activities have ceased.

10.3 **Regulatory Requirements.** Contractor acknowledges that the Company and affiliates of the Company are businesses that are, or may be, subject to extensive gaming regulations and that exist because of privileged licenses issued by governmental authorities relating to casino gaming ("Gaming Authorities"). Upon request, Contractor shall disclose the names of all officers and directors of Contractor, and unless a publicly traded corporation on a national stock exchange, Contractor shall disclose to the Company all ownership interests in Contractor and all lenders or sources of financing. Contractor and its shareholders, members, principals, officers and others shall comply with requests from the Company and its affiliates to undergo background investigations, to provide personal, financial and business information and to complete such forms and documentation and perform such other acts as may be requested by Company and its affiliates for gaming regulatory purposes. If requested to do so by Company, Contractor shall obtain any license, qualification, clearance or the like which shall be requested or required of Contractor by any Gaming Authority or any regulatory authority having jurisdiction over Company or any affiliate of Company. If Contractor fails to satisfy any requirements of this Section, or if Company or any affiliate of Company is directed to cease business with Contractor by any such authority, Company shall have the right to terminate this Agreement or any SOW or Purchase Order upon written notice without further liability by either party. If Company shall in good faith determine that Contractor, or any of its officers, directors, employees, agents, designees or representatives, or partner, owner, member, or shareholder, or any lender or financial participant: (i) is or may be engaged in, or is about to be engaged in, any activity or activities or (ii) was or is involved in any relationship, either of which could or does jeopardize Company's business, reputation or such

licenses, or those of its affiliates, or if any such license is threatened to be, or is, denied, curtailed, suspended or revoked, then Contractor shall immediately (iii) terminate the relationship with the source of the problem, or (iv) cease the activity creating the problem. If Contractor does not comply with item (iii) or (iv) above, then Company may (v) require Contractor to specifically perform such obligation (the parties recognizing that damages or other remedies would be inadequate under the circumstances), or (vi) terminate this Agreement or any SOW or Purchase Order without further liability by either party. If the termination of any such activity or relationship would, in the judgment of Company's Corporate Compliance Committee (the "Committee") cure the regulatory concerns of the Committee, Contractor shall have thirty (30) days from written notice by Company within which to effect such cure (but in no event longer than the time available to fully comply with any requirement imposed by any Gaming Authority, any other governmental requirement or the fulfillment of the obligations of the Committee under the requirements of any Gaming Authority); provided, however, that Company shall have the right to terminate the this Agreement, SOW or any Purchase Order, without further liability by either party, if in the judgment of the Committee termination of the relationship or activity would not resolve the concerns of the Committee.

10.4 Intentionally Blank.

10.5 **Equitable Relief.** Company may seek equitable relief to enforce the rights granted in this Agreement to obtain a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm. The rights granted in this Agreement are critical to Company's business and Company's ability to service its customers; and the loss of these rights cannot be adequately compensated or measured in monetary damages. Accordingly, the rights granted in this Agreement are the proper subject of an order of specific performance, mandatory injunction, or other appropriate preliminary or permanent equitable relief without the need / requirement for Company to post a bond.

10.6 **Compliance with Audits.** Contractor will provide necessary information and comply with Company or third party initiated audits including, but not limited to, financial viability assessment, electronic security assessment, and criminal and civil background investigations.

10.7 **English Language; Governing Law; Venue.** English is the language of this Agreement, and all communications and proceedings must be conducted in English. If this Agreement is translated, then the English language version will control. The laws of the State of Nevada, United States of America, govern this Agreement, without regard to any conflicts of laws rules and the United Nations Convention on Contracts for International Sale of Goods does not apply to this Agreement. The parties agree to submit to the jurisdiction of the state and federal courts located in Las Vegas, Nevada.

10.8 **Dispute Resolution.** The parties agree that all disputes arising from or relating to this Agreement (the "Dispute(s)") may only be resolved by arbitration as described herein. The Dispute may only be resolved by arbitration in accordance with the Commercial Rules of the American Arbitration Association currently in effect before a single arbitrator. The demand for arbitration will be filed in writing with the other party and with the American Arbitration Association. The arbitrator will apply the substantive law of Nevada without regard to any conflict of laws provision. The arbitration will be governed by the United States Arbitration Act, 9 U.S.C. § 1 et. seq. The arbitration will be held in Clark County, Nevada at a location determined by the arbitrator. Arbitration may involve, by consolidation or joinder, any third party whose presence is necessary to provide full relief to any party, including a subcontractor, even though not a party to this Agreement. In order to facilitate resolution of the Dispute, Contractor will include the arbitration requirements of this Agreement, in its contracts with suppliers or in subcontracts with subcontractors. The award rendered by the arbitrator will be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Each party will pay its own costs and attorney's fees of the arbitration.

10.9 **Travel Expenses.** When travel is required in the performance of Services, Company may arrange and/or reimburse Contractor the cost of such travel, at its discretion, subject to the following limitations. All travel arrangements (airfare, car rental, lodging, etc.) are subject to the Company's Travel Policy as may be found at http://www.sands.com/procurement-supply-chain.html the Company and/or Company Affiliate for which Services are being provided ("Travel Policy"), must be approved in writing by Company prior to incurring such, and must be made through the Company's travel services agency

("Travel Services") by contacting: Executive Travel Services, Inc. via e-mail at victoria@executive-travel.net or by phone (757) 622-2887. If travel arrangements are not made through Travel Services, Company shall not pay for or otherwise reimburse Contractor for such travel expenses. The Travel Policy is subject to change, and Contractor may at any time access a copy of the then current Travel Policy from the above referenced website link.

10.10 **Severability, Survival.** The terms of this Agreement are severable and if any term is unenforceable for any reason, then that term will be enforced to the fullest extent possible, and the Agreement will remain in effect. All obligations that by their terms or nature survive termination of this Agreement will continue until fully performed.

10.11 **Written Amendments; Electronic Business Transactions.** This Agreement may be changed only by written amendment signed by both parties. The parties may exchange electronic documents in lieu of printed documents. Contractor will comply with Company's designated system of exchanging electronic documents and will bear its own costs to participate in the system. Neither party will contest the validity or enforceability of electronically transmitted documents on the grounds that they fail to comply with the Statute of Frauds or similar laws requiring that contracts be in writing (such as UCC Section 2-201 or any statutory or common-law equivalent). Neither party is prohibited from asserting that an electronic document is invalid for any reason that would also invalidate a written document.

10.12 **Assignment.** This Agreement, or any of its rights or any materials provided hereunder, may not be assigned or otherwise transferred by either party to any other person or entity, whether by operation of law or otherwise, without the other party's express written consent, which shall not be unreasonably withheld or delayed and any such attempted assignment not permitted by either party shall be void and of no effect; provided, however, that such consent of the other party shall not be required with respect to an assignment or transfer by either party to (a) any corporate affiliate of such party; or (b) an acquirer of all or substantially all of the assets or capital stock of such party related to this Agreement, whether through purchase, merger, consolidation or otherwise. Any permitted assignment or transfer of or under this Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and permitted assigns of the parties hereto.

Subject to the above, if Contractor transfers (a) any controlling ownership interest in Contractor, or (b) any controlling ownership interest in any Contractor division or subsidiary responsible for supplying or maintaining the Services or Work Product, then the successor will be bound to continue supplying and maintaining the Services or Work Product for Company under the terms of this Agreement; and further, Contractor unconditionally and irrevocably guarantees the performance of all of Contractor's obligations under this Agreement by any successor. Company may pursue its rights against Contractor or any successor in any sequence that Company determines appropriate.

10.13 **Affiliated Companies.** Exhibit D sets forth each entity that controls, is controlled by, or is under common control with Contractor. The Contractor shall inform the Company as soon as practicable, should there be any change to Exhibit D after the Effective Date and during the term of the Agreement.

10.14 **Entire Agreement; No Waiver; Notices; Third Parties.** This Agreement contains the complete and entire agreement between the parties and supersedes any prior understandings, agreements, undertakings or representations between the parties, whether oral or written. All understandings and agreements heretofore made between the parties are merged into this Agreement. No failure or delay in exercising any right will be considered a waiver of that right. All notices and other communications must be delivered to the addresses designated on the first page of this Agreement. There are no intended third party beneficiaries to this Agreement.

10.15 **Order of Precedence.** It is the intent of the parties that the language in the documents making up this Agreement be construed to the maximum extent possible so as not to create a conflict among or between such documents, and to the extent the conflicting terms can reasonably be interpreted so that such terms are consistent with each other, such consistent interpretation shall prevail. In the event of a conflict between: (a) this Agreement and any Exhibit to this Agreement, the terms of this Agreement shall prevail; (b) this Agreement and any Statement of Work, the terms of the Statement of Work shall prevail. Notwithstanding the foregoing, any modification to the terms of this Agreement as

incorporated into a Statement of Work shall be applicable only to such Statement of Work. In addition, the terms and conditions of any Contractor-provided purchase order, invoice, quotation or other document or reference to Contractor online terms and conditions shall not apply to the Services provided under this Agreement and shall automatically be deemed null and void.

10.16 **Force Majeure.** In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, material unavailability, or any other cause beyond the reasonable control of such party, and if such party shall have used its best efforts to mitigate its effects, and if such party shall give prompt written notice to the other party, such party's performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences. Notwithstanding the foregoing, if the period of delay extends beyond 30 days, the other may terminate the Agreement upon written notice.

10.17 **Publicity and Announcements.** The Contractor shall not: (a) make any formal or informal public statement or announcement; (b) advertise or issue any information, document or article (including photographs or film) for publication (including publication on the internet and in any social media, website or blog) whether for advertising, promotional, publicity or any other purposes; or (c) give any media interviews or issue any media release, relating to any or all of the following (all of which matters in sub-sections (i), (ii) and (iii) below shall constitute Confidential Information of the Company) without the prior written approval of the Company (which approval may be withheld or conditioned at the sole discretion of the Company), and shall provide a copy of any proposed statement, announcement or media release to the Company when seeking such approval: (i) the Contractor's Services or any part thereof; (ii) the status, progress or any details of the Contractor's Services (including without limitation any regulatory approvals required and all discussions and meetings with the Company, other parties involved in the Contractor's Services and any government agencies and their respective directors, officers, employees, agents, consultants, advisors and representatives); and (iii) the fact, existence or contents of this Agreement.

END.

EXHIBIT A - NDA

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("Agreement") is made as of February 3, 2016 between Venetian Casino Resort, LLC, a Nevada limited liability company ("Company") and the participant identified below ("Participant").

1. In connection with discussions between the parties relating to a potential business relationship (the "**Purpose**"), one party hereto (the "**Disclosing Party**") may find it beneficial to disclose to the other party hereto (the "**Receiving Party**" and, together with the Disclosing Party, the "**Parties**") certain Confidential Information (as defined below). As a condition to making available such information, the Disclosing Party requires that the Receiving Party agree, as set forth below, to treat confidentially any Confidential Information that the Disclosing Party or its Representatives make available to the Receiving Party or its Representatives (which term, as used in this Agreement, shall mean the applicable Party's subsidiaries and their respective directors, officers, employees, consultants and advisors) and to take or abstain from taking certain other actions as set forth herein.

2. As used in this Agreement, "**Confidential Information**" means all information concerning the Disclosing Party or any of its subsidiaries (whether prepared by the Disclosing Party or otherwise, whether oral or written, in whatever form or data storage medium and whether or not specifically identified as "confidential") that the Disclosing Party or its Representatives make available to the Receiving Party or its Representatives, including, without limitation, technical, financial and product business plans, customer lists and customer information, strategies and information, computer programs, code and software, technical drawings and schematics, technical expertise, know-how, processes, ideas, inventions (whether patentable or not) and reports (together with all analyses, compilations, forecasts, studies, summaries, notes, data and other documents and materials, in whatever form maintained and whether prepared by the Disclosing Party, the Receiving Party or other persons, which contain or reflect, or are based on or generated from, in whole or in part, any such information). Confidential Information does not include information to the extent that such information:

(a) is already known by the Receiving Party or its Representatives prior to the date of disclosure (as evidenced in the Receiving Party's or its Representatives' books and records), and is not already subject to an obligation of confidentiality owed by the Receiving Party or its Representatives to the Disclosing Party;

(b) is or becomes generally available to the public other than as a result of disclosure in violation of this Agreement;

(c) is received by the Receiving Party or its Representatives on a non-confidential basis from an unaffiliated third party without, to the knowledge of the Receiving Party or its Representatives, an obligation of confidentiality or a breach of an obligation of confidentiality to the Disclosing Party; or

(d) is independently developed by the Receiving Party or its Representatives (as evidenced in the Receiving Party's or its Representatives' books and records).

3. With respect to Confidential Information, the Receiving Party shall, and shall cause its Representatives to:

(a) use the Confidential Information solely to the extent necessary for the purpose of evaluating the Purpose and not for any other purpose;

(b) except to the extent permitted by, and in accordance with, Section 5 hereof, not disclose any Confidential Information to any person other than Representatives of the Receiving Party if and to the extent such Representatives have a need to know such information for the purpose of evaluating the Purpose and have agreed to be bound by the applicable provisions of this Agreement; and

(c) upon the written request of the Disclosing Party, promptly return all Confidential Information to the Disclosing Party (or destroy such Confidential Information) without retaining any copies thereof and provide certification of its compliance with this Section 3(c) by a senior officer of the Receiving Party, except to the extent that returning or destroying such Confidential Information would constitute a violation of applicable law (as confirmed by the opinion of its counsel); provided, however, that the Receiving Party and its Representatives may retain (i) one (1) copy of written Confidential Information for compliance purposes and (ii) Confidential Information to the extent it is contained in computer archives made in the ordinary course of business which would be commercially impracticable to delete; provided, further, however, that, notwithstanding Section 13 hereof, the obligations under this Agreement shall survive with respect to any Confidential Information that is so retained for so long as it is retained.

The Receiving Party shall be responsible for any breach of this Agreement by its Representatives to the same extent as if they were parties hereto.

4. Without the prior written consent of the Disclosing Party, the Receiving Party shall not, and shall cause its Representatives not to, disclose to any person (except to the extent permitted by, and in accordance with, Section 5 hereof): (a) the fact that investigations, discussions or negotiations are taking place or have taken place concerning the Purpose; (b) any of the terms, conditions or other facts with respect to any relationship or transaction relating to the Purpose, including the status thereof or either Party's consideration thereof; or (c) that this Agreement exists or that Confidential Information has been requested or made available to the Receiving Party or its Representatives. The term "person" as used in this Agreement shall be interpreted broadly to include any corporation, partnership, limited liability company, other entity, governmental authority, group or individual.

5. In the event that the Receiving Party (or any of its Representatives) is required by law or judicial or governmental order to disclose any Confidential Information (or the information referred to in Section 4 hereof), the Receiving Party (or such Representative) must first provide the Disclosing Party with prompt written notice of such requirement so that the Disclosing Party may seek an appropriate protective order, unless, as confirmed by the opinion of counsel of the Receiving Party (or such Representative), providing such notice would itself constitute a violation of law. If the Receiving Party (or such Representative) is nevertheless so required (as confirmed by the opinion of its counsel) to disclose Confidential Information (or the information referred to in Section 4 hereof), then the Receiving Party (or such Representative) shall only disclose that portion of the Confidential Information (or information referred to in Section 4 hereof) that is so required to be disclosed (as confirmed by the opinion of its counsel). In such an event, the Receiving Party (or such Representative) shall take reasonable efforts to obtain assurance that confidential treatment will be accorded to that portion of the Confidential Information (or information referred to in Section 4 hereof) being disclosed. In no event shall the Receiving Party (or such Representative) oppose action by the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information (or information referred to in Section 4 hereof).

6. Nothing in this Agreement grants, or shall be deemed to grant, either Party (or any of its Representatives) any authority or agency of kind or manner to act in any way in the other Party's name or otherwise on behalf of the other Party and no Party (or any of its Representatives) shall hold itself out to be acting in such manner or to possess such authority.

7. Nothing contained in this Agreement shall be construed as granting or conferring, whether by sale, license or otherwise, to the Receiving Party (or any of its Representatives) any right, title or interest in or to Confidential Information. The Disclosing Party shall be entitled at any time and without notice to the Receiving Party (or any of its Representatives) to negotiate, disclose and otherwise deal in any manner and for any purpose with third parties regarding the Confidential Information. Each Party reserves the right, in its sole discretion and without prior notice, to terminate any discussions with the other Party or such Party's consideration of any potential relationship or transaction between the Parties. Unless and until a definitive agreement between the Parties with respect to the Purpose has been executed and delivered, neither Party will be under any legal obligation of any kind with respect to the Purpose by virtue of this Agreement (or any written or oral expression with respect to the Purpose), except for the matters specifically agreed to in this Agreement. All Confidential Information is made available on an "as is" basis and neither Disclosing Party nor any of its affiliates or Representatives has made or

makes any express or implied representations or warranties as to the accuracy or completeness of the Confidential Information.

8. The Receiving Party and its Representatives acknowledge and agree that neither the Disclosing Party nor any of its Representatives shall have any liability to the Receiving Party or any of its Representatives on any basis (including, without limitation, in contract, tort, under federal or state securities laws or otherwise), and neither the Receiving Party nor any of its Representatives shall make any claims whatsoever against such other persons, in connection with this Agreement or any other written or oral expression with respect to the Purpose, the evaluation of the Purpose, the review of or use or content of the Confidential Information or any errors therein or omissions therefrom or any action taken or any inaction occurring in reliance on the Confidential Information, in each case, except and solely to the extent as may be included in any definitive agreement with respect to any business relationship or other transaction involving the Parties.

9. Participant hereby acknowledges and agrees that it is aware, and that it will advise its Representatives who are informed as to the matters that are the subject of this Agreement, that the United States and other securities laws prohibit any person who has received from an issuer material, non-public information from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

10. Company has sole and exclusive rights in all personally or other identifiable information of its patrons that may be received by Participant ("Patron Data"), and takes seriously its efforts to ensure the privacy rights of its patrons. Participant therefore agrees that if Patron Data is so provided by Company, or Participant has access to Patron Data, Participant shall use the Patron Data in compliance with all applicable laws, administrative rulings, and in accordance with Company's privacy policies, which will include without limitation, protection of the Patron Data from unauthorized access, destruction, use, modification or disclosure. Participant will not sell, release or use any Patron Data, including e-mail addresses associated therewith, except as expressly agreed in writing by Company and within strict compliance with any and all federal, state and local laws, and any and all rules and regulations including the CAN-SPAM Act of 2003 (15 U.S.C. 7701, et seq, the "CAN-SPAM Act"). Additionally, Participant shall not aggregate or combine Patron Data with Participant information or information received from other third parties.

11. The provisions hereof shall inure to and be binding upon the successors and assigns of the Parties; provided, however, that no disclosure of Confidential Information may be made to any successor or assign of the Receiving Party without the written consent of the Disclosing Party.

12. The Receiving Party and its Representatives acknowledge and agree that the Disclosing Party would be irreparably harmed by a breach of this Agreement by the Receiving Party or its Representatives and that money damages are an inadequate remedy for an actual or threatened breach of this Agreement. Therefore, the Receiving Party and its Representatives agree to the granting of specific performance of this Agreement and injunctive or other equitable relief in favor of the Disclosing Party as a remedy for any such breach, without proof of actual damages, and the Receiving Party and its Representatives further waives any requirement for the securing or posting of any bond in connection with any such remedy. Such remedy shall not be deemed to be the exclusive remedy for any such breach, but shall be in addition to all other remedies available at law or equity to the Disclosing Party.

13. This Agreement shall be governed in accordance with the laws of the State of Nevada, United States of America, without regard to conflict of law provisions. The Receiving Party hereby (a) irrevocably and unconditionally submits to the jurisdiction of any State court located in Las Vegas, Nevada with respect to all actions and proceedings arising out of or relating to this Agreement, (b) agrees that all claims with respect to any such action or proceeding may be heard and determined in such court, (c) irrevocably and unconditionally waives any objection to the laying of venue of any such action or proceeding in any such court and hereby further irrevocably and unconditionally waives and agrees not to plead or claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum, (d) agrees that service of any process, summons, notice or document delivered by hand or sent by U.S. registered mail to the Receiving Party's address set forth below shall be effective service of process for any action or proceeding brought against you in any such court,

and (e) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

14. This Agreement shall remain in effect for two (2) years from the date of this Agreement. This document represents the full and complete agreement of the Parties with respect to the subject matter of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute the same agreement.

IN WITNESS WHEREOF, the Parties have, by duly authorized persons, executed this Agreement, as of the date first above written.

BAZ Theatrical, LLC		Venetian Casino Resort, LLC	
Address:	4350 S. Arville, B15 Las Vegas, NV 89103	Address:	3355 Las Vegas Blvd. South Las Vegas, NV 89109
Signature:		Signature:	
Print Name:	Blair Farrington	Print Name:	GEORGE MARKANTONIS
Title:	President	Title:	PRESIDENT & COO

EXHIBIT B – STATEMENT OF WORK

1. Contractor shall provide the services of general manager for the run of the production of the theatrical show commonly known as "BAZ – Star *Crossed* Love" at Company's Palazzo Theater (the "Production"). Such services shall begin upon the Parties having fully signed the Agreement and shall continue until three (3) weeks after the close of all performances of the Production or until three (3) weeks after Company's abandonment of the Production.

2. Contractor will use its best efforts in performing the services set forth herein. These duties include, but are not limited to:

    a. Assisting Company in preparing documents and budgets;

    b. Arranging for the casting of all performers (the "Cast") in the Production;

    c. Exercising all indicia of the employment relationship and all control over all Production personnel, including but not limited to the interviewing, negotiating, hiring, terminating and administering (including the payment of all sums due and owing to such personnel as well as preparing all payroll records (e.g. W-2s and Affordable Care Act documentation) all contracts for all such personnel including but not limited to the Cast, backstage personnel (including but not limited to directors, designers and choreographers, and musicians); and stage management, associate producer/production manager (collectively, the "Contractor's Employees") – as well as all vendor/supplier agreements required for the delivery of the Production.

    d. Preparing all production and operating statements to be submitted by no later than each Monday;

    e. Paying all bills approved by Company as funds to do so are provided by Company;

    f. Scheduling all work schedules for the Contractor's Employees

    g. Assisting Company as requested with all routine and customary financial and business matters with respect to the Production;

    h. Opening and maintaining the Production's manager's account; and

    i. Maintaining complete and accurate records and files of the above, which books and records shall be made available to Company or its representatives on demand.

3. The Contractor's Employees shall not be deemed employees of the Company, and the Contractor shall be solely responsible for and shall make timely and complete payment of all Employee Costs. "Employee Costs" shall mean any and costs and expenses related to Contractor's Employees, including but not limited to salaries, wages, fees, benefits, contributions, workers' compensation insurance, employment taxes including federal and state withholding, social security, and unemployment compensation taxes, all as indicated in the Contractor's hiring plan for each of Contractor's Employees as set forth in Attachment 1 hereto (which exhibit is merely illustrative of the expenses to be paid by Contractor as Contractor is solely responsible for the payment of all items set forth in Attachment 1 hereto). Notwithstanding the absence of any line item in Attachment 1, Contractor acknowledges and agrees that it is solely responsible for all costs and expenses related to the Contractor's Employees, so long as they have been prepaid by Company.

4. With respect to Contractor's services set forth herein, Contractor shall receive weekly compensation of Three Thousand and Five Hundred Dollars ($3,500.00) for the entire period set forth in Section 1 of this Statement of Work. Contractor shall be entitled to distribute to itself the weekly compensation from the Accounts as funded by Company.

5. Attachment 1 hereto is the current agreed upon budget for the Production (the "Budget"). Only Company has the authority to modify the Budget. Contractor shall be responsible for ensuring that all payments from the Account are pre-approved in writing by Company. Contractor shall provide Company with a reconciliation of all payments from the Account each Friday or as requested by Company.

6. Attachment 2 is the current agreed upon schedule for the preparation phase of the Production.

7. Company shall pay to Contractor the amount sufficient for pre-approved expenses in the Contractor's requested weekly budget. This payment is to be transferred on the Friday before settlement for any given week. At settlement on Tuesday of the given week, Contractor will present Company with an invoice for the following week's operating expense funding request to be transferred by Company on the Friday of the given week. (In the event that Contractor requests payment of a pre-approved expense via any method other than the requested weekly budget set forth above, Company shall promptly review such request.) Contractor shall not be required to advance funds to pay any expenses of the Production. Company shall hold Contractor harmless and indemnify Contractor from all claims resulting from any failure by Company to advance any approved expenses. Should Company advance all approved Employee Costs, Contractor shall hold Company harmless and indemnify Company from all claims resulting from any failure by Contractor to timely and fully pay all Employee Costs. Company shall approve all expenses that it deems in its sole and absolute judgment to be reasonable and necessary for the operation of the Production.

8. Contractor shall maintain all books and records and in all other respects fully comply with all applicable City, State and Federal laws.

9. Contractor shall maintain the manager's account (as such term is defined in the theatrical industry) checkbooks for the Production and be able to sign such checks singly.

10. Upon the termination of Contractor's services, Contractor shall: a) deliver all of the Production's books and records to Company or its designee (Contractor shall retain copies and/or originals as required by law); and b) transfer control of the Accounts to Company or its designee.

11. All services rendered hereunder by Contractor and/or any of its employees and/or agents shall be performed with Company's prior approval.

12. Contractor understands that neither Contractor nor Contractor's Employees or contract personnel are eligible for workers' compensation or unemployment insurance benefits from Company and therefore will not apply for such benefits. Also, neither Contractor nor Contractor's Employees or contract personnel may participate in any employee pension, profit sharing, stock option, health, vacation pay, sick pay or other benefit plan of Company. Contractor further agrees that in the event a court or government agency later determines that Contractor is an employee rather than an independent contractor, Contractor waives any right to recover and promises not to seek employee benefits of any kind to which an employee would have been entitled during the period prior to the court or agency's ruling.

13. Since Contractor is an independent business, Contractor is responsible for and will timely pay all income, Social Security, self-employment, unemployment and other taxes that may be due as a result of payments to Contractor under this Agreement. Upon request, Contractor will provide Company with proof that such payments have been made. Other than as required by applicable laws, no taxes will be withheld from Company's payments to Contractor. Contractor will complete an IRS Form W-9 (or similar documents as required in the applicable country) certifying that Contractor is not subject to backup withholding. Company will provide Contractor with an IRS Form 1099 at the end of each year showing all fees paid to Contractor during the year. In the event of an audit, Contractor agrees to promptly cooperate with Company and provide copies of Contractor's state and federal income tax returns and other documents as Company may reasonably request.

Attachment 1
Projected Budget (as of February 15, 2016)
Subject to Change

Projected project budget under BAZ Theatrical, LLC management: **$886,221.74**

Due to at signing: **$150,000.00 (see table below)**
Due as invoiced following signing: **$202,185.37**
Due three weeks prior to first rehearsal: **$78,350.00**
Due on demand, as invoiced during production period: **$455,735.87**

DUE TO BAZ THEATRICAL, LLC AT SIGNING	
Detail	Total
Casting Costs	$ 20,000.00
Director	$ 10,000.00
Choreographer & Asst.	$ 7,500.00
Lighting Designer	$ 11,250.00
Costume Designer	$ 5,000.00
AEA Bond (estimate)	$ 42,000.00
BAZ Theatrical Insurance	$ 9,000.00
BAZ Theatrical Fee	$ 14,000.00
Associate Producer	$ 16,000.00
Associate Producer Housing	$ 1,700.00
Airfares	$ 4,800.00
Hotel	$ 4,750.00
Per Diem	$ 4,000.00
Total	**$ 150,000.00**

BAZ THEATRICAL - BUDGET BASIS	TOTAL	INVOICED POST SIGNING	Three weeks prior to rehearsal	Balanced due as invoiced
Balcony Masking Curtain	$ -	$ -	$ -	$ -
Chandeliers (ceiling)	$ 32,000.00	$ 16,000.00	$ -	$ 16,000.00
Stage Flooring	$ 4,000.00	$ 2,000.00	$ -	$ 2,000.00
On Stage Platforming	$ 144,521.74	$ 72,260.87	$ -	$ 72,260.87
On Stage Masking	$ 15,000.00	$ 7,500.00	$ -	$ 7,500.00
FOH/FO Stage / Runway	$ -	$ -	$ -	$ -
Backline Equipment	$ 10,000.00	$ 5,000.00	$ -	$ 5,000.00
Media/Video Content - Format	$ 85,000.00	$ 42,500.00	$ -	$ 42,500.00
Seat Removal	$ -	$ -	$ -	$ -
Stud Removal and Anchor & Reset	$ -	$ -	$ -	$ -
Table- Rails - Cocktail Surface	$ -	$ -	$ -	$ -
Facilities - Bars - Re-allocated to FF&E	$ -	$ -	$ -	$ -
Stage Height Adjustment	$ -	$ -	$ -	$ -
Wardrobe	$ 20,000.00	$ 10,000.00	$ -	$ 10,000.00
Shipping	$ 35,000.00	$ 17,500.00	$ -	$ 17,500.00
Sub Total	$ 345,521.74	$ 172,760.87	$ -	$ 172,760.87
CREATIVE AND TECHNICAL STAFF				
Advance Payment - Ad Astra - IP	$ -			
Director	$ 20,000.00	$ -	$ -	$ 10,000.00
Assistant Director	$ 5,000.00	$ 2,500.00	$ -	$ 2,500.00
Choreographer & Assistant	$ 15,000.00	$ -	$ -	$ 7,500.00
Scenic Designer	$ 25,000.00	$ 12,500.00	$ -	$ 12,500.00
Lighting Designer	$ 22,500.00	$ -	$ -	$ 11,250.00
Costume Designer	$ 10,000.00	$ -	$ -	$ 5,000.00
Lighting Programmer	$ 9,750.00	$ 4,875.00	$ -	$ 4,875.00
Sound Designer	$ 5,000.00	$ 2,500.00	$ -	$ 2,500.00
Associate Producer	$ 48,000.00	$ -	$ -	$ 32,000.00
Sub Total	$ 160,250.00	$ 22,375.00	$ -	$ 88,125.00
REHEARSAL AND CASTING EXPENSE				
Performance Bond (refundable)	$ 42,000.00	$ -	$ -	$ -
Casting - 2 weeks - LV/LA	$ 20,000.00	$ -	$ -	
Actors - Rehearsal Pay	$ 90,000.00	$ -	$ 45,000.00	$ 45,000.00
Musicians - rehearsal PAY	$ 18,750.00	$ -	$ 9,375.00	$ 9,375.00
Musical Director	$ 8,250.00	$ -	$ 4,125.00	$ 4,125.00
General Manager	$ 42,000.00	$ 7,000.00	$ -	$ 21,000.00
BAZ Theatrical, LLC - Insurance	$ 9,000.00	$ -	$ -	$ -
VCR HOD's OT Only	$ -	$ -	$ -	$ -
Load In labor - ST	$ -	$ -	$ -	$ -
Load In labor - OT	$ -	$ -	$ -	$ -
PSM	$ 11,550.00	$ -	$ 5,775.00	$ 5,775.00
ASM	$ 9,450.00	$ -	$ 4,725.00	$ 4,725.00
Sub Total	$ 251,000.00	$ 7,000.00	$ 69,000.00	$ 90,000.00
HOUSING - TRAVEL - PER DIEM				
Actor - Allowance	$ 9,350.00	$ -	$ 9,350.00	$ -
Associate Producer - Housing Allowance	$ 3,400.00	$ -	$ -	$ 1,700.00
Per Diem	$ 44,100.00	$ -	$ -	$ 40,100.00
Airfare	$ 9,600.00	$ -	$ -	$ 4,800.00
Hotel	$ 63,000.00	$ -	$ -	$ 58,250.00
Sub Total	$ 129,450.00	$ -	$ 9,350.00	$ 104,850.00
SOFT COST - CODE COMPLIANCE				
Sub Total	$ -	$ -	$ -	$ -
PRELAUNCH MARKETING				
Allocation	$ -	$ -	$ -	$ -
Sub Total	$ -	$ -	$ -	$ -
	$ 886,221.74	$ 202,135.87	$ 78,350.00	$ 455,735.87
CONTINGENCY 0.00%	$ -	$ -	$ -	$ -
GRAND TOTAL - PRODUCTION	$ 886,221.74	$ 202,135.87	$ 78,350.00	$ 455,735.87

Attachment 2
Current Projected Schedule

Auditions: March 2016

Design Install: May 9-29

Studio Rehearsals: May 16-29 (2 weeks)

Tech Rehearsals: May 30-June 20 (3 weeks)

Previews: June 21-24

Opening Night: June 25

EXHIBIT C - FOREIGN CORRUPT PRACTICESACT SUMMARY

This memorandum summarizes pertinent portions of the Foreign Corrupt Practices Act ("FCPA").

By its terms, the FCPA applies to the worldwide business activities of U.S. corporations. It prohibits U.S. companies, first, from paying bribes to foreign officials. It also prohibits offering or promising to pay, or authorizing, a bribe, and prohibits making gifts or otherwise providing anything of value to foreign officials. This prohibition even extends to the offering of business opportunities, lavish entertainment, excessive "business promotional" activities, covering or reimbursing expenses of foreign officials, and charitable, political, or in-kind contributions.

The FCPA defines the term "foreign official" to include any government employee, elected, appointed, or otherwise. It also includes officers, directors, and employees of government-owned companies or other instrumentalities. Justice Department officials construe the FCPA to cover gifts or payments to employees of companies in which the government has <u>any</u> ownership, not just wholly-owned and controlled companies.

The FCPA covers the giving of anything of benefit to a candidate for government office, an official of a political party, or the political party itself. The United States Department of Justice ("DOJ") and the Securities and Exchange Commission ("SEC") have applied the FCPA to cover payments or gifts to members of the family of a government or party official, as well as charitable contributions. Finally, the FCPA covers, and has been enforced against, payments to officials of public international organizations such as the World Bank.

The FCPA's books and records provisions, which apply to U.S. or foreign-based companies whose stock is publicly-traded in the United States, require that not only these "issuers," but also their related entities, which form part of the corporate group, maintain accurate books and records and a system of internal controls over assets.

A major source of risk to American companies is the provision of the FCPA that allows U.S. companies, U.S. citizens, and residents of the United States to be held liable for improper payments made by third parties, even payments of which they may be unaware. For example, if a U.S. company were to hire a local agent or consultant in another country, or enter into business with a foreign partner, and that person or partner were to make an improper payment or share part of his or its compensation with a government official of that country, the U.S. company that entered into the relationship with the agent or partner could be liable.

The FCPA provides for criminal liability in the form of fines and imprisonment for persons who willfully violate the law. These provisions apply without regard to the nationality of the person. Both the DOJ and the SEC have civil enforcement authority, although in the SEC's case limited to "issuers."

In recent years, more than 60 other countries have adopted anti-corruption standards and rules similar to those found in the FCPA under conventions concluded under the auspices of the Organization for Economic Cooperation and Development (OECD), the Organization of American States (OAS), and, most recently, the United Nations. Members of the World Bank group and other international financial institutions now follow strict anticorruption rules in their procurements. This international movement has forged a global consensus against corruption. It also has provided U.S. enforcement officials with new enforcement cooperation and extradition agreements with other countries to facilitate FCPA prosecutions for activities that take place entirely outside the United States.

Certification from Contractor:

I certify that:

- I have read and understand Section 10.2 and Exhibit C of this Agreement, and I agree to act consistent with all applicable laws, including the FCPA;
- I have been provided with and have reviewed the preceding summary of the FCPA;
- I am familiar with the FCPA and its purposes, including its prohibition against any payment, gift, offer, promise, or authorization of any payment of money or anything of value to any Official, directly or indirectly through a third party;
- At no time while acting under this Agreement will I, or any person acting for or on my behalf, take any action that would constitute a violation of the FCPA or that would create any liability for Las Vegas Sands Corp. ("LVSC"), or any of its affiliates under any law applicable to LVSC or its affiliates in the Special Administrative Region of Macau of the People's Republic of China, the Republic of Singapore or of the United States or any State or local governmental entity thereof;
- I understand that if LVSC determines that I have violated these commitments, LVSC can terminate this Agreement immediately, and I will be obligated to repay to LVSC all monies I have been paid; and
- If I am requested to act in any manner by any person contrary to the foregoing requirements of the FCPA that I will immediately report the details of any such request immediately to LVSC.

Contractor: _____ Date: 2-18-14

EXHIBIT D - AFFILIATED COMPANIES

S/N	FULL COMPANY NAME (Associate/Related)	DATE OF FORMATION	COMPANY REGISTRATION No.	PLACE OF INCORPORATION	COMPANY'S REGISTERED ADDRESS	PLACE OF BUSINESS ADDRESS
1.						
2.						

VENUE LICENSE AGREEMENT

This Venue License Agreement (the "Agreement") is dated as of May 13, 2016 ("Effective Date") and is made by and between Best Agency ("Coproducer"), a Nevada limited liability company with offices at 5801 S Decatur Blvd, Suite 110, Las Vegas, NV 89118, and Venetian Casino Resort, LLC ("VCR"), a Nevada limited liability company, located at 3355 Las Vegas Boulevard South, Las Vegas, NV 89109.

RECITALS

WHEREAS, Coproducer is in the business of producing plays, shows and other theatrical productions throughout the world;

WHEREAS, VCR owns and operates the Venetian Resort Hotel Casino ("The Venetian") and Palazzo Resort Hotel Casino ("The Palazzo") in Las Vegas, NV (collectively, the "Resort");

WHEREAS, VCR desires to have Coproducer produce and stage the show currently entitled "Inspired" (the "Show") for ongoing performances at the Resort, and Coproducer desires to produce and stage such performances, as more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual covenant and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as set forth below.

1. Performance Weeks; Show Content; Venue.

1.1. Performance Weeks. Coproducer shall produce and cause the Show to be performed at the Sands Showroom (the "Venue") at the Resort for an initial 52 weeks. The model anticipates an attendance hurdle of 45% average weekly paid attendance, based on 520 seats available per performance, or 1,283 tickets sold weekly. Performances shall occur once each evening Tuesday through Saturday (the "Performance Week") at either 9:30pm or 10:00pm (as the Parties shall subsequently agree), and last a minimum of 90 minutes. Coproducer shall commence show on a date to be mutually agreed.

1.2. Show Content. Coproducer shall retain all general creative control of the Show; finance all Show development and rehearsals; secure all intellectual property rights required to present the Show; and provide and maintain all wardrobe required for the Show. The Show will feature Clint Holmes ("Artist") and a 6 piece band and 1 back-up singer (all of whom are collectively referred to herein as "the Performers"). Coproducer shall be solely responsible for hiring the Performers and for all payments, including but not limited to all salary and benefits due and owing to any and all of the Performers. For the avoidance of doubt, Coproducer shall not be reimbursed for any such expenses prior to the expenses incurred during the initial Performance Week. The Performers shall not use abusive or threatening language toward, or make any remarks disparaging of, the officers, directors, employees, patrons or tenants of VCR or its affiliates. Additionally, and to the degree such activity is under the reasonable control of Coproducer, Coproducer and Performers understand that The Venetian and The Palazzo are Five-Star Resorts with a worldwide reputation for excellence, and as such Performers will refrain from: (a) any public behavior, specifically including criminal conduct, that negatively reflects on Performers and/or The Venetian or The Palazzo; (b) Show content that is, in the reasonable discretion of VCR, obscene or patently offensive in the script of the Show; (c) issuing any public political statements whatsoever from the date of this Agreement through the final Performance of the Show; and (d) participating in media appearances not related to the Show while on VCR's premises unless approved by VCR in writing in advance.

1.3. Use of Venue by VCR. During any time in which the Show is either not being performed or in an agreed upon rehearsal period (morning, daytime, late evening, or other), the parties may consult on potential entertainment options, however for the avoidance of doubt, any agreement with Coproducer will not in any way restrict VCR's right to contract with other talent for use of the Venue, and VCR reserves the right

to utilize the Venue at any time during the Term for meetings, events, or performances ("Other Events") and to retain any revenue derived from that use so long as Other Events do not conflict with scheduled and agreed upon Show preparation, clean-up, patron occupation, rehearsals or Performances.

Coproducer acknowledges and agrees that Coproducer is NOT the only tenant/licensee presenting entertainment in the Venue and that secondary production(s) will occupy the Venue during the Term.

1.4 Use of Venue by Coproducer. VCR hereby grants Coproducer a non-exclusive, revocable license to enter the Venue with personnel, materials and equipment to produce and stage the Show, subject to the terms and conditions of this Agreement. In consultation with VCR and with prior reasonable notice, and based on availability of Venue and support services, Coproducer shall have access and use of the Venue and designated dressing rooms in the Venue during day times of Performance Weeks in order to rehearse, stage other show elements, meet with stage production personnel, produce promotional content or other such show related activities. VCR shall be responsible for providing all technical and crew positions required to operate the Show as well as all box office personnel and ushers. VCR shall be solely responsible for hiring such personnel and for all payments, including but not limited to all salary and benefits due and owing to any and all such personnel.

1.5. Venue Labor; Venue Consumables. VCR shall be responsible for providing all technical and crew positions required to operate the Show as well as all box office personnel and ushers. VCR shall be solely responsible for hiring such personnel and for all payments, including but not limited to all salary and benefits due and owing to any and all such personnel. VCR and Coproducer hereby agree that Coproducer shall reimburse VCR for support services, if any, including without limitation labor ("Venue Labor") and consumables ("Venue Consumables"), beyond the costs to be covered from the Base Venue Rent (as defined below), payable as set forth in Section 7 herein. For the avoidance of doubt, Coproducer's reimbursement obligations will not commence prior to the expenses incurred by VCR during the initial Performance Week. Coproducer shall have full access to the Venue at least one (1) hour prior to and shall vacate the Venue immediately following each scheduled Performance, unless needed for rehearsal or technical needs, for which Coproducer shall notify VCR in advance, and be subject to VCR's reasonable approval based on availability. VCR shall provide Coproducer with access to the Venue no less than four (4) weeks prior to the First Public Performance (as defined in Section 2.2) for set load-in, lighting programming, video tech and pre-production rehearsals, such load-in and rehearsal schedules and details to be determined by VCR in consultation with all producers utilizing the Venue. VCR reserves the right to determine the final schedule consistent with the foregoing. Notwithstanding anything herein to the contrary, shall not engage in any activity that could, in the commercially reasonable view of VCR, cause a material disruption to VCR's business.

1.6. Acceptance of Venue; Changes to Venue. Coproducer has inspected and accepts the Venue in "as-is" condition as of the Effective Date, including, without limitation, Venue lights, sound, stage, seating, and dressing rooms. Each party acknowledges that the Venue may require modifications to accommodate the Show content as well as the artistic requirements stipulated by any other Coproducer using the Venue for presentation of its production. However, any modifications made to the Venue for the Show, not including any removable scenery or props put on the stage of the Venue for performance of the Show, must: (a) be approved in writing by VCR based on uses of the Venue other than that of Coproducer; (b) be determined in consultation with VCR and other user(s) of the Venue and; (c) be performed at Coproducer's sole cost.

2. Programming.

2.1. Performance Time. Performances shall occur at the advertised performance start time of either 9:30 p.m. or 10:00 p.m. PST, and last a minimum of seventy-five (75) minutes and a maximum of ninety (90) minutes with no intermission.

2.2. First Public Performance. The Performances shall commence on a specific date ("First Public Performance") which is currently anticipated to be on July 16th unless otherwise mutually agreed by Coproducer and VCR in writing.

2.3. Exceptions to the Performance Week. There shall be no Performances on July 23, July 30 or August 6, 2016, as the Venue is booked on those evenings.

3. Complimentary and Discounted Tickets.

3.1. Promotional Tickets. Coproducer and VCR shall each be entitled to ten (10) zero value complimentary house seat tickets to each Performance in mutually agreeable locations.

4. Food and Beverage Sales.

VCR shall have the exclusive right to sell food and beverages at the Venue (both at the lobby bar and within the Venue during each Performance) and all revenue from such sales shall belong exclusively to VCR. Coproducer shall be entitled to a weekly food and beverage credit at the Venue of Two Hundred dollars ($200) per Performance Week. This credit shall have no cash value and is non-transferable. Each Performance Week's food and beverage credit may only be used by Coproducer during such Performance Week.

5. Merchandise Sales.

VCR will facilitate merchandise sales as requested and split net revenue 50/50 with Coproducer

6. Marketing/Advertising.

VCR assumes responsibility for all marketing and advertising (and the costs thereof), with reasonable approval authority granted to the Coproducer.

7. Ticketing; Revenue; Fees; Settlement.

7.1. Ticket Pricing and Sales. Coproducer and VCR shall mutually agree upon ticket prices, scaling, discounts, and broker commissions for the Show. VCR shall have the exclusive right to sell such tickets for admission to the Show through its own sales channels and any other channels. VCR shall have the right not to make tickets available for sale to or through any ticket broker, ticket reseller or other third party if VCR determines in its reasonable discretion that there are any payment, financial or operational concerns with such broker, reseller or third party.

7.2. Revenue Payments/Settlements.

Revenue to VCR: Base Venue Rent of $1,500 per Performance (commencing on the 27th Performance Week)
Venue Labor of $7,500 per Performance Week (commencing Performance Week 1 and ending with the 26th Performance Week).
Ticket Handling Fee of $10.00 for each ticket sold (inclusive of LET; NET $9.17)
50% of Net Operating Income on a weekly basis

Revenue to Coproducer**:** Performers' agreed upon payments per Performance Week

50% of Net Operating Income on a weekly basis.

"Net Operating Income" means NAGBOR less (i) Venue Labor in the agreed upon fixed amount of $7,500 per Performance Week (commencing on the 1st Performance Week and terminating with the completion of the 26th Performance Week) (which amount shall be deducted from Coproducer's weekly share of Net Operating Income); (ii) the Base Venue Rent (commencing on the 27th Performance Week) (which amount shall be deducted from Coproducer's weekly share of Net Operating Income), (iii) all agreed upon payments due to the Performers per Performance Week (which amount shall be deducted from VCR's weekly share of Net Operating Income and remitted to Coproducer for the sole purpose of paying each Performer for such Performance Week) (the "Performers' Payment"); and Pooled Expenses. Pooled Expenses shall be split evenly by the Parties via an equal deduction from each party's

weekly share of Net Operating Income) and shall include: (a) Venue Labor of $7,500 per Performance Week (commencing the 27th Performance Week), (b) Piano Tuning (to be arranged by VCR), (c) all music license fees (e.g. ASCAP, BMI, GMR and SESAC); (d) Venue Consumables; (e) Venue cleaning expenses (to be arranged by VCR); and (f) any other expenses that the Parties subsequently agree in writing to include as a Pooled Expense).

"NAGBOR" (Net Adjusted Gross Box Office Receipts) means, with respect to each Performance, a Performance Week or other period of time as applicable, the total gross revenue from the sale of tickets to the Show including the LET and the Ticket Handling Fee less: (1) any discounts (to the extent the gross amount without a deduction for the discount was included in gross revenue), (2) any applicable entertainment or similar tax on ticket sales such as the LET, (3) actual credit and debit card commissions and processing fees, (4) actual and documented broker commissions, group commissions and concierge commissions (if any), (5) all sums included in the calculation of gross revenue, whether during the current Performance Week or any prior Performance Week, that are refunded or uncollected due to a dishonored check, invalidated credit card charge, credit card chargeback, or any other reason, and (6) the Ticket Handling Fee

Settlements will be done on a weekly basis with the Parties anticipating that the settlement will occur no later than each Wednesday for the previous Performance Week. VCR shall pay to Coproducer 50% of the the Performance Week's Net Operating Income as well as the Performers' Payment within two (2) business days following the weekly settlement by ACH or other method requested by Coproducer and expressly approved by VCR. In the event that the Base Venue Rent and any other amounts owed by Coproducer exceed NAGBOR for any Performance Week, VCR may collect the excess amount from subsequent weekly settlement(s).

7.3. Expense Reimbursement and Audit. Coproducer understands and agrees that all reimbursable expenses must be agreed to and authorized by VCR in writing prior to Coproducer incurring such, subject to VCR's policies regarding reimbursement as available at http://www.sands.com/corporate-overview/procurement-supply-chain.html, and subject to VCR's audit at any time during the term of the Agreement and for a period of three (3) years thereafter. One or more certified public accountants designated by Coproducer shall have the right to examine, inspect and audit VCR's books and records with respect to the Show only, for the purpose of verifying any payments or statements made or sent to Coproducer in connection therewith, and to make copies and extracts thereof. Said rights may be exercised during VCR's regular business hours where such books and records are kept upon not less than 14 days' prior written notice to VCR and shall be made solely at Coproducer's expense, unless such audit reveals more than a five percent (5%) discrepancy in amounts owing to Coproducer, in which case the reasonable, actual, documented cost of such audits shall be borne by VCR. No inspection or audit by Coproducer shall be made more frequently than once in any calendar year.

8. Dressing Rooms; Backstage Support Spaces.

8.1. Dressing Room. VCR will provide Coproducer with access to and use of dressing rooms adjoining the Venue as reasonably required by the Performers and staff or the Show prior to, during, and directly after each Performance during Performance and Rehearsal Weeks with the dressing rooms being secured and accessible for Coproducer during Performance and Rehearsal Weeks, unless otherwise mutually agreed. Coproducer understands and agrees that the dressing rooms will also be used by other shows or productions performing at the Venue throughout the Term and shall cooperate with VCR and such other productions/shows in order to share access and use of the dressing rooms as reasonably necessary. VCR shall also provide Coproducer with a designated dressing room for the exclusive use of Clint Holmes during the same time periods set forth above.

8.2. Backstage Space. VCR will devise, along with Coproducer, allocation and availability of all backstage support spaces. VCR, at its sole expense, shall modify dressing and support areas as required. For the avoidance of any doubt, Show (and no other production) shall be granted non-exclusive use of such

support spaces, except that Coproducer will be provided permanent and secure rooms for its costumes, props, instruments and equipment. Notwithstanding the foregoing, Coproducer's costumes, props, instruments and equipment (or other possessions) shall not be considered under the care, custody, or control of VCR, and Coproducer shall be solely liable for any loss thereof, for any reason whatsoever except that arising from VCR's sole gross negligence.

9. Performance Cancellation.

Coproducer shall promptly notify VCR of the need to cancel any Performance due to the unavailability of the Artist due to illness.

10. Term and Termination.

10.1. Term. "Term" as used in this Agreement collectively means the Initial Term and any Extended Term (as defined below).

10.2. Initial Term. This Agreement shall commence on the Effective Date and, unless otherwise extended or terminated as set forth herein, shall expire after 52 weeks from the date of the First Public Performance (the "Initial Term").

10.3 Term Extension. The Parties may enter into a written amendment to this Agreement to extend the term at any time during the performance run. Notwithstanding the preceding, unless and until the parties agree to any such extension (the "Extended Term") in writing, with the same or different terms as may be agreed to by the parties, neither party shall be obligated beyond the Initial Term.

10.4 Termination. Beginning with the 13th Performance Week, either party may cancel the run of the show on a thirty (30) day notice in writing. In the event that Coproducer so notifies VCR of its intent to close the show, VCR may elect to continue show by assuming all show related expenses as of the effective date of such termination.

10.5 Termination for Breach. In the event that a party breaches this Agreement and fails to cure such breach within ten (10) calendar days after receiving written notice of the breach, the non-breaching party may terminate this Agreement on written notice.

10.6 Termination for Force Majeure Event. This Agreement may be terminated for a Force Majeure Event as further described and set forth in Section 20.7 below.

10.7 Non-Exclusive Rights. The above termination rights as set forth in this Section 10 shall be in addition to any other rights or remedies either party may have in law or equity.

10.8 Payment after Termination. Upon expiration or termination of this Agreement, any reconciliations, settlements and/or payments necessary after such expiration or termination shall be made.

11. Limited Exclusivity.

Except for live appearances, for the promotion, marketing and/or publicity of the Show at the Venue, beginning thirty (30) days prior to the First Public Performance and thirty (30) days after the end of the Term ("Limited Exclusivity Period"), Coproducer shall not perform or allow the promotion of a performance of the same or similar show, or any show with the same name, or any performance whatever by the Artist within a 250 mile radius of the Venue of Clark County, Nevada. Notwithstanding the previous sentence, and so long as such performance does not conflict with Coproducer's advertised performance schedule for VCR hereunder, Performers may perform in Clark County, Nevada during the Limited Exclusivity Period for a "private" event such as a corporate gathering, meeting, or charity, so long as that performance is not advertised or promoted in any way to the general public and VCR is notified in writing thirty (30) days in advance of each such performance. For the avoidance of doubt, Coproducer may make promotional appearances on television, radio and other media and events to promote the Show during the Limited Exclusivity Period.

12. Insurance.

Coproducer shall procure and maintain throughout the Term the following insurance coverage: (a) workers' compensation insurance as required by the State of Nevada; (b) comprehensive general liability insurance of not less than $2,000,000 per occurrence and $5,000,000 in the aggregate; and (c) commercial umbrella liability insurance in an amount not less than Five Million Dollars ($5,000,000) including but not limited to coverage for personal injury liability, property damage liability and blanket contractual liability. All insurance coverage required shall be primary coverage regardless of any coverage maintained by any of the Additional Insureds (as defined below) for any qualifying incident and shall be issued by companies authorized to do business in the State of Nevada. The comprehensive general liability insurance and umbrella policies shall be endorsed to name as additional insureds "Venetian Casino Resort, LLC, Las Vegas Sands Corp., Sands Expo & Convention Center, Inc. and each of their parent, subsidiaries and affiliated companies and each of their officers, directors, agents, and employees" (collectively, the "Additional Insureds") with an address of 3355 Las Vegas Blvd. South, Las Vegas, Nevada 89109, in respects to the conduct of the named insured(s) in or about VCR's property. VCR shall add Coproducer as an additional insured to VCR's comprehensive general liability insurance policy for the Resort for the term of the Agreement. Company or Company Affiliate(s).

All insurance required to be carried by Coproducer shall include a full Waiver of Subrogation in favor of the Additional Insureds whereby Coproducer waives any and every claim which arises in its favor and against VCR, or against any of the Additional Insureds set forth herein, for any and all loss or damage covered by valid and collectible insurance policies to the extent of the insurance proceeds paid with respect thereto. VCR reserves the right to request additional Additional Insureds when such are related to the services being provided hereunder. Insurance retentions shall be fully disclosed in the Certificate of Insurance, and no deductible or self-insured retention may exceed ten thousand dollars ($10,000.00) without the prior written approval of VCR. Prior to the delivery of any services, Coproducer shall provide Company with evidence of compliance with the terms of this Section 12, including a Certificate of Insurance. It is further agreed that Coproducer and/or its insurance carrier shall provide VCR with a thirty (30) day advance notice of material policy modification or cancellation.

13. Indemnification.

13.1. Coproducer Obligation. Coproducer shall indemnify, defend and hold harmless VCR, its parent, subsidiaries and affiliates, and each of their respective directors, officers, agents and employees (the "VCR Parties") from and against any third-party claim, demand, suit or cause of action (collectively, "Claims") arising from or related to: (a) any willful or negligent action, inaction, or omission of Coproducer, including, without limitation, third-party claims of personal injury (including death) to any person or damage to any property; (b) the performance of Show or Coproducer's breach of or failure to perform any term or condition of this Agreement; or (c) any actual or alleged infringement of any copyright, trademark, or other intellectual property right by the Coproducer or Show. Coproducer specifically will indemnify the VCR Parties against any resulting liability, damages, losses, costs or expenses (including reasonable attorneys' fees and other professionals' fees and expenses) incurred by or awarded against any VCR Party as a result of a Claim or agreed to in a settlement and attributable to such Claim.

13.2. VCR Obligation. VCR shall indemnify, defend and hold harmless Coproducer, its parent, subsidiaries and affiliates, and each of their respective directors, officers, agents, employees and Performers ("Coproducer Parties") from and against any third-party Claim arising from or related to: (a) any willful or negligent action, inaction, or omission of VCR, including, without limitation, personal injury (including death) to any person or damage to any property, or (b) VCR's breach of or failure to perform any term or condition of this Agreement. VCR specifically will indemnify the Coproducer Parties against any resulting liability, damages, losses, costs or expenses (including reasonably attorneys' fees and other professionals' fees and expenses) incurred by or awarded against any Coproducer Party as a result of a Claim or agreed to in a settlement and attributable to such Claim.

13.3. Indemnification Procedure. The party seeking indemnity ("Indemnified Party") shall promptly notify the other party ("Indemnifying Party") upon becoming aware of a Claim; provided, however, that the Indemnified Party's failure to give prompt notice will not relieve the Indemnifying Party of its indemnity obligation except to the extent that the Indemnifying Party shows that the failure actually prejudiced the Indemnifying Party. The Indemnified Party will permit the Indemnifying Party to assume control of the defense of the Claim, with counsel selected by the Indemnifying Party, provided that the Indemnified Party may participate in such defense at the Indemnified Party's expense. The Indemnified Party will give reasonable assistance and cooperation to the Indemnifying Party in the defense of the Claim. The Indemnifying Party will not admit liability or enter into any settlement that adversely affects the Indemnified Party's rights or interests without the prior written approval of the Indemnified Party.

14. Limitation of Liability.

EXCEPT FOR ANY CLAIM OR CAUSE OF ACTION ARISING FROM EITHER PARTY'S OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 19, THIRD PARTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 13, OR ANY PAYMENTS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE IN ANY WAY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF A PARTY HAD BEEN ADVISED OR WAS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

15. Licenses; Permits.

With the sole exception of licenses from BMI, ASCAP, GMR, SESA and other similar "blanket licensor", which licenses will be obtained and maintained by VCR (and the cost of which licenses shall be split evenly by the Parties as set forth in Section 7.2 above), throughout the Term, Coproducer shall at its own expense, obtain and maintain all necessary local, state, and federal permits, licenses, and approvals required to perform and stage Show. Coproducer shall secure all such licenses at its sole cost and expense and VCR shall have no liability therefor. Additionally, Venetian shall obtain and maintain any necessary licenses, clearances, permits, or consents necessary to produce and stage the Show. To the extent that VCR remits any such license fees on Coproducer's behalf, such payment shall be deducted in full from the next Performance Week's settlement.

16. Gaming; Regulatory Compliance; Ethics; Use of Funds; Code of Conduct.

16.1. Coproducer understands and acknowledges that this Agreement, at VCR's discretion, may be subject to Coproducer and its principals completing and submitting to VCR a due diligence compliance questionnaire (including an Authorization for the Release of Information) and being found suitable by VCR's Gaming Compliance Committee. Notwithstanding any other provision in this Agreement to the contrary, VCR may immediately terminate this Agreement without further obligation or liability to Coproducer if, in the judgment of VCR's Gaming Compliance Committee, or representatives thereof, the relationship with Coproducer could subject VCR to disciplinary action by gaming regulatory authorities or cause VCR to lose or become unable to obtain or reinstate any federal, state and/or foreign registration, license or approval material to VCR's business.

16.2. In connection with its own business, each party shall comply, and cause its subcontractors to comply, with all applicable local, state, federal, and international rules, laws, and regulations related to anti-corruption, anti-money laundering, and gaming, including those governing the providing of incentives, inducements, kickbacks, gratuities or bribes, including without limitation the U.S. Foreign Corrupt Practices Act of 1977 (the "FCPA") (15 U.S.C. §§ 78dd-1, et seq.) which precludes giving, offering or agreeing to give anything of value to foreign government officials or holders of and candidates for public office or political

parties, their families and agents, directly or indirectly, in connection with obtaining or maintaining contracts or orders or obtaining other benefits. Each party shall maintain complete and accurate records in compliance with the FCPA and any other applicable law.

16.3. VCR requires its officers, employees, suppliers, and contractors to observe the highest standards of business and personal ethics. Each person is expected to practice honesty and integrity in every aspect of dealing with each other, the public, business community, customers, other suppliers, and government authorities. Accordingly, Coproducer shall at all times adhere to the following:

(a) Coproducer shall not directly or indirectly give or accept gifts, contributions, or prizes with a value exceeding $100.00 ("Maximum Gift Value"), which is in any way connected with or related to the business or matters of VCR. The Maximum Gift Value shall be the limitation both in any individual instance, as well as that collectively within any one (1) year period;

(b) Coproducer shall not solicit gifts, contributions, gratuities, services, or kickbacks from VCR, nor VCR's suppliers or customers, regardless of value; and

(c) Coproducer shall not give or accept, directly or indirectly, entertainment or meals in excess of usual and reasonable limits that are a normal and acceptable part of regular business activity, and all such meals shall be included in and subject to the Maximum Gift Value as set forth in subsection (a), above.

16.4. VCR has established a compliance and ethic's hotline to enhance VCR's commitment to maintain the highest business ethics and standards. Appropriate and prudent use of this hotline/website is a means by which Coproducer can help preserve the integrity of VCR's business, and the manner in which the parties are perceived by co-workers, regulators, customers, suppliers, competitors and community. VCR therefore strongly encourages Coproducer to immediately report misconduct that it becomes aware of by calling (888) 469-1536, or by logging on to VCR's website at www.lvscethics.com. In addition to the preceding reporting method, Coproducer may at any time contact VCR's management regarding any actual or alleged violation of ethics.

16.5. Coproducer has read, understands, and agrees to comply with, and not do anything in violation of VCR's Supplier Code of Conduct, as available at: http://www.sands.com/corporate-overview/procurement-supply-chain.html or Code of Business Conduct and Ethics, as available at: http://s1.q4cdn.com/133622603/files/doc_downloads/Code-of-Business-Conduct-and-Ethics.pdf.

16.6. Coproducer represents that it has not provided, and shall not provide, directly or indirectly, funds or other consideration to any person or entity (including VCR and its employees and agents) to improperly procure special or unusual treatment with respect to this Agreement, or for the purpose of otherwise improperly influencing Coproducer's relationship with VCR. Coproducer shall cause all of its officers, directors, employees, members, partners, agents, subcontractors and suppliers to comply with the restrictions contained in this Section 16.

17. Intentionally deleted.

18. Warranties.

18.1. Coproducer hereby warrants to VCR that Coproducer shall perform the services provided hereunder in a timely, professional and workmanlike manner, consistent with industry standards, using individuals of suitable training and skill.

18.2. Coproducer represents and warrants that it is not prohibited by any third-party from entering into the Agreement and Coproducer's entering into this Agreement will not violate or otherwise breach any other third-party agreement Coproducer may be subject to or bound by.

19. Confidentiality.

The terms of this Agreement and all information, including but not limited to oral statements, computer files, databases, and other material or data provided by one party to the other hereunder shall be considered confidential and privileged ("Confidential Information"). Each party shall not disclose the other party's Confidential Information, nor allow such information to be disclosed to any person or entity other than that such party's employees, affiliates or advisors who have a need to know such terms for purposes of such party's performance of its obligations under this Agreement and an obligation of confidentiality, without the express prior written consent of the other party. Each party shall have the right to use Confidential Information only for the purpose of complying with its obligations under this Agreement. Upon request by the party that disclosed Confidential Information ("Disclosing Party"), the other party ("Receiving Party") shall promptly destroy or return all of the Disclosing Party's Confidential Information, together with all copies and extracts, except to the extent that returning or destroying such Confidential Information would constitute a violation of applicable law (as confirmed by the opinion of the Receiving Party's counsel). In the event that the Receiving Party is required by law, judicial or governmental order, or other legal process to disclose any Confidential Information, the Receiving Party shall, to the extent permitted by law, provide the Disclosing Party with prompt written notice of such requirement so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy. In no event shall the Receiving Party oppose action by the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. The confidentiality requirements set forth above shall not apply where: (a) the information is, at the time of disclosure, in the public domain; (b) the information is known to the Receiving Party with no obligation of confidentiality prior to obtaining the same from the Disclosing Party; (c) the information is lawfully obtained by the Receiving Party from a third-party without any violation of confidentiality; or (d) information is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information. The obligations of confidentiality shall survive the termination of this Agreement.

20. General Terms.

20.1. Language; Governing Law. English is the language of this Agreement, and all communications and proceedings must be conducted in English. If this Agreement is translated, then the English language version will control. The laws of the State of Nevada, United States of America, govern this Agreement, without regard to any conflicts of laws rules. The United Nations Convention on Contracts for International Sale of Goods does not apply to this Agreement.

20.2. Dispute Resolution. For each claim or dispute arising between the parties under this Agreement, the parties shall attempt to resolve the matter through escalating levels of management. In the unlikely event the parties cannot resolve a claim or dispute among themselves, the parties agree that any dispute or claim arising out of or relating to this Agreement (other than an action, claim or dispute seeking injunctive relief) shall be settled exclusively in accordance with the following terms of this section. VCR and Coproducer agree to attempt to settle all such disputes or claims first by mediation to be conducted by the American Arbitration Association ("AAA") in accordance with the AAA's then-current Commercial Arbitration Rules and Mediation Procedures (the "Rules"). If mediation is unsuccessful in resolving the dispute(s) or claim(s), the parties agree to settle the matter by binding arbitration conducted by the AAA in accordance with the Rules. The arbitration will be held in Clark County, Nevada before a single arbitrator. The arbitrator will apply the substantive law of Nevada without regard to any conflict of laws provision. The arbitration will be governed by the United States Arbitration Act, 9 U.S.C. § 1 et. seq. The parties will be permitted to engage in limited discovery prior to the arbitration. The parties agree that each will only be entitled to one deposition of the other's officers, directors, employees or agents. The parties further agree that no interrogatories shall be served and document production obligations shall be limited to documents directly and solely related to the performance of this Agreement. Following a hearing, the arbitrator shall issue a signed and dated written opinion which shall decide all issues submitted. The arbitrator shall award only those remedies which are authorized by law and requested by the parties and which the arbitrator determines to be supported by credible relevant evidence. The parties will be responsible for their own attorney's fee and expenses. Notwithstanding the foregoing, the prevailing party

in the arbitration shall be entitled to an award of its reasonable fees and expenses as an element of the arbitrator's award. Unless otherwise provided by law, the cost of the arbitrator and the administrative fees of the AAA will be shared equally by the parties.

Judgment may be entered on the arbitrator's award in any court having jurisdiction. For purposes of entering such judgment or seeking injunctive relief with regard to this Agreement, the parties hereby consent to the jurisdiction of any or all of the following courts: (i) the courts of the State of Nevada and of the United States of America for the District of Nevada; or (ii) any other court having jurisdiction; provided, that damages for any alleged violation of this Agreement, as well as any claim, counterclaim or cross-claim brought by Coproducer or any third-party in response to, or in connection with any court action commenced by VCR seeking said injunctive relief shall remain exclusively subject to final and binding arbitration as provided for herein. Coproducer and VCR hereby each respectively waive, to the fullest extent permitted by applicable law, any objection which either may now or hereafter have to such jurisdiction, venue and any defense of inconvenient forum.

20.3. Assignment. Neither party may assign their rights nor delegate their duties under this Agreement without the written consent of the other party. Any assignment or delegation shall not relieve any party of its obligations under this Agreement.

20.4. Waiver. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing signed by each party. The failure of either party to enforce any of the provisions of this Agreement, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions, affect the validity of any part of this Agreement, or affect the right of the parties to thereafter enforce each and every provision of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of this Agreement.

20.5. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties shall amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

20.6. Relationship of Parties. In the performance of this Agreement, Coproducer and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of VCR. Coproducer shall be liable for the actions of any person, organization or corporation with which it subcontracts to fulfill this Agreement. VCR will at all times hold Coproducer as the sole responsible party for the performance of this Agreement. Nothing contained in this Agreement or any subcontract awarded by Coproducer shall create a partnership, joint venture or agency. Neither party shall have the right to obligate or bind the other party in any manner to any third party. All persons employed by Coproducer in connection with its obligations hereunder shall be the sole and exclusive employees of, and paid by Coproducer. In connection with the employment of its employees, Coproducer shall pay all applicable social security, unemployment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal, state, and local laws and regulations relating to employment generally, minimum wages, social security, unemployment insurance, workmen's compensation and immigration laws.

20.7. Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) which is due to an event beyond the reasonable control, and occurring without the fault or negligence, of such party (the "Force Majeure Event"). Force Majeure Event's include, but are not limited to: an Act of God; terrorism, threats of violence,

war, political insurgence, insurrection, riot, or civil unrest; earthquake, flood, or other natural disasters; failure of suppliers, subcontractors, or carriers; or any other natural or manmade event that causes the postponement of the Show or substantial interference with the audience's and cast and crew's ability to attend the Show, or the termination in whole or part of this Agreement, provided that, as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other party prompt written notice, with full details following the occurrence of the cause relied upon. At the option of VCR, any delays in the providing a Performance, caused by a Force Majeure Event, shall be addressed by either: (1) extending the period for providing such Performance for a period of time equal to the time lost due to the Force Majeure Event; or (ii) cancellation of those Performances as so delayed (with no obligation to re-schedule). Additionally, in addition to all other rights hereunder, in the event that a Force Majeure Event, for any reason, delays Performances for a period of six (6) consecutive Performance Weeks or more, or such Force Majeure Event is anticipated to continue for a period in excess of six (6) consecutive Performance Weeks, VCR or Coproducer may terminate this Agreement with no further liability except that arising prior to the date of termination.

20.8. No Third Party Beneficiary. This Agreement is entered into for the exclusive benefit of the parties. It is not intended to benefit any person or entity that is not a signatory to this Agreement or create any rights, powers or interest in any third party.

20.9. Section Headings. The section headings appearing in this Agreement are inserted for the purpose of convenience and ready reference. They do not purport to define, limit, or extend the scope or intent of the language of the sections to which they pertain.

20.10. Notices. All notices required pursuant to the terms and conditions of this Agreement shall be in writing, unless an emergency dictates otherwise. Any notice required to be given under the terms of this Agreement shall be deemed to have been given: (a) when received by the party to whom it is directed by hand delivery or personal service; (b) when transmitted by facsimile with confirmation of transmission; (c) three (3) business days after it is sent by U.S. mail via certified mail-return receipt requested; or (d) one (1) business day after it is sent by national overnight courier, such as FedEx or UPS, with proof of delivery. Notices shall be sent to the individuals set forth below at the addresses first set forth above, WITH COPY FOR VCR TO - Venetian Casino Resort, LLC, Attn. SVP and General Counsel, 3355 Las Vegas Boulevard South, Las Vegas, Nevada, 89109 - Fax (702) 414-4421. The parties shall provide written notification of any change in address for notice purposes.

20.11. Time is of the Essence. Time is of the essence in this Agreement.

20.12. Modification and Amendment. This Agreement shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Agreement shall be null and void, and may not be relied upon by either party.

20.13. Survival. Any provisions of this Agreement that by their terms or nature extend beyond termination shall survive such termination.

20.14. Agreement Binding; Drafter. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns. The provisions contained herein shall not be construed in favor of or against either party because that party or its counsel drafted this Agreement, but shall be construed as if all parties prepared this Agreement equally.

20.15. Entire Agreement. This Agreement constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written or oral, regarding such subject matter. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement.

20.16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. A facsimile or electronic signature shall be as valid as the original signatures. This Agreement shall not be effective and binding upon any party until it has been fully executed by both parties.

The below signatories to this Agreement on behalf of each party represent that they are authorized to enter into this Agreement and bind their respective entities to all terms and conditions stated herein. Furthermore, each signatory to this Agreement represents to the other party that their respective entity is duly organized, validly existing and in good standing under the laws of the State of Nevada, and has all requisite power and authority to carry on its business as now being conducted and otherwise contemplated by this Agreement.

The parties have caused this Agreement to be executed by persons duly authorized, as of the Effective Date.

Best Agency		**Venetian Casino Resort, LLC**	
DocuSigned by: 762AA6E479024B1...	5/16/2016	DocuSigned by: Peter Boyd F2280B59D9D94A3...	5/16/2016
Signature	*Date*	*Signature*	*Date*
Print Name: Ken Henderson		Print Name: Peter Boyd	
Title: CEO		Title: SVP OPS	

Certificate Of Completion

Envelope Id: AAAF294B0A3A414187052FE10E6CADB8
Status: Completed
Subject: CW2364231 - Inspired Agreement Finala.pdf
Source Envelope:
Document Pages: 12
Signatures: 2
Certificate Pages: 4
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Envelope Originator:
Brad Morrison
3355 Las Vegas Blvd. South
Las Vegas, NV 89109
brad.morrison@sands.com
IP Address: 216.109.111.40

Record Tracking

Status: Original
5/16/2016 9:37:44 AM

Holder: Brad Morrison
brad.morrison@sands.com

Location: DocuSign

Signer Events	Signature	Timestamp
Ken Henderson khenderson@best-agencies.com CEO Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:	DocuSigned by: 762AA6E479024B1...	Sent: 5/16/2016 9:38:36 AM Viewed: 5/16/2016 10:09:21 AM Signed: 5/16/2016 10:10:51 AM Using IP Address: 70.189.248.192
Peter Boyd pete.boyd@sands.com SVP OPS Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/16/2016 10:13:20 AM ID: f6720f2e-fc14-4631-a1d8-c81be6c3045a	DocuSigned by: Peter Boyd F2280B59D9D94A3...	Sent: 5/16/2016 10:10:53 AM Viewed: 5/16/2016 10:13:20 AM Signed: 5/16/2016 10:13:31 AM Using IP Address: 66.209.81.2

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Notary Events		Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/16/2016 10:10:53 AM
Certified Delivered	Security Checked	5/16/2016 10:13:20 AM
Signing Complete	Security Checked	5/16/2016 10:13:31 AM
Completed	Security Checked	5/16/2016 10:13:31 AM

Electronic Record and Signature Disclosure

CONSUMER DISCLOSURE

From time to time, Las Vegas Sands Corp. (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the Ã¦I agreeÃ† button at the bottom of this document.

Electronic Representation of your signature and initials

Each time that you (or your agent) use the signature and initials that you have selected, it would be the electronic representation of your signature and initials for all purposes including legally binding contracts â€“ just the same as a pen-and-paper signature or initial.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign Ã´Withdraw ConsentÃ¶ form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as

described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Las Vegas Sands Corp.:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: craig.fischer@venetian.com

To advise Las Vegas Sands Corp. of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at craig.fischer@venetian.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from Las Vegas Sands Corp.

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to craig.fischer@venetian.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Las Vegas Sands Corp.

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an e-mail to craig.fischer@venetian.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000Â¬ or WindowsXPÂ¬
Browsers (for SENDERS):	Internet Explorer 6.0Â¬ or above
Browsers (for SIGNERS):	Internet Explorer 6.0Â¬, Mozilla FireFox 1.0, NetScape 7.2 (or above)

Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Ã² Allow per session cookies Ã² Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access, consent to receive materials electronically and the use of electronic representation of signature and initials

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above and agree that each time you (or your agent) use the signature and initials that you have selected, it would be the electronic representation of your signature and initials for all purposes including legally binding contracts â€“ just the same as a pen-and-paper signature or initial, please let us know by clicking the Ã¦I agreeÃ† button below.

By checking the Ã¦I AgreeÃ† box, I confirm that:

- I agree that each time I (or my agent) use the signature and initials that I have selected, it would be the electronic representation of my signature and initials for all purposes including legally binding contracts â€“ just the same as a pen-and-paper signature or initial; and
- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Las Vegas Sands Corp. as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Las Vegas Sands Corp. during the course of my relationship with you.

VCR Contract No. 16-178

VENUE LICENSE AGREEMENT

This Venue License Agreement (the "Agreement") is dated as of the date last signed below ("Effective Date") and is made by and between BASE Puppet Up, LLC ("Producer"), a Delaware limited liability company with offices at 3667 Las Vegas Blvd. South, Las Vegas, NV 89109, and Venetian Casino Resort, LLC ("VCR"), a Nevada limited liability company, located at 3355 Las Vegas Boulevard South, Las Vegas, NV 89109.

RECITALS

WHEREAS, Producer is in the business of producing plays, shows and other theatrical productions throughout the world;

WHEREAS, VCR owns and operates the Venetian Resort Hotel Casino ("The Venetian") and Palazzo Resort Hotel Casino ("The Palazzo") in Las Vegas, NV (collectively, the "Resort");

WHEREAS, VCR desires to have Producer produce and stage the show currently entitled "Puppet Up" (the "Show") for ongoing performances at the Resort, and Producer desires to produce and stage such performances, as more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual covenant and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as set forth below.

TERMS AND CONDITIONS

1. Performance Weeks; Show Content; Venue.

1.1. Performance Weeks. Producer shall produce and cause the Show to be performed at the Sands Showroom (the "Venue") at the Resort for a minimum of 50 Performance Weeks for each performance year (each such year calculated from the date of the first paid public performance of the Show) of the Term (defined below) unless mutually agreed to in writing by VCR and Producer. Producer and VCR acknowledge that VCR shall close the Venue for maintenance for not more than two (2) weeks per calendar year of the Term. "Performance Week" shall be defined as Monday through Sunday and will consist of a minimum of six (6) performances of the Show (each a "Performance") per Performance Week (excluding the first and last Performance Weeks under this Agreement). The selection of Performance Weeks as well as the daily Performance schedule will be determined by Producer in consultation with VCR, submitted for approval by VCR, and any subsequent changes thereto, shall be at VCR's sole and absolute discretion after reasonable consultation with Producer. While the exact Performance schedule is to be determined, it is acknowledged and understood that the Show will be performed in the "later show" time slot, except on Sundays, when the Show shall be performed in the "early show" time slot, at a start time to be determined by VCR and Producer as provided in Section 2.1 below.

1.2. Show Content. Producer shall retain all general creative control of the Show; however, the Show shall be subject to the following general terms related to on-site entertainment:

All performers and artists performing in the Show (collectively, "Performers") shall not use abusive or threatening language toward, or make any remarks disparaging of, the officers, directors, employees, patrons or tenants of VCR or its affiliates in the script of the Show (as the nature of the Show is improvisation with audience participation, the parties acknowledge that such audience participation is beyond the control of Producer). Additionally, and to the degree such activity is under the reasonable control of Producer, Producer and Performers understand that The Venetian and The Palazzo are Five-Star Resorts with a worldwide reputation for excellence, and as such Performers will refrain from: (a) any public behavior, specifically including criminal conduct, that negatively reflects on Performers and/or The Venetian or The Palazzo; (b) Show content that is, in the reasonable discretion of VCR, obscene or patently offensive in the script of the Show (as the nature of the Show is improvisation with

audience participation, the parties acknowledge that such audience participation is beyond the control of Producer); (c) issuing any public political statements whatsoever while (i) performing the Show at the Venue and/or (ii) on VCR's premises (as the nature of the Show is improvisation with audience participation, the parties acknowledge that such audience participation is beyond the control of Producer).; and (d) participating in media appearances not related to the Show while on VCR's premises unless approved by VCR in writing in advance.

1.3. Use of Venue by VCR. During any time in which the Show is either not being performed or in an agreed upon rehearsal period (morning, daytime, late evening, or other), the parties may consult on potential entertainment options, however for the avoidance of doubt, any agreement with Producer will not in any way restrict VCR's right to contract with other talent for use of the Venue, and VCR reserves the right to utilize the Venue at any time during the Term for meetings, events, or performances ("Other Events") and to retain any revenue derived from that use so long as Other Events do not conflict with scheduled and agreed upon Show preparation, clean-up, patron occupation, rehearsals or Performances.

Producer acknowledges and agrees that Producer is NOT the only tenant/licensee presenting entertainment in the Venue and that secondary production(s) will occupy the Venue during the Term.

1.4. Use of Venue by Producer. VCR hereby grants Producer a non-exclusive, revocable license to enter the Venue with personnel, materials and equipment to produce and stage the Show, subject to the terms and conditions of this Agreement. In consultation with VCR and with prior reasonable notice, and based on availability of Venue and support services, Producer shall have access and use of the Venue and designated dressing rooms in the Venue during day times of Performance Weeks in order to rehearse, stage other show elements, meet with stage production personnel, produce promotional content or other such show related activities. VCR and Producer shall agree on a cost for Producer's reimbursement for support services, if any, including without limitation labor ("Venue Labor") and consumables ("Venue Consumables"), beyond the costs to be covered from the Venue License Fee (as defined below). Producer shall have full access to the Venue at least one (1) hour prior to and shall vacate the Venue immediately following each scheduled Performance, unless needed for rehearsal or technical needs, for which Producer shall notify VCR in advance, and be subject to VCR's reasonable approval based on availability. VCR shall provide Producer with access to the Venue no less than four (4) weeks prior to the First Public Performance (as defined in Section 2.2) for set load-in, lighting programming, video tech and pre-production rehearsals, such load-in and rehearsal schedules and details to be determined by VCR in consultation with all producers utilizing the Venue. VCR reserves the right to determine the final schedule consistent with the foregoing. Notwithstanding anything herein to the contrary, Producer shall not engage in any activity that could, in the commercially reasonable view of VCR, cause a material disruption to VCR's business.

1.5. Acceptance of Venue; Changes to Venue. Producer has inspected and accepts the Venue in "as-is" condition as of the Effective Date, including, without limitation, Venue lights, sound, stage, seating, and dressing rooms. Each party acknowledges that the Venue may require modifications to accommodate the Show content as well as the artistic requirements stipulated by any other producer using the Venue for presentation of its production. However, any modifications made to the Venue for the Show, not including any removable scenery or props put on the stage of the Venue for performance of the Show, must: (a) be approved in writing by VCR based on uses of the Venue other than that of Producer; (b) be determined in consultation with VCR and other user(s) of the Venue and; (c) be performed at Producer's sole cost.

2. Programming.

2.1. Performance Time. Performances shall occur at the advertised performance start time of 9:00 p.m., 9:15p.m. or 9:30 p.m. PST, except for Sundays where the show shall be performed in the "early show" time slot (7pm or 7:30pm), and last a maximum of ninety (90) minutes with no intermission.

2.2. First Public Performance. The Performances shall commence on a specific date ("First Public Performance") which is currently anticipated to be on or before July 21, 2016 unless otherwise mutually agreed by Producer and VCR in writing.

3. Complimentary and Discounted Tickets.

3.1. Complimentary Tickets. Producer and VCR shall each be entitled to ten (10) zero value complimentary house seat tickets to each Performance in mutually agreeable locations.

3.2. Promotional Tickets. The parties agree to negotiate in good faith further complimentary or discounted tickets to the Show to be provided to VCR during the Term for use by VCR's Casino and Leisure Marketing guests as part of VCR promotional opportunities, or for Producers use in trade or barter promotions and advertising for the Show.

4. Food and Beverage Sales.

VCR shall have the exclusive right to sell food and beverages at the Venue and all revenue from such sales shall belong exclusively to VCR.

5. Merchandise Sales.

5.1. Permitted Sales. In the event that Producer desires to sell merchandise related to the Show ("Merchandise"), Producer shall upon request provide VCR with evidence of applicable third-party permissions for such (i.e. intellectual property licenses, etc.), and Producer shall be responsible for all costs associated with the sale of such Merchandise, including without limitation staffing, the cost of the Merchandise, taxes, and credit card processing fees. All Merchandise shall be sold only in the existing retail location of the Venue and any such other places as the parties may agree from time to time, and Producer shall be liable for all licenses, permits, and taxes related thereto.

5.2. Revenue Share. Producer shall retain eighty five percent (85%) of Merchandise Revenue, except for revenue related to compact discs, DVD's and other audio recordings for which Producer shall retain ninety percent (90%) of Merchandise Revenue. "Merchandise Revenue" shall mean the gross revenue received from Merchandise sales, less sales tax, credit card processing fees, and any returns or refunds. Producer shall pay to VCR fifteen percent (15%) and ten percent (10%) of the Merchandise Revenue, respectively, as provided above. In the event that any Merchandise, including, without limitation, audio-visual or audio only product(s), are provided for free as promotional items, there shall be no split of Merchandise Revenue paid to VCR.

5.3. Staffing. Producer shall be entitled to sell directly or to retain a licensed third party to sell Merchandise, so long as that third party meets VCR standards for staffing. In the event that VCR provides staff for the sale of Merchandise, in addition to any other amounts due to VCR hereunder, Producer shall reimburse VCR the actual and documented labor costs related thereto. The parties shall agree on the number of VCR staff necessary to sell the Merchandise.

6. Marketing/Advertising.

6.1. Producer Obligations. As between Producer and VCR, except as otherwise expressly provided below with respect to the On-Property Advertising Package, Producer is solely responsible for the formulation, creation, design, content and expense of all marketing, publicity, promotion and advertising respecting the Show.

6.2. On-Property Advertising Package. VCR will provide Producer with on-site advertising at the Resort ("On-Property Advertising Package"), the inventory and other characteristics of which will be determined in meaningful consultation with Producer, but at the sole discretion of VCR, and shall be substantially similar to the on-property advertising provided to the show appearing in the "first earlier show" time slot at the Venue (which as of the Effective Date of this Agreement is Human Nature: Jukebox) and reasonably

similar to that as set forth on Attachment A attached hereto. The On-Property Advertising Package shall include placement on the following four (4) sign marquees ("Marquees"): VEN Marquee, PAL Marquee, VEN Customs House, and PAL Curved Wall Marquee. Notwithstanding the foregoing, the placement of advertising for the Show on the Marquees is subject to change, in the sole discretion of VCR, and may be affected by, among other things, upgrades to and construction on the Marquees. VCR's obligation with respect to the On-Property Advertising Package is limited to making the space or medium available to Producer, and VCR will not charge Producer a placement fee for such space or medium. Producer shall be responsible for the other aspects of the On-Property Advertising as described below. For the avoidance of doubt, VCR may from time to time change locations and other characteristics of the On-Property Advertising Package over the course of the Term; however, in the event that VCR does change a location of On- Property Advertising, it will endeavor in good faith to provide Producer with at least thirty (30) days advance written notice of such change. Furthermore, VCR will identify a suitable new location to replace the changed location and will be responsible for the cost of third-party design, pre- fabrication, production and installation of the new location.

Notwithstanding the preceding, with respect to the On-Property Advertising Package, Producer shall be responsible at its sole cost and expense for all third- party design, pre-fabrication, production, installation, maintenance, repair, replacement and other third-party costs for such advertising content, including without limitation, any advertising content for static or electronic signage except that Producer shall not be responsible for the costs to remove, change and/or re-install any advertising content if the removal or change is requested unilaterally by VCR, unless that change is related to the expiration or termination of the time period for which such advertising is allowed.

6.3. License. Producer agrees that VCR shall have a non-exclusive, royalty-free license to use, and allow others to use, any Producer approved images of the Show or any Performance, any names, titles, trademarks, logos or other marks designed for the Show and provided by Producer in connection with advertising, marketing and promotion of the Show (including without limitation the sale of tickets to the Shows), any such usage to be pre-approved in each instance by Producer or its representative. In connection therewith, and subject to the indemnification obligations in this Agreement, Producer represents and warrants to VCR that it has the power and authority to use and license any such names, images, marks, and logos.

7. Ticketing; Revenue; Fees; Settlement.

7.1. Ticket Pricing and Sales. Producer and VCR shall mutually agree upon ticket prices, scaling, discounts, and broker commissions for the Show. VCR shall have the exclusive right to sell such tickets for admission to the Show through its own sales channels and any other channels commonly used by VCR from time-to-time. VCR shall have the right not to make tickets available for sale to or through any ticket broker, ticket reseller or other third party if VCR determines in its reasonable discretion that there are any payment, financial or operational concerns with such broker, reseller or third party. Producer, its principals or affiliates, shall have the right to sell group, concierge, timeshare and wholesale broker tickets to the Show for industry standard commission rates.

7.2. Ticket Handling Fee. In consideration for VCR staffing and operating the box office that sells tickets to the Show and otherwise handling the printing and issuance of all tickets to the Show, including without limitation all Internet and phone sales, walk-up and will call services, printing and distribution, and returns and exchanges, VCR shall have the right to charge a ticket process and handling fee ("Ticket Handling Fee") of $10.00 (inclusive of Nevada Live Entertainment Tax ("LET")) for each ticket issued for the Show. All Ticket Handling Fee revenue shall belong solely and exclusively to VCR. The Ticket Handling Fee shall not apply to zero value tickets, refunded tickets, exchanged tickets (provided the applicable Ticket Handling Fee was paid on the original tickets and is not refunded as part of the exchange), pre-printed tickets which remain unsold, and such other tickets as VCR may hereafter expressly agree in writing to exclude.

It is understood that as part of the Ticket Handling Fee, VCR shall provide the following staff at no additional costs to Producer (a) one (1) Venue Supervisor; (b) a minimum of two (2) Ticket Takers; (c) a minimum of five (5) Ushers for each Performance; (d) all needed box office staff; (e) venue porters and cleaners; and (f) any needed front or back of house security personnel.

7.3. Venue License Fee. Producer shall pay VCR the sum of Fifteen Hundred Dollars ($1,500.00) per Performance regardless of a Performance's profitability ("Venue License Fee") throughout the duration of the Term. The Venue License Fee is in addition to all other costs, fees and payments that Producer is obligated to pay and to which VCR is entitled to receive pursuant to this Agreement. The Venue License Fee with respect to a Performance Week shall be incorporated into, and paid to VCR pursuant to the Weekly Settlement for such Performance Week with VCR having the right to deduct the Venue License Fee from the Net Operating Income payable to Producer pursuant to Section 7.4.2.

7.4. Revenue Payments to Producer.

7.4.1. Guarantee. Producer shall be entitled to a guarantee of Two Dollars ($2.00), less LET, for each ticket sold ("Producer Guarantee"). VCR will deduct the LET from the Producer Guarantee and will pay the LET to the appropriate tax authorities. By way of example only, as of the Effective Date of this Agreement, the LET rate is 9%, which would make the net Producer Guarantee for each ticket $1.835.

7.4.2. Net Operating Income. Producer shall also receive Net Operating Income from the show. "Net Operating Income" means NAGBOR less (i) the Producer Guarantee, (ii) the Venue License Fee, (iii) Venue Labor (if any), and (iv) Venue Consumables (if any). "NAGBOR" (Net Adjusted Gross Box Office Receipts) means, with respect to each Performance, a Performance Week or other period of time as applicable, the total gross revenue from the sale of tickets to the Show including the LET and the Ticket Handling Fee less: (1) any discounts (to the extent the gross amount without a deduction for the discount was included in gross revenue), (2) any applicable entertainment or similar tax on ticket sales such as the LET (to the extent the tax is included in gross revenue), (3) actual credit and debit card commissions and processing fees, (4) actual and documented broker commissions, group commissions and concierge commissions (if any), (5) all sums included in the calculation of gross revenue, whether during the current Performance Week or any prior Performance Week, that are refunded or uncollected due to a dishonored check, invalidated credit card charge, credit card chargeback, or any other reason, and (6) the Ticket Handling Fee (to the extent the Ticket Handling Fee is included in gross revenue).

7.5. Weekly Settlement. Settlements will be done on a weekly basis with the parties anticipating that the settlement will occur no later than Wednesday for the previous Performance Week. VCR shall pay to Producer the Producer Guarantee and Net Operating Income within two (2) business days following the weekly settlement by ACH or other method requested by Producer and expressly approved by VCR. In the event that the Venue License Fees and any other amounts owed to Producer exceed NAGBOR for any Performance Week, VCR may collect the excess amount from the following weekly settlement(s).

7.6. Show Costs. Producer shall be solely responsible for all costs and expenses associated with producing and staging the Show.

7.7. Expense Reimbursement and Audit. Producer understands and agrees that all reimbursable expenses must be agreed to and authorized by VCR in writing prior to Producer incurring such, subject to VCR's policies regarding reimbursement as available at http://www.sands.com/corporate-overview/procurement-supply-chain.html, and subject to VCR's audit at any time during the term of the Agreement and for a period of three (3) years thereafter. One or more certified public accountants designated by Producer shall have the right to examine, inspect and audit VCR's books and records with respect to the Show only, for the purpose of verifying any payments or statements made or sent to Producer in connection therewith, and to make copies and extracts thereof. Said rights may be exercised during VCR's regular business hours

where such books and records are kept upon not less than 14 days' prior written notice to VCR and shall be made solely at Producer's expense, unless such audit reveals more than a five percent (5%) discrepancy in amounts owing to Producer, in which case the reasonable, actual, documented cost of such audits shall be borne by VCR. No inspection or audit by Producer shall be made more frequently than once in any calendar year.

8. Dressing Rooms; Backstage Support Spaces.

8.1. Dressing Room. VCR will provide Producer with access to and use of dressing rooms adjoining the Venue as reasonably required by the performers and staff or the Show prior to, during, and directly after each Performance during Performance and Rehearsal Weeks with the dressing rooms being secured and accessible for Producer during Performance and Rehearsal Weeks, unless otherwise mutually agreed. Producer understands and agrees that the dressing rooms will also be used by other shows or productions performing at the Venue throughout the Term and shall cooperate with VCR and such other productions/shows in order to share access and use of the dressing rooms as reasonably necessary.

8.2. Backstage Space. VCR will devise, along with Producer, allocation and availability of all backstage support spaces. VCR, at its sole expense, shall modify dressing and support areas as required. For the avoidance of any doubt, Show (and no other production) shall be granted exclusive use of such support spaces, except that Producer will be provided permanent and secure rooms for its costumes, props, instruments and equipment. Notwithstanding the foregoing, Producer's costumes, props, instruments and equipment (or other possessions) shall not be considered under the care, custody, or control of VCR, and Producer shall be solely liable for any loss thereof, for any reason whatsoever except that arising from VCR's sole gross negligence.

9. Performance Cancellation.

9.1. Producer and VCR Cancellation Fee. Except for any cancellation resulting from a Force Majeure Event as set forth in Section 20.7 below, or illnesses of the majority of the cast, Producer's failure to perform or cancellation of a regularly scheduled Performance (a with less than seven (7) calendar days advance written notice to VCR Producer shall be liable to VCR for a cancellation fee in the amount equal to the daily Venue License Fee of Fifteen Hundred Dollars ($1,500.00) (the "Producer Cancellation Fee"). For the avoidance of doubt, if a Performance is cancelled by Producer with seven (7) or more calendar days advance written notice to VCR, Producer shall not be liable for any Producer Cancellation Fee. Should any performances be cancelled due to the fault of VCR to be able to provide the venue or ticketing (excluding as a result of a force majeure event), VCR shall pay to Producer a cancellation fee equal to the average net box office sales for the prior seven performances of the Show prior to such cancelled Performance.

The parties agree that in the event of a Performance cancellation as set forth above, damages would be difficult, if not impossible to ascertain and prove. As such, in the event of such Performance cancellation, the parties agree that the above Producer Cancellation Fee is a fair and reasonable representation of the damages to VCR, and Producer will be liable only for the Producer Cancellation Fee as liquidated damages, and not as a penalty. Because this is a liquidated damages provision, VCR is not obligated to mitigate damages and there shall be no claim of actual mitigation of liquidated damages, and Producer shall not be liable to VCR for any other damages, costs or sums of any kind whatsoever that VCR may incur as a result of such Performance cancellation.

9.2. Excessive Cancellations. Producer's or VCR's cancellation of five (5) or more Performance days ("Cancelled Performances") for any reason other than a Force Majeure Event or the illnesses of the majority of the cast within any consecutive thirty (30) day period during the Term may be deemed by VCR or Producer to be a breach and VCR or Producer, respectively, may terminate this Agreement immediately upon written notice to Producer or VCR, respectively. Producer understands and agrees that

such Cancelled Performances are not subject to any right of Producer to cure herein, and as such no cure period shall be provided by VCR.

9.3. Rescheduling. Except as provided in Section 9.2, in the event that a Performance is cancelled for any reason, Producer and VCR shall meet and agree to use best efforts to reschedule such cancelled Performance at another time during the Term, in addition to any other regularly scheduled Performances, and with such rescheduled Performance to take place as reasonably close to the date of the cancelled Performance as practical based on each party's availability to accommodate such rescheduling.

10. Term and Termination.

10.1. Term. "Term" as used in this Agreement collectively means the Initial Term and any Extended Term or Renewal Term (as defined below).

10.2. Initial Term. This Agreement shall commence on the Effective Date and, unless otherwise extended or terminated as set forth herein, shall expire two (2) years from the date of the First Public Performance (the "Initial Term").

10.3. Term Extension. On a date no later than the start of the eighteenth (18th) month following the First Public Performance, the parties agree to commence negotiations in good faith on a term extension of not more than one (1) year from the expiration date of this Agreement (the "First Extended Term"). Notwithstanding the preceding, unless and until the parties agree to the First Extended Term in writing, with the same or different terms as may be agreed to by the parties, neither party shall be obligated beyond the Initial Term.

10.4. Term Renewal. In addition to the above, prior to the end of the First Extended Term, Producer may request to renew the Agreement for a two (2) year renewal term ("Renewal Term"), subject to VCR's approval, in its sole discretion. The Renewal Term shall include an option for two one (1) year extended terms (the "Second Extended Term" and the "Third Extended Term"). If the parties agree to a Renewal Term, negotiations for the Second Extended Term must begin no later than the start of the eighth (8th) months following the start of the Renewal Term, and the negotiations for the Third Extended Terms must commence no later than eight (8) months following the start of the Second Extended Term. Notwithstanding the preceding sentences, unless and until the parties agree to the Renewal Term and Second and Third Extended Term in writing, with the same or different financial terms, though in no event shall the increase in any financial term be greater than five percent (5%) for any such Extended Term, as may be agreed to by the parties, neither party shall be obligated beyond the then current Term. Any further extensions beyond the Third Extended Term are to be negotiated in good faith between the parties.

10.5. Termination for Failure to Meet Ticket Sales Goal. Following the initial one hundred twenty (120) days from the First Public Performance, if the average weekly NAGBOR (as defined in Section 7.4.2 above) falls below $92,500 ("NAGBOR Threshold") for any two (2) consecutive Performance Week period, not to include any week where one or more performances are cancelled due to a Force Majeure Event, as defined below, or mutual agreement of the parties, during the remaining Term then VCR or Producer shall have the right, but not the obligation, to terminate this Agreement upon fourteen (14) calendar days written notice (the "Termination Option"). Notwithstanding the foregoing, each party's Termination Option for the five (5) Performance Weeks following January 1st in each calendar year and the four (4) Performance Weeks following July 4th in each calendar year period, may only be exercised if NAGBOR falls below $85,000 ("Alternative NAGBOR Threshold") for any two (2) consecutive Performance Weeks. For purposes of this Section 10.5 only, all NAGBOR calculations must include (rather than deduct) the Producer Guarantee of Two Dollars ($2.00) per ticket.

In the event VCR send written notice to terminate as provided above, Producer may request in writing a cure period of the next three (3) consecutive Performance Weeks ("Performance Cure Period"). If Ticket Sales exceed the NAGBOR Threshold or Alternative NAGBOR Threshold, respectively, during any week

of the Performance Cure Period, then Producer's failure under this Section 10.5 shall be deemed to have been cured and VCR shall no longer have the right to terminate under this provision. Notwithstanding the preceding or any other term herein, in the event that there are two (2) or more required Performance Cure Periods within any consecutive six (6) month period, VCR may terminate this Agreement at its sole and absolute discretion by providing fourteen (14) calendar days' notice.

10.6. Termination for Breach. In the event that a party breaches this Agreement and fails to cure such breach within thirty (30) calendar days after receiving written notice of the breach, the non-breaching party may terminate this Agreement on written notice.

10.7. Termination for Force Majeure Event. This Agreement may be terminated for a Force Majeure Event as further described and set forth in Section 20.7 below.

10.8. Non-Exclusive Rights. The above termination rights as set forth in this Section 10 shall be in addition to any other rights or remedies either party may have in law or equity.

10.9. Return of Venue Upon Termination. Upon expiration or termination of this Agreement for any reason other than a VCR breach as may occur under Section 10.6 above, Producer shall be liable for the reasonable, actual, and documented costs incurred by VCR in VCR's return of the Venue to the state in which it was as of the Effective Date (the "Current State"), to the extent that such efforts and costs by VCR to return the Venue to its Current State were necessitated by Producer's modifications to the Venue solely to accommodate Producer's Show hereunder. For the avoidance of doubt, Producer shall not be liable for any costs incurred by VCR in VCR's return of the Venue to the Current State to the extent such costs relate to any modifications that were made to the Venue to accommodate any other show or production in the Venue. Upon expiration or termination of this Agreement, and in any event within a reasonable period not to exceed five (5) days thereafter, the parties shall meet in person at the Venue to conduct a joint walk-through of the Venue to make both written and video documentation of the condition of the Venue. Any mutually and reasonably agreed repairs for which Producer shall be liable shall be agreed to by both parties in writing, and Producer shall make arrangements with Venetian for repairs in a prompt and timely manner thereafter.

10.10. Payment after Termination. Upon expiration or termination of this Agreement, any reconciliations, settlements and/or payments necessary after such expiration or termination shall be made.

11. Limited Exclusivity.

Except for live appearances, for the promotion, marketing and/or publicity of the Show at the Venue, beginning thirty (30) days prior to the First Public Performance and thirty (30) days after the end of the Term ("Limited Exclusivity Period"), Producer shall not perform or allow the promotion of a performance of the same or similar show, or any show with the same name, in Clark County, Nevada. Notwithstanding the previous sentence, and so long as such performance does not conflict with Producer's advertised performance schedule for VCR hereunder, Performers may perform in Clark County, Nevada during the Limited Exclusivity Period for a "private" event such as a corporate gathering, meeting, or charity, so long as that performance is not advertised or promoted in any way to the general public and VCR is notified in writing thirty (30) days in advance. For the avoidance of doubt, Producer may make promotional appearances on television, radio and other media and events to promote the Show during the Limited Exclusivity Period.

12. Insurance.

Producer shall procure and maintain throughout the Term the following insurance coverage: (a) workers' compensation insurance as required by the State of Nevada; (b) comprehensive general liability insurance of not less than $2,000,000 per occurrence and $5,000,000 in the aggregate; and (c) commercial umbrella liability insurance in an amount not less than Five Million Dollars ($5,000,000) including but not limited to coverage for personal injury liability, property damage liability and blanket contractual liability. All insurance

coverage required shall be primary coverage regardless of any coverage maintained by any of the Additional Insureds (as defined below) for any qualifying incident and shall be issued by companies authorized to do business in the State of Nevada. The comprehensive general liability insurance and umbrella policies shall be endorsed to name as additional insureds "Venetian Casino Resort, LLC, Las Vegas Sands, LLC, Sands Expo & Convention Center, Inc. and each of their parent, subsidiaries and affiliated companies" (collectively, the "Additional Insureds") with an address of 3355 Las Vegas Blvd. South, Las Vegas, Nevada 89109. Venetian shall add Producer as an additional insured to Venetian's comprehensive general liability insurance policy for the Resort for the term of the Agreement.

13. Indemnification.

13.1. Producer Obligation. Producer shall indemnify, defend and hold harmless VCR, its parent, subsidiaries and affiliates, and each of their respective directors, officers, agents and employees (the "VCR Parties") from and against any third-party claim, demand, suit or cause of action (collectively, "Claims") arising from or related to: (a) any willful or negligent action, inaction, or omission of Producer, including, without limitation, third-party claims of personal injury (including death) to any person or damage to and property; (b) the performance of Show or Producer's breach of or failure to perform any term or condition of this Agreement; or (c) any actual or alleged infringement of any copyright, trademark, or other intellectual property right by the Producer or Show. Producer specifically will indemnify the VCR Parties against any resulting liability, damages, losses, costs or expenses (including reasonable outside attorneys' fees and other professionals' fees and expenses) incurred by or awarded against any VCR Party as a result of a Claim or agreed to in a settlement and attributable to such Claim.

13.2. VCR Obligation. VCR shall indemnify, defend and hold harmless Producer, its parent, subsidiaries and affiliates, and each of their respective directors, officers, agents, employees and Performers ("Producer Parties") from and against any third-party Claim arising from or related to: (a) any willful or negligent action, inaction, or omission of VCR, including, without limitation, personal injury (including death) to any person or damage to and property, or (b) VCR's breach of or failure to perform any term or condition of this Agreement. VCR specifically will indemnify the Producer Parties against any resulting liability, damages, losses, costs or expenses (including reasonably attorneys' fees and other professionals' fees and expenses) incurred by or awarded against any Producer Party as a result of a Claim or agreed to in a settlement and attributable to such Claim.

13.3. Indemnification Procedure. The party seeking indemnity ("Indemnified Party") shall promptly notify the other party ("Indemnifying Party") upon becoming aware of a Claim; provided, however, that the Indemnified Party's failure to give prompt notice will not relieve the Indemnifying Party of its indemnity obligation except to the extent that the Indemnifying Party shows that the failure actually prejudiced the Indemnifying Party. The Indemnified Party will permit the Indemnifying Party to assume control of the defense of the Claim, with counsel selected by the Indemnifying Party, provided that the Indemnified Party may participate in such defense at the Indemnified Party's expense. The Indemnified Party will give reasonable assistance and cooperation to the Indemnifying Party in the defense of the Claim. The Indemnifying Party will not admit liability or enter into any settlement that adversely affects the Indemnified Party's rights or interests without the prior written approval of the Indemnified Party.

14. Limitation of Liability.

EXCEPT FOR ANY CLAIM OR CAUSE OF ACTION ARISING FROM EITHER PARTY'S OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 19, THIRD PARTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 13, OR ANY PAYMENTS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE IN ANY WAY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF A

PARTY HAD BEEN ADVISED OR WAS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

15. Licenses; Permits.

Throughout the Term, Producer shall at its own expense, obtain and maintain all necessary local, state, and federal permits, licenses, and approvals required for the Show. Additionally, Producer shall obtain and maintain any necessary licenses, clearances, permits, or consents necessary to produce and stage the Show; provided, however, that to the extent covered by VCR's existing blanket licenses under ASCAP, BMI, SESAC as performing rights organizations (collectively, the "Blanket Licenses"), VCR shall provide such licenses for the Show at the Venue, and at no cost to Producer. In the event that the Blanket Licenses do not provide licenses by the applicable licensing entities as required for the Show, Producer shall secure such licenses at its sole cost and expense and VCR shall have no liability therefor. Additionally, for the purpose of VCR providing the Blanket Licenses as set forth above, and as requested by VCR throughout the Term of this Agreement, Producer shall promptly provide VCR with reviewed financial statements prepared by an independent Certified Public Accountant and other documentation reflecting any and all information to the extent required for VCR to complete and comply with its Blanket License obligations.

16. Gaming; Regulatory Compliance; Ethics; Use of Funds; Code of Conduct.

16.1. Producer understands and acknowledges that this Agreement, at VCR's discretion, may be subject to Producer and its principals completing and submitting to VCR a due diligence compliance questionnaire (including an Authorization for the Release of Information) and being found suitable by VCR's Gaming Compliance Committee. Notwithstanding any other provision in this Agreement to the contrary, VCR may immediately terminate this Agreement without further obligation or liability to Producer if, in the judgment of VCR's Gaming Compliance Committee, or representatives thereof, the relationship with Producer could subject VCR to disciplinary action by gaming regulatory authorities or cause VCR to lose or become unable to obtain or reinstate any federal, state and/or foreign registration, license or approval material to VCR's business.

16.2. In connection with its own business, each party shall comply, and cause its subcontractors to comply, with all applicable local, state, federal, and international rules, laws, and regulations related anti-corruption, anti-money laundering, and gaming, including those governing the providing of incentives, inducements, kickbacks, gratuities or bribes, including without limitation the U.S. Foreign Corrupt Practices Act of 1977 (the "FCPA") (15 U.S.C. §§ 78dd-1, et seq.) which precludes giving, offering or agreeing to give anything of value to foreign government officials or holders of and candidates for public office or political parties, their families and agents, directly or indirectly, in connection with obtaining or maintaining contracts or orders or obtaining other benefits. Each party shall maintain complete and accurate records in compliance with the FCPA and any other applicable law.

16.3. VCR requires its officers, employees, suppliers, and contractors to observe the highest standards of business and personal ethics. Each person is expected to practice honesty and integrity in every aspect of dealing with each other, the public, business community, customers, other suppliers, and government authorities. Accordingly, Producer shall at all times adhere to the following:

(a) Producer shall not directly or indirectly give or accept gifts, contributions, or prizes with a value exceeding $100.00 ("Maximum Gift Value"), which is in any way connected with or related to the business or matters of VCR. The Maximum Gift Value shall be the limitation both in any individual instance, as well as that collectively with any single individual or entity within any one (1) year period;

(b) Producer shall not solicit gifts, contributions, gratuities, services, or kickbacks from VCR, nor VCR's suppliers or customers, regardless of value; and

(c) Producer shall not give or accept, directly or indirectly, entertainment or meals in excess of usual and reasonable limits that are a normal and acceptable part of regular business activity, and all such meals shall be included in and subject to Maximum Gift Value's as set forth in subsection (a), above.

16.4. VCR has established a compliance and ethic's hotline to enhance VCR's commitment to maintain the highest business ethics and standards. Appropriate and prudent use of this hotline/website is a means by which Producer can help preserve the integrity of VCR's business, and the manner in which the parties are perceived by co-workers, regulators, customers, suppliers, competitors and community. VCR therefore strongly encourages Producer to immediately report misconduct that it becomes aware of by calling (888) 469-1536, or by logging on to VCR's website at www.lvscethics.com. In addition to the preceding reporting method, Producer may at any time contact VCR's management regarding any actual or alleged violation of ethics.

16.5. Producer has read, understands, and agrees to comply with, and not do anything in violation of VCR's Supplier Code of Conduct, as available at: http://www.sands.com/corporate-overview/procurement-supply-chain.html.

16.6. Producer represents that it has not provided, and shall not provide, directly or indirectly, funds or other consideration to any person or entity (including VCR and its employees and agents) to improperly procure special or unusual treatment with respect to this Agreement, or for the purpose of otherwise improperly influencing Producer's relationship with VCR. Producer shall cause all of its officers, directors, employees, members, partners, agents, subcontractors and suppliers to comply with the restrictions contained in this Section 16.

17. Personally Identifiable Information ("PII").

To the extent that the services under the Agreement may require either party to have access to personally identifiable information about an individual **(**hereinafter referred to as "PII"), that party shall after receipt thereof, treat such PII as confidential and safeguard such information from unauthorized use and disclosure per its policies. Each party agrees to allow access only to those employees who need the PII to perform services under the Agreement, and agrees that PII will be used solely for the purpose of performing services under the Agreement. Each party shall ensure that its employees will not discuss, divulge or disclose any such PII to any person or entity except those persons within its organization directly concerned with the performance of the Agreement. Each party shall administer a monitoring process to ensure compliance with the provisions of this section, promptly report in writing any breaches to the other, and implement immediate, appropriate corrective actions to contain and prevent recurrence. Protected PII is an individual's first name or first initial and last name in combination with any one or more of the following data elements including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, and educational transcripts.

18. Warranties.

18.1. Producer hereby warrants to VCR that Producer shall perform the services provided hereunder in a timely, professional and workmanlike manner, consistent with industry standards, using individuals of suitable training and skill.

18.2. Producer represents and warrants that it is not prohibited by any third-party from entering into the Agreement and Producer's entering into this Agreement will not violate or otherwise breach any other third-party agreement Producer may be subject to or bound by.

19. Confidentiality.

The terms of this Agreement and all information, including but not limited to oral statements, computer files, databases, and other material or data provided by one party to the other hereunder shall be considered

confidential and privileged ("Confidential Information"). Each party shall not disclose the other party's Confidential Information, nor allow such information to be disclosed to any person or entity other that such party's employees, affiliates or advisors with have a need to know and an obligation of confidentiality, without the express prior written consent of the other party. Each party shall have the right to use Confidential Information only for the purpose of complying with its obligations under this Agreement. Upon request by the party that disclosed Confidential Information ("Disclosing Party"), the other party ("Receiving Party") shall promptly destroy or return all of the Disclosing Party's Confidential Information, together with all copies and extracts, except to the extent that returning or destroying such Confidential Information would constitute a violation of applicable law (as confirmed by the opinion of the Receiving Party's counsel). In the event that the Receiving Party is required by law, judicial or governmental order, or other legal process to disclose any Confidential Information, the Receiving Party shall, to the extent permitted by law, provide the Disclosing Party with prompt written notice of such requirement so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy. In no event shall the Receiving Party oppose action by the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. The confidentiality requirements set forth above shall not apply where: (a) the information is, at the time of disclosure in the public domain; (b) the information is known to the Receiving Party with no obligation of confidentiality prior to obtaining the same from the Disclosing Party; (c) the information is lawfully obtained by the Receiving Party from a third-party without any violation of confidentiality; or (d) information that is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information. The obligations of confidentiality shall survive the termination of this Agreement.

20. General Terms.

20.1. Language; Governing Law. English is the language of this Agreement, and all communications and proceedings must be conducted in English. If this Agreement is translated, then the English language version will control. The laws of the State of Nevada, United States of America, govern this Agreement, without regard to any conflicts of laws rules. The United Nations Convention on Contracts for International Sale of Goods does not apply to this Agreement.

20.2. Dispute Resolution. For each claim or dispute arising between the parties under this Agreement, the parties shall attempt to resolve the matter through escalating levels of management. In the unlikely event the parties cannot resolve a claim or dispute among themselves, the parties agree that any dispute or claim arising out of or relating to this Agreement (other than an action, claim or dispute seeking injunctive relief) shall be settled exclusively in accordance with the following terms of this section. VCR and Producer agree to attempt to settle all such disputes or claims first by mediation to be conducted by the American Arbitration Association ("AAA") in accordance with the AAA's then-current Commercial Arbitration Rules and Mediation Procedures (the "Rules"). If mediation is unsuccessful in resolving the dispute(s) or claim(s), the parties agree to settle the matter by binding arbitration conducted by the AAA in accordance with the Rules. The arbitration will be held in Clark County, Nevada before a single arbitrator. The arbitrator will apply the substantive law of Nevada without regard to any conflict of laws provision. The arbitration will be governed by the United States Arbitration Act, 9 U.S.C. § 1 et. seq. The parties will be permitted to engage in limited discovery prior to the arbitration. The parties agree that each will only be entitled to one deposition of the other's officers, directors, employees or agents. The parties further agree that no interrogatories shall be served and document production obligations shall be limited to documents directly and solely related to the performance of this Agreement. Following a hearing, the arbitrator shall issue a signed and dated written opinion which shall decide all issues submitted. The arbitrator shall award only those remedies which are authorized by law and requested by the parties and which the arbitrator determines to be supported by credible relevant evidence. The parties will be responsible for their own attorney's fee and expenses. Notwithstanding the foregoing, the prevailing party in the arbitration shall be entitled to an award of its reasonable fees and expenses as an element of the arbitrator's award. Unless otherwise provided by law, the cost of the arbitrator and the administrative fees of the AAA will be shared equally by the parties.

Judgment may be entered on the arbitrator's award in any court having jurisdiction. For purposes of entering such judgment or seeking injunctive relief with regard to this Agreement, the parties hereby consent to the jurisdiction of any or all of the following courts: (i) the courts of the State of Nevada and of the United States of America for the District of Nevada; or (ii) any other court having jurisdiction; provided, that damages for any alleged violation of this Agreement, as well as any claim, counterclaim or cross-claim brought by Producer or any third-party in response to, or in connection with any court action commenced by VCR seeking said injunctive relief shall remain exclusively subject to final and binding arbitration as provided for herein. Producer and VCR hereby each respectively waive, to the fullest extent permitted by applicable law, any objection which either may now or hereafter have to such jurisdiction, venue and any defense of inconvenient forum.

20.3. Assignment. Neither party may assign their rights nor delegate their duties under this Agreement without the written consent of the other party. Any assignment or delegation shall not relieve any party of its obligations under this Agreement.

20.4. Waiver. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing signed by each party. The failure of the either party to enforce any of the provisions of this Agreement, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions, affect the validity of any part of this Agreement, or affect the right of the parties to thereafter enforce each and every provision of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of this Agreement.

20.5. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties shall amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

20.6. Relationship of Parties. In the performance of this Agreement, Producer and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of VCR. Producer shall be liable for the actions of any person, organization or corporation with which it subcontracts to fulfill this Agreement. VCR will at all times hold Producer as the sole responsible party for the performance of this Agreement. Nothing contained in this Agreement or any subcontract awarded by Producer shall create a partnership, joint venture or agency. Neither party shall have the right to obligate or bind the other party in any manner to any third party. All persons employed by Producer in connection with its obligations hereunder shall be the sole and exclusive employees of, and paid by Producer. In connection with the employment of its employees, Producer shall pay all applicable social security, unemployment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal, state, and local laws and regulations relating to employment generally, minimum wages, social security, unemployment insurance, workmen's compensation and immigration laws.

20.7. Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) which is due to an event beyond the reasonable control, and occurring without the fault or negligence, of such party (the "Force Majeure Event"). Force Majeure Event's include, but are not limited to: an Act of God; terrorism, threats of violence, war, political insurgence, insurrection, riot, or civil unrest; earthquake, flood, or other natural disasters; failure of suppliers, subcontractors, or carriers; or any other natural or manmade event that causes the postponement of the Show or substantial interference with the audience's and cast and crew's ability to attend the Show, or the termination in whole or part of this Agreement, provided that, as a condition to the

claim of non-liability, the party experiencing the difficulty shall give the other party prompt written notice, with full details following the occurrence of the cause relied upon. At the option of VCR, any delays in the providing a Performance, caused by a Force Majeure Event, shall be addressed by either: (1) extending the period for providing such Performance for a period of time equal to the time lost due to the Force Majeure Event; or (ii) cancellation of those Performances as so delayed (with no obligation to re-schedule). Additionally, in addition to all other rights hereunder, in the event that a Force Majeure Event, for any reason, delays Performances for a period of six (6) consecutive Performance Weeks or more, or such Force Majeure Event is anticipated to continue for a period in excess of six (6) consecutive Performance Weeks, VCR or Producer may terminate this Agreement with no further liability except that arising prior to the date of termination.

20.8. No Third Party Beneficiary. This Agreement is entered into for the exclusive benefit of the parties. It is not intended to benefit any person or entity that is not a signatory to this Agreement or create any rights, powers or interest in any third party.

20.9. Section Headings. The section headings appearing in this Agreement are inserted for the purpose of convenience and ready reference. They do not purport to define, limit, or extend the scope or intent of the language of the sections to which they pertain.

20.10. Notices. All notices required pursuant to the terms and conditions of this Agreement shall be in writing, unless an emergency dictates otherwise. Any notice required to be given under the terms of this Agreement shall be deemed to have been given: (a) when received by the party to whom it is directed by hand delivery or personal service; (b) when transmitted by facsimile with confirmation of transmission; (c) three (3) business days after it is sent by U.S. mail via certified mail-return receipt requested; or (d) one (1) business day after it is sent by national overnight courier, such as FedEx or UPS, with proof of delivery. Notices shall be sent to the individuals set forth below at the addresses first set forth above, WITH COPY FOR VCR TO - Venetian Casino Resort, LLC, Attn. SVP and General Counsel, 3355 Las Vegas Boulevard South, Las Vegas, Nevada, 89109 - Fax (702) 414-4421. The parties shall provide written notification of any change in address for notice purposes.

20.11. Time is of the Essence. Time is of the essence in this Agreement.

20.12. Modification and Amendment. This Agreement shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Agreement shall be null and void, and may not be relied upon by either party.

20.13. Survival. Any provisions of this Agreement that by their terms or nature extend beyond termination shall survive such termination.

20.14. Agreement Binding; Drafter. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns. The provisions contained herein shall not be construed in favor of or against either party because that party or its counsel drafted this Agreement, but shall be construed as if all parties prepared this Agreement equally.

20.15. Entire Agreement. This Agreement constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written or oral, regarding such subject matter. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement.

20.16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. A facsimile or electronic signature shall be as valid as the original signatures. This Agreement shall not be effective and binding upon any party until it has been fully executed by both parties.

The below signatories to this Agreement on behalf of each party represent that they are authorized to enter into this Agreement and bind their respective entities to all terms and conditions stated herein. Furthermore, each signatory to this Agreement represents to the other party that their respective entity is duly organized, validly existing and in good standing under the laws of the State of Nevada, and has all requisite power and authority to carry on its business as now being conducted and otherwise contemplated by this Agreement.

The parties have caused this Agreement to be executed by persons duly authorized, as of the Effective Date.

BASE Puppet Up, LLC

DocuSigned by:
Scott Armstrong
7AFCED01A89945F...

5/10/2016

Signature *Date*

Print Name: Scott Armstrong

Title: General Manager

Venetian Casino Resort, LLC

DocuSigned by:
Peter Boyd
F2280B59D9D94A3...

5/10/2016

Signature *Date*

Print Name: Peter Boyd

Title: SVP OPS

Approved To Form Only
Venetian Casino Resort, LLC
Legal Department

Attachment A

On-Property Advertising Package

1. On Property Interior Signage

a. Duratrans, wall-wrap, and poster placement on property (including but not limited to: breezeway from Venetian / Venezia Parking Garages, Palazzo Parking Garage, Rialto Bridge, Sands Bridge, The Venetian/Palazzo lobby/valet entrances, Doge's palace entrance, food courts, poker room, restaurant row casino end cap and slot machine signage).

2. The Venetian/Palazzo Exterior Signage

a. Inclusion in strip-facing / marquee video loops (see additions in red, in the paragraph above).

3. In-room

a. In-room piece (limited time).

b. Inclusion in in-room video loop.

c. Possible specialty "invitations" in-room for ticket buyers.

4. Video

a. Inclusion in all on-property animated digital displays (including: horizontal, vertical, sands ave entrance marquee, & jpeg digital loops (Venetian Breezeway) as well as in-room, equivalent to other entertainment/amenities on property.

5. Web

a. Social media push via The Venetian/Palazzo Facebook & Twitter pages and email blasts, and placement on the Venetian website (entertainment page listing and equal placement on rotating entertainment header / banner ad).

6. Grazie offer

a. Direct Mail and email correspondence with Grazie offer to database.

Certificate Of Completion

Envelope Id: AEFE2580AB7F49DF91E8C5915F1309D3

Status: Completed

Subject: CW2352901 - BASE Puppet Up Agreement (Final Execution Copy 05.06.16)final.pdf

Source Envelope:

Document Pages: 16

Signatures: 2

Certificate Pages: 4

Initials: 0

AutoNav: Enabled

EnvelopeId Stamping: Enabled

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Envelope Originator:
Brad Morrison
3355 Las Vegas Blvd. South
Las Vegas, NV 89109
brad.morrison@sands.com
IP Address: 216.109.111.243

Record Tracking

Status: Original
5/10/2016 7:46:11 AM

Holder: Brad Morrison
brad.morrison@sands.com

Location: DocuSign

Signer Events	Signature	Timestamp
Scott Armstrong sarmstrong@baseentertainment.com General Manager Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:	DocuSigned by: Scott Armstrong 7AFCED01A89945F... Using IP Address: 24.120.194.94	Sent: 5/10/2016 7:47:23 AM Viewed: 5/10/2016 8:23:43 AM Signed: 5/10/2016 3:46:53 PM
Peter Boyd pete.boyd@sands.com SVP OPS Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/10/2016 3:47:46 PM ID: d6b7378e-e415-4cba-96b6-69c25d1014d0	DocuSigned by: Peter Boyd F2280B59D9D94A3... Using IP Address: 66.209.81.2	Sent: 5/10/2016 3:46:54 PM Viewed: 5/10/2016 3:47:46 PM Signed: 5/10/2016 3:47:59 PM

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Notary Events		Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/10/2016 3:46:54 PM
Certified Delivered	Security Checked	5/10/2016 3:47:46 PM
Signing Complete	Security Checked	5/10/2016 3:47:59 PM
Completed	Security Checked	5/10/2016 3:47:59 PM

Electronic Record and Signature Disclosure

CONSUMER DISCLOSURE

From time to time, Las Vegas Sands Corp. (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the Ã¦I agreeÃ† button at the bottom of this document.

Electronic Representation of your signature and initials

Each time that you (or your agent) use the signature and initials that you have selected, it would be the electronic representation of your signature and initials for all purposes including legally binding contracts â€“ just the same as a pen-and-paper signature or initial.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign Ã´Withdraw ConsentÃ¶ form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as

described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Las Vegas Sands Corp.:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: craig.fischer@venetian.com

To advise Las Vegas Sands Corp. of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at craig.fischer@venetian.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from Las Vegas Sands Corp.

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to craig.fischer@venetian.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Las Vegas Sands Corp.

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an e-mail to craig.fischer@venetian.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000Â¬ or WindowsXPÂ¬
Browsers (for SENDERS):	Internet Explorer 6.0Â¬ or above
Browsers (for SIGNERS):	Internet Explorer 6.0Â¬, Mozilla FireFox 1.0, NetScape 7.2 (or above)

Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Ã² Allow per session cookies Ã² Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access, consent to receive materials electronically and the use of electronic representation of signature and initials

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above and agree that each time you (or your agent) use the signature and initials that you have selected, it would be the electronic representation of your signature and initials for all purposes including legally binding contracts â€“ just the same as a pen-and-paper signature or initial, please let us know by clicking the Ã¦I agreeÃ† button below.

By checking the Ã¦I AgreeÃ† box, I confirm that:

- I agree that each time I (or my agent) use the signature and initials that I have selected, it would be the electronic representation of my signature and initials for all purposes including legally binding contracts â€“ just the same as a pen-and-paper signature or initial; and
- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Las Vegas Sands Corp. as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Las Vegas Sands Corp. during the course of my relationship with you.

EXHIBIT “D”

DocuSign Envelope ID: 79D2EF84-D293-431D-9D30-AA12E65248F8

MERLIN ENTERTAINMENTS

3377 Las Vegas Blvd South Suite 2001 | Las Vegas, Nevada 89109 | (702) 862- 7810

April 1, 2016

Dear Charry,

Thank you for agreeing to become a Trade Credit partner of Merlin Entertainments Group US Holdings Inc. ("**Merlin**").

This Trade Sales Agreement ("**Agreement**") between Merlin Entertainments plc ("**Merlin**") and Venetian Hotel & Casino, Box Office & Concierge ("**Client**") is comprised of:

1. This Letter Agreement ("**Letter Agreement**")
2. Trade Rate and Procedures Sheet ("**Trade Rate Sheet**"), which is incorporated by reference herein and is an integral part hereof, setting forth the details of the relationship between Client and Merlin; and
3. Merlin Credit Client Terms and Conditions ("**Terms and Conditions**"), which are incorporated by reference herein and is an integral part hereof. Unless defined in this Letter Agreement, capitalized terms are defined in the Terms and Conditions.

Merlin authorizes the Client to sell and distribute tickets and/or vouchers based on the Rates on the Trade Rate Sheet and pursuant to the Terms and Conditions at each of the following Merlin attractions. Please select the attractions for which you intend to distribute vouchers:

□ Madame Tussauds – Hollywood
X Madame Tussauds – Las Vegas
□ Madame Tussauds – New York
□ Madame Tussauds – Washington D.C.
□ Madame Tussauds – San Francisco
□ Madame Tussauds – Orlando

□ SEA LIFE – Arizona
□ SEA LIFE – Dallas
□ SEA LIFE – Kansas City
□ SEA LIFE – Minnesota
□ SEA LIFE – Charlotte
□ SEA LIFE – Orlando

□ LEGOLAND Discovery Center - Chicago
□ LEGOLAND Discovery Center - Dallas
□ LEGOLAND Discovery Center - Atlanta
□ LEGOLAND Discovery Center – Kansas City
□ LEGOLAND Discovery Center – Boston
□ LEGOLAND Discovery Center - Toronto
□ LEGOLAND Discovery Center – Westchester, NY

□ The San Francisco Dungeon

□ The Orlando Eye

If Client agrees to provide the trade credit partner services specified herein pursuant to the terms set forth herein, please sign and date below, then fax or email signed copy back to Merlin's Trade Sales Manager.

Very truly yours,

By: _____

Vanessa Lopez
Sales Coordinator, Madame Tussauds Las Vegas
T: 702.862.7810 / F: 702.862.7851

The undersigned agrees to the terms and conditions of the Letter Agreement, Trade Rate Sheet, and Terms and Conditions.

Acknowledged and Agreed to:
this 1st date of April, 2016 .

CLIENT: Venetian Box Office & Concierge

DocuSigned by:
By: Peter Boyd (Signature)
F2280359D9D94A3...

Name: Peter Boyd (Print Name)

Its: SVP OPS (Title)

PLEASE FILL IN CLIENT CONTACT DETAIL BELOW:

If Product Manager or Accounts Payable information is different per attraction/product, please attach a list of contact information to this agreement.

Product/Contractor Manager Information:

Name: Charry Kennedy

Title: Director Ticketing Services / Box Office

Email: Charry.Kennedy@sands.com

Telephone: 702 414 4861

Accounts Payable/Billing Address:

Name: Teresa Phillips

Title: Director Accounts Payable

Email: teresa.phillips@sands.com

Telephone: (702) 607-2221

Address: 3355 Las Vegas Blvd.

City: Las Vegas

State/Region: NV Postal Code: 89109

PLEASE SIGN AND RETURN TO

Vanessa Lopez, Sales Coordinator, Madame Tussauds Las Vegas
Vanessa.Lopez@madametussaudslv.com | Phone: 702.862.7810 | Fax: 702.862.7851

MERLIN

DocuSign Envelope ID: 79D2EF84-D293-431D-9D30-AA12E65248F8

MADAME TUSSAUDS LAS VEGAS
TRADE RATES AND PROCEDURES SHEET

TERM: Rates Effective from April 1, 2016 to March 31, 2017

NET FIT RATES:
Note: NET rates must NOT be printed in literature of any description.

The Attraction reserves the right to change retail and/or net rates at any time. We will provide 30 day notice of any rate changes in written or electronic form.

All prices are in USD and are inclusive of local sales tax.

Ticket Type	Retail Rate	Venetian Concierge Rate	Net FIT Rate	Discount
Adult All-Access (13+)	$29.95	$18.98	$13.98	53.33%
Child All-Access (4-12)*	$19.95	$14.98	$9.98	50.00%

*Children 3 and under are free with paid adult admission.

PAYMENT:
You will be billed monthly based on voucher redemptions. Please make company checks payable to:

Madame Tussauds Las Vegas
Attn: Accounts Payable
3377 Las Vegas Blvd South, Ste 2001
Las Vegas, NV 89109

HOURS OF OPERATION:
Open 365 Days a year

Sunday - Thursday: 10:00 AM – 8:00 PM (last guest ticket taken at 8 PM)
Friday – Saturday: 10:00 AM – 9:30 PM (last guest ticket taken at 9:30 PM)

Extended Summer Hours (Memorial Day – Labor Day):
Sunday – Saturday: 10:00 AM – 10:00 PM (last guest ticket taken at 10 PM)

The Attraction may close early for special events or extend hours during peak periods. Please call (702) 862-7800 for updated closing times.

LOCATION:
3377 Las Vegas Blvd South, Ste 2001 (In front of the Venetian resort)
Las Vegas, NV 89109

http://www.madametussauds.com/LasVegas/PlanYourVisit

DURATION OF VISIT: 1 to 1.5 hours

INCLUSIONS:
- Entrance to Attraction
- Marvel 4D experience

GROUPS: Discounted group rates (for 15+ visitors) are available by calling (702) 862-7810 or emailing Groups@MadameTussaudsLV.com

DS
PB
Client Initials

DocuSign Envelope ID: 79D2EF84-D293-431D-9D30-AA12E65248F8

MADAME TUSSAUDS LAS VEGAS
TRADE RATES AND PROCEDURES SHEET

TERM: Rates Effective from April 1, 2016 to March 31, 2017

NET FIT RATES:
Note: NET rates must NOT be printed in literature of any description.

The Attraction reserves the right to change retail and/or net rates at any time. We will provide 30 day notice of any rate changes in written or electronic form.

All prices are in USD and are inclusive of local sales tax.

Ticket Type	Retail Rate	Venetian Box Office Rate	Net FIT Rate	Discount
Adult All-Access (13+)	$29.95	$18.98	$11.98	60%
Child All-Access (4-12)*	$19.95	$14.98	$7.98	

*Children 3 and under are free with paid adult admission.

PAYMENT:
You will be billed monthly based on voucher redemptions. Please make company checks payable to:

Madame Tussauds Las Vegas
Attn: Accounts Payable
3377 Las Vegas Blvd South, Ste 2001
Las Vegas, NV 89109

HOURS OF OPERATION:
Open 365 Days a year

Sunday - Thursday: 10:00 AM – 8:00 PM (last guest ticket taken at 8 PM)
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http://www.madametussauds.com/LasVegas/PlanYourVisit

DURATION OF VISIT: 1 to 1.5 hours

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- Entrance to Attraction
- Marvel 4D experience

GROUPS: Discounted group rates (for 15+ visitors) are available by calling (702) 862-7810 or emailing Groups@MadameTussaudsLV.com

DS
PB
Client Initials

MERLIN ENTERTAINMENTS GROUP US HOLDINGS, INC.

TERMS AND CONDITIONS

These Terms and Conditions constitute a material part of the Trade Sales Agreement ("**Agreement**") by and between Merlin Entertainments Group US Holdings, Inc. ("**Merlin**") and the Client (Venetian Casino Resort, LLC) specified in the parties' Letter Agreement dated April 1, 2016 and made as of the Effective Date as provided in the accompanying Trade Rates and Procedures Sheet.

WHEREAS, Merlin wishes to appoint Client to sell, distribute or provide admission tickets ("**Tickets**") or vouchers for Tickets ("**Vouchers**") to those museums, theme parks, or exhibits identified in the Letter Agreement ("**Attractions**");

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Merlin and Client (the "**Parties**") agree as follows:

1. SALE AND DISTRIBUTION OF TICKETS AND VOUCHERS.

(a) Appointment of Client. Merlin appoints Client to sell, distribute or provide Tickets or Vouchers to the Attractions at the rates provided in the Agreement ("**Rates**") and on the terms ("**Terms**") contained in the Agreement. Notwithstanding any other provision of the Agreement, Client shall be treated as Merlin's contractor in the sale, distribution or provision of Tickets or Vouchers hereunder and shall not, unless expressly otherwise agreed in writing by Merlin, be considered to be a distributor thereof.

(b) Tickets and Vouchers. All Tickets and Vouchers are non-refundable and non-exchangeable. Client shall not sell any Tickets or Vouchers within a one-half mile radius of any Attraction unless by prior written agreement with Merlin. Failure to comply with this clause shall constitute a material, repudiatory and irremediable breach of the Agreement entitling Merlin to terminate the Agreement immediately without any liability and without further compensation due to Client. In addition, Client agrees to adhere to the start and end dates of any offer periods in relation to Tickets or Vouchers as notified by Merlin; to adhere to the "close out time" for all bookings on 6.00 A.M. on the day of visit to which the Ticket or Voucher refers; and to adhere to any volume allocations by Ticket or Voucher type as set by Merlin.

(c) Tickets and Vouchers Subject to Attractions Terms and Conditions. Client acknowledges and agrees that each person seeking to use a Ticket or Voucher shall do so subject to the terms and conditions of entry for that Attraction, a copy of which is available from the Attraction. Client shall ensure that such terms and conditions are provided to any person to whom Client provides a Ticket or Voucher for the Attraction.

(d) Rates. Client agrees to charge third parties for the Tickets or Vouchers in accordance with the Rates. Where the Tickets or Vouchers are sold as part of a package along with any third-party products or services, the incremental price of the Tickets or Vouchers shall, to the extent permitted by law, be hidden from the consumer. Merlin reserves the right to change the Rates at any time. Such changed Rates shall apply from the date on which Merlin provides notice to Client of such new Rates. All Rates are inclusive of Sales Tax at the prevailing time. Client agrees to comply with all applicable laws relating to the display of prices with respect to any Tickets or Vouchers.

(e) Vouchers. Client shall ensure that all Vouchers are approved by Client's Account Manager and shall clearly and legibly state: 'BOOKED AND PAYABLE BY [Client]' and 'NOT FOR RESALE.' Each Voucher shall include: the company name as stated on the Client credit agreement; company address; invoicing address; Attraction name; date of visit; valid dates; purchaser/consumer name; number of adults, children, students, seniors and free places if applicable; booking reference number; Client customer service phone number; and date of Voucher issue. Consumers will be required to show identification matching the name on the voucher at the time of redemption. Amendments to Vouchers shall not be accepted unless

countersigned by Client and by the Operations Manager or Supervisor of the Attraction and may be accepted or not at the discretion of the on-duty manager of the Attraction. Client acknowledges that if any group arrives at an Attraction without a valid Voucher for the number of persons in the group on the day of the visit, the members of such group shall only be allowed to enter the Attraction if the group presents a valid reservation code or booking confirmation and pays for the appropriate number of individuals in the group at the walk-up group rate. Client shall use its best efforts to ensure that a group seeking admission to an Attraction has a valid advance group Voucher.

(f) Client-Issued Vouchers or Tickets. In the event that Client issues its own Vouchers or Tickets entitling the holder to entry to any Attraction or to exchange the same for Tickets, Client shall ensure that each such Voucher or Ticket bears a unique reference number and such other identification or security features as Merlin may from time to time require. If required by the Attraction, the holder of a client-issued Ticket or Voucher shall exchange same for an Attraction-issued Ticket at the time of entry to the Attraction.

(g) Right to Refuse Entry. Photocopies, incomplete copies or counterfeit Tickets or Vouchers shall not be accepted at any Attraction and Merlin reserves the right in its absolute discretion to refuse entry to any person attempting to use such items.

(h) Groups of 15 or More Individuals. All groups of fifteen (15) or more persons shall be booked with the US Trade Group Booking Facility by emailing the group contact email address listed on the appropriate Trade Rate Sheet no less than 48 hours in advance by Client. The Rates are not available for Tickets purchased at the Attraction.

(i) Packaging of Merlin Products with Non-Merlin Attractions: Client shall obtain written approval from Merlin before packaging Merlin products with those of any non-Merlin attraction. Merlin reserves the right to refuse inclusion of Merlin products with any non-Merlin attraction for any reason.

(j) Open Tickets: Unless agreed to in writing by Merlin, all Ticket or Voucher sales must specify a visit date. Tickets or Vouchers with no visit date ("**Open Tickets**") are deemed to be a premium product and may attract a higher price. The sale of Open Tickets is subject to separate agreement with Merlin;

(k) Priority Entry: Client shall only use references to "Priority Entry" on any Tickets or Vouchers if agreed with the Account Manager in advance in writing. For the avoidance of doubt, no other wording relating to fast-track or queue/line skipping should be used on the Tickets or Vouchers.

2. ONLINE SALES

(a) Rates and Terms. Unless otherwise agreed to in writing between Merlin and Client, Tickets or Vouchers sold online are subject to the Rates and Terms specified on the Trade Rates and Procedures Sheet and are subject to the obligations stated herein.

(b) Prior Approval by Merlin. Client shall obtain prior written approval from Merlin for the following:

(i) the format of the Ticket or Voucher Client that intends to offer for sale online;

(ii) the content of any website or page thereof which will refer to or offer the online sale of Tickets or Vouchers;

(iii) the sale of Tickets or Vouchers through any affiliate website or to any other online operator.

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(c) Protection of Merlin's Online Reputation and Property. Client shall ensure that no reference to any of the Attractions is included on any inappropriate website including, but not limited to, any site which is obscene, defamatory, illegal or damaging to the reputation of Merlin in any way. Client shall not allow any Tickets or Vouchers to appear on a blacklisted website as notified by Merlin on a monthly basis.

(d) Pay-Per-Click Advertising ("PPC"). No PPC is allowed on any search engine (including search engine content network campaigns), in any country, without prior written permission from Merlin (including, for the avoidance of doubt, each of the Attractions). This PPC restriction includes any third party or affiliate site and refers to any brand name usage (including variations and misspellings). PPC agreements shall be agreed upon with each individual Attraction and the consent of one Attraction shall not be taken to include the consent of any other. The consent of an individual Attraction can be withdrawn or qualified at any time. Any PPC agreement Client has with an Attraction refers only to Client's site and not to any third party or affiliate site. No brand negative PPC descriptors (including, but not limited to, such phrases as "cheap" or "bargain") shall be used by Client to describe the sale of a Ticket or Voucher or any package containing a Ticket or Voucher. Only positive descriptors (for example such phrases as "fantastic savings" or "amazing deals") shall be used by Client to describe the sale of a Ticket or Voucher or any package containing a Ticket or Voucher. Price-led PPC descriptors shall not be used unless by prior written agreement with Merlin. No reference shall be made to being an official partner or an official site or other similar connection to Merlin, unless by prior agreement in writing with Merlin. Client shall ensure that PPC advertising using a Merlin brand is linked to a brand specific landing page and that any tactical offers have the lead spot on the relevant landing page and are not listed underneath standard offers.

3. INVOICING AND PAYMENT.

(a) Payment. Following the use of Tickets or Vouchers by individuals or by groups, an invoice respecting such Tickets or Vouchers shall be sent to Client. The Client agrees to pay such invoice within thirty (30) days of receipt, unless otherwise agreed in writing by Merlin or otherwise stated on the invoice. If an invoice is not paid by Client within such time, Merlin may in its absolute discretion, take one or more of the following actions:

(i) suspend, for whatever period Merlin thinks reasonable and proper, or terminate the account of any such Client without prior notification. For the avoidance of doubt, the suspension of an account may prevent the issue of further Tickets or Vouchers to Attractions;

(ii) charge interest on the overdue amount as stated on the invoice(s) at the annual rate of 4% above the prime rate then applicable.

(b) Disputes Regarding Invoices. For any invoice sent by Merlin, in the event of a dispute about the number of Tickets used, the number shown on the Vouchers presented at the Attraction shall be deemed to be correct.

(c). Tickets Sent by Mail. If, at Client's request, Merlin sends Tickets to Client by USPS or any other means, Client shall bear risk of loss or theft of such Tickets from and after the time that the Tickets leave the possession of Merlin or its agent that produced such Tickets. Invoices for such Tickets shall be sent at the same time as the Tickets are dispatched.

(d) Open Dated Tickets. Open dated Tickets for all relevant Attractions shall be invoiced at the time of purchase. Merlin shall provide a credit note or, if Client's contract has been cancelled, shall provide a full refund, for any unused Tickets, provided that they are returned no later than six weeks after the expiration date.

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4. RISK.

(a) Client's Responsibilities. Client agrees to provide sufficient security, procedures, safeguards and insurance to avoid or compensate for theft, fraud or any other unlawful activity in relation to Tickets, Vouchers and Restricted Information (as defined herein), all of which are held at Client's sole risk and obligation. Without limitation of the foregoing, Client agrees to ensure that it has sufficient security, procedures, safeguards and insurance in place to reasonably confirm that:

(i) all sales of Tickets or Vouchers are genuine and in good faith;

(ii) all reasonable means are taken to confirm the identity (and, where practicable, the address) of the purchaser and to prevent against credit/debit card fraud and forgery;

(iii) all Tickets are kept secure from theft, misappropriation and misuse while in Client's possession.

(b) Notice to Merlin. All instances of fraud, forgery, theft, misappropriation or misuse of Tickets or Vouchers shall be reported in writing to Merlin as soon as practicable together with such non- confidential information as is reasonably available to Client concerning the fraud, forgery, theft, misappropriation or misuse, or as is reasonably requested by Merlin.

(c) Indemnification. If Client shall fail to comply with its obligations hereunder with respect to fraud, forgery, theft, misappropriation, misuse or any other unlawful activity in relation to any Ticket or Voucher then Client shall indemnify Merlin for the loss of the face value of such Ticket or Voucher.

(d) Each party shall indemnify, defend and hold harmless the other party from any third party claims, damages, judgments, expenses, attorney fees and costs of any kind arising from the indemnifying party's actual or alleged negligence or willful misconduct.

5. CANCELLATION, CLOSURES AND AMENDMENT OF BOOKINGS.

(a) Cancellation by Customer. In the event that Client agrees to amend or cancel a booking for a customer, any such amendments or refunds are solely the liability of Client. However, in the event that such customer uses a Ticket or Voucher for admission to the Attraction, Client (regardless of any arrangement made between it and the customer concerned) shall be invoiced for payment.

(b) Late-Arriving Customers. If a customer to whom Client supplies a Ticket or Voucher for a time slot product misses such time slot, the customer shall be placed on standby for the next available time.

(c) Limitation of Liability as to Merlin. Client acknowledges and agrees that the Attractions are dynamic locations that may sometimes be closed in whole or in part for technical, operations, maintenance, safety, compliance, or other reasons. Merlin shall not be liable to Client or any customer for any damages, expenses, costs or losses, either direct, indirect or consequential, that might be incurred by Client or its customers arising out of or relating to the closure or unavailability of the Attractions or any parts thereof on a given date or time.

(d) Unused Tickets. Any unused Tickets (up to a maximum of 100 per ticket type, such as adult, child, etc.) for which Client seeks a credit must be returned to Merlin and actually received thereby no later than six (6) weeks after the validity date shown on the Ticket. In no event will credit be issued to Client for Tickets returned after this time, and Tickets returned after this period shall be charged and paid for in full.

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6. TIMED ADMISSION BOOKING SYSTEM (TABS).

(a) System. Certain aspects or exhibits within the Attractions are capacity limited, and therefore in order to limit the number of customers in such areas, customers are pre-assigned admission times through Merlin's Timed Admission Booking System ("**TABS**").

(b) Guarantee of Entry. Entry into Attractions subject to TABS is only guaranteed within the half hour TABS time slots specified in the booking for any group to which Client provides a Ticket, Voucher or a timed Ticket relevant to the booking.

(c) Late-Arriving Groups. Any group arriving after its booking time shall have to join the main group queue on a first-come, first-served basis. Merlin shall endeavor to admit groups as soon as reasonably practicable. If the actual group size exceeds that specified in the booking Merlin can only guarantee entry into the Attractions for the original numbers in the booking.

7. CONFIDENTIALITY AND INTELLECTUAL PROPERTY.

(a) Restricted Information. "Restricted Information" means any information or data which is disclosed by Merlin or any representative of Merlin Entertainments Group or any affiliate, pursuant to or in connection with the subject matter or provisions of the Agreement (whether orally or in writing or in any other medium and whether or not such information is expressly stated to be confidential or marked as such) including but not limited to all Rates, commissions, prices, cancellation terms and conditions, revenue targets and all special promotions.

(b) Non-Disclosure of Restricted Information. Client may not disclose to any third party details of any Restricted Information without Merlin's prior written consent. In furtherance of this Agreement, Merlin hereby consents to limited disclosure by Client of such Restricted Information needed to comply with gaming/regulatory obligations, perform hereunder and fulfill the purpose of this Agreement.

(c) Rates Are Restricted Information. The Rates form part of the Restricted Information. Any disclosure of the Rates by Client to any third party shall constitute a material, repudiatory and irremediable breach of the Agreement entitling Merlin to terminate the Agreement immediately without any liability and without further compensation due to Client.

(d) Intellectual Property Rights. Client agrees that all of Merlin's and Client's intellectual property ("**IP**") in relation to any Attraction and any other material supplied between Client and Merlin are, as between Client and Merlin, the exclusive property of the disclosing party owning such IP and the use by the receiving party of any name, logo, slogan, character, image or other IP belonging to the disclosing party in whatever form and for whatever purpose is not permitted unless approved by the disclosing party in writing prior to such use. Client and Merlin agree to assist in protecting the others IP and shall not knowingly do or cause or permit anything to be done which may endanger the other party's IP or its title to it and acknowledges and agrees that it shall not request or allow any third party to use the other party's IP in any way without prior written consent of the IP owner.

(e) Client Produced Materials. Client agrees that in connection with the creation of any material (including but not being limited to tickets, vouchers, newsletters, magazines, brochures and/or websites) ("**Materials**") using any of the Merlin IP, at Client's sole cost and expense, to:

(i) produce designs, layouts and artwork for and print all Materials;

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(ii) feature on the Materials such details as Merlin may from time to time reasonably request;

(iii) send samples of Materials to Merlin in advance for approval; and

(iv) make modifications, if reasonably requested by Merlin, following submission of the Materials for approval before the Materials are distributed to members of the public. Client agrees to send all samples of Materials by e-mail to the relevant Merlin account manager as a PDF file to USTrade@MerlinEntertainments.biz for purposes of such approval.

(f) Protection and Disposal of Restricted Information, IPR (Intellectual Property Rights) and Materials. Client agrees that it shall not act or use any of the rights granted to Client by these Terms in a manner which is defamatory of, or disparages or casts in a negative light, Merlin and/or of theme parks and/or exhibitions operated by Merlin. Client agrees to securely dispose of surplus Materials. Client shall ensure that proper and adequate measures designed to protect the Materials from damage and/or theft are in force at Client's premises and the premises of any third party where Materials are designed, printed or stored.

(g) Survival of Section 7. The provisions of this Section 7 shall continue to apply after the expiration or termination of the Agreement, as well in the event of cancellation of the booking.

8. TERMINATION OF THE AGREEMENT.

(a) Immediate Termination. This Agreement may be terminated, at Merlin's sole option, upon the occurrence of any of the following events:

(i) Client's failure to pay any sum due under the Agreement;

(ii) Client's failure to achieve sales with a minimum value (as is agreed between Merlin and Client) in any twelve (12) month period;

(iii) Client's breach of this Agreement or default of its obligations hereunder and, if capable of remedy, failure to remedy the same within seven (7) days of receiving written notice of such breach or default from Merlin;

(iv) Client entering into liquidation or bankruptcy proceedings, whether compulsory or voluntary;

(v) Client having an administrator appointed or a receiver, administrative receiver or manager appointed over any part of its assets or undertaking;

(vi) Client ceasing or threatening to cease business; or

(vii) Client suffering any other event or circumstance which, in the opinion of Merlin, results or is likely to result in Client being unable to fulfill its obligations under the Agreement; then, without prejudice to any other rights of the parties, Merlin may by written notice forthwith terminate the Agreement.

(b) Termination on Notice. Without prejudice to any other right it may have under the Agreement, Client or Merlin may terminate the Agreement by giving thirty (30) days written notice to the other, whereupon all of the rights and obligations of this Agreement shall cease and all amounts due to

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Merlin shall be immediately due and payable, and Client shall no longer sell any Tickets or Vouchers on Merlin's behalf. Any Tickets/Vouchers sold prior to Notice hereunder shall be honored by Merlin.

9. GENERAL PROVISIONS

(a) Force Majeure. Neither party shall be liable for any failure to perform its duties and responsibilities pursuant to this Agreement where such failure results from acts of God, fires, floods, strikes, or any other cause beyond its reasonable control; provided that each party shall use its best efforts to notify the other party if performance is precluded by such an event.

(b) Agreement Subject to Attractions Terms and Conditions. Client agrees and undertakes to reasonably monitor that each person seeking to use a Ticket shall do so subject to the terms and conditions of entry for that Attraction, a copy of which is available from the Attraction. Client shall ensure that such terms and conditions are brought to the attention of any person to whom Client provides a Ticket or Voucher for the Attraction.

(c) Entire Agreement. This Agreement contains the entire agreement between and among the Parties hereto, and fully supersedes any and all prior agreements or understandings pertaining to the subject matter hereof. Every representation, warranty, and covenant made prior to or contemporaneous with this Agreement is merged into this Agreement, and in entering into the Agreement no Party is relying on any other statement, representation or warranty, written or oral, as inducement or consideration for entering into this Agreement.

(d) Amendment or Modification. No amendment or variation to these Terms shall be valid against either party unless previously agreed to in writing.

(e) Severability. If any provision of this Agreement is rendered inoperative, void or illegal by operation of law or otherwise, the other provisions shall remain in full force and effect.

(f) Assignment. Neither Merlin nor Client may assign, transfer or otherwise dispose of any rights or obligations under the Agreement without prior consent in writing by both parties.

(g) Effect of Waiver. The failure of either party to insist on strict compliance with any of the Terms, covenants or conditions of this Agreement by the other party shall not be deemed a waiver of that Term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

(h) Governing Law; Consent to Jurisdiction. This Agreement, including the validity, construction and performance thereof, shall be governed and construed in accordance with, and enforced under, the laws of the State of Nevada, excluding its conflict of law principles, statutes or laws.

(i) Arbitration. If a dispute should arise under the terms of this Agreement as to its terms and conditions or any act of work to be performed under this Agreement, the parties agree to submit to arbitration in Las Vegas, Nevada pursuant to the then-current rules of the American Arbitration Association.

(j) Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, all partners, partnerships, subsidiaries, parent corporations and affiliates of any of the Parties, and all of their respective predecessors, successors, assigns, heirs, legal representatives, officers, directors, shareholders, agents and employees.

(k) Notice. Unless otherwise specified, all notices or other communications required pursuant to this Agreement must be in writing and shall be deemed duly served upon receipt if hand-delivered; or if

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sent by first class mail, postage prepaid; or if sent via facsimile, with electronic confirmation (provided that an original is sent by overnight delivery service); or if sent by overnight delivery service.

(i) Notices and communications to Merlin shall be sent to:

General Manager
Madame Tussauds Las Vegas
Merlin Entertainments plc
3377 Las Vegas Blvd S. Suite 2001
Las Vegas, NV 89109

(ii) Notice and communications to Client shall be sent to persons at the address and telephone numbers set forth on the Trade Sales Agreement or beneath its signature block within this Agreement.

(iii) Either party may change the notice addresses upon three (3) days prior written notice to the other party.

(l) Intentionally Omitted.

(m) Execution. The person executing this Agreement on behalf of client expressly represents that she or he is of full age, and further, if an organization is named herein as Client, that she or he is authorized to execute this Agreement of behalf of said organization.

(n) GAMING COMPLIANCE**.** Merlin acknowledges that Client and affiliates of Client are businesses that are, or may be, subject to extensive gaming regulations and that exist because of privileged licenses issued by governmental authorities relating to casino gaming ("Gaming Authority"). Merlin understands and acknowledges that this Agreement, at Client's discretion, may be subject to Merlin and its principals completing and submitting to Client a due diligence compliance questionnaire (including an Authorization for the Release of Information) and being found suitable by Client's Gaming Compliance Committee. Notwithstanding any other provision in this Agreement to the contrary, Client may immediately terminate this Agreement without further obligation or liability to Merlin(except for those monetary obligations incurred prior to termination) if, in the judgment of Client's Gaming Compliance Committee, or representatives thereof, the relationship with Merlin could subject Client or its affiliates to disciplinary action by gaming regulatory authorities or cause Client or its affiliates to lose or become unable to obtain or reinstate any federal, state and/or foreign registration, license or approval material to Client's or its affiliates' business.

FCPA. In connection with performing its services under this Agreement, Merlin shall comply with all applicable anti-corruption and anti-money laundering laws and regulations, including those governing the providing of incentives, inducements, kickbacks, gratuities or bribes, including without limitation the U.S. Foreign Corrupt Practices Act of 1977 (FCPA) (15 U.S.C. §§ 78dd-1, et seq.) which precludes giving, offering or agreeing to give anything of value to foreign government officials or holders of and candidates for public office or political parties, their families and agents, directly or indirectly, in connection with obtaining or maintaining contracts or orders or obtaining other benefits. The FCPA also requires complete and accurate record-keeping which records Merlin will maintain.

Certificate Of Completion

Envelope Id: 79D2EF84D293431D9D30AA12E65248F8 | Status: Completed

Subject: CW2365441 - Merlin Entertainment Trade Sales Agreement (Final Execution Copy 06.16.16a).pdf

Source Envelope:

Document Pages: 12	Signatures: 1	Envelope Originator:
Certificate Pages: 4	Initials: 2	Brad Morrison
AutoNav: Enabled		3355 Las Vegas Blvd. South
EnvelopeId Stamping: Enabled		Las Vegas, NV 89109
Time Zone: (UTC-08:00) Pacific Time (US & Canada)		brad.morrison@sands.com
		IP Address: 216.109.111.40

Record Tracking

Status: Original 6/17/2016 4:54:37 PM	Holder: Brad Morrison brad.morrison@sands.com	Location: DocuSign

Signer Events	Signature	Timestamp
Peter Boyd pete.boyd@sands.com SVP OPS Security Level: Email, Account Authentication (None)	DocuSigned by: Peter Boyd F2280B59D9D94A3...	Sent: 6/17/2016 4:55:34 PM Viewed: 6/20/2016 10:21:32 AM Signed: 6/20/2016 10:21:49 AM
	Using IP Address: 66.209.81.2	

Electronic Record and Signature Disclosure:
Accepted: 6/20/2016 10:21:32 AM
ID: c757fb88-001f-4207-a8d5-50f257b09cda

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Notary Events		Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/17/2016 4:55:34 PM
Certified Delivered	Security Checked	6/20/2016 10:21:32 AM
Signing Complete	Security Checked	6/20/2016 10:21:49 AM
Completed	Security Checked	6/20/2016 10:21:49 AM

Electronic Record and Signature Disclosure

CONSUMER DISCLOSURE

From time to time, Las Vegas Sands Corp. (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the Ã¦I agreeÃ† button at the bottom of this document.

Electronic Representation of your signature and initials

Each time that you (or your agent) use the signature and initials that you have selected, it would be the electronic representation of your signature and initials for all purposes including legally binding contracts â€“ just the same as a pen-and-paper signature or initial.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign Ã´Withdraw ConsentÃ¶ form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as

described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Las Vegas Sands Corp.:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: craig.fischer@venetian.com

To advise Las Vegas Sands Corp. of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at craig.fischer@venetian.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from Las Vegas Sands Corp.
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to craig.fischer@venetian.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Las Vegas Sands Corp.

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an e-mail to craig.fischer@venetian.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000Â¬ or WindowsXPÂ¬
Browsers (for SENDERS):	Internet Explorer 6.0Â¬ or above
Browsers (for SIGNERS):	Internet Explorer 6.0Â¬, Mozilla FireFox 1.0, NetScape 7.2 (or above)

Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Ã² Allow per session cookies Ã² Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access, consent to receive materials electronically and the use of electronic representation of signature and initials

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above and agree that each time you (or your agent) use the signature and initials that you have selected, it would be the electronic representation of your signature and initials for all purposes including legally binding contracts â€“ just the same as a pen-and-paper signature or initial, please let us know by clicking the Ã¦I agreeÃ† button below.

By checking the Ã¦I AgreeÃ† box, I confirm that:

- I agree that each time I (or my agent) use the signature and initials that I have selected, it would be the electronic representation of my signature and initials for all purposes including legally binding contracts â€“ just the same as a pen-and-paper signature or initial; and
- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Las Vegas Sands Corp. as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Las Vegas Sands Corp. during the course of my relationship with you.

MADAME TUSSAUDS LAS VEGAS
TRADE RATES AND PROCEDURES SHEET

TERM: Rates Effective from July 1, 2018 to March 31, 2019

NET FIT RATES:
Note: NET rates must NOT be printed in literature of any description.

The Attraction reserves the right to change retail and/or net rates at any time. We will provide 30 day notice of any rate changes in written or electronic form.

All prices are in USD and are inclusive of local sales tax.

Ticket Type	Retail Rate	Venetian Box Office Rate	Net FIT Rate	Discount
Adult All-Access (13+)	$29.95	$18.98	$11.98	60%
Child All-Access (3-12)*	$24.95	$16.98	$9.98	

*Children 2 and under are free with paid adult admission.

PAYMENT:
You will be billed monthly based on voucher redemptions. Please make company checks payable to:

Madame Tussauds Las Vegas
Attn: Accounts Payable
3377 Las Vegas Blvd South, Ste 2001
Las Vegas, NV 89109

HOURS OF OPERATION:
Open 365 Days a year

Sunday - Thursday: 10:00 AM – 8:00 PM (last guest ticket taken at 8 PM)
Friday – Saturday: 10:00 AM – 9:30 PM (last guest ticket taken at 9:30 PM)

Extended Summer Hours (Memorial Day – Labor Day):
Sunday – Saturday: 10:00 AM – 10:00 PM (last guest ticket taken at 10 PM)

The Attraction may close early for special events or extend hours during peak periods. Please call (702) 862-7800 for updated closing times.

LOCATION:
3377 Las Vegas Blvd South, Ste 2001 (In front of the Venetian resort)
Las Vegas, NV 89109

http://www.madametussauds.com/LasVegas/PlanYourVisit

DURATION OF VISIT: 1 to 1.5 hours

INCLUSIONS:
- Entrance to Attraction
- Marvel 4D experience

GROUPS: Discounted group rates (for 15+ visitors) are available by calling (702) 862-7810 or emailing Groups@MadameTussaudsLV.com

Client Initials

EXHIBIT “U”

AFFIDAVIT OF ANNA HERSEL

Sekera v. Venetian Casino Resort, LLC, et al, Case No. A-18-772761-C

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

ANNA HERSEL, being first duly sworn upon his oath, deposes and says as follows:

1. I am the Director of Concierge for the Venetian Resort Hotel Casino (*Venetian*), located at 3355 Las Vegas Blvd., Las Vegas, NV 89109. I have served in this capacity since May 2015.

2. I am a resident of Clark County, Nevada, I am above the age of eighteen (18) years, and I am competent and able to testify as to the following facts if so called upon.

3. The Venetian provides a variety of services to guests at its Concierge Desk. Among the services provided by Venetian Concierge Desk employees is the selling of tickets to events, shows, excursions, tours, and attractions in the Las Vegas area.

4. Since prior to 2016, Venetian has been under contract to use a ticket brokering software service through Entertainment Benefits Group (*EBG*) to obtain information about ticket availability, seat selection, pricing, to reserve seats and purchase tickets.

5. Since prior to 2016, guests purchasing tickets from Venetian Concierge Desk employees through the EBG software are changed a service fee which is shared by Venetian and EBG as per prior contractual agreement. Venetian Concierge Desk employees selling tickets to guests via the EBG software are paid commissions.

6. Since prior to 2016, Venetian Concierge Desk employees have used the EBG ticket brokering service software for all events, shows, tours, attractions outside the Venetian. For Venetian shows and events, Venetian Concierge Desk employees have internal access to the Venetian box office system, enabling them to provide actual tickets to guests, as opposed to

vouchers (explained further below).

7. Since prior to 2016, any guest within the Venetian may approach the Concierge Desk for information related to any events, shows, attractions, tours, etc., in the Las Vegas area. When that occurs, the Venetian Concierge Desk employee is able to provide information via the EBG software for non-Venetian related productions, and otherwise access the Venetian system internally for all Venetian shows.

8. Since prior to 2016, if a guest inquired about attending a show or event outside Venetian, the Venetian Concierge Desk employee would access information via the EBG ticket brokering software system, provide it to the guest and answer questions, reserve seats (if desired), accept payment for the seats, and present the guest with vouchers to be redeemed for tickets at the appropriate box office.

9. For example, if a guest were to have inquired about tickets to see Celine Dion at Caesars Palace in 2016, a Venetian Concierge Desk employee would have access to information about upcoming show times, ticket availability, ticket pricing, and have the ability to reserve seats for the guest via the EBG ticket brokering software system. Continuing with the same example, if the guest chose to purchase tickets for Celine Dion, the Venetian Concierge Desk employee would accept payment for the tickets and provide the guest with vouchers to be redeemed at the Caesars Palace box office in exchange for show tickets. This was the typical procedure for ticket sales in 2016 for any show or event reserved via the EBG software for locations outside the Venetian.

10. Since prior to 2016, if a Venetian Concierge Desk employee is unable to find

tickets for a guest through the EBG ticket brokering software system, the employee can then access a ticket broker portal to see about other ticket availability (usually at a higher price), for which commissions are also paid.

11. I am familiar with Brand Vegas, LLC, which I understand to be a ticket brokering company which offers a ticket brokering software system similar to that provided by EBG, and is designed to accomplish the same purpose.

12. I have reviewed documents identified as BV 012-047 which I understand to be related to ticket sales by certain Brand Vegas, LLC, employees in 2016. I can confirm that Venetian Concierge Desk employees were able to sell tickets to all non-Venetian events and attractions identified on this list in 2016 via the EBG ticket brokering software system in 2016.

14. I have reviewed records from 2016 related to tickets sales by Venetian Concierge Desk employees via the EBG system and confirmed that it is thousands of pages in length, with more than 55,,000 sales for tickets to events, shows, attractions, tours, etc., outside the Venetian. These included shows such as Criss Angel, Blue Man Group, The Beatles LOVE, Le Reve, Absinthe, David Copperfield, Menopause The Musical, O by Cirque du Soleil, Mystere by Cirque du Soleil, Michael Jackson ONE, Donny and Marie, Penn & Teller, Mat Franco: Magic Reinvented, Britney Spears, Celine Dion, Australian Bee Gees Show, Rock of Ages, Jabbawwockeez, Zumanity by Cirque du Soleil, Million Dollar Quartet, Thunder from Down Under, Legends In Concert, BOYZ II Men, Elton John: The Million Dollar Piano, Chippendales, KA by Cirque du Soleil, Terry Fator, and Solid Gold Soul, among many others.

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15. Since prior to 2016, Venetian Concierge Desk employees have been expected to provide unmatched guest services, which include the convenience of selling tickets to guests for off property events, shows, attractions, tours, etc., via the EBG ticket brokering software system, and also for selling tickets to guest for Venetian events through its internal system.

16. I am aware that in 2016, Brand Vegas, LLC, operated kiosks in the Grand Canal Shops in which its employees sold tickets to events, shows and attractions in the Las Vegas area, including those located at the Venetian. I have reviewed the affidavit of Edward DiRocco, dated February 20, 2019, identified as VEN 961 - 965, and can confirm that the process followed by Brand Vegas, LLC, employees in selling tickets to guests off Venetian property is substantially similar, if not identical, to the steps followed by Venetian Concierge Desk employees.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.

ANNA HERSEL

SUBSCRIBED AND SWORN to before me
this 5 day of July, 2019.

NOTARY PUBLIC in and for
Clark County, Nevada

JESSICA LILIANA CORTES DE ARENAS
Notary Public, State of Nevada
No. 16-3550-1
My Appt. Exp. Aug. 3, 2020

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual, Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: 25 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRCP 56(C) BASED ON STATUTORY IMMUNITY UNDER THE NEVADA INDUSTRIAL INSURANCE ACT**

Plaintiff hereby submits her Opposition to Defendant's Motion for Summary Judgment Pursuant to NRCP 56 (c) Based On Statutory Immunity Under The Nevada Industrial Insurance Act.

This Opposition is based upon and supported by the following memorandum of points and authorities, the pleadings and papers on file, the exhibits attached hereto, and any argument that the Court may allow at the time of hearing.

DATED this 19th day of July, 2019

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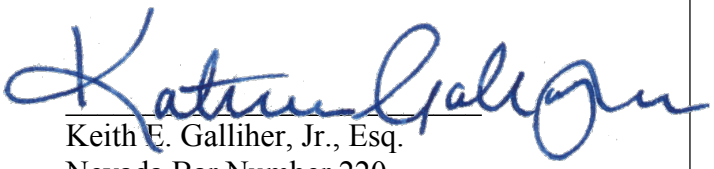

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MEMORANDUM AND POINTS OF AUTHORITIES

I. INTRODUCTION

This is a personal injury case arising out of a slip and fall on the shiny marble floors in the Venetian Casino Resort ("Venetian"). On November 4, 2016 Plaintiff Joyce Sekera ("Plaintiff") was on her lunch break from her job selling show tickets for Brand Vegas, LLC ("Brand Vegas") when she sustained serious injuries after she slipped and fell on water on the marble floors near the Grand Lux Cafe. Plaintiff worked at a kiosk in the Grand Canal Shoppes adjacent to the Venetian. The kiosk was a sub-let to Brand Vegas by Adventure Tours International, a seller of guided tour tickets.

At the time of her fall Plaintiff was employed by Brand Vegas. Brand Vegas is a ticket broker which sells tickets to Las Vegas shows and attractions at various locations in Las Vegas, as

well as online. Plaintiff worked at one of three Brand Vegas kiosk locations inside the Grand Canal Shoppes.

In the instant motion Venetian seeks to be declared Plaintiff's employer so it may seek immunity from suit. However, it is undisputed that Brand Vegas was Plaintiff's employer at all relevant times, including on the day she was injured. In order for Venetian to be immune from this lawsuit the Court would therefore need to determine was Plaintiff's statutory co-employee. For the reasons set forth below, Venetian is not Plaintiff's statutory co-employee and the motion must be therefore be denied.

II. STATEMENT OF UNDISPUTED FACTS

1. At the time of her injury Plaintiff was employed by Brand Vegas, LLC. (See, affidavit of Edward DiRocco, attached as Exhibit "E" to Defendant's instant motion, at Paragraph 17.)

2. The kiosk location where Plaintiff worked for Brand Vegas is not owned by the Venetian. (Deposition of Edward R. DiRocco at Page 64, lines 17-21.)

3. Plaintiff was on her lunch break at the time of her fall. (Deposition of Joyce Sekera, Page 83, lines 16-18, attached as Exhibit "J" to Defendant's instant motion.)

4. The ticket broker agreements between Venetian and Brand Vegas are not "sub-contracts." (See Exhibit "A" to MSJ VEN 135-VEN 140)

5. The ticket broker agreements between Venetian and Brand Vegas expressly states that the relationship of the parties is one of "supplier and buyer." The agreement further clarifies that Venetian and Brand Vegas are "independent" and that no other "business relationship" (i.e. employee/employer) exists between them. (Exhibit "A" to MSJ at VEN 151)

6. The kiosk where Joyce Sekera worked was never staffed by Venetian employees. (Deposition of Edward R. DiRocco at Page 64, lines 17-21.)

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III. ARGUMENT

A. Standard of Review for a Motion for Summary Judgment

"The district court should exercise great care in granting summary judgment." *Shepard v. Harrison,* 100 Nev. 178, 180, 678 P.2d 670, 672 (1984). "A litigant has the right to trial where there is the slightest doubt as to the facts." *Id.*; *see also Stone v. Mission Bay Mortgage Co*., 99 Nev. 802, 672 P.2d 629 (1983). Summary judgment is only appropriate "when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.,* 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In evaluating a motion for summary judgment, the court may not "pass upon the credibility or weight of the opposing affidavits or evidence." *Hidden Wells Ranch v. Strip Realty*, 83 Nev. 143, 145, 425 P.2d 599, 601 (1967); *see also Sawyer v. Sugarless Shops*, 106 Nev. 265, 267-68, 792 P.2d 14, 15-16 (1990). Rather, "the court is obligated to accept as true all evidence favorable to the party against whom the motion is made." *Id.*

If the moving party is the one defending the claim, it can meet its burden of production by showing an absence of evidence to support any one or more of the prima facie elements of the non-moving party's claim. *See* NRCP 56(c); *see also Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23 (1986). The moving party bears the burden of establishing the lack of any genuine issue of material fact. *Pacific Pools Constr. Co. v. McClain's Concrete*, 101 Nev. 557, 559, 706 P.2d 849, 851 (1985). A fact is material if it might affect the outcome of the suit, and a dispute is genuine if the evidence is such that it could lead a rational jury to return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 247 (1986); *Wood*, 121 Nev. at 731, 121 P.3d at 1031.

B. Overview of Employer and Co-Employee Immunity

The doctrine of employer immunity was developed and implemented to ensure the availability of compensation in the event of industrial injuries. *Meers v. Haughton Elevator*, 101 Nev. 283, 285 (Nev. 1985) ("Industrial insurance is a limitation on common law liability. "The reason for the employer's immunity is the *quid pro quo* by which the employer gives up his normal

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defenses and assumes automatic liability, while the employee gives up his right to common-law verdicts." 2A Larson, *Laws of Workman's Compensation*, § 72.22, 14-86 (1983).") Third parties remain liable for injuries that occur in the workplace.

It is important to note that the impetus behind statutory immunity under the NIIA was not to provide a loophole to allow third parties to escape liability, as Venetian seeks to do here. The issue of immunity for employers originated in the construction context when thinly financed sub-contractors dumped their workers compensation coverage as a cost cutting measure and thereby left their employees unprotected. The solution was to offer immunity to the general contractors who hired those subcontractors in exchange for a commitment to provide workers compensation coverage for the sub-contractor's employees. Hence, under NIIA the general contractor became the "statutory employer" of the sub-contractors' employees.

However, the general rule is that third parties are liable for injuries caused by their negligence. Only in cases where the defendant is the employer or co-employee of the Plaintiff will immunity attach.

The seminal case in this area of law is *Meers v. Haughton Elevator*, 101 Nev. 283, 701 P. 2d 1006 (1985).

> "It is well established that employers, and persons in the same employ as a person injured in the course of employment, are immune from liability under the Nevada Industrial Insurance Act. The introductory paragraph of NRS 616.560 defines those third parties who can be sued in a civil action by an injured employee:
>
> 1. When an employee coming under the provisions of this chapter receives an injury for which compensation is payable under this chapter and which injury was caused under circumstances creating a legal liability in some person, *other than the employer or person in the same employ*, to pay damages in respect thereof . . . [that employee may bring proceedings against that person]. NRS 616.560 (emphasis added).") 101 Nev. 283, 285.

Simply put, the immunity applies to only a narrow set of potential defendants: The Plaintiff's employer and the Plaintiff's co-employees. This concept is codified in NRS 616A.020 which bestows employer immunity:

> If an employee receives any compensation or accident benefits under chapters 616A to 616D, inclusive, of NRS, the acceptance of such compensation or benefits shall be

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> in lieu of any other compensation, award or recovery **against his or her employer** under the laws of any other state or jurisdiction and such employee is barred from commencing any action or proceeding for the enforcement or collection of any benefits or award under the laws of any other state or jurisdiction. (emphasis added) Nev. Rev. Stat. § 616A.020

However, what Venetian is attempting to do here is something completely different: Venetian is seeking to supplant Brand Vegas as Plaintiff's employer through a backward application of the law.

C. Venetian's Motion Should Be Denied Because It Has No Immunity Under All Potential Scenarios

Because it is not clear from Venetian's motion which parties Venetian argues are the "principal" the "main contractor" and "sub-contractor" it is necessary to discuss each permutation.

1. Scenario #1 – Entertainer as Principal, Venetian as Main Contractor and Brand Vegas as Subcontractor

Because Venetian argues that the agreements between the Venetian and various entertainers each constitute a "main contract", one possible scenario is that the entertainers who entered into agreements with the Venetian which are included as Exhibit "T" to the instant motion are the "Principals" who hired Venetian as the "Main Contractor" who then hired Brand Vegas as a "sub-contractor."

However, this scenario is belied by the fact that Venetian is the party under those agreements who pays the entertainers, thereby defying Venetian's status as the "Main Contractor". After all, common sense dictates that a "contractor" does not pay the principal, but instead the principal pays the contractor in exchange for whatever service the contractor is providing.

By their very nature these are agreements by which Venetian pays entertainers to perform at the property. (See, generally, Exhibit "T" to MSJ.) Consequently, Venetian is regularly referred to in these agreements as "purchaser", (*Id.* at VEN 1205, VEN 1231, VEN 1270) the entertainers are regularly defined as "independent contractors" of the Venetian, (*Id.* at VEN 1193, VEN 1322, 1348) the entertainers are regularly subject to the "Sands code of conduct" (*Id.* at VEN 1211, VEN 1240, VEN 1255, VEN 1346) and, in at least one of the agreements relied upon by Venetian, the artist is specifically defined as "Contractor" and Venetian as "Company". (*Id.* at VEN 1317).

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It is clear from the terms of these agreements that none of the entertainers hired Venetian as a "contractor." Therefore, Venetian's argument that the agreements with the entertainers are "Main Contracts" under which Venetian then hired Brand Vegas as a "sub-contractor" fails.

Nevertheless, in Section E of its brief Venetian attempts to establish immunity under *Meers* within this scenario. In this section Venetian wavers between arguing that Venetian and Brand Vegas "were engaged in a common entertainment business enterprise" and in the next sentence that "[i]ndeed they were direct competitors".

For the sake of argument, if the *Meers* test is applied to this scenario it must necessarily result in the conclusion that no immune relationship exists between Plaintiff and Venetian. The "normal work test" examines whether the work being done by a "sub-contractor" (Haughton): is the "normal work" of the Plaintiff's employer (Centel) in order to establish immunity for the sub-"contractor" (Haughton) as Plaintiff's co-employee. But here Venetian asserts that Brand Vegas is the "sub-contractor". However, as established throughout this case Brand Vegas is Plaintiff's employer, and therefore already immune. If that is indeed the case, then the requisite relationships for a *Meers* analysis are not present and the default – that third party Venetian is subject to suit – must apply.

2. Scenario #2 – Venetian as Principal, Brand Vegas as Main Contractor and Plaintiff as Sub-Contractor

Venetian seems to argue this scenario in parts of section "C" of its brief titled "Venetian is a Statutory Employer as a Party to the Venetian/Brand Vegas Agreement with Brand Vegas." In that section it attempts to characterize Plaintiff as a "sub-contractor" by arguing that "Plaintiff's injuries, without question, occurred as she was engaged in a "subcontracted fraction of" the Venetian/Brand Vegas Agreement". Motion at Page 3, lines 7-8.

Despite then referencing the "Normal Work Test" of *Meers* the Venetian never applies that test to this case. Instead, the brief merely makes some alleged factual statements and then goes on to argue that Court should consider a couple of "construction cases" and a "recent" 17-year-old decision by Judge Loehrer.

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Venetian obviously gets sued a lot since it can cite to several cases where it was defendant for various arguments. However, none of the cases cited offer a set of facts remotely similar to this one. Further, in order to follow any of those (non-binding) holdings this Court would need to ignore well-established contrary authority.

Later in the same section Venetian states that "there is no reasonable dispute that Plaintiff was performing work under the "*main contract*" between Venetian and its entertaining entity as a brand Vegas employee." Its not clear if that is intended to reference the agreements between the Venetian and various entertainers or something else.

Nevertheless, applying *Meers* in this scenario would dictate an outcome where Plaintiff would be determined to be the employee of Brand Vegas, LLC, not the Venetian. Recall, in *Meers* the question was not whether the defendant (Haughton there, Venetian here) was Plaintiff's employer, but whether they were determined to also be employed by Plaintiff's employer (Brand Vegas here, Centel there).

By its express terms the agreement between Brand Vegas and Venetian is nothing more than a brokerage arrangement whereby Brand Vegas sells tickets to various shows and events, produced by a third party but performed at the Venetian. Paragraph 19 of the Agreement states as follows:

> Independent Contractor. The Parties to the Agreement are independent contractors and **nothing herein shall be construed to create a partnership, joint venture or other business relationship between the Parties except supplier and buyer.** Broker (Brand Vegas) shall be solely liable for the acts and omissions of its employees, agents and representatives. (Emphasis added)

This agreement is clearly not a "principal contract" as contemplated by Nevada worker's compensation law. It expressly states that the relationship of the parties is one of "supplier and buyer." The agreement further clarifies that Venetian and Brand Vegas are "independent" and that no other "business relationship" exists between them. Venetian simply supplies tickets to Brand Vegas which Brand Vegas re-sells at its kiosks and online just like it does for countless other Las Vegas properties.

Likewise, there is zero evidence of a "sub-contract" between Brand Vegas and Plaintiff to that Ticket Broker Agreement as Venetian argues. Contrarily, all of the available evidence in this

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case establishes that Plaintiff was Brand Vegas' employee. No such "sub-contract" has been produced because it does not exist.

3. Scenario #3 – Venetian and Brand Vegas are "Co-employers" of Plaintiff

Under this scenario Venetian would be essentially asking the Court to find that Plaintiff had TWO employers: Brand Vegas, LLC and Venetian. However, the concept of "co-employers" has not existed in Nevada law since the 2001 decision in *Harris v. Rio Hotel & Casino Inc.*[1] where the court eschewed the concept as previously set forth in *Antonini v. Hannah Industries*[2], a 1978 decision.

Even if it were the case, as Venetian argues, that virtually any contracted party was automatically a co-employee it would still not absolve Venetian of liability in this case because the Venetian is not a sub-contractor to Brand Vegas and is therefore not an statutory employee of Brand Vegas, LLC or co-employee of Plaintiff.

Rather, Venetian's arguments evidence a fundamental misunderstanding of the applicable law. Specifically, Venetian argues that Venetian is Plaintiff's "statutory employer" based upon the contract between Venetian and Brand Vegas.

Employer immunity is bestowed by NRS 616A.020(6) which states:

> If an employee receives any compensation or accident benefits under chapters 616A to 616D, inclusive, of NRS, the acceptance of such compensation or benefits shall be in lieu of any other compensation, award or recovery **against his or her employer** under the laws of any other state or jurisdiction and such employee is barred from commencing any action or proceeding for the enforcement or collection of any benefits or award under the laws of any other state or jurisdiction. (emphasis added) Nev. Rev. Stat. § 616A.020

As Plaintiff's employer Brand Vegas is the only entity with "automatic" (i.e. "employer") immunity under NRS 616A.020. *Richards v. Rp. Silver State Disposal*, 122 Nev. 1213, 1218 (Nev. 2006) ("A company that 'has in service any person under a contract of hire,' is that person's statutory employer under the NIIA.")

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[1] 117 Nev. 482, 25 P.3d 206 (2001)
[2] 94 Nev. 12, 573 P.2d 1184 (1978)

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It cannot be reasonably disputed that Brand Vegas, LLC is Plaintiff's statutory employer. Ed DiRocco, the CEO of Brand Vegas so stated both in his sworn affidavit (See, Affidavit of Ed DiRocco, Exhibit E to Defendant's MSJ at paragraph 17) and in his sworn testimony at deposition:

> Q. Okay. Let me just ask you about Joyce Sekera.
> She was employed with Brand Vegas; correct?
> A. Yes, sir.
> Deposition of Edward R. DiRocco, Page 22, line 8-10.

> Q. I think you already testified that Brand Vegas,
> LLC, is a Nevada limited liability corporation?
> A. It is.
> Q. Okay. On November 4, 2016, was Joyce Sekera an
> employee of Brand Vegas, LLC?
> A. To the best of my knowledge, yes.
> Q. Well, you equivocated a little bit.
> Is there some doubt in your mind about whether
> or not she was -- what's giving you pause? Is it the
> date or is it -- or do you think it was possible she was
> not an employee?
> A. No, no. It would be the date.
> Q. Okay. Well, I'm going to represent that
> November 4, 2016, is the date that Ms. Sekera was
> injured at the Venetian. Okay?
> Now, with that representation in mind, **is it**
> **your understanding that on the date she was injured, she**
> **was an employee of Brand Vegas, LLC?**
> **A. That is my understanding, correct.**
> Q. And did Brand Vegas, LLC, provide her with --
> strike that.
> **Did Brand Vegas, LLC, pay payroll taxes on her**
> **wages during that time period?**
> **A. Yes.**
> **Q. And I think you already indicated that Brand**
> **Vegas, LLC, provided her with workers' compensation**
> **coverage during that time period?**
> **A. Yes, sir.**
> Q. Okay. Who paid the bill for that coverage?
> A. Brand Vegas, LLC.

Deposition of Edward R. DiRocco, Page 59, line 3-page 60, line 7 (Exhibit "L" to Defendant's MSJ)

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There is no evidence in this case that suggests Plaintiff was ever an employee of Venetian. At deposition defense counsel undertook an exhaustive examination of Plaintiff's employment history. Nowhere does that testimony indicate that Venetian ever interviewed, hired, paid or terminated Plaintiff. Venetian has not produced any documentary evidence to indicate that any person or entity other than Brand Vegas, LLC is Plaintiff's employer and all of the evidence in this case establishes that on November 4, 2016 Brand Vegas, LLC was Plaintiff's employer. Since Brand Vegas is Plaintiff's statutory employer, Venetian cannot be.

4. Scenario #4 – Venetian is a sub-contractor of Brand Vegas and the "Co-employee" of Plaintiff

In order for Venetian to be afforded immunity under this scenario Venetian must fit underneath the umbrella of Brand Vegas' statutory immunity as Plaintiff's employer. Stated differently, since it is clear that Brand Vegas is Plaintiff's employer, in order to enjoy NIIA immunity in this case Venetian also needs to be an employee of Brand Vegas and therefore a "co-employee" of Plaintiff. Obviously, that would require a finding by this court that Venetian is a statutory employee of Brand Vegas, and that Venetian is NOT an "Independent Enterprise" as defined by NRS 616B.603.

> While the legislature afforded this umbrella of protection to sub-contractors and independent contractors, **the protection is by no means absolute**. There is some limit to its coverage. In order to make the determination of which types of sub-contractors and independent contractors are covered, it is necessary to make an initial determination as to the statutory employer. (Citation Ommitted). **In other words, if Centel is not deemed to be the statutory employer of Haughton, then Haughton could not be a statutory employee. Therefore, Haughton could not be a statutory co-employee of Meers, protected from liability under the Nevada Industrial Insurance Act. (Emphasis added)**

Meers v. Haughton Elevator, 101 Nev. 283, 285-86 (Nev. 1985)

If that analysis is applied to the facts of this case, the following results:

> In other words, if Brand Vegas, LLC [Centel] is not deemed to be the statutory employer of Venetian [Haughton], then Venetian [Haughton] could not be a statutory employee. Therefore, Venetian [Haughton] could not be a statutory co-employee of Sekera [Meers], protected from liability under the Nevada Industrial Insurance Act.

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First, we must look at the contractual relationship between Brand Vegas and Venetian. The contract between Brand Vegas and Venetian is a Ticket Broker Agreement whereby Brand Vegas sells tickets to various shows and events, produced by a third party but performed at the Venetian. Paragraph 19 of the Agreement states as follows:

> Independent Contractor. The Parties to the Agreement are independent contractors and nothing herein shall be construed to create a partnership, joint venture or other business relationship between the Parties except supplier and buyer. Broker (Brand Vegas) shall be solely liable for the acts and omissions of its employees, agents and representatives.

This agreement is clearly not a "sub-contract" as contemplated by Nevada worker's compensation law. It expressly states that the relationship of the parties is one of "supplier and buyer." The agreement further clarifies that Venetian and Brand Vegas are "independent" and that no other "business relationship" (i.e. employee/employer) exists between them. Venetian simply supplies tickets to Brand Vegas which Brand Vegas re-sells at its kiosks and online.

Since it is undisputed that Brand Vegas is Plaintiff's employer, in order to enjoy NIIA immunity in this case Venetian would therefore need to be an employee of Brand Vegas and therefore a "co-employee" of Plaintiff under the analysis above. That would require a finding by this Court that Venetian is both 1) a statutory employee of Plaintiff's actual employer, Brand Vegas, and 2) that Venetian is NOT an "Independent Enterprise" as defined by NRS 616B.603.

In order to determine if Venetian is Plaintiff's co-employee this Court must determine if Venetian is a statutory employee of Brand Vegas and not the other way around as argued by Venetian.

Once again we look to *Meers v. Haughton Elevator*[3]. Ruth Meers was an employee of Central Telephone who was injured in an elevator being repaired by an employee of Haughton Elevators. Haughton claimed that because its technician was working at Centel's office and working on Centel's elevator then Haughton was an employee of Centel and Ms. Meers' co-employee,

[3] 101 Nev. 283, 701 P. 2d 1006 (1985)

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therefore immune from suit. The Supreme Court rejected that argument and instead developed a test for determining co-employee status in a non-construction setting.

Dubbed the "normal work test," the *Meers* court enunciated the parameters for determining a statutory employment relationship in non-construction cases as follows:

> "The type of work performed by the subcontractor or independent contractor will determine whether the employer is the statutory employer:
>
> > The test is not one of whether the subcontractor's activity is useful, necessary or even absolutely indispensable to the statutory employer's business, since, after all, this could be said of practically any repair, construction or transportation service. The test (except in cases where the work is obviously a subcontracted fraction of a main contract) is whether that indispensable activity is, in that business normally carried on through employees rather than independent contractors." 101 Nev. 283, 286, 701 P. 2d 1006, 1007-1008 (1985) (**Emphasis** added)

This passage is often quoted in cases and briefs related to this issue. However, this language did not originate with the *Meers* court, but rather was quoted from a 1976 Virginia case called *Bassett Furniture Industries v. McReynolds* 216 Va. 897, 224 S.E.2d 323 (1976). In *Bassett,* the Virginia Supreme Court cited to a worker's compensation treatise called "The Law of Worker's Compensation, Vol 1A" by Professor Arthur Larson. 212 Va. 715 at 722. Virginia used this treatise in multiple cases dating back to 1969. *Id.*

In this case, Venetian seized onto the parenthetical which states "except in cases where the work is obviously a subcontracted fraction of a main contract" asserting that "[b]efore applying the 'normal work test,' reviewed above in *Meers*, the Court first looked to whether the on the job injury occurred as part of a '*subcontracted fraction of a main contract'*." MSJ at Page 18, lines 1-2. However, there is no discussion in the *Meers* opinion about what constitutes a "subcontracted fraction of a main contract."[4] The opinion likewise provides no support for Venetian's next assertion that "[w]here such a contract setting forth the working business relationship between the parties is established, and an on the job injury occurs in furtherance thereof, the contracting parties are all entitled to statutory immunity." MSJ at Page 18, lines 3-7.

[4] For all of its perceived importance to Nevada jurisprudence, the *Meers* opinion is barely two pages in length.

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Rather a review of the *Meers* opinion and the underlying treatise suggests that the parenthetical relied upon by Venetian has no application here, since by its plain language the rule is meant to apply to "repair, construction or transportation" contracts. It was this disparity itself which prompted the *Meers* court to declare a test for "non-construction" cases.

Further, the normal work test from *Meers* has never been applied to a brokerage contract such as the one in this case. For this reason, Venetian's motion is replete with citations to non-binding district court opinions and unpublished Supreme Court decisions from cases with no factual similarity to this one and to "construction cases" which very clearly have no application to this "non-construction" case. Such obfuscation is necessary because Venetian cannot establish the existence of a contractor/sub-contractor relationship between Brand Vegas and Venetian, respectively, which is necessary to show Venetian is Plaintiff's co-employee and therefore immune.

Despite Venetians continued mischaracterization that Plaintiff "was allowed by Venetian to come upon its property daily to sell tickets to shows" it is important to note that while Plaintiff's injury happened inside the Venetian, Plaintiff did not work inside the Venetian. The location where Plaintiff worked was a kiosk inside the Grand Canal Shoppes rented by another third party, Adventure Tours International, from whom Brand Vegas sublet a portion of the kiosk. (Deposition of E. DiRocco Page 14, lines 16-20.) The Grand Canal Shoppes is a completely separate entity from the Venetian and is owned by a joint venture between general Growth Properties and TIAA-CREF. Despite Venetians attempt to suggest otherwise by stating :"[p]laintiff was assigned to work at a brand Vegas kiosk located in the Grand Canal Shops (sic) within the same structure as Venetian," Plaintiff's presence on Venetian property was not a function of her work. In fact, she was on her lunch break at the time of her injury. (Deposition of Joyce Sekera, Page 83, lines16-18). She was headed to the bathroom which was most convenient to her work location at the kiosk in the Grand Canal Shoppes. (*Id.* at Page 88, lines10-14.)

Further, Venetian's reliance on *Harris* and *Richards* is misplaced. "Construction" cases and "non-construction" cases are treated differently in Nevada. That concept is consistent throughout the 26 reported cases which came after *Meers.* Venetians attempt to interject the reasoning of non-

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construction cases into the Court's analysis in this case is nothing short of misleading. The fact that neither Venetian nor Brand Vegas holds a Chapter 624 contractor's license is dispositive of the issue of whether the "construction" or "non-construction" standard applies.

Since this is a "non-construction" case (i.e no party holds a license under NRS Chapter 624) in order to determine whether a defendant tortfeasor is the co-employee of the Plaintiff the "normal work" test from *Meers v. Haughton Elevator*[5] must be applied. As discussed *infra* that test requires an analysis of whether, at the time of the alleged negligence, the Defendant was engaged in the "normal work" of the Plaintiff's employer. 101 Nev. at 286. So, in this case the Court must determine whether at the time Plaintiff was injured Venetian was engaged in the "normal work" of Plaintiff's employer, Brand Vegas and not the other way around as argued by Venetian. Therefore, a correct application of the "normal work test" would determine whether the work of Venetian is the "normal work" of Plaintiff's employer, Brand Vegas or, if Venetian is an "independent enterprise" under NRS 616B.603.

Despite 30 pages of brief and nearly 600 pages of exhibits Venetian failed to support a claim that the Venetian is entitled to immunity. For example, there is no *quid pro quo* in the case before the Court. There is no set of circumstances under which Venetian would be required to provide workers compensation coverage to Plaintiff. The arms-length nature of the relationship between Venetian and Brand Vegas is explicitly laid out with in Paragraph 19 of the Ticket Broker Agreement which states:

> *Independent Contractor. The Parties to the Agreement are independent contractors and nothing herein shall be construed to create a partnership, joint venture or other business relationship between the Parties except supplier and buyer. Broker (Brand Vegas) shall be solely liable for the acts and omissions of its employees, agents and representatives.*

D. Venetian is Not Immune Pursuant to NRS 616B.603

A correct application of NRS 616B.603 must likewise result in a determination that Venetian is not immune. NRS 616B.603 provides, in relevant part:

[5] 101 Nev. 283, 701 P.2d 1006 (1985)

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> **1.** A person is not an employer for the purposes of chapters 616A to 616D, inclusive, of NRS if:
> **(a)** The person enters into a contract with another person or business which is an independent enterprise; and
> **(b)** The person is not in the same trade, business, profession or occupation as the independent enterprise.
> **2.** As used in this section, "independent enterprise" means a person who holds himself or herself out as being engaged in a separate business and:
> **(a)** Holds a business or occupational license in his or her own name; or
> **(b)** Owns, rents or leases property used in furtherance of the business.
> Nev. Rev. Stat. § 616B.603

In order to determine that Venetian and Brand Vegas are in the same "trade, business, profession or occupation" this Court would need to find that either 1) Venetian's primary business was selling show tickets or 2) Vegas was in the business of owning and operating casino resorts. Of course, neither of those is the case.

Venetian argued that because a small part of its own business is selling tickets then it is in the same business as Brand Vegas. In support it cites to *Hays Home Delivery, Inc. v. EICON*, 177 Nev. 678 (2001). But the factual situation in *Hays Home Delivery* is so disparate to the one at bar as to be no help whatsoever. First, *Hays Home Delivery* was about the availability of workers compensation benefits and not statutory immunity. It did not involve an issue of substituting some putative employer for the plaintiff's statutory employer as Venetian urges here. Moreover, the injured party in *Hays Home Delivery* is was in direct contractual privity with the defendant. Perhaps most importantly the defendant's entire business was making deliveries which it accomplished through contract employees like the injured worker. Both parties were engaged 100% of the time in the same work of delivering home appliances, one as scheduler and the other as deliverer.

Contrarily, a tenuous contractual agreement by a casino resort to broker show tickets through a non-captive broker like Brand Vegas simply does not create the symbiotic relationship the court found in *Hays* and which is required to establish statutory employment. Such an agreement has never been held to be the basis for a "statutory employer" relationship in Nevada. Instead an application of the parameters of 616B.603 to Venetian vis-à-vis its relationship with Brand Vegas

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must conclude that the two businesses are independent enterprises not engaged in the same trade business or profession.

Clearly both Venetian and Brand Vegas meet the definition of an independent enterprise of NRS 616B603(2). They each hold separate business licenses and own, rent or lease property in the furtherance of their respective businesses.

The only remaining question is whether these two entities are in the same "trade, profession or business." So, either Brand Vegas is in the casino resort business or Venetian is a ticket broker. Obviously, the former is not the case. *Hays* is helpful in this area because in examining the issue the court makes it clear that to be in the same trade the parties' basic business function must be intertwined. *Hays Home Delivery, Inc. v. Eicon*, 117 Nev. 678, 684 (Nev. 2001) ("We conclude that Green and Hays are in the "same trade," and that Green performed work that would "normally" be carried on through employees of Hays and not independent contractors. Both Green and Hays were in the "trade" of delivering merchandise from retailers to end-customers. Although Hays attempts to distinguish its business from Green's by characterizing Hays's business as administrating the deliveries, and Green's business as delivering the merchandise, this distinction is unpersuasive. Even though Green arguably delivered the merchandise, while Hays arguably only acted as an administrator and oversaw the deliveries, both Green and Hays are in the same trade of delivering merchandise from retailers to end-customers. Therefore, notwithstanding any minimal distinction between Green's and Hays's functions, both are in the same trade of delivering merchandise. ")

Contrarily, the nexus between the business of Venetian (operating a casino resort) and Brand Vegas (ticket brokerage) is miniscule in comparison. Venetian has not established what percentage of its income is derived from brokered ticket sales or how much of its workforce is dedicated to the same, but common sense suggests it is minute.

//

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IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court deny Venetian's Motion for Partial Summary Judgment. At a minimum, there remain triable issues of fact with respect to the relationships in this case which would foreclose a granting of summary judgment.

DATED this 19th day of July, 2019

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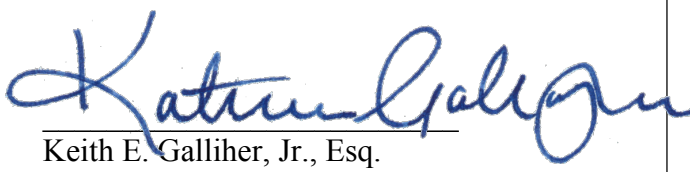

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRCP 56(C) BASED ON STATUTORY IMMUNITY UNDER THE NEVADA INDUSTRIAL INSURANCE ACT** was served on the 19th day of July, 2019, to the following addressed parties by:

_____ First Class Mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P 5(b)

_____ Facsimile, pursuant to EDCR 7.26 (as amended)

_____ Electronic Mail/Electronic Transmission

_____ Hand Delivered to the addressee(s) indicated

_____ Receipt of Copy on this _____ day of July 2019,

acknowledged by, _____

Michael A. Royal, Esq.
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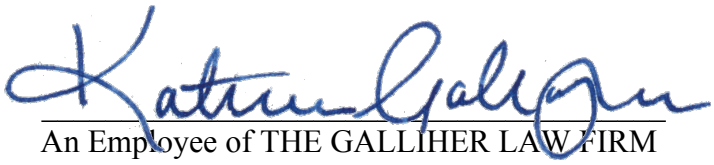

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual; Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: XXV Date of Hearing: August 13, 2019 Time of Hearing: 9:00 a.m.

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRCP 56(c) BASED ON STATUTORY IMMUNITY UNDER THE NEVADA INDUSTRIAL INSURANCE ACT

Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC (hereinafter collectively *"Venetian"*), by and through their counsel of record, Michael A. Royal, Esq., of ROYAL & MILES LLP, hereby files this REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRCP 56(c) BASED ON STATUTORY IMMUNITY UNDER THE NEVADA INDUSTRIAL INSURANCE ACT. This

Reply is based upon the Points and Authorities below, the papers and pleadings filed herein, and any oral argument allowed at the hearing on this matter.

DATED this 12 day of August, 2019.

ROYAL & MILES LLP

By_____

Michael A. Royal, Esq.
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VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

NATURE OF REPLY

Defendants have set forth more than sufficient undisputed evidence establishing that they are entitled to statutory immunity under the circumstances. In fact, much of it is uncontroverted by Plaintiff in the Opposition. Plaintiff has contorted facts, presented conclusory statements of fact and law without any credible support, and has largely ignored the most compelling evidence.

Plaintiff has acknowledged, among other things, that she was injured in the course and scope of her employment for Brand Vegas, LLC (*Brand Vegas*), that she sold tickets to Venetian entertainment shows as part of her employment for which she was paid commission, that she came upon Venetian property daily to park her vehicle and walk to and from her place of employment, that she was subject to Venetian rules and regulations with respect to her conduct on its property - including parking and submitting to a background check to obtain an identification badge - that she represented Venetian's interests when discussing its shows with potential customers, and that Plaintiff used Venetian facilities in the regular course of her employment.

Whether the Court focuses on the contractual relationship between Venetian and Brand Vegas, applies the *"normal work test"*, applies NRS 616B.603(1), examines both the common and competing interests between Venetian and Brand Vegas, evaluates the degree of control Venetian had over Plaintiff and her coworkers, or evaluates the sharing of profits for ticket sales, the outcome is the same - Venetian is a statutory employer of Plaintiff and is entitled to immunity under the Nevada Industrial Insurance Act (*NIIA*). Plaintiff continues to receive all benefits to which she is entitled under the NIIA. She is not legally entitled to pursue this third party litigation against Defendants.

II.

DECLARATION OF MICHAEL A. ROYAL, ESQ. PURSUANT TO NRS 53.045

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

MICHAEL A. ROYAL, ESQ., being first duly sworn, under oath deposes and states:

1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel for Defendants in connection with the above-captioned matter. I have personal knowledge of the following facts and if called upon could competently testify to such facts.

2. Following the filing of this motion, Defendants became aware of a similar motion filed by the defendant in the matter of Kilyushik v. Desert Palace, LLC, Case No. A-17-764171-C, Eighth Judicial District Court, before Judge Adriana Escobar in Department 14. There, the plaintiff was injured in the course and scope of his employment as a stagehand for AEG Live LV, LLC (*AEG*). Defendant Desert Palace, LLC, (*Caesars*) had contracted with AEG produce the ongoing show for Celine Dion at Caesars. Plaintiff was injured while setting up for a show and sued Caesars for personal injuries. There, the defendant argued that the plaintiff was a statutory employee under the NIIA based on the fact that there was a contractual relationship between AEG and Caesars, with a subcontract between AEG and the payroll company used to pay the plaintiff (engaged by AEG). The defendant

further argued that the agreement calling for some sharing of profits further tied Caesars with AEG to receive statutory immunity. Plaintiff countered that the agreement between Caesars and AEG was merely a lease and, therefore, insufficient to create a contract that would create a subcontracted fraction of a main contract. Plaintiff further argued that Caesars and AEG are not in *the same trade, business, profession or occupation*, contending that Caesars was a property owner for purposes of the AEG contract while AEG is in the business of producing live shows. Judge Escobar ruled in Caesars' favor, finding that NRS 616B.603(1) did not apply (*i.e.* that Caesars and AEG were, in fact, in *the same trade, business, profession or occupation*), and that the joint interests and efforts to promote the Celine Dion show by Caesars and AEG under their contract were sufficient to attach statutory immunity. (A true and correct copy of the transcript from the aforementioned proceeding is attached hereto as Exhibit V.)

3. In addition to the above, I am also including a copy of the case of *Bassett Furniture Industries, Inc. v. McReynolds*, 216 Va. 897, 224 S.E.2d 323 (1976), relied upon in the case of *Meers v. Haughton Elevator*, 701 P.2d 1006 (Nev. 1985), to address points set forth by Plaintiff in the Opposition, attached hereto as Exhibit W.

4. I have also included a section of the deposition testimony provided by former Venetian security officer and EMT, Joseph Larson, regarding his understanding of Plaintiff's employment status at the time of the subject incident, attached hereto as Exhibit X.

5. I declare that the exhibits identified in Defendant's Motion For Summary Judgment Pursuant to NRCP 56(c) Based on Statutory Immunity Under the Nevada Industrial Insurance Act, as set forth in the table below, are true and correct copies of documents produced in this matter pursuant to NRCP 16.1 or otherwise are provided herein for demonstrative purposes only as indicated.

Exhibit	Document	Bates
V	Transcript of Proceedings, *Kilyushik v. Desert Palace, LLC*, A-17-764171-C, dated 07.16.19	

W	Copy of *Bassett Furniture Industries, Inc. v. McReynolds*, 216 Va. 897, 224 S.E.2d 323 (1976)	
X	*Transcript of Joseph Larson Deposition* at 64, ln 19-25; 65, ln 1-6	

6. I declare under penalty of perjury under the law of the State of Nevada that the foregoing statements of fact are true and correct to the best of my knowledge.

Executed this 6 day of August, 2019.

MICHAEL A. ROYAL, ESQ.

III.

RESPONSE TO OPPOSITION'S STATEMENT OF UNDISPUTED FACTS

Plaintiff has made reference to being on a *lunch break* at the time of the subject incident; however, that fact is irrelevant as Plaintiff was nevertheless injured in the course and scope of her employment under Nevada law. Plaintiff has not presented any evidence, legal analysis or argument to suggest otherwise. Plaintiff sustained an on the job injury, applied for workers compensation benefits, her claim was accepted and she continues to receive benefits associated with this incident.

Plaintiff's contention that the Ticket Broker Agreements *"are not 'sub-contracts'"* is by definition a *disputed* fact, since Defendants contend otherwise. However, it is a factual dispute which is easily resolved by the Court which now has all relevant evidence before it to decide this motion.

IV.

DISCUSSION

A. **Defendants Are Immune From Suit Pursuant to the Ticket Broker Agreements**

Plaintiff has strained to present a list of scenarios which serve only to complicate and confuse the issue of the contract connection between the parties. Defendants will therefore provide a brief review.

First, Plaintiff has attempted to convey to this Honorable Court that the parenthetical language provided by the Nevada Supreme Court in *Meers v. Haughton Elevator*, 701 P.2d 1006, 1007 (Nev. 1985); *to wit:* ***except in cases where the work is obviously a subcontracted fraction of a main contract***, is limited in application to *"repair, construction or transportation' contracts."* (*See* Opposition at 14, ln 1-3.) While placing that nicely within quotations, Plaintiff does not provide a specific citation. Further, she does not provide any Nevada case law supporting her proposition.

This, frankly, is why the previously produced decisions of *Roberta Brooks-Handler v. Venetian Casino Resort, LLC, et. al*, Case No. A4677123, Eighth Judicial District Court (MSJ Exhibits M, N & O), and *Gogolos v. Venetian Casino Resort, LLC et al*, case no A691678, Eighth Judicial District Court (MSJ Exhibit P) are relevant to the pending motion. Plaintiff cannot cite to one Nevada case which has interpreted the *Meers* parenthetical language in the manner Plaintiff has misleadingly suggested in the Opposition.

Citing the language from the Nevada Supreme Court in the *Brooks-Handler* appeal, the Court held as follows:

> *Here, contractual relationships exist between Ramada , Venetian , and BOA.* ***The main contract for the convention was between Ramada and Venetian.*** *The record is devoid of the contract creating the basis for the remaining contractual relationships. In particular, the contracts between Ramada and SOA, and between Ramada and Sands Expo and Convention Center (Sands) are not in the record, nor is the sub-contract between Sands and Telave Audio Visual Solutions (Telave). Sub-contracts between Sands and Production Resource Group (PRG) and between Sands and Convention Technical Services (CTS) are found in the record.* ***In order to provide an extension of the exclusive remedy provided by the NIIA to SOA, PRG, CTS Sands, and Telave, the necessary link between those parties and Ramada must be evidenced. That evidence would be the contractual agreement between Ramada and Sands, and any other relevant contract that establishes the relationship of the parties as subcontractors of Ramada.*** (*See* MSJ Exhibit O at 5-6, emphasis added.)

Even though this is an unpublished opinion, the *Brooks-Handler* decision demonstrates that the Nevada Supreme Court does not interpret the *Meers* parenthetical language the way Plaintiff claims. Likewise, in the *Gogolos* district court case cited by Defendants, Judge Miley recognized

application of the *Meers* parenthetical language where Venetian had a contract with the plaintiff's employer, Hewlett Packard. (*See* MSJ Exhibit P at 5, ln 8-9.) There, Defendant Encore Productions, Inc., had a subcontract with Venetian to provide audio-visual services for a Hewlett Packard convention hosted by Venetian, and Plaintiff had a simple employer/employee relationship with Hewlett Packard (*i.e.* no written employment contract). Under that scenario, the *Meers* parenthetical language was applied as in *Brooks-Handler*; accordingly, both Venetian and Encore were found to be immune from liability under the NIIA. (*See id.* at 4-6.)

Defendants therefore review the following facts pertinent to the *Meers* parenthetical language within its explanation of the *"normal work test."*

1. Defendants entered into contracts with entertainment companies to provide a venue for a show. (*See* MSJ Exhibit T.)

2. For each Venetian show contract effective during the time of Plaintiff's employment with Brand Vegas, Venetian entered into a Ticket Broker Agreement allowing Brand Vegas to sell tickets to Venetian shows for which profits were shared via payment of commission. (*See* MSJ Exhibits A, B, C, D, E, Q & T.)

3. Each Ticket Broker Agreement between Venetian and Brand Vegas was directly tied to a Venetian entertainment agreement associated with a specific show. (*See* MSJ Exhibits B, C, D, E and Q.) Without an associated Venetian entertainment agreement, there would be no Ticket Broker Agreement between Venetian and Brand Vegas. (*Id.*) Thus, each broker agreements is, by definition, a subcontract.

4. Pursuant to the Ticket Broker Agreements, Venetian paid *commissions* to Brand Vegas for each ticket sold to a Venetian entertainment event. (*See e.g.,* MSJ Exhibit A at VEN 147-48 (paragraph 2), and VEN 153.)

5. Plaintiff's employment with Brand Vegas, LLC (*Brand Vegas*) was in part based on the numerous Ticket Broker Agreements executed between Venetian and Brand Vegas. (*See* MSJ, Exhibits A, B and E; *see also* MSJ Exhibit J at 58-60; MSJ Exhibit R at 38, ln 18-25; 39, ln 1-5.)

6. Plaintiff was paid commissions by Brand Vegas on each sale made for a Venetian entertainment event. (*See* MSJ Exhibit A at VEN 147-48 (paragraph 2), and VEN 153; MSJ Exhibit J at 58-60; *see also* MSJ Exhibit R at 38, ln 18-25; 39, ln 1-5.)

7. Plaintiff was injured on Venetian property in the course and scope of her employment for Brand Vegas.

Defendants respectfully submit that the above facts establish the appropriate contractual nexus with Plaintiff to establish Venetian as a statutory employer under the NIIA. (*See* MSJ Exhibit Q.) Plaintiff's assertion in the Opposition that the *Meers* parenthetical language of *subcontracted fraction of a main contract* does not apply to ticket broker agreements is unsupported by any legal authority.

B. **Defendants Are Immune From Liability Under the *Normal Work Test***

If the Court disagrees with the above and continues its analysis under the *Normal Work Test*, Defendants are still immune from liability under the NIIA. Recall the *Meers* test set forth as follows:

> *The test (except in cases where the work is obviously a subcontracted fraction of a main contract)* ***is whether that indispensable activity is, in that business, normally carried on through employees rather than independent contractors.***

(*Meers*, supra at 286, 701 P.2d at 1007, emphasis added.)

In the Opposition, Plaintiff has largely disregarded Defendants' evidence and analysis under this test. Plaintiff's failure to address critical aspects of Defendants' motion is tantamount to her concession that it is meritorious under EDCR 2.20(e).[1] Nevertheless, Defendants will provide a brief review.

---

[1]The pertinent language in EDCR 2.20(e) reads as follows: *Failure of the opposing party to serve and file written opposition* ***may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.***

Perhaps the best way to begin is to ask the following question: **What part of Plaintiff's work activities with Brand Vegas were <u>not</u> *normally carried on through [Venetian] employees rather than independent contractors*?** Plaintiff has not stated. Again, she did not address this at all. On the other hand, Defendants have established that Plaintiff's work was identical to work performed by Venetian Box Office Employees and Venetian Concierge Desk employees. (*See* <u>MSJ</u> Exhibits A, E, T and U.)

The *Meers* case related to a Centel employee injured in an elevator maintained by Haughton Elevator; thus, the facts there (where statutory immunity did not attach) are different than those presently before the Court. The *Meers* court continued:

> *This "normal work" test has been applied in many cases involving sub-contracted maintenance activities.* ***"The general rule is that '[m]ajor repairs, or specialized repairs of the sort which the employer is not equipped to handle with his own force, are held to be outside his regular business."***

(*Meers*, <u>supra</u> at 286, 701 P.2d at 1007-08, emphasis added.) Here, Defendants have demonstrated that Venetian was *"equipped to handle"* everything Plaintiff was doing *"with [its] own [work] force."* The Court is without any evidence to the contrary. Thus, application of the *normal work test* leads to the same conclusion - Defendants are entitled to statutory immunity.

Plaintiff's suggestion in the Opposition that Venetian is not entitled to statutory immunity unless it interviewed, hired, paid, and terminated Plaintiff as her direct employer is nonsense. It is simply unsupported by any legal authority, much less Nevada case law.

C. **<u>Defendants Are Immune From Liability Under NRS 616B.603(1)</u>**

Once again, Plaintiff has to really stretch the facts (and truth) to muster an opposition to Defendants' motion under NRS 616B.603(1), which provides as follows:

> *1. A person is not an employer for the purposes of chapters 616A to 616D, inclusive, of NRS if:*
> *(a) The person enters into a contract with another person or business which is an independent enterprise; and*

(b) The person is not in the same trade, business, profession or occupation as the independent enterprise.

Plaintiff concedes that Brand Vegas is an independent enterprise. Thus, the requirement of NRS 616B.603(1)(a) is met. The analysis then comes down to NRS 616B.603(1)(b), whether Brand Vegas *"is **not** in the same is not in the same trade, business, profession or occupation as"* Venetian. (Emphasis added.)

In addressing the issue of *same trade, business, profession or occupation*, Plaintiff argues that *"This Court would need to find that either 1) Venetian's **primary business** was selling show tickets or 2) Vegas was in the business of owning and operating casino resorts.* (*See* Opposition at 16, ln 7-10.) This is a false choice. It is an incorrect representation of the law. Indeed, Plaintiff provides no legal authority supporting her claim that the Court must find that selling show tickets is *Venetian's **primary business*** for purposes of NRS 616B.603(1)(b). It is a wholly contrived, unsupported assertion.

Since the Opposition reviews the case of *Bassett Furniture Industries, Inc. v. McReynolds*, 216 Va. 897, 224 S.E.2d 323 (1976), as relied upon by the Nevada Supreme Court in the *Meers* case, Defendants will likewise respond. (A copy of *McReynolds*, supra, is attached hereto as Exhibit W.)

In *McReynolds*, the plaintiff was injured while installing a conveyor belt system in a Bassett Furniture Industries manufacturing plant located in Virginia. There, the Virginia court quoted the following from VA Code § 65.1-29:

> *. . . when an owner "undertakes to perform or execute any work which is part of his trade, business or occupation and contracts with" a subcontractor "for the execution or performance by or under such subcontractor **of the whole or any part of the work", the owner becomes a statutory employer** and the subcontractors employees become statutory employees of the owner.*

(*See id.* at 901, 224 S.E.2d at 325, emphasis added.) The Virginia court continued, noting the following regarding the *Normal Work Test*: *"Frequency and regularity of performance **are factors** to*

be considered in determining whether work is 'normally carried on through employees.'" (*Id.*, emphasis added.)

Note that there is nothing in the analysis presented by the Virginia court in *McReynolds* (much less the Nevada Supreme Court) requiring that for Defendants to prevail on this motion, Venetian must establish that selling tickets to shows it provides for guests within its premises or selling tickets to shows elsewhere in Las Vegas is its ***primary business***. That is Plaintiff's invention from thin air and rather subtly misstates the law.

Plaintiff's assertion that the holding is *Hays Home Delivery, Inc., vs. EICON*, 117 Nev. 678, 680, 31 P.3d 367, 368 (2001), is inapplicable to the present facts is simply unfounded. Plaintiff's argument to that end seems to be that Venetian's ticket brokering business *"is minuscule in comparison"* to its operation as a hotel/casino. (*See* Opposition at 17, ln 20-23.) Recall that the law followed in Virginia as related in the *McReynolds* court is whether an owner engages an independent contractor to *execute any work which is **part** of his trade . . . for execution . . . of the whole or **any part** of the work . . . .* (*See* McReynolds, *supra* at 901, 224 S.E.2d at 325, emphasis added.) The court in *Hays Home Delivery* did not use words like ***primary*** *business* or require a certain percentage of the work performed to be in the *same trade, business, profession or occupation.* Indeed, Plaintiff has not identified one Nevada case to support such an argument.

What established facts to this end has Plaintiff missed or ignored in the Opposition?

1. Plaintiff was engaged in the same exact work performed by Venetian employees at the Venetian Box Office and Venetian Concierge Desk. (*See* MSJ Exhibits A, E, T and U.) Indeed, Venetian has entire departments dedicated to the selling of show tickets.

2. Venetian employees, like Plaintiff, sell tickets to both Venetian events and to all other major events in the Las Vegas area. (*See* MSJ Exhibits T and U.) Plaintiff has completely ignored this critical fact in the Opposition, where Venetian Director of Concierge, Anna Hersel, testified that

Venetian offered access to all of the same shows sold by Brand Vegas in 2016, and that Venetian sold more than 55,000 tickets for outside events through its Concierge Desk in 2016. (*See* MSJ Exhibit U at VEN 1394.) Accordingly, Plaintiff was not doing anything Venetian employees were not already doing by selling tickets to either Venetian shows or to shows elsewhere in Las Vegas.

3. The preamble to the Ticket Broker Agreement reads as follows:

> *WHEREAS,* ***Venetian sponsors, hosts, produces, or otherwise provides various entertainment acts*** *(each a "Show") from time-to-time in the Sands Showroom ("Showroom");*
>
> *WHEREAS,* ***Venetian desires to engage the Broker with respect to the sale of tickets for performances at the Showroom*** *("Tickets");*
>
> *WHEREAS,* ***Broker is in the business of selling tickets for various entertainments shows****; and*
>
> *WHEREAS, the Parties desire to enter into this Agreement for the standard terms and conditions* ***regarding the Broker's sale of Tickets, with the specifics for each Show to be agreed in writing between the Parties*** *from time-to-time hereafter.*
>
> . . .

(*See* MSJ Exhibit A at VEN 135, emphasis added.) Venetian and Brand Vegas jointly recognize the important role of marketing and promoting shows to sell tickets. Without ticket sales, there would be no shows; hence, Venetian has departments with employees to sell show tickets and likewise engages outside companies like Brand Vegas to assist in that important effort.

Plaintiff has made light of Defendants' contention that Venetian was actually in competition with Brand Vegas for ticket sales, as though it is a silly argument. To the contrary, it is a key undisputed fact. Any person coming upon the Venetian property with a desire to obtain tickets to a Venetian show or any other show in Las Vegas, could purchase tickets from Venetian employees or Brand Vegas employees. Thus, the Ticket Broker Agreement by its very nature has a common interest factor and one of competition. Without a doubt, that fact aligns Venetian and Brand Vegas as being in the *same trade, business, profession or occupation* for purposes of NRS 616B.603(1)(b).

This brings us to another case completely ignored by Plaintiff in the Opposition *Quick v. Freeman Decorating Co.*, 55 Fed. Appx. 450, 2003 U.S. App. LEXIS 1525. (*See* MSJ Exhibit R.)

There, the Ninth Circuit, relying on *Hays Home Delivery, Inc.*, supra, held that because the two entities in question were in competition for the same business, that was a compelling fact establishing they were in the *same trade, business, profession or occupation.* The court, therefore, found both businesses to be immune from suit under the NIIA. That same analysis applied here falls in favor of granting Defendants' motion for summary judgment.

Finally, Venetian has its own showrooms and venues for entertainment, Venetian has its own employees selling tickets to its shows and events, and its contract with Brand Vegas merely provides another avenue to the desired objective of drawing more people to attend Venetian shows and events. Venetian and Brand Vegas are clearly in the entertainment business and, according to Plaintiff's former employer, Edward DiRocco, Plaintiff was working daily in furtherance of the Ticket Broker Agreements between Venetian and Brand Vegas. (*See* MSJ Exhibit L at 70, ln 11-19; 73, ln 8-13.)

D. **Defendants Exercised Control Over Plaintiff**

Another aspect of Defendants' motion virtually ignored in the Opposition is that of control and its role in the *Meers* analysis. In *Tucker v. Action Equip. & Scaffold Co.*, 113 Nev. 1349, 1357, 951 P.2d 1027, 1032 (1997), the Nevada Supreme Court held that the *"control test"* which predated *Meers* is no longer the primary standard for evaluating facts related to NIIA immunity, but that it still remains *"one factor to be considered in resolving 'normal work' issues under Meers."*

Defendants exercised control over Plaintiff in the following manner.

1. Venetian issued Plaintiff a parking pass allowing her to park her vehicle on floors designated for employees. (*See* MSJ Exhibit F, *Venetian Parking policy*; MSJ Exhibit I, *Venetian Security Report - Narrative* (11.04.16) (VEN 008-09); MSJ Exhibit J at 140, ln 7-25; 106, ln 1.)

2. Venetian performed a background investigation of Plaintiff to issue her an identification badge so she could use employee entrances. (*See* MSJ Exhibit J at 74, ln 5-19.)

3. Plaintiff routinely entered upon Venetian property and used its facilities in the ordinary course of her employment. (*See* MSJ Exhibit J at 88, ln 11-14.)

4. Plaintiff was required to follow the Las Vegas Sands Supplier Code of Conduct. (*See* MSJ Exhibit J at 231, ln 2-17; *see also* MSJ Exhibits A at VEN 152; MSJ Exhibits C, D and E.)

5. Plaintiff represented Venetian's interests to guests at her Brand Vegas kiosk. (*See* MSJ Exhibit J at 231, ln 2-17.)

6. Plaintiff was expected to work in accordance with Venetian's Code of Conduct. (*See id.*)

In addition to the above, Plaintiff was given access to Venetian property beyond that provided to normal guests because of her vendor/employee status. In deposition, Venetian Security Officer/EMT, Joseph Larson, who responded to the subject incident, testified as follows on why he escorted Plaintiff from the accident scene to the back of the house area reserved for employees only:

> *Q. . . . Is it unusual to take someone from, let's say, the public area back to the medical room? Just a normal guest?*
> *A.* ***I wouldn't take a guest back to the medical room.***
> *Q.* ***Why did you on this occasion?***
> *A.* ***Because she was an outside vendor. She worked at the property, but wasn't exactly a team member with us. Those employees on our property do have access to our back-of-house areas,*** *so it's not against anything for me to bring her back to a secure area like that. . . .*

(*See* Exhibit X, *Transcript of Joseph Larson Deposition* at 64, ln 19-25; 65, ln 1-6, emphasis added.) Thus, Plaintiff's vendor/employee status provided her with greater access to Venetian property not enjoyed by normal guests, which is why she underwent a background investigation for an ID badge.

E. **Venetian and Brand Vegas Shared Common Goals, Interest and Profits**

The Ticket Broker Agreement between Venetian and Brand Vegas was mutually beneficial. Venetian shared a percentage of the sales for each ticket sold to its shows and events by Brand Vegas. (*See* MSJ Exhibit A at VEN 147-48, 153.) The more Venetian tickets sold by Brand Vegas, the more money Venetian shared with Brand Vegas.

In Hook v. Giuricich, 108 Nev. 29, 823 P.2d 294 (1992), the Supreme Court of Nevada reviewed a granting of Summary Judgment where the issue was whether or not the then State Industrial Insurance System provided immunity for Star Cab as a result of its joint venture with Yellow Cab. The Court held:

> *". . . where the evidence of a joint venture is uncontroverted and one joint venture is immune from suit by virtue of being been enrolled in State Industrial Insurance System, the other joint venturers are also immune from suit."* Haertel v. Sonshine Carpet Co., *104 Nev. 331, 335, 757 P.2d 364, 366 (1988).*

(*Id.* at 296, 823 P.2d at 295.) A joint venture is *"a contractual relationship in the nature of an informal partnership wherein two or more persons conduct some business enterprises, agreeing to share jointly, or in proportion to capital contributed, in profits and losses."* (Bruttomesso v. Las Vegas Met. Police, 95 Nev. 151, 154 (1979). *"The parties intent to create a joint venture is determined by the application of ordinary rules concerning the interpretation and construction of contracts* ***as well as a consideration of the actions and conduct of all the parties.***" (Radaker v. Scott, 109 Nev. 653, 658 (1993), emphasis added.)

In this case there is no doubt that Venetian was in a profit sharing venture with Brand Vegas having a basket of responsibilities that complemented Venetian's basket of responsibilities. The sum of those baskets resulted in the sale of tickets to Venetian entertainment shows and events by Plaintiff when she was injured in the course and scope of her employment. While Plaintiff has argued that the Ticket Broker Agreement expressly states that the arrangement between Venetian and Brand Vegas is not a *joint venture*, the fact remains that the two entities entered into an agreement designed to share the profits associated with ticket sales. This is yet another basis in which this Court can grant immunity under the NIIA, which Judge Escobar did in the matter of Kilyushik v. Desert Palace, LLC, Case No. A-17-764171-C, on July 16, 2019. (*See* Exhibit V.)

V.

CONCLUSION

Plaintiff's work for Brand Vegas on a daily basis was *a subcontracted fraction of a main contract* related to Venetian and its show venue/entertainment agreements. Under the *Meers* analysis, Plaintiff's work for Brand Vegas in selling tickets to Venetian shows and events was not at all unique, as she was engaged in the very same work for which Venetian employed many within its Box Office and Concierge Desk departments. While Venetian benefitted financially from Brand Vegas sales to its shows and events, it was also in competition with Brand Vegas to sell tickets not only for Venetian shows and events, but for the same Las Vegas shows outside Venetian sold by Brand Vegas. Venetian and Brand Vegas were so much in the same line of business in ticket sales and brokering that they were selling tickets to the same shows and events. All of these factors, and more, demonstrate that Venetian and Brand Vegas were in the *same trade, business, occupation and profession* for purposes of NRS 616B.603(1)(b). Venetian exercised control over Plaintiff and, in exchange, allowed her to have access to areas of its property where guests are not allowed. Venetian shared with Brand Vegas a percentage of profits associated with its sales, from which profits Brand Vegas paid commissions to Plaintiff.

Based on the foregoing, Venetian respectfully submits that there are no genuine material issues of fact which would prevent the Court from granting summary judgment for lack of jurisdiction pursuant to the exclusivity of remedies afforded to Plaintiff under the NIIA.

DATED this 6 day of August, 2019.

ROYAL & MILES LLP

By_____

Michael A. Royal, Esq.
Nevada Bar No. 4370
1522 W. Warm Springs Rd.
Henderson, NV 89014
Attorneys for Defendants
VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6 day of August, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRCP 56(c) BASED ON STATUTORY IMMUNITY UNDER THE NEVADA INDUSTRIAL INSURANCE ACT** to be served as follows:

_____ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

_____ to be served via facsimile; and/or

✓ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

_____ to be hand delivered;

to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

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Ashley Schmitt
An employee of ROYAL & MILES LLP

EXHIBIT "V"

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IVAN KILYUSHIK,	)	CASE NO. A-17-764171-C
Plaintiff,	)	DEPT NO. XIV
vs.	)	
DESERT PALACE, LLC,	)	
Defendant.	)	**Transcript of Proceedings**

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE

DEFENDANT DESERT PALACE, LLC, dba CAESARS PALACE'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS

TUESDAY, JULY 16, 2019

APPEARANCES:

FOR THE PLAINTIFF: JENNIFER A. PETERSON, ESQ.

FOR THE DEFENDANT: JOHN R. DaCORSI, ESQ.

RECORDED BY: SANDRA ANDERSON, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

1 LAS VEGAS, NEVADA, TUESDAY, JULY 16, 2019, 9:53 A.M.
2 (Court was called to order)
3 THE COURT: All right. This is Kilyushik v. Caesars.
4 It's a motion for summary judgment. Good morning. Your
5 appearances for the record, please.
6 MR. DaCORSI: Good morning, Your Honor. John R.
7 DaCorsi on behalf of Caesars, 8043.
8 THE COURT: Okay.
9 MS. PETERSON: And Jennifer Peterson on behalf of
10 plaintiff, Ivan Kilyushik.
11 THE COURT: Good morning.
12 MS. PETERSON: Good morning.
13 THE COURT: All right. This is defendant's motion, so
14 if you will please go ahead.
15 MR. DaCORSI: Yes. Thank you, Your Honor. Your
16 Honor, our motion is based upon Exhibit 1, which is the venue
17 operations and co-promotions agreement. That agreement provides
18 for certain obligations by AEG and certain obligations by
19 Caesars. There are three types of shows at the Colosseum. One
20 type of show are those promoted only by AEG, the other type of
21 show are those that are co-promoted, and the third type of show
22 are those that are promoted solely by Caesars.
23 In this particular case, the injury that plaintiff is
24 complaining about occurred during the Celine Dion show which is
25 a joint promotion. And because it's a joint promotion, our

1 basic argument is that not only is it a joint promotion in the
2 venue operations agreement, that agreement is in essence a
3 partnership agreement, which under the Supreme Court cases says
4 that immunity for liability can be granted.
5 And I would particularly refer the Court to Hook
6 versus Guerchich (phonetic) in which the court held that
7 conducting business as a joint venture provides statutory
8 immunity to both joint venturers and there can be no doubt upon
9 review of the agreement that this is a joint venture.
10 For example, there is a basket of operations that AEG
11 is required to do, which includes maintaining the premises,
12 making sure that the shows are booked, handling those types of
13 -- those types of entertaining activities. In the inside,
14 there's certain activities and requirements that Caesars has.
15 They control selling the merchandise, selling the tickets, the
16 concessions booth, and so forth. And these two baskets of
17 obligations combine to create the show.
18 And counsel, in an argument, I believe she's trying to
19 say that Caesars is not in the entertainment business, and that
20 is just not true. Because if you look at the VOA, clearly they
21 produce the Jerry Seinfeld show and that is a solely produced
22 show. So they are in the entertainment business, not only at
23 the Colosseum, but in venues all over -- all over town.
24 So because they share profit and losses, and because
25 they have this basket of obligations on the side of both

1 parties, we believe that the Hook case is controlling, and that
2 the injury that occurred, occurred to a joint venturer and that
3 statutory immunity is mandated by this Court. The exceptions
4 that occur under 16 -- 603 -- 616B.603 do not apply here because
5 they are in the same business, Your Honor.
6 And on that basis, we would submit this is basically a
7 joint venture. They are co-promoters, and his injury is -- we
8 are statutorily immune from any personal injury case that
9 occurred during the course of the enterprise. Thank you, Your
10 Honor.
11 THE COURT: Thank you.
12 Go on, counsel.
13 MS. PETERSON: If you look at defendant's motion
14 versus its reply, they take -- he takes two different positions.
15 In the motion they're arguing that it's a subcontract of a main
16 contract, which, obviously, based on the case law, that is not
17 the case. It wasn't until the reply that they first came up
18 with the joint venture argument.
19 You have to go back and look at the contract. The
20 contract speaks for itself. The contract states what each
21 party's role is, and Caesars is listed as the owner of the
22 property. For AEG, they're the ones that put on the show. So,
23 yes, they're in the big umbrella of entertainment, but one of
24 them owns the venue, and one is actually putting on the shows.
25 For some of the case -- or for some of the shows, they

1 joint promote, but that doesn't change the responsibility of AEG
2 who is putting on the shows. Caesars does not help with any of
3 that. AEG provides the lighting, the services, everything. The
4 venue is the only thing. So you have to go back and look at the
5 actual contract.
6 I believe that NRS 616B.306 describes the relationship
7 perfectly. The parties entered into a contract with another
8 business, which is an independent enterprise. AEG owns its own
9 business. It's not -- it's not part of Caesars. And the second
10 part is not the same trade, business, profession, or occupation.
11 Now, although they both work in the entertainment industry, the
12 contract for contract purposes for this particular case only
13 lists Caesars as the venue owner.
14 Other than that, AEG is taking over the lease
15 agreement, part of it, to put shows on in that venue. That
16 doesn't mean it's a joint venture. It does not mean it's a
17 contract of -- or a subcontract of a main contract. That's not
18 the argument. Caesars is solely the owner of the property for
19 purposes of this -- of this agreement.
20 Also, they're not a joint venture. And, also, the
21 contract doesn't say that -- or that Caesars is hiring AEG to
22 put on shows in its venue. You have to look at the payment.
23 Caesars isn't paying AEG to put on shows. They didn't contract
24 with them to put on shows. AEG leased the property and put the
25 shows on in Caesars venue.

1 They just decided that they would both promote them
2 and they would split the funds. That's instead of paying for
3 the lease. Instead of paying monthly rent, that's just the way
4 that they decided to make payments. So you have to look at the
5 contract and what the contract says.
6 Also, it's not a joint venture like I said. I stated
7 in my opposition that joint ventures are for short periods of
8 time and they both have responsibilities. What were -- what
9 were Caesars responsibilities? They allowed -- if you look at
10 the contract, it says they get to use the property, they get to
11 use the area outside so people can line up, but they get -- and
12 they get to sell concessions, which means they get to make a
13 profit off of the actual event being held there on the property.
14 But it doesn't say that they have any responsibility as far as
15 putting on the shows.
16 Whether they put on shows of their own in that venue,
17 that has nothing to do with AEG. AEG did the Celine Dion show.
18 And the only thing that Caesars had to do with that is they both
19 promoted it. That's it. And that was in order to make the fees
20 according to the contract.
21 Defendant brought up the Hook case. Obviously, that
22 was brought up in the reply. That was not brought up in the
23 original motion, so I haven't had a chance to review the case or
24 to provide any kind of response on it. But I think the evidence
25 is pretty clear that it's not a joint venture. Joint ventures

1 are for short periods of time, and this was a contract that went
2 starting in 2001, and it extends to 2019. It's a lease. It's a
3 long-term lease. That's all it is. They're not joint --
4 they're not in the business jointly.
5 Also, one of the arguments I noticed in the reply was
6 that AEG -- this isn't an exclusivity contract, but it is.
7 There's a -- there's a -- if you look at the contract, it says
8 that AEG is exclusively contracting, so they won't put on the
9 shows anywhere else except for there was a cutout for the Hard
10 Rock. So they're not in competition. They're doing a service.
11 They're only in competition when Caesars puts on a show in the
12 actual venue. Other than that, they're not -- they're not
13 competitors, so --
14 THE COURT: I'd like to hear more about competitors.
15 Your last comment.
16 MS. PETERSON: Oh, okay. If you look at the contract
17 that's attached to plaintiff as Exhibit 1.
18 THE COURT: Uh-huh.
19 MS. PETERSON: On page 4 it has an exclusivity
20 contract. It says that AEG shall not enter into any booking or
21 venue management agreement wherein it provides services similar
22 to the services set forth in the agreement to a venue with a
23 seating capacity for 1,000 seats, fewer to -- it's hard to read.
24 I'm sorry, Your Honor.
25 THE COURT: It's all right.

1 MS. PETERSON: I think it says seats fewer than 1,000.
2 So they are -- it is an exclusivity agreement. And I think
3 that's significant because it means that they weren't being
4 hired by Caesars to put on shows. They're saying this is our
5 business, this is what we do, this is our venue. It's a lease.
6 They're renting the property. That's what it is.
7 So I believe that based on the language in the
8 contract, this is a lease and nothing more. It's not a joint
9 partnership, it's not -- it's not a main contract and a
10 subcontract, so it's a lease. And that fits squarely in the
11 definition of NRS 616B.306 where it talks specifically about
12 what an independent enterprise is.
13 And it says a person enters into a contract with
14 another person or business, which is what we have, the person is
15 not in the same trade, business, profession, or occupation for
16 purposes of the contract, one is the venue owner, one is the
17 person putting on the actual shows. An independent contractor
18 holds a business or occupational license in his or her own name,
19 which AEG does, and owns, rents, or leases property in
20 furtherance of that business. That's exactly what this is.
21 This fits squarely within the definition, and so there is no
22 dispute that this is a contract and not a joint project, joint
23 ownership, anything.
24 THE COURT: Thank you.
25 MR. DaCORSI: Your Honor, counsel ignores the joint

1 responsibilities that this contract calls for. To say that this
2 is a lease or a rental contract is misconstruing innocently the
3 purpose of this agreement. There is a whole list in the
4 agreement of what Caesars must do, including selling tickets and
5 handling the -- I don't want to go through it. The Court had a
6 chance to see what we put in there.
7 AEG has a whole list of things that they're supposed
8 to do. And to try to couch this as a lease is to ignore that
9 these guys are in a partnership. They're 50/50 on the profits.
10 This is not two separate entities. This is a joint venture.
11 The very paragraph that it starts out, it says on page
12 -- on page 1, Your Honor, that the venue operations and
13 co-promotion agreement in the very first paragraph. They are
14 co-promoting these shows. This is not two separate businesses.
15 This is two businesses acting as one business for a certain
16 enterprise.
17 And so the argument that it's two separate businesses
18 and this is a lease agreement is -- is belied by the very
19 document itself. As a matter of fact, AEG, if you look at --
20 and I'd call the Court's attention to 6.2A, subparagraph (a),
21 and 6.1. 6.2A(a) says AEG is responsible for all the personnel
22 and human resources. 6.1 says AEG shall mange and control the
23 presentation of shows.
24 And so AEG's responsibilities are clearly defined as
25 show manager. Caesars responsibility is clearly defined as

1 selling tickets and handling the concessions and so forth. So I
2 think that the -- the defense to this motion is premised upon a
3 misconstruction of this agreement.
4 The reason we brought forth this motion for summary
5 judgment, it's up to, obviously, the Court to tell us what this
6 agreement is. And I would submit to the Judge that this
7 agreement is a joint venture type of agreement to co-promote
8 shows, including all of the shows at the Colosseum. It's not a
9 rental agreement. Thank you, Your Honor.
10 THE COURT: Okay.
11 MS. PETERSON: Can I just say one other thing?
12 THE COURT: Yes, of course. Go ahead.
13 MS. PETERSON: In order to address the issue about
14 employees, of course AEG is going to put in the contract that on
15 its shows it's going to supply its own support. That -- that
16 doesn't add anything to the fact that Caesars could also put
17 their own shows in there not run by AEG. So AEG is basically
18 saying when it's our show and we're putting it on, we're going
19 to use our own employees instead of using Caesars' employees.
20 And going back to venue operation and co-promotion
21 agreement, if you look on page 1, it talks about the license
22 venue. It says upon and subject to the terms and conditions as
23 set forth, agreement Caesars hereby grants AEG a license during
24 the term of the venue and agrees adjacent to the venue within
25 this casino for ticket sales.

1 So he's giving them permission to use it for ticket
2 sales and queuing area for ticket holders willing to enter the
3 venue -- or wanting to enter the venue for the purpose
4 contemplated by the agreement. So they're saying not only do
5 you get to use the venue, you get to use some of the areas
6 outside of the venue.
7 But the fact remains that it's a lease agreement.
8 They're renting the venue and that's just -- that's just
9 spelling out what areas they can use in addition to the venue in
10 order to put on co-promoted shows.
11 MR. DaCORSI: Final call, Your Honor?
12 THE COURT: Yeah, absolutely. And then I --
13 MR. DaCORSI: Thank you, Your Honor. 6.1 on page 4,
14 with respect to all shows unless agreed otherwise, AEG shall
15 have the right to manage and control the presentation. It's --
16 AEG is controlling Caesars' shows, as well, which included
17 Seinfeld. Thank you, Your Honor.
18 THE COURT: Okay. Thank you. I'm ready to -- to give
19 you my -- this Court's decision. I'm going to grant the motion
20 for the following reasons, including, and not limited to this,
21 but essentially with respect to NRS 616B.603(1), this does not
22 appear to apply to this relationship.
23 So it does appear that for the purposes of this -- of
24 this case, or what they're doing in this contract and so forth,
25 it does appear to be a joint venture that is jointly promoting

1 this show. And this -- this gives Caesars statutory immunity.
2 They share profits, they share losses, and many other things
3 that are required.
4 Also, under the Hook court, it appears, you know, they
5 defined a joint venture, and with respect to the elements there,
6 it appears to this Court that -- that those are persuasive, that
7 they're -- you know, they fit within that. So also, in my view,
8 in this Court's view, the worker's comp statute NIIA, that was
9 already -- that has already helped, you know, take care of this
10 plaintiff's injury is what was correct. And I don't believe
11 that Caesars in this situation has a responsibility.
12 MR. DaCORSI: Thank you, Your Honor.
13 THE COURT: Okay.
14 MR. DaCORSI: Would you like me to prepare an order?
15 THE COURT: Yes, please.
16 MR. DaCORSI: Okay.
17 THE COURT: And I'd like, counsel, to make sure --
18 MR. DaCORSI: Oh, I'll present to them. Sure.
19 THE COURT: Okay. Thank you.
20 MR. DaCORSI: Thank you, Your Honor.
21 (Proceedings concluded at 10:11 a.m.)
22 * * * * *
23
24
25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
(702) 635-0301

Julie Potter

JULIE POTTER
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Bassett Furniture Industries, Inc. v. McReynolds

Supreme Court of Virginia

April 23, 1976

Record Nos. 750781 and 750743

Reporter
216 Va. 897 *; 224 S.E.2d 323 **; 1976 Va. LEXIS 223 ***

BASSETT FURNITURE INDUSTRIES, INC. v. ROBERT F. MCREYNOLDS. ROBERT F. MCREYNOLDS v. BASSETT FURNITURE INDUSTRIES, INC

Prior History: [***1] Error to a judgment of the Circuit Court of Henry County. Hon. Frank I. Richardson, Jr., judge presiding.

Disposition: *Affirmed.*

Core Terms

hole, employees, conveyor, trial court, Industrial, damages, floor, subcontractor, manufacturer, contracts, independent contractor, circumstances, installation, remittitur, chain, plant, trial judge, jury's, statutory employer, carpenters, construction work, inferences, contributory negligence, second floor, occupation, feet, lighting conditions, general contractor, common law, contractor

Case Summary

Procedural Posture
Plaintiff employee was injured while working for his employer on the premises of defendant contractor. After receiving workmen's compensation benefits, the employee filed suit against the contractor in the Circuit Court of Henry County (Virginia). The parties filed cross-appeals when a judgment was rendered in favor of the employee but the contractor's motion to set the verdict aside as excessive was sustained and a remittitur was ordered.

Overview
The contractor argued that the employee was its statutory employee and that he was guilty of contributory negligence as a matter of law. The employee alleged that remittitur was improper. The court held that the evidence was sufficient to support the trial court's finding that the work the employee was engaged in at the time of his injury was not a part of the business normally carried on by the contractor through its own employees. The employee was not the contractor's statutory employee. The testimony whether the hole through which the employee fell was "open and obvious" to a reasonably prudent man was conflicting and diverse inferences were reasonably deducible from uncontradicted circumstances. The issue of contributory negligence was properly submitted to the jury and the evidence was sufficient to support the jury's finding on that issue. Although the court felt that an award for non-economic damages higher than that determined by the trial court was sustainable, the trial court had not erred when it found the jury award excessive. The recovery after remittitur was found to bear a reasonable relation to the damages disclosed by the evidence. The remittitur was not erroneous.

Outcome
The judgment in favor of the employee and the order of remittitur were affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > General Overview

HN1[] A trial court sits as a fact-finder, and, insofar as the evidence is in conflict, an appellate court views the facts and all inferences reasonably deducible therefrom in the light most favorable to a non-movant and considers whether the trial court correctly applied the law thereto.

Workers' Compensation &
SSDI > Coverage > Employment
Status > Employers

HN2[] Employers

Va. Code Ann. § 65.1-29 (1973) provides that when an owner undertakes to perform or execute any work which is a part of his trade, business, or occupation and contracts with a subcontractor for the execution or performance by or under such subcontractor of the whole or any part of the work, the owner becomes a statutory employer and the subcontractor's employees become statutory employees of the owner.

Workers' Compensation &
SSDI > Coverage > Employment
Status > Employers

HN3[] Employers

Va. Code Ann. § 65.1-30 (1973) provides that when a general contractor contracts with an owner to perform work which is not a part of the trade, business or occupation of the owner, and contracts with a subcontractor for the performance of the whole or any part of the work, the general contractor becomes the statutory employer of the subcontractor's employees.

Workers' Compensation &
SSDI > Coverage > Employment
Status > Employers

HN4[] Employers

Under Va. Code Ann. § 65.1-31 (1973), an owner covered by Va. Code Ann. § 65.1-29 or a general contractor covered by Va. Code Ann. § 65.1-30 becomes the statutory employer of the employees of a secondary subcontractor to whom a primary subcontractor has awarded a subcontract.

Workers' Compensation &
SSDI > Coverage > Employment
Status > Contractors

Workers' Compensation &
SSDI > Coverage > Employment
Status > Employers

HN5[] Contractors

Va. Code Ann. § 65.1-29 to -31 (1973) must be read and reconciled with the language in Va. Code Ann. § 65.1-5 (1973). That language provides that nothing in the Workers' Compensation Act shall be construed to make the employees of an independent contractor the employees of the person contracting with such independent contractor.

Workers' Compensation &
SSDI > Coverage > Employment
Status > Contractors

Civil Procedure > Parties > Intervention > General Overview

Workers' Compensation &
SSDI > Coverage > Employment
Status > Employers

HN6[] Contractors

It clearly appears to be the purpose to bring within the operation of the Workers' Compensation Act all persons engaged in any work that is a part of the trade, business or occupation of an original party who undertakes as owner, or contracts as contractor, to perform work, and to make liable to every employee engaged in that work every such owner, or contractor, and subcontractor, above such employee. But when an employee reaches an employer in an ascending scale, of whose trade, business or occupation the work being performed by an employee is not a part, then that employer is not liable to that employee for compensation. At that point Va. Code Ann. § 65.1-5 intervenes and an employee's right of action at common law is preserved.

Business & Corporate Compliance > ... > Real Property Law > Construction Law > Contractors & Subcontractors

Workers' Compensation &
SSDI > Coverage > Employment
Status > Employers

HN7[] Contractors & Subcontractors

The chief purpose of enactments like Va. Code Ann. § 65.1-5 (1973) is to protect the employees of

subcontractors who are not financially responsible and to prevent employers from relieving themselves of liability for compensation by doing through independent contractors what they would otherwise do through direct employees. The statute is not intended to relieve employers from liability for their own negligence which causes injury to the employees of independent contractors engaged in the performance of work for employers outside the scope of the latter's occupation.

Workers' Compensation & SSDI > Coverage > Employment Status > Employers

HN8[] **Employers**

An owner, simply by acting as its own general contractor, contracting with independent contractors, does not thereby become a statutory employer unless the work performed by the independent contractor is a part of the owner's trade, business or occupation. Whether the work is such a part depends upon the facts and circumstances in each case, and for that reason the question does not readily yield to categorical or absolute standards.

Workers' Compensation & SSDI > Coverage > Employment Status > Employers

HN9[] **Employers**

The test for statutory employment is not one of whether a subcontractor's activity is useful, necessary, or even absolutely indispensable to the statutory employer's business, since, this could be said of practically any repair, construction or transportation service. The test, except in cases where the work is obviously a subcontracted fraction of a main contract, is whether this indispensable activity is, in that business, normally carried on through employees rather than independent contractors.

Workers' Compensation & SSDI > Coverage > Employment Status > Employers

HN10[] **Employers**

Frequency and regularity of performance are factors to be considered in determining whether work is normally carried on through employees. Mere capacity to perform, standing alone, is not determinative. Nor is performance which is a de minimis part of a total business operation.

Workers' Compensation & SSDI > Coverage > Employment Status > Employers

HN11[] **Employers**

In the manufacturing industry, construction work is typically outside the custom of the trade, and manufacturers who use their employees for such work generally do so only infrequently and irregularly. Such manufacturers are not statutory employers of employees of independent contractors hired for such work. Where a manufacturer regularly does its own construction work with its own employees, a different result may be reached.

Torts > Negligence > General Overview

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

HN12[] The presence or absence of negligence is a question for a jury, not only where there is a conflict in the evidence on the subject, but also where there is room for a difference of opinion among reasonable men as to the proper inference which might fairly be drawn from unconflicting evidence. Diverse inferences may reasonably be drawn from undisputed facts. Whenever the facts proved without dispute require the exercise of reason and judgment, so that one reasonable mind may infer that a controlling fact exists and another that it does not exist, there is a question for a jury.

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

Torts > Negligence > General Overview

Torts > ... > Defenses > Contributory Negligence > General Overview

Torts > ... > Contributory Negligence > Procedural

Matters > Province of Court & Jury

HN13[] **Province of Court & Jury**

Whether one has been guilty of negligence is a mixed question of law and fact. Where there is no controversy in regard to the facts or the inferences that fairly may be drawn from them, the question of negligence is one of law. Where the facts are in dispute or where diverse inferences reasonably might be drawn by men of reasonable minds, then it is a jury question. This is, of course, also true as to contributory negligence.

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > Remittiturs

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > General Overview

HN14[] **Remittiturs**

At common law, the power to order remittitur lay within the sound discretion of a trial court.

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > General Overview

Civil Procedure > Judgments > Relief From Judgments > Motions for New Trials

HN15[] See Va. Code Ann. § 8-224 (1957).

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > General Overview

HN16[] See Va. Code Ann. § 8-350.

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > General Overview

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

Civil Procedure > Special Proceedings > Eminent Domain Proceedings > Jury Trials

HN17[] In personal injury cases, where an action merely sounds in damages and where there is no rule for measuring such damages, the amount to be awarded is left largely to the discretion of a jury. But this is not to say that the verdict of a jury is not subject to the control of the courts. A healthy administration of justice requires that in a proper case, the courts must take action to correct what plainly appears to be an unfair verdict. This authority is an ancient and accepted part of the common law.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > General Overview

Civil Procedure > Judicial Officers > Judges > General Overview

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

HN18[] **Abuse of Discretion**

The law has wisely placed in the hands of a trial judge the power to exercise his sound discretion in supervising the verdicts of juries to prevent miscarriages of justice. The law intends that this power should be exercised, and that a judge should be more than a mere referee between the litigating parties. The ultimate test is whether or not the discretion has been abused.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > Remittiturs

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > General

Overview

HN19[] **Abuse of Discretion**

In determining whether a trial judge has abused the discretion vouchsafed to him by the statutes and the common law an appellate court must examine the grounds upon which he bases his order of remittitur. The record must show the grounds relied on in support of such action, otherwise it cannot be upheld. Absent a statement of the grounds, an appellate court must assume that a trial judge simply disagreed with a jury's damage evaluation and arbitrarily substituted his opinion for theirs. In such case, entry of the order would clearly constitute an abuse of discretion.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > Remittiturs

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > General Overview

HN20[] **Abuse of Discretion**

When it appears from the record that a trial judge made a finding that a verdict is plainly excessive and remittitur should be ordered and that, in reaching his conclusion, he considers factors in evidence relevant to a reasoned evaluation of the damages incurred and to be incurred, his order will not be disturbed on appeal if the recovery after remittitur bears a reasonable relation to the damages disclosed by the evidence. "Reasonableness" is the standard by which the exercise of discretion must be tested in an appellate court.

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > General Overview

HN21[] Judges have the power and are clearly charged with the duty of setting aside verdicts where the damages are either so excessive or so small as to shock the conscience and to create the impression that a jury has been influenced by passion or prejudice, or has in some way misconceived or misinterpreted the facts or the law which should guide them to a just conclusion.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Judicial Officers > Judges > General Overview

Civil Procedure > ... > Relief From Judgments > Additur & Remittitur > General Overview

HN22[] **Abuse of Discretion**

A trial judge is more than a mere umpire in the trial of a common law action. Whether or not a sum awarded by a jury is inadequate or excessive is a legal question addressed to the sound discretion of a court, to exercise his supervisory power over verdicts to prevent gross miscarriage of justice. There are many incidents which occur in the trial of a common law case which a trial judge observes but which cannot be reproduced in the cold printed page. When a trial court has made his ruling on such questions it will not be disturbed by an appellate court unless it appears that there has been an abuse of his legal discretion.

Headnotes/Summary

Headnotes

(1) Workmen's Compensation -- Owner -- General Contractor -- Employee of Independent Contractor.

(2) Contributory Negligence -- Open and Obvious Danger.

(3) Evidence -- Conduct of Others.

(4) Pleading and Practice -- Summation -- Rebuttal.

(5) Pleading and Practice -- Remittitur.

1. Owner simply by acting as its own general contractor, contracting with independent contractors, does not thereby become a statutory employer unless the work performed by the independent contractor is part of the owner's trade, business or occupation. Owner, a manufacturer of furniture, maintained no separate construction division and only a negligible fraction of owner's employees was trained in

construction skills. Carpenters, electricians and similar craftsmen were assigned to maintenance crews. Job in question was of a size always contracted out. Not error to hold that construction work involved was not a part of business normally carried on by owner through its own employees. Owner not statutory employer with regard to employees of independent contractor. **[***2]** Employer's common law right of action against owner is preserved.

2. Plaintiff, a construction worker, fell through hole only recently cut through floor to accommodate conveyor belt. There were no warning or protective devices indicating existence of hole. There was evidence to show that light was insufficient to illuminate danger. Eyewitness testified surroundings and lighting conditions created a camouflage for the hole. Trial court properly submitted question of contributory negligence to jury and evidence was sufficient to support jury's finding of no contributory negligence.

3. If hole was not seen by others similarly situated a fair inference is that it was not open and obvious to reasonable men similarly situated. Not error to admit evidence on this point.

4. Not abuse of discretion in exercise of supervisory control over argument of counsel to allow plaintiff on rebuttal to supplement opening argument on damages.

5. At common law, power to order remittitur lay within sound discretion of trial court and this rule has not been repealed or altered by General Assembly. When it appears that the trial judge made a finding that the verdict was plainly excessive, **[***3]** and remittitur should be ordered, and that in reaching his conclusion he considered factors in evidence relevant to a reasoned evaluation of the damages incurred and to be incurred, his order will not be disturbed on appeal if recovery after remittitur bears a reasonable relation to the damages disclosed by the evidence. Reasonableness is the standard by which the exercise of discretion must be tested on appeal. Under circumstances court cannot say that trial court erred in finding $1 million award excessive or that recovery of $550,000 bears no reasonable relation to damages disclosed by evidence.

Counsel: *S. D. Roberts Moore; James R. Austin (Gentry, Locke, Rakes & Moore,* on brief), for plaintiff in error in Record No. 750781.

R. Reid Young, Jr.; Jackson L. Kiser; Robert W. Mann; (Young, Kiser, Haskins & Mann, Ltd., on brief), for defendant in error in Record No. 750781.

R. Reid Young, Jr.; Jackson L. Kiser; Robert W. Mann (Young, Kiser, Haskins & Mann, Ltd., on briefs), for plaintiff in error in Record No. 750743.

S. D. Roberts Moore; James R. Austin (Gentry, Locke, Rakes & Moore, on brief), for defendant in error in Record No. 750743.

Judges: Present, l'Anson, **[***4]** C.J., Carrico, Harman, Poff and Compton, JJ.

Opinion by: POFF

Opinion

[*898] [324]** POFF, J., delivered the opinion of the court.

Robert F. McReynolds (plaintiff), an employee of Industrial Air, Inc. (Industrial), suffered injuries rendering him a paraplegic when he fell through a hole in a floor cut to accommodate a conveyor system Industrial was installing in the Virginia plant of Bassett Furniture Industries, Inc. (Bassett). After receiving workmen's compensation benefits from Industrial, plaintiff filed a motion for judgment against Bassett. Bassett moved to dismiss on the grounds that plaintiff was its statutory employee and that the trial court, therefore, had no jurisdiction over the tort action. Upon stipulation, the trial court heard evidence *ore tenus* and, having considered memoranda of law and oral argument, overruled the motion.

[*899] A jury was then empaneled and, after three days of testimony, returned a verdict awarding plaintiff $1,000,000 in damages. The trial court sustained Bassett's motion to set the verdict aside as excessive and ordered plaintiff to remit $450,000 or submit to a new trial on damages. Exercising his right under Code § 8-350 **[***5]** (Repl. Vol. 1957), plaintiff accepted remittitur under protest. By final order entered March 13, 1975, incorporating a letter opinion dated February 27, 1975, the trial court awarded judgment to plaintiff in the sum of $550,000. We granted writs of error to both parties.

A.

The jurisdictional question whether plaintiff was Bassett's statutory employee is the threshold issue. That issue turns upon a mixed question of law and fact. *HN1*[] The trial court sat as the fact-finder, and, insofar as the evidence is in conflict, we view the facts and all inferences reasonably deducible therefrom in the light most favorable to the plaintiff and consider whether the trial court correctly applied the law thereto.

Bassett's principal witness in support of its motion to dismiss was James Minter. His job title at Bassett was "Chief Engineer", although, as he said, "I am not an industrial engineer." The facts underlying the jurisdictional issue are found largely in his testimony.

Bassett is a furniture manufacturer with annual sales of "something over a hundred and fifty million [dollars]". Its plants in eight states employ about 7000 workers, 5000 of whom work in Virginia plants. In **[***6]** 1971, Bassett decided to enlarge its plant at Bassett, Virginia, by adding a $3,500,000, five-story warehouse adjacent to one of its existing buildings. Plans and specifications were prepared by Minter and the three other employees in Bassett's "engineering department". Bassett "put these out for bids" and awarded separate contracts to different contractors for construction of the "building shell", for "demolition of an existing building", for "installation of an elevator **[**325]** facility", for installation of "interior sprinkler work", and for certain other work. Bassett's plans called for installation of a conveyor system serving four floors of the new building and connecting with an existing conveyor system in an existing building. Bassett awarded a $173,722 "turn-key job" contract to Industrial. Minter acknowledged that Industrial was "an independent contractor to install the conveyor system." Bassett did not prepare the plans and specifications for this contract but, as Minter said, "[we] only showed the path of flow and the general arrangement of the conveyor, the specific shop drawings or drives on **[*900]** it and so on were done by Industrial Air", and Industrial **[***7]** supplied all materials. While Bassett did the electrical work and periodically inspected Industrial's work for compliance, it had no control over Industrial's employees and never required any "specific changes".

In order for the conveyor to pas from the second floor to the ground floor, it was necessary to cut a hole in the second floor of an existing building. Responsibility for the cutting was not included in Industrial's contract, and Bassett's carpenters did the work. It was this hole through which plaintiff fell while working on the conveyor system. The circumstances surrounding his fall will be considered in Part B.

In the last four years, Bassett had spent about $1,000,000 per year on construction work. However, Bassett had no "separate construction division" and employed only a "dozen or so" carpenters "on the maintenance crews" and about 60 electricians. These and other Bassett employees were sometimes called upon to perform certain tasks in connection with new construction projects, but "[this] would normally be confined to electrical, piping, mechanical work and that type of thing." Minter testified that "for the past few years, we have been contracting most **[***8]** all of the work outside and using our people to make modifications to tie in with these." On "major projects" involving in excess of $25,000, Bassett's policy was to employ independent contractors, because it was uneconomic to assemble Bassett employees from different plants and take them away from their regular jobs. On projects involving less than $25,000, Bassett did all "[or] a portion of it, depending on our people and the availability of them and what other jobs they were doing."

Bassett did not maintain a separate work crew "for the purpose of conveyor systems". Minter testified that "we have the capability" and "we do some designing and building in our own maintenance shops" but that is done "with employees who have other jobs and it generally depends upon the need and the time involved as to whether they would do it or we would have it done outside. Generally, on a job of this size, it would always be contracted out." Minter said that "we actually build new conveyors" but acknowledged that "Bassett had never undertaken anything of this magnitude."

[1] Addressing the jurisdictional issue, Bassett says that when an owner acts as its own general contractor and contracts, **[***9]** in whole or in part, with subcontractors for the performance of construction work, the owner-general contractor becomes a statutory employer and the **[*901]** subcontractor's employees become statutory employees if "the specific, specialized work being done by the specialty subcontractor and his injured employee is the kind of work which employees of the owner-general contractor usually do."

HN2[] Code § 65.1-29 (Repl. Vol. 1973) provides that when an owner "undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with" a subcontractor "for the execution or

performance by or under such subcontractor of the whole or any part of the work", the owner becomes a statutory employer and the subcontractor's employees become statutory employees of the owner. HN3[]

Code § 65.1-30 (Repl. Vol. 1973) provides that when a general contractor contracts with an owner to perform work which "is not a part of the trade, business or occupation of" the owner, and contracts with a subcontractor for the performance "of the whole or any part of the work", the general **[**326]** contractor becomes the statutory employer of the subcontractor's employees. HN4[]

[*10]** Under Code § 65.1-31 (Repl. Vol. 1973), an owner covered by Code § 65.1-29 or a general contractor covered by Code § 65.1-30 becomes the statutory employer of the employees of a secondary subcontractor to whom a primary subcontractor has awarded a subcontract. HN5[]

These three statutes must be "read and reconciled with" the language in what is now Code § 65.1-5 (Repl. Vol. 1973). Sykes v. Stone & Webster Eng. Corp., 186 Va. 116, 121, 41 S.E.2d 469, 471 (1947). That language provides that "[nothing] in this Act . . . shall be construed to make . . . the employees of an independent contractor the employees of the person . . . contracting with such independent contractor."

When so read and reconciled:

HN6[] "It clearly appears to be the purpose . . . to bring within the operation of the Compensation Act all persons engaged in any work that is a part of the trade, business or occupation of the original party who undertakes as owner, or contracts as contractor, to perform that work, and to make liable to every [employee] engaged in that work every such owner, or contractor, and subcontractor, above such employee. But when the [employee] reaches an employer in the ascending **[***11]** scale, of whose trade, business or occupation the work being performed by the [employee] is not a part, then that employer is not liable to that [employee] for compensation. . . . **[*902]** At that point [Code § 65.1-5] intervenes and the [employee's] right of action at common law is preserved." 186 Va. at 122-23, 1 S.E.2d at 472; quoted with approval in Anderson v. Thorington Construction Co., 201 Va. 266, 271, 110 S.E.2d 396, 399-400 (1959).

In Sears, Roebuck & Co. v. Wallace, 172 F.2d 802, 810 (4th Cir. 1949), the court quoted the above passage from *Sykes* and concluded:

HN7[] "[The] chief purpose of enactments like the Virginia statute . . . is to 'protect the employees of subcontractors who are not financially responsible and to prevent employers from relieving themselves of liability (for compensation) by doing through independent contractors what they would otherwise do through direct employees.' See notes 58 A.L.R. 872; 105 A.L.R. 580. The statute was not intended to relieve employers from liability for their own negligence which causes injury to the employees of independent contractors engaged in the performance of work for employers outside **[***12]** the scope of the latter's occupation."

Thus, HN8[] an owner, simply by acting as its own general contractor, contracting with independent contractors, does not thereby become a statutory employer unless the work performed by the independent contractor "is a part of [the owner's] trade, business or occupation".

Whether the work is such a part depends upon the facts and circumstances in each case, and for that reason the question does not readily yield to categorical or absolute standards. However, we believe that the most reliable test is the one quoted and applied by this Court in Shell Oil Co. v. Leftwich, 212 Va. 715, 722, 187 S.E.2d 162, 167 (1972).

HN9[] "[The] test is not one of whether the subcontractor's activity is useful, necessary, or even absolutely indispensable to the statutory employer's business, since, after all, this could be said of practically any repair, construction or transportation service. The test (except in cases where the work is obviously a subcontracted fraction of a main contract) is whether this indispensable activity is, in that business, *normally* carried on through employees rather than independent contractors.' (Emphasis supplied)." **[***13]** (Citation omitted). HN10[]

Frequency and regularity of performance are factors to be considered in determining whether work is "normally carried on through employees". *See generally,* 1A A. Larson, *The Law of Workmen's* **[*903]** *Compensation* § 49.12 (1973). Mere capacity to perform, standing alone, is not determinative. Holt v. Bowie, 343 F. Supp. 962, 965 (W.D. **[**327]** Va. 1972). *See also* Gaston v. Cooperative Farm Chemicals Association, 450 S.W.2d 174, 180-81 (Mo. 1970). Nor is performance which is a *de minimis* part of the total business operation. Sun Oil Company v. Lawrence, 213 Va. 596, 194 S.E.2d 687 (1973).

HN11[] In the manufacturing industry, construction work is typically outside the custom of the trade, and manufacturers who use their employees for such work generally do so only infrequently and irregularly. The courts have largely agreed that such manufacturers are not statutory employers of employees of independent contractors hired for such work. *See e.g., Ray v. Monsanto Company, 420 F.2d 915 (9th Cir. 1970)* (construction of new furnace); *King v. Palmer, 129 Conn. 636, 30 A.2d 549 (1943)* (installation of new **[***14]** heating system); *Hataway v. Proctor & Gamble Manufacturing Co., 195 Kan. 335, 405 P.2d 350 (1965)* (construction of plant addition); *Duplechin v. Pittsburgh Plate Glass Company, 265 So. 2d 787 (La. App. 1972)* (construction of new electrical generating facilities). On the other hand, where a manufacturer regularly does its own construction work with its own employees, a different result may be reached. In *Walker v. United States Gypsum Company, 270 F.2d 857 (4th Cir. 1959), cert. denied, 363 U.S. 805, 4 L. Ed. 2d 1148, 80 S. Ct. 1240 (1960)*, a manufacturer maintained a full-time construction division and, using its own employees, performed all of the construction work on plant additions, modifications, and modernizations and part of the work on new plant construction; there, the court held that the manufacturer was the statutory employer of an employee of a plumbing subcontractor working on construction of a new plant.

Here, the trial court, focusing upon frequency and regularity, summarized the facts and circumstances underlying its decision that Bassett was not plaintiff's statutory employer. Bassett was a manufacturer of furniture. It maintained **[***15]** no separate construction division. Only a negligible fraction of its 7000 employees was trained in construction skills. Carpenters and similar craftsmen were assigned to maintenance crews. Depending upon their "availability" and "what other jobs they were doing", they were sometimes used to construct all or part of minor projects and sometimes "to make modifications to tie in with" major projects.

While Bassett had spent $1,000,000 annually for the last four years on construction work, the evidence was that "for the past few years, **[*904]** we have been contracting most all of the work outside". Bassett had the capacity to build new conveyors, but "on a job of this size, it would always be contracted out", and "Bassett had never undertaken anything of this magnitude."

Moak v. Link-Belt Company, 229 So. 2d 395 (La. App. 1946), is a case factually analogous to the case at bar. There, a sugar manufacturer contracted with an independent contractor to install a major conveyor system in its refinery. Several injured employees of the independent contractor brought tort actions against their employer and the manufacturer. The question at issue was whether the work was **[***16]** a part of the manufacturer's business. While the court found that the manufacturer "has itself on other occasions done some of the same kind of work . . . [and] has in the past installed a conveyor system with its own labor, although not of this magnitude or complexity", the court concluded that installation of the new conveyor system was "not part of the operation of a refinery" and ruled that the tort actions were not barred by the workmen's compensation statute. *Id. at 412-13*.

We hold that the evidence was sufficient to support the trial court's finding that the work in which plaintiff was engaged at the time of his injury was not "a part of" the business normally carried on by Bassett through its own employees, that the trial court applied the correct principles of law, and that the trial court properly overruled Bassett's motion to dismiss.

B.

[2] Primary negligence on the part of Bassett is not at issue on appeal. Bassett **[**328]** contends that plaintiff was guilty of contributory negligence as a matter of law.

On the day before the accident, plaintiff helped "measure out" a place on the concrete ground floor where a steel "vertical" was to be positioned. **[***17]** It was Bassett's responsibility to cut a hole in the second floor "two feet long, one foot wide", large enough to admit the vertical but small enough to allow welders to "work around it." Plaintiff acknowledged that he knew that once a vertical was installed the small hole would have to be enlarged to accommodate the conveyor system but said that he "didn't know when" this particular hole would be cut and enlarged.

At 7:00 a.m. on the day of the accident, plaintiff arrived at work and "walked through" the area on the second floor where the conveyor was scheduled to descend to the ground floor and saw no hole. **[*905]** Plaintiff worked on the second floor level for about two hours, operating the "button" which started and stopped the conveyor. About 9:00 a.m., a chain became wedged in one of the turns of the conveyor system, and plaintiff and the other Industrial employees engaged in the installation work took a "break". After 20 to 30 minutes, the men returned to the job site and resumed their efforts to free the chain.

Industrial "had actually laid the floor opening out during the previous week". Designed to be seven feet wide and twenty-four feet long, the hole had **[***18]** been "fifty percent" to "two-thirds" completed some "thirty to forty-five minutes" before the accident. Bassett's carpenters had used a "skill saw" which made "quite a bit" of noise, but plaintiff, whose work post was 65 to 75 feet away, testified that he "didn't hear them working" because there "was a whole bunch of people working there that morning" and he "had no reason to be watching other people."

After the "break", plaintiff and two other Industrial employees began pulling on the chain (or a rope tied to the chain) while Curtis Griffin beat upon the chain with a "truck standard". Plaintiff was stationed at the rear nearest the hole, looking at the conveyor above his head and "concentrating on getting that chain pulled off." When the chain snapped free, plaintiff fell back, through the hole, to the floor below which was strewn with debris.

Griffin testified that he was about 15 feet from the hole facing the three men pulling on the chain; that he "knowed it was going to be a hole cut out, but I didn't know when" and "thought they would leave it like the first hole they cut. They cut a small hole in one"; and that he did not see the opening in the floor until he ran over **[***19]** to the edge, and "I had to stop real quick before I went through it myself."

Thomas Wilkins, who was immediately in front of plaintiff; said that he had been working in the area "all that morning"; that after the break, he did not see a hole, heard no warnings about it, and saw no signs, railings, or sawhorses; and that when the chain he was pulling broke loose, "I liked to have went through the hole myself."

Donald Jones, Industrial's project engineer, testified that Bassett had removed the "main flooring" sometime before the day of the accident but that the subflooring was still intact and people were walking on it when he arrived at work at 7:30 a.m.; that after the "break" he heard no warnings about a hole; and that although he was standing "less than ten" feet away, he did not see the hole because "general conditions did not permit such."

[*906] One of Bassett's witnesses, the plant "firewatch", testified that he had worked on the second floor that morning "the whole time" and was standing six steps from the conveyor when plaintiff fell but did not know that the hole had been cut.

Other than the carpenters involved, no witness for either party testified that he knew **[***20]** that the hole was open, and all witnesses agreed that no warnings had been spoken or posted and no protective barricades had been erected.

The evidence concerning visibility in the accident zone was conflicting. Bassett's witnesses said that there were three rows **[**329]** of fluorescent lamps in the ceiling above the hole and that all were burning. There was a window in the wall behind the hole and two windows beneath the hole on the ground floor. Griffin said, however, that the window behind the hole "didn't put out much light" because it "was covered with sawdust" and "the middle section had clear glass, and the other part around it was a safety glass, like wire-type stuff through it, and you couldn't see through it" and that there "wasn't much light back in that area". Wilkins said that the lighting conditions were "right dim" and the ceiling fixture "wasn't much light". Jones characterized the "general lighting conditions" as "spotty to very minimal."

The subflooring in which the hole was cut was described as "dark-colored" and "almost black". Asked to explain why he had not seen the hole, Jones said:

"A. Well, as I suggested earlier, the lighting conditions, **[***21]** the general overall surroundings, even with the main flooring being removed, offered a camouflage for the hole. In fact, the subflooring looked very much like the main flooring when it was removed. It was dark on the first floor. Again there were no indications of a lighted condition.

"Q. There was no light coming up through the hole from the first floor?

"A. None significant. It only became obvious to me that a hole was there when I saw the man disappear through it."

Bassett argues that "when a defect or dangerous condition is 'open and obvious' to a person who is exercising reasonable care for his own safety, then such person is guilty of contributory negligence as a matter of law if he is injured by such defect or dangerous condition."

Under this rule, contributory negligence becomes a question of law only when the stated premise is satisfied. If the only reasonable **[*907]** conclusion to be drawn from all of the evidence is that the defect would have been obvious to a reasonably prudent man

under the same or similar circumstances, the premise is satisfied. If, however, the evidence concerning the circumstances is conflicting, or if fairminded men could draw **[***22]** different inferences from uncontradicted circumstances, the premise remains an unanswered question of fact to be determined by the jury.

"We have held that *HN12*[] the presence or absence of negligence is a question for the jury, not only where there is a conflict in the evidence on the subject, but also where there is room for a difference of opinion among reasonable men as to the proper inference which might fairly be drawn from unconflicting evidence. Diverse inferences may reasonably be drawn from undisputed facts. Whenever the facts proved without dispute require the exercise of reason and judgment, so that one reasonable mind may infer that a controlling fact exists and another that it does not exist, there is a question for the jury.

. . .

"In Virginia this court has held in innumerable cases that *HN13*[] whether one has been guilty of negligence is a mixed question of law and fact. Where there is no controversy in regard to the facts or the inferences that fairly may be drawn from them, the question of negligence is one of law. On the other hand, where the facts are in dispute or where diverse inferences reasonably might be drawn by men of reasonable minds, then it is a jury **[***23]** question. This is, of course, also true as to contributory negligence." (Citation omitted). *Acme Markets v. Remschel, 181 Va. 171, 178-79, 24 S.E.2d 430, 434 (1943)*.

Bassett argues that a reasonably prudent worker, familiar with the design, function, and planned location of the conveyor system, would have anticipated the possibility that a hole existed and taken care commensurate with the danger. It is true that plaintiff anticipated that a small hole would be cut to admit the vertical and later enlarged to accommodate the conveyor, but he did not know when, and only two hours before his accident, he had walked through **[**330]** the area and seen that the hole had not yet been cut. Even so, Bassett says, plaintiff should have seen the carpenters at work, heard the noise of their electric saw, and been forewarned that the hole was being cut. But plaintiff, involved in the performance of his own duties, said that he **[*908]** had not heard the carpenters working and had no reason to be watching other workers.

Bassett then reasons that if plaintiff was working close enough to the hole to fall through it, he was close enough to see it before he fell. At the time **[***24]** of his fall, plaintiff, with his back to an unknown danger, was looking at the conveyor above his head, not at the floor, and was "concentrating" on freeing the chain. Even if he had not been so preoccupied and had made a deliberate effort to look in the area behind him, the question remains whether the hole was "open and obvious" to a reasonably prudent man. There were no warning or protective devices indicating the existence of a hole. While there was some natural and artificial light in the area, there was evidence to show that it was insufficient to illuminate the danger. The floor surrounding the hole was "dark-colored". "It was dark on the first floor" and there was no "significant" light passing from the lower level through the hole. It is reasonable to believe, as an eyewitness with long engineering experience testified, that such surroundings and lighting conditions created a "camouflage for the hole" which "only became obvious" when plaintiff fell. At the very time the carpenters were cutting the hole, several men who had been working at a spot nearer the hole than plaintiff had not seen the danger, and two men performing the same work as plaintiff almost suffered **[***25]** the same fate.

The testimony concerning the circumstances was conflicting and diverse inferences were reasonably deducible from uncontradicted circumstances. We hold, therefore, that the trial court properly submitted the question of contributory negligence to the jury and that the evidence was sufficient to support the jury's finding.

C.

Three additional questions are raised by Bassett's assignments of error. One is an evidentiary question related to Bassett's primary negligence. Since the jury's finding of primary negligence is not challenged on appeal, it is unnecessary to consider this question.

[3] The second question concerns the admissibility of the testimony of certain witnesses present in the building when the accident occurred. Bassett argues that "[whether] or not Jones, Wilkins and Griffin saw the hole is an irrelevant, collateral matter." We do not agree.

Whether the hole was "open and obvious" to a reasonable man was, as we have said, a factual question subsidiary to the ultimate question **[*909]** of contributory negligence. The fact that the hole was not seen by the plaintiff does not, of course, resolve that factual question. Nor does the **[***26]** fact that it was

not seen by another man or by several other men under the same or similar circumstances. However, while such facts, standing alone, were insufficient to resolve the question, they were sufficient to raise an inference that conditions were such that the danger was not open and obvious to a reasonable man similarly situated. That inference constituted some evidence relevant to the subsidiary factual question and was entitled to such weight as the jury felt it deserved.

[4] The third question arises from a ruling of the trial court during the course of summation. On rebuttal, plaintiff supplemented his opening argument on damages. Bassett objected on the ground that it had not argued damages. We find from the record that Bassett did allude to the plaintiff "as a man who is in serious circumstances" and to the fact that the plaintiff "has had his spinal cord injured." We are of opinion that the trial court, in the exercise of its "supervisory control over the argument of counsel", did not abuse its "broad discretion". *Cohen v. Power, 183 Va. 258, 262, 32 S.E.2d 64, 65 (1944)*; *accord, Jordan v. Taylor, 209 Va. 43, 51, 161 S.E.2d 790, 795 (1968)*. **[***27]**

[331]** D.

[5] We turn now to the question concerning remittitur, the sole issue raised by plaintiff's assignment of error.

Plaintiff claimed damages in the sum of $2,500,000. Medical expenses accumulated at the time of trial were $20,382.01. While a doctor testified that plaintiff will be more susceptible to infection in "the kidney system, and obviously is going to require more in the way of medical care than an uninjured individual might", he was unable to give any estimate of the cost, and plaintiff offered no evidence by which future medical expenses could be measured. Based upon a wage history of $7000 per year and a work expectancy of 32 years, the present value of lost wages was fixed at $146,398.32. The jury returned a verdict of $1,000,000. The trial court ordered a remittitur of $450,000 and placed plaintiff on terms. Invoking his statutory privilege, plaintiff accepted judgment in the sum of $550,000 under protest and pursued his appeal.

At the time of his injury, plaintiff was 33 years of age, married, and the father of two daughters, ages 10 and 11. After dropping out of school in the tenth grade, he had been employed in factory jobs and **[*910]** **[***28]** construction work. Except for a bleeding ulcer, he had enjoyed good health and actively engaged in outdoor activities. The "final clinical impression" recorded at Duke University Medical Center to which plaintiff had been transferred by the receiving hospital showed: "1. Paraplegia secondary to thoracic spine fractures (T4 and T5). 2. Cervical spine compression fractures. 3. Dislocation of proximal interphalangeal joint, third digit, left hand. 4. Bilateral pneumonia, resolving." The doctor testified that "when we say paraplegia we simply mean the person had paralysis from the waist down, not able to move or control that part of his body."

As a result of his paralysis, plaintiff has no control over his bladder and little control over his bowels and is embarrassed by unexpected "accidents". He has lost the power to perform the sexual function. His legs, which are smaller than before the accident and will continue to deteriorate, are subject to muscle spasms which cause "trembling and jerking". Largely confined to his bed, wheelchair, or car, plaintiff suffers recurring "bed sores".

Plaintiff's wife, who gave up her employment after the accident, has returned to work. **[***29]** She testified that while she is at work and the children are in school, plaintiff "tries to help hisself as much as he can" but on two occasions was compelled to call her home for assistance. Although plaintiff has accepted instruction in driving a car equipped with hand controls and, as his wife said, "has hopes of walking again" and "doesn't believe" the doctors, his condition is classified as total and permanent disability. Since his fall, plaintiff has suffered continuous pain under his "right shoulder blade" which he described as "like a knife sticking in my back." This pain, the doctor testified, will "be permanent unless you cut the nerve through which he feels the nerve sensations."

Plaintiff argues that, when a trial court orders remittitur and puts the plaintiff on terms, it is the appellate function to decide whether the jury's verdict was "excessive as a matter of law." Bassett says that the appellate function is to determine whether the order was an "abuse of discretion" on the part of the trial court. ***HN14***[↑]

At common law, the power to order remittitur lay within the sound discretion of the trial court. *Ches. & O. Ry. Co. v. Arrington, 126 Va. 194, 217, 101 [***30] S.E. 415, 423 (1919)*. This rule has not been repealed or altered by the General Assembly. To the contrary, the legislature has tacitly recognized and implicitly ratified it. Code § 8-224 (Repl. Vol. 1957) provides that ***HN15***[↑] "the court before which a trial by jury is had, **[*911]** may grant a new trial . . . where the damages awarded are too small [or] where they are excessive." Under Code § 8-350:

HN16[] "In any action at law in which the trial court shall require a plaintiff to remit a part of his recovery, as ascertained by the verdict of a jury, or else submit to a new **[**332]** trial, such plaintiff may remit and accept judgment of the court thereon for the reduced sum under protest . . . [and pursue an appeal]."

We considered these statutes in Smithey v. Sinclair Refining Co., 203 Va. 142, 122 S.E.2d 872 (1961). There, the plaintiff contended that, in personal injury cases where there is no standard by which damages for pain, suffering, and mental anguish may be measured, a trial court has no power to order remittitur. Rejecting that argument and affirming an order to remit two-thirds of a jury's verdict, we said:

HN17[] "In personal injury cases, where the action merely **[***31]** sounds in damages and where there is no rule for measuring such damages, the amount to be awarded is left largely to the discretion of the jury. . . .

. . .

"But this is not to say that the verdict of a jury is not subject to the control of the courts. A healthy administration of justice requires that in a proper case, the courts must take action to correct what plainly appears to be an unfair verdict. This authority is an ancient and accepted part of the common law. . . .

. . .

HN18[] "The law has wisely placed in the hands of the trial judge the power to exercise his sound discretion in supervising the verdicts of juries to prevent miscarriages of justice. The law intends that this power should be exercised, and that the judge should be more than a mere referee between the litigating parties. *The ultimate test, in a case of this nature, is whether or not the discretion has been abused."* (Emphasis added). 203 Va. at 145-46, 148, 122 S.E.2d at 875, 877.

Accord, Clatterbuck v. Miller, 215 Va. 359, 209 S.E.2d 904 (1974); National Cab v. Thompson, 208 Va. 731, 160 S.E.2d 769 (1968).

HN19[] In determining whether a trial judge has abused the discretion vouchsafed **[***32]** to him by the statutes and the common law we must examine the grounds upon which he based his order of remittitur. " **[*912]** [The] record must show the grounds relied on in support of such action, otherwise it cannot be upheld." Hoffman v. Shartle, 113 Va. 262, 264, 74 S.E. 171, 172 (1912). Absent a statement of the grounds, we must assume that the trial judge simply disagreed with the jury's damage evaluation and arbitrarily substituted his opinion for theirs. In such case, entry of the order would clearly constitute an abuse of discretion.

On the other hand, HN20[] when it appears from the record before us that the trial judge made a finding that the verdict was plainly excessive * and remittitur should be ordered and that, in reaching his conclusion, he considered factors in evidence relevant to a reasoned evaluation of the damages incurred and to be incurred, his order will not be disturbed on appeal if the recovery after remittitur bears a reasonable relation to the damages disclosed by the evidence. "Reasonableness" in this context is the standard by which the exercise of discretion must be tested in this Court.

[*33]** By letter opinion, the trial judge found that the jury's verdict "is so excessive as to shock the conscience of this Court" and that it "creates the impression that the jury misconceived or misunderstood the facts or the law, and is not the product of a fair and impartial decision." The opinion expressly recited the "background and explanation" for the order of remittitur. From this recitation, it appears that the trial judge considered: plaintiff's **[**333]** age, life expectancy, work expectancy, work experience, wage history, education, and family obligations; plaintiff's loss of past and future earnings; the cost of medical attention; the nature and extent of plaintiff's "catastrophic and permanent" injuries and the curtailment of his normal activities; the nature and extent of his pain, suffering, humiliation, and embarrassment; and "the future cost to maintain and provide for the plaintiff and any special treatment that he may need."

Having considered these circumstances, the trial judge observed that, since plaintiff adduced no evidence by which damages for future medical expense could be

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* For the definition of that term, we have repeatedly relied on language such as that in Ches. & O. Ry. Co. v. Arrington, supra. There, we said:

"[It] is an ancient and accepted doctrine of the common law, that HN21[] judges have the power and are clearly charged with the duty of setting aside verdicts where the damages are either so excessive or so small as to shock the conscience and to create the impression that the jury has been influenced by passion or prejudice, or has in some was misconceived or misinterpreted the facts or the law which should guide them to a just conclusion." (Citation omitted).

ascertained, the jury's verdict must be construed as an award of $166,780.31 for **[***34]** "economic" damages and an **[*913]** award of $833,219.67 for "non-economic" damages. Applying the language of this Court, he found that the latter was excessive and ordered the total damage award reduced to $550,000. While, without benefit of personal presence at trial, we might feel that an award for non-economic damages higher than that determined by the trial court would be sustainable, we cannot say that the trial court erred in finding the jury's award excessive or that the recovery after remittitur bears no reasonable relation to the damages disclosed by the evidence.

In reaching our conclusion, we reaffirm what was said in *American Oil Co. v. Nicholas, 156 Va. 1, 12, 157 S.E. 754, 758 (1931)*:

HN22[] "The trial judge is more than a mere umpire in the trial of a common law action. Whether or not the sum awarded by the jury is inadequate or excessive is a legal question addressed to the sound discretion of the court, to exercise his supervisory power over verdicts to prevent gross miscarriage of justice. There are many incidents which occur in the trial of a common law case which a trial judge observes but which cannot be reproduced in the cold printed page. When, **[***35]** therefore, the trial court has made his ruling on such questions it will not be disturbed by this court unless it appears that there has been an abuse of his legal discretion."

* * *

We have carefully considered all issues framed under the two writs of error, and we find no reversible error below. The judgment is affirmed.

End of Document

EXHIBIT “X”

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 CERTIFIED COPY

5 JOYCE SEKERA, an Individual,

6 Plaintiff,

7 vs. Case No. A-18-772761-C Dept. 25

8 VENETIAN CASINO RESORT, LLC,
d/b/a THE VENETIAN LAS VEGAS,
9 a Nevada Limited Liability
Company; LAS VEGAS SANDS, LLC
10 d/b/a THE VENETIAN LAS VEGAS,
a Nevada Limited Liability
11 Company; YET UNKNOWN EMPLOYEE;
DOES I through X, inclusive,

12

Defendants.

13 _____/

14

15 DEPOSITION OF JOSEPH LARSON

16 Taken at the Galliher Law Firm
1850 East Sahara Avenue, Suite 107
17 Las Vegas, Nevada 89104

18 On Thursday, October 11, 2018
At 2:15 p.m.

19

20

21

22

23

24

Reported By: PAULINE C. MAY
25 CCR 286, RPR

1 phrasing? On VEN006, "PHI, outside vendor."
2 Because she was in line with, like, a temp
3 worker or somebody who works at the Venetian Palazzo,
4 but is not employed by the Venetian Palazzo, we would
5 ask them if they had worker's compensation only
6 because that would require them to report to their
7 manager and that would require them to fill out the
8 worker's compensation paperwork.
9 And that -- mostly we saw temp workers for
10 injuries, but that's for third-party stuff like this.
11 And they had their own worker's comp, but most people
12 aren't aware of how to engage that conversation with
13 the manager or how to start the worker's compensation
14 process.
15 So that's just the normal thing we ask them,
16 anybody that's not employed by the Venetian Palazzo.
17 Only because, like I said, they have to report to the
18 manager and let them know they were injured.
19 Q That brings up another question. Is it
20 unusual to take someone from, let's say, the public
21 area back to the medical room? Just a normal guest?
22 A I wouldn't take a guest back to the medical
23 room.
24 Q Why did you on this occasion?
25 A Because she was an outside vendor. She

1 worked at the property, but wasn't exactly a team
2 member with us.
3 Those employees on our property do have
4 access to our back-of-house areas, so it's not against
5 anything for me to bring her back to a secure area
6 like that. And in the case of a guest, if they ask
7 for more privacy, there are other areas near the
8 casino floor that we could assess them that isn't the
9 medical room.
10 Q Okay. Back to VEN009, Exhibit 1, and it
11 indicates, "She refused to complete a voluntary
12 statement for the incident."
13 Can you explain what that indicates or
14 reads?
15 A Sure.
16 So our policy for reporting injuries to
17 outside vendors or third-party employees on property
18 was that they would fill out the medical release,
19 which is VEN017.
20 They would fill out the medical release and
21 they were given the option of completing a voluntary
22 statement for their employer. But, like, it's implied
23 it's a voluntary statement. If they don't want to
24 complete any paperwork for their injury, they don't
25 have to.

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Steven D. Grierson
CLERK OF THE COURT

ORD
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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual; Plaintiff, v. VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, a Nevada Limited Liability Company; YET UNKNOWN EMPLOYEE; DOES I through X, inclusive, Defendants.	CASE NO.: A-18-772761-C DEPT. NO.: XXV **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED ON STATUTORY IMMUNITY UNDER THE NEVADA INDUSTRIAL INSURANCE ACT**

The above matter having come before the court for hearing on August 13, 2019, on DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRCP 56(c) BASED ON STATUTORY IMMUNITY UNDER THE NEVADA INDUSTRIAL INSURANCE ACT, filed by Defendants VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC (collectively "VENETIAN"), by and through its counsel of record, Royal & Miles LLP. Plaintiff JOYCE SEKERA ("MS. SEKERA") filed an opposition by and through her counsel of record The Galliher Law Firm to which VENETIAN responded by way of reply. The parties were represented as follows: Michael A. Royal, Esq., of Royal & Miles LLP, appearing on behalf of VENETIAN

SEP 03 2019

and Jeffrey L. Galliher, Esq., of The Galliher Law Firm appearing on behalf Plaintiff MS. SEKERA.

RELEVANT PROCEDURAL HISTORY

1. On April 12, 2018, MS. SEKERA filed a Complaint against VENETIAN to recover for injuries related to the subject incident occurring on VENETIAN property.

2. On July 9, 2019, VENETIAN filed a motion for summary judgment, asserting that this Court lacks jurisdiction to adjudicate this matter under the Nevada Industrial Insurance Act ("NIIA"), which provides VENETIAN with statutory immunity under the given circumstances.

3. In support of its motion for summary judgment, VENETIAN generally set forth the following arguments:

a. That MS. SEKERA's work for her employer, Brand Vegas, LLC ("Brand Vegas") was "a subcontracted fraction of a main contract" as contemplated by the parenthetical language of *Meers v. Haughton Elevator*, 701 P.2d 1006, 1007 (Nev. 1985) (asserting that, as discussed under Findings of Fact, each entertainment agreement between VENETIAN and an entertainment company was the "main contract" for each respectively associated *Ticket Broker Agreement* between VENETIAN and Brand Vegas, and that the *Ticket Broker Agreement* was a "subcontract");

b. That MS. SEKERA's work for Brand Vegas meets the "normal work test" of *Meers*, supra, as MS. SEKERA was engaged in work "normally carried on through [VENETIAN] employees rather than independent contractors" (asserting that, as discussed under Findings of Fact, VENETIAN employees personnel for the purpose of selling tickets to VENETIAN shows and events as well as to non-VENETIAN shows and events throughout the Las Vegas area, just as Brand Vegas, and that the two business entities not only enjoyed a mutually beneficial contractual relationship, but that they were likewise competitors in the ticket selling business);

c. That, as part of the *Meers* analysis, VENETIAN offered evidence to support the "control test" found in *Tucker v. Action Equip. & Scaffold Co.*, 113 Nev. 1349, 951 P.2d 1027, 1032 (Nev. 1997) (VENETIAN, as discussed under Findings of Fact, citing to certain privileges provided to MS. SEKERA by VENETIAN, such as issuance of an employee parking area pass and identification badge);

d. That VENETIAN and Brand Vegas are in the same trade, business, profession or occupation and that, accordingly, NRS 616B.601(1) does not apply to bar VENETIAN from asserting statutory immunity under the circumstances; and

e. That the *Ticket Broker Agreement* was tantamount to a joint venture, with profits shared in proportion to capital invested, and shared losses in opportunity cost as contemplated in *Hook v. Giuricich*, 108 Nev. 29, 823 P.2d 294 (1992), *Haertel v. Sonshine Carpet Co.*, 104 Nev. 331, 335, 757 P.2d 364, 366 (1988), *Bruttomesso v. Las Vegas Met. Police*, 95 Nev. 151, 154 (1979);*Radaker v. Scott*, 109 Nev. 653, 658 (1993).

4. In opposition to VENETIAN's motion, MS. SEKERA argued, among other things, that the *Ticket Broker Agreement* is not a subcontract, that VENETIAN did not employ personnel to work at the Brand Vegas kiosks, that Brand Vegas paid MS. SEKERA directly, withheld payroll taxes and provided workers compensation insurance, and that VENETIAN and Brand Vegas are not in the same trade, business, profession or occupation as contemplated by NRS 616B.603(1).

5. A hearing on the motion for summary judgment was held on August 13, 2019.

Upon full review of the motion and all related responses thereto, following oral argument, having been fully advised on the facts and law, the Court finds, concludes and orders as follows:

FINDINGS OF FACT

1. At all times pertinent to the issues at hand, VENETIAN was and is in the business of gaming, hospitality and entertainment, operating as Venetian Resort Hotel Casino in Las Vegas, Nevada.

2. VENETIAN has multiple venues on its property for live shows and entertainment events for guests.

3. In the regular course of business, VENETIAN entered into agreements with entertainment companies to perform live shows and events at certain designated VENETIAN venues.

4. VENETIAN has a Box Office Department staffed by employees dedicated to the selling of tickets to guests for the purpose of attending VENETIAN shows and events held at VENETIAN venues.

5. VENETIAN has a Concierge Desk Department which likewise sells tickets to guests for VENETIAN shows and events held at VENETIAN venues.

6. In addition to selling tickets to VENETIAN related shows and events, VENETIAN employees likewise sell tickets to other shows in the Las Vegas area at venues not owned, operated or controlled by VENETIAN.

7. Brand Vegas is engaged in the Las Vegas entertainment business as a ticket brokering company which sells tickets to Las Vegas area shows, events and tours.

8. In or about 2015, Brand Vegas began entering into *Ticket Broker Agreements* with VENETIAN for the purpose of selling tickets to VENETIAN shows and events.

9. Pursuant to the agreement between VENETIAN and Brand Vegas, for each separate agreement executed between VENETIAN and an entertainment entity for the purpose of producing a show at a VENETIAN venue, a *Ticket Broker Agreement* specific to that show was executed between VENETIAN and Brand Vegas.

10. Pursuant to the *Ticket Broker Agreement*, VENETIAN agreed to allow Brand Vegas to sell tickets to VENETIAN shows and events in exchange for which VENETIAN agreed to pay commissions to Brand Vegas for each ticket sold to the subject VENETIAN event.

11. Brand Vegas entered into a separate agreement with Adventures International, LLC, to sublease three kiosks located in the Grand Canal Shops, a mall area located within the VENETIAN property which is not owned, operated or controlled by VENETIAN.

12. In late 2015, Brand Vegas hired employees to work at the Grand Canal Shops kiosks for the purpose of selling tickets to Las Vegas events, including events and shows held at the VENETIAN property under the various separate *Ticket Broker Agreements*, which continued through 2016.

13. The Grand Canal Shops property is a landlocked area which can only be accessed through VENETIAN property.

14. In late December 2015, Brand Vegas hired MS. SEKERA to work as a kiosk employee to sell tickets to Las Vegas area shows and events.

15. In the normal course of her employment, MS. SEKERA drove her vehicle to work and parked in the VENETIAN self-parking garage set aside for employees of VENETIAN.

16. MS. SEKERA was issued a parking pass by VENETIAN to park on its property in the area designated for employees of VENETIAN and the Grand Canal Shops.

17. MS. SEKERA was issued an identification badge by VENETIAN, following a background investigation, which provided her with special access to areas of VENETIAN property not normally accessible to guests.

18. MS. SEKERA was required to come upon VENETIAN property daily in the normal course of her employment for Brand Vegas.

19. MS. SEKERA was required to adhere to an agreed upon code of conduct between VENETIAN and Brand Vegas pursuant to the *Ticket Broker Agreement.*

20. MS. SEKERA sold tickets to VENETIAN shows and events in the normal course of her employment for Brand Vegas for which she received commissions.

21. MS. SEKERA regularly communicated with VENETIAN Box Office employees about shows and events related to certain ticket sales by telephone and email, sometimes directly and other times through her supervisor.

22. VENETIAN and Brand Vegas both offered ticket sales services to guests to the same shows and events on VENETIAN property along with other shows the Las Vegas area wholly unaffiliated with VENETIAN.

23. In the course of her daily routine as a kiosk employee for Brand Vegas, MS. SEKERA routinely took breaks and went to the VENETIAN casino floor area to purchase food items, smoke, and/or use the restroom.

24. On November 4, 2016, MS. SEKERA slipped and fell in the Grand Lux rotunda area of the VENETIAN casino floor in the course and scope of her employment for Brand Vegas.

25. Following the fall of MS. SEKERA on November 4, 2016, she was escorted to the VENETIAN back house area by the responding security/EMT, which is not normal protocol in guest related incidents, based on her employment with Brand Vegas.

26. MS. SEKERA claimed to have sustained injuries in the November 4, 2016 fall and filed a claim for workers compensation which was accepted.

27. MS. SEKERA has received and continues to receive benefits through her workers compensation claim related to the November 4, 2016 incident.

CONCLUSIONS OF LAW

1. The Court considered facts and evidence outside the pleadings; therefore, it has evaluated the present issues as a motion for summary judgment under NRCP 56(c).

2. There are no genuine issues of material fact in dispute that would preclude the Court from ruling on the VENETIAN motion for summary judgment.

3. The contractual relationship between VENETIAN and Brand Vegas does not qualify as a subcontract; therefore, MS. SEKERA's work related for Brand Vegas on November 4,

2016 at the time of the subject fall did not constitute "a subcontracted fraction of a main contract" as contemplated by the parenthetical language of *Meers v. Haughton Elevator*, 701 P.2d 1006, 1007 (Nev. 1985).

4. Work performed by MS. SEKERA for Brand Vegas does not meet the criteria of the "normal work test" as set forth in *Meers*, supra.

5. VENETIAN requirements of MS. SEKERA to obtain permission to come upon its property as a Brand Vegas employee by issuing a parking pass and badge identification, providing her with more access to the property than guests, and requiring her to follow a code of conduct was not persuasive under the "control test" of *Tucker*, supra.

6. VENETIAN and Brand Vegas are not in the same trade, business, profession or occupation as contemplated by NRS 616B.601(1); therefore, VENETIAN cannot be a statutory employer.

7. The *Ticket Broker Agreement* did not meet the requirements of a joint venture under *Hook*, supra and related cases.

8. Under all scenarios presented by VENETIAN in its motion for summary judgment the Court finds that VENETIAN is not a statutory employer immune from third party liability under NRS 616.560.

9. The Court's determination on this issue final, with prejudice, and will not be revisited.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, for the reasons outlined herein above, Defendant VENETIAN's Motion for Summary Judgment is DENIED, with prejudice.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that VENETIAN's motion for a stay of proceedings pending appellate review of this matter is DENIED.

DATED this 9th day of September, 2019.

DISTRICT COURT JUDGE

Submitted by:

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2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6
JOYCE SEKERA,)
7)
Plaintiff,)
8) Case No. A-18-772761-C
vs.) Dept. No. XXV
9)
VENETIAN CASINO RESORT LLC,)
10)
Defendant.)
11
12 Before the Honorable KATHLEEN E. DELANEY
Tuesday, August 13, 2019, 9:00 A.M.
13 Reporter's Transcript of Proceedings
14 Defendant's Motion for Summary Judgment Pursuant to NRCP 56(c)
Based on Statutory Immunity Under the Nevada Industrial
15 Insurance Act
16
17
APPEARANCES:
18
For the Plaintiff: KEITH E. GALLIHER, JR., ESQ.
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21
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22 Attorney at Law
23
24
REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122
25

1 Las Vegas, Clark County, Nevada
2 Tuesday, August 13, 2019, 9:00 A.M.
3 P R O C E E D I N G S
4 * * * * *
5 THE COURT: Page 3, Sekera versus Venetian
6 Casino and Resort, please.
7 MR. ROYAL: Good morning, Your Honor. Mike
8 Royal for defendants.
9 THE COURT: Good morning.
10 MR. GALLIHER: Good morning, Your Honor. Jeff
11 Galliher and Kathleen Gallagher for the plaintiff.
12 THE COURT: I always want to know how to
13 pronounce your name. I know that there is missing a letter,
14 that's all. I think that's how it works.
15 Good to see you all.
16 This is on today for Defendant's Motion for
17 Summary Judgment Pursuant to, as it's styled, 56(c), based on
18 Statutory Immunity under Nevada Industrial Insurance Act.
19 Very thoroughly briefed, always appreciative of
20 that.
21 And we certainly do know that the -- the act can
22 be preemptive of certain Court claims and other matters. And I
23 think it's obviously something that we always want to make sure
24 that we are fully viewing, reviewing, and making the right call
25 on that.

1 So I want to make sure I give also the
2 opportunity, besides the very thorough briefing, to highlight
3 any oral arguments that the counsel may have for today's
4 purposes.
5 I'll start with Mr. Royal.
6 MR. ROYAL: Thank you, Your Honor.
7 This action or at least the motion is based upon
8 a contract between Venetian and Brand Vegas, plaintiff's
9 employer, as it relates to brokering and selling of tickets
10 related to Venetian events and shows.
11 There was a ticket brokering agreement that is
12 entered into for each show that the Venetian has on property.
13 And so if the Venetian, for example, has an
14 agreement with Human Nature, once that -- once that is in place
15 and Venetian has -- starts selling tickets through its box
16 office, it's concierge desk and so forth, then, in about 2014
17 or '15, it entered into an agreement with Brand Vegas where
18 they could then sell tickets to whom nature.
19 And for every single different entertainment
20 contract that Venetian had, once that contract was in place
21 with an entertainer, then a separate ticket brokering agreement
22 would be entered into between Venetian and Brand Vegas to sell
23 tickets for that particular event.
24 The plaintiff was working in a kiosk -- or
25 kiosks located in the Grand Canal Shops connected to the

1 Las Vegas -- or rather the Venetian property. She would get
2 commissioners on sales and so forth for all the tickets that
3 she would sell, including Venetian-related events.
4 In order for the plaintiff to get to her work
5 each day she had to come on to Venetian property. She was
6 given permission, an ID badge. There was a background check
7 and so forth so we knew who she was. She had access to the
8 back, the house areas, and had to adhere to a certain code of
9 conduct while she was on our property.
10 She used the Venetian facilities every day. She
11 walked through the area of this particular fall several times a
12 day for nearly a year. She was very familiar with the
13 property. She was very connected to the property and its
14 business as it relates to at least the sale of tickets.
15 And so first our -- our first argument then for
16 summary judgment relates to the contracts themselves. And it
17 relates to the parenthetical language under the Meers case,
18 which provides the normal work task. In the parenthetical it
19 says: Except in cases where the work, or is obviously a
20 subcontracted fraction of the main contract.
21 I don't know that I said that exactly right, but
22 you know.
23 In other words, the plaintiff was injured in the
24 course and scope of her employment on November 4th, 2016.
25 That's -- that's undisputed. She made a workers comp claim.

1 It's been accepted. She's been receiving benefits and so forth
2 since that time, she still is to my understanding.
3 And so while she is -- while she's engaged in
4 that employment, we have provided the Court with her sales for
5 the year 2015 to '16, just to demonstrate that she was
6 receiving commissions on sales for tickets and so forth that
7 she sold throughout the Las Vegas area, including many from the
8 Venetian.
9 If the plaintiff, for example, had an issue with
10 respect to a particular ticket, a sale, or some kind of
11 question, there was a mechanism for them to contact and make
12 communication with the box office area.
13 And so our first argument is that we're
14 connected contracturally to the plaintiff. We had the
15 entertainment agreement. We have a subcontract with the --
16 with the ticket broker agreement. She was in the course and
17 scope of her employment, which our argument is it falls within
18 the definition of a subcontracted fraction of a main contract;
19 and, therefore, based on that parenthetical language, then this
20 would fall within the -- within the exclusivity of the Nevada
21 Industrial Insurance Act.
22 We've provided the Court with -- we've provided
23 the Court with an example or an unpublished opinion from the
24 Supreme Court in the -- I'm sorry, the Brooks Handler
25 (phonetic) case, where the Court can see at least how the

1 Nevada Supreme Court reviews these particular kind of incidents
2 and the looking at contracts, looking for a connection.
3 We -- it's our contention that we have that
4 connection here. And that should be dispositive of this
5 particular issue, that Venetian stands in the shoes of Brand
6 Vegas, which is plaintiff's direct employer, and was provided
7 workers comp insurance and made sure that she had coverage,
8 which she does.
9 The second part of the analysis, if the Court
10 continues, is the normal work test.
11 And under Meers, just so I read that right, it's
12 -- excuse me. It's whether the -- whether the activity
13 performed by the employee in that business is normally carried
14 on through an employee, rather than independent contractors.
15 Now Brand Vegas is an independent contractor.
16 THE COURT: Right.
17 MR. ROYAL: We entered into this agreement with
18 them in 2015.
19 The Venetian has been in business since 1999.
20 We've been putting on shows since then. We have our own box
21 office department. We have our own box office employees. We
22 have our own concierge desk and employees. They do all the
23 same things.
24 If we didn't have a contract with Brand Vegas,
25 Venetian would still be selling tickets to guests that come

1 upon this property.
2 One of the -- one of the cases that we cited
3 from the -- from the, I believe it was, the Ninth Circuit, the
4 Quick case, it looked at the circumstances in that particular
5 case and in its analysis noted that the two entities that were
6 being compared as to -- and considered whether they're in the
7 same trade or so forth, which I'll get into in more specifics
8 in just a minute, but that they were in competition for one
9 another.
10 You know, we pointed out in our brief that when
11 someone comes on to the property of Venetian and they -- and
12 they want to attend a show, whether it's Venetian or whether
13 it's any other show in Las Vegas, they can get their tickets at
14 the concierge desk from the Venetian, they can get their
15 tickets from the box office at the Venetian, or they can get
16 their ticket at the kiosk located at the Grand Canal Shops,
17 where the plaintiff was working.
18 So there's direct competition between -- even
19 though they're working together and they have this agreement,
20 they still and -- and there's mutual benefit from this
21 agreement -- they still have an interest in making that sale to
22 the person who walks upon the property, who wants --
23 And so one of the things we pointed out is not
24 only does the plaintiff, through these brokering agreements, is
25 her company allowed to sell Venetian tickets, or tickets to

1 Venetian events, but the Venetian concierge, we have our own
2 program, but we sell tickets, just like Brand Vegas, to every
3 other event in Las Vegas.
4 So we have employees who are doing exactly the
5 same thing that the plaintiff is doing or was doing when she
6 was employed with Brand Vegas.
7 This is the very definition of work that is
8 normally carried on through employees rather than independent
9 contractors because this is the work that Venetian was doing
10 before it ever entered into an agreement with Brand Vegas.
11 Another point, Your Honor, I wanted to -- is --
12 THE COURT: Can I just interrupt, Mr. Royal,
13 because I -- I mean, I -- maybe it's wrong to think of it this
14 way with you since I am thinking of it this way I want to share
15 it with you.
16 So I don't -- I know you're trying to make this
17 connection to what is essentially a joint venture between these
18 parties based on talking about how they shared the profits and
19 the other things, but a joint venture is a very, very specific
20 thing.
21 By your theory then are we trying to suggest
22 that every one of our casino properties or, you know, anyplace,
23 like, a shopping mall or something else, where somebody might,
24 you know, share profits amongst each other or, I guess, to
25 benefit each other because there's a lessee or a lessor who is

1 using the space but then they might do something related to
2 what that is, but somehow that makes everybody a joint venture?
3 I mean, it seems like a slippery slop.
4 I guess what I'm trying to get at is if your
5 argument is correct, that the way these entities existed
6 together is somehow that type of joint venture where because
7 one is enrolled for, you know, again workers comp and the other
8 should get the benefit of it, such as our Supreme Court case
9 law would tell us, it seems like that we should have that
10 scenario everywhere.
11 MR. ROYAL: Well, if they meet the definition of
12 a joint venture, then under the Hook case that would be the
13 case, Your Honor, but that's not -- I haven't got to the joint
14 venture argument yet. I'm just arguing the normal -- right now
15 I'm -- the normal work task. So we're not even talking about a
16 joint venture.
17 THE COURT: Okay. Well, I mean, I guess maybe I
18 jumped ahead of you there. I apologize. Like you said, I
19 don't think there was a largely any dispute that she was in the
20 course and scope of her employment and that she's filed a
21 workers comp claim with her employer.
22 The question is: Do you get to have the benefit
23 of the immunity that the employer would have?
24 And obviously, in the opposition, they pointed
25 out a number of scenarios where you could try to argue that you

1 would have that relationship to get the benefit of that
2 immunity, but I -- like I said, I'm not the one -- that's okay.
3 MR. ROYAL: Okay. Well, Your Honor, of course,
4 the joint -- the joint venture was one argument, the
5 subcontracted fraction of a main contract is another argument,
6 Your Honor.
7 THE COURT: Right.
8 MR. ROYAL: And then the normal work test is
9 part of the analysis here.
10 I don't think that there's any question that
11 what she -- there's nothing unique about what the plaintiff was
12 doing in selling the tickets.
13 THE COURT: I guess my point is: Is this not
14 just a vender utilizing a rental space and not those other
15 forms of contractural relationships that you are trying to
16 identify?
17 MR. ROYAL: Well, their -- their relationship is
18 that -- that we pay them to provide a service for the Venetian.
19 And the service is that they represent the Venetian, two people
20 who come to them in that kiosk and say, hey, we'd like to see a
21 show. Can you tell us about Human Nature? Can you tell us
22 about this show? They represent the Venetian. They are able
23 to sell the tickets. Once they sell the tickets, there is a
24 sharing of profits that's proportional. And if they make the
25 sale, then there's a sharing of the profits. If they don't

1 make the sale, then there's some opportunity costs.
2 That's the contractural relationship that we
3 have, Your Honor. And that -- and that -- I don't think you
4 have to necessarily show that it's a joint venture. That's
5 just, to me, is a separate argument. That's a separate
6 analysis.
7 THE COURT: This is. That's the one that stuck
8 in my mind. Scratch the joint venture.
9 Any type of additional contractural relationship
10 that you are trying to say existed between these parties that
11 would somehow allow you to take advantage of her employer's
12 immunity from liability because of the circumstances, do those
13 extra relationships, joint ventures, sub- -- actually exist or
14 are we trying to fit the scare peg in a round hole simply
15 because this person was exercising their business on the
16 property?
17 I know you got these different scenarios.
18 That's the one, like I said, to illustrate my point, but I
19 didn't make my point very well, but it's okay. Just finish
20 your argument and focus on the joint venture. Just finish your
21 argument.
22 MR. ROYAL: Okay. Your Honor, under 616(b),
23 6031, that we -- we meet the criteria there.
24 We've got an independent enterprise, we've got
25 an agreement, and we are in the same trade, profession,

1 occupation, employment, or, I'm sorry, business as is --
2 insofar as we share interests in the entertainment business.
3 We have provided the Court with the Haze case,
4 where they take -- the Supreme Court takes a very broad view of
5 what that means.
6 And it doesn't mean, as the plaintiff has
7 suggested, that we -- that we are -- our primary business,
8 Venetian's primary business has to be the same as Brand Vegas.
9 It's this -- we are in the same business in what
10 we are doing, which is selling tickets to consumers who come
11 upon the Las Vegas property.
12 The other argument, and part of OR argument,
13 Your Honor, is that under the control test, which is another
14 form under Tucker that is part of the Meers analysis, is -- is
15 that the -- is the amount of control that is exercised by the
16 Venetian over Ms. Sekera while she was employed with Brand
17 Vegas and that's -- that's where we get to dictating -- giving
18 her permission, allowing her to park on the property, dictating
19 to her where she could park on the property, providing her with
20 and ID badge so that she'd have access to the back of the house
21 and so forth, performing a background investigation check of
22 her and certain requirements upon her and her co-workers about
23 how they had present themselves while they are on property.
24 So that is -- I mean, it's not just any kind of
25 an agreement between Venetian and just anyone.

1 This is an agreement with another company to
2 sell tickets, to do something that Venetian is already
3 employing people to do, and where Venetian controls a certain
4 amount of what those employees are able to do.
5 They have to come onto our property every day
6 and -- in order to get to work; they have to conduct themselves
7 a certain way while they're on property and doing their work.
8 And, Your Honor, it's our contention we've met
9 the criteria under Meers, under the parenthetical, under the
10 normal work test, including the control test.
11 I even think, you know, arguably we have an
12 argument under the Hook, you know, as to the joint venture.
13 But there are many avenues in which the Court
14 can get there to find that as a matter of law Venetian stands
15 in the shoes of Brand Vegas and is statutorily immune from suit
16 in this particular cast.
17 THE COURT: All right. Thank you. I'll give
18 you some more time. I want to hear from Mr. Galliher.
19 MR. GALLIHER: Thank you, Your Honor.
20 Your Honor, this -- this is -- this immunity is
21 a very discrete immunity. This is not merely as broad as
22 Mr. Royal and his client would like it to be.
23 THE COURT: I think they know that. I think
24 that's why they went through the various scenarios of maybe
25 we're a co-employer, well, maybe we are a principal, maybe we

1 are a joint venture, all of those things.
2 With respect to the joint venture, Your Honor,
3 in -- I think that argument was first made in the reply, so I
4 haven't had an opportunity to really address it fully, but in
5 -- in the opposition I did quote from paragraph 19 of the
6 contract between Brand Vegas and Venetian, which states -- it's
7 entitled Independent Contractor and it says: The party to this
8 agreement, which is Brand Vegas and Venetian --
9 THE COURT: That IS not a joint venture.
10 MR. GALLIHER: -- or independent contractors,
11 and nothing herein shall be construed to create a partnership,
12 joint venture or other business relationship between the
13 parties except supplier and buyer.
14 So that's what we have. We have a relationship
15 by their own definition of supplier and buyer.
16 And frankly, Judge, that's not the type of
17 relationship that results in the quid quo pro that is required,
18 as the Court pointed out, in order to grant immunity.
19 You get -- employers get immunity because they
20 are -- it's fault-free. They're on the hook for a -- an injury
21 in the course and scope of the employment. That's why they get
22 immunity.
23 The question is: Is there anybody else who
24 potentially -- pardon me, Your Honor, I wear a -- an appliance
25 and it dries my mouth out.

1 THE COURT: Got you.
2 MR. GALLIHER: Is there anybody else who is
3 going to potentially -- who could get under that umbrella
4 that's granted by 166(a)020.
5 So the Meers Court says, well, if you bring in a
6 subcontractor employer and that subcontractor is doing
7 something that you normally do with your employees -- i.e., the
8 plaintiff's co-employees -- because your employees would also
9 be immune, that subcontractor is immune if it's doing work that
10 you normally do with your other employees.
11 Now, so in this case, that means is if the
12 Venetian normally had their people out there selling tickets in
13 the kiosk out in the Grand Canal Shops but on this occasion,
14 for whatever reason, it's Joyce Sekera, potentially then that's
15 normal -- that's the normal work test.
16 It's not to say if you have other employees at
17 some other location that also do similar work to this, that's
18 not the normal work test.
19 The normal work test is if the -- the defendant
20 has employees normally doing the work that the plaintiff is
21 doing at the time of the injury. So they don't qualify under
22 the normal work test.
23 And, Judge, if you look at Richards, because
24 it's clear that the Supreme Court, since Meers in 1985, it's
25 clear that they're trying to define this, and they're not

1 always doing such a great job, which they admit fully in the
2 Richards' opinion.
3 But they even narrow it further in Richards,
4 because in Richards they say: It's not just if you are injured
5 in the course and scope of the employment. Okay. The injury
6 has to be from -- it has to be from the scope of the contract.
7 So if you're -- so in Richards, they're putting
8 swamp coolers on top of a roof and Mr. Richards is going up and
9 down a ladder to put them on the roof and falls off the ladder
10 and gets hurt.
11 So the Supreme Court says because he has to go
12 up and down that ladder in order to put the swamp coolers on,
13 what he was doing was implicated in that contract. And there's
14 no way he could do what he's doing and avoid doing that action.
15 Okay?
16 So they say that's -- that's the standard, and
17 that's even in a construction case. As long as it's a
18 construction person who doesn't have a Chapter 624 license,
19 right, they kind of lump those together; right?
20 So in this case if what she was doing when she
21 got hurt wasn't directly implicated in her selling tickets,
22 even if all the those other -- even if they were independent
23 enterprises and even if they were in the same trader
24 business -- and I'm not conceding, I don't think they were --
25 but even if they were, they still wouldn't qualify because what

1 she was doing at the time she was hurt was walking through
2 their lobby to go to the bathroom.
3 She wasn't standing at the kiosk selling
4 tickets, which is what their contract with Brand Vegas has her
5 doing for them.
6 And this kind of glossed over here, but she
7 didn't work at the Venetian. She worked at the Grand Canal
8 Shops, which is a completely separate legal entity. Okay.
9 It's owned by different companies.
10 Yes, they're connected because now everything on
11 the Strip is connected now.
12 But -- but the defense kind of glossed over
13 that.
14 She could have gone to work that day, Judge, and
15 ever set foot in the Venetian. She could have come to work,
16 did her job all day long, and never put her foot inside the
17 Venetian.
18 If she had chosen to use a different bathroom,
19 one in the mall rather than one in the Venetian, then she could
20 have done that.
21 So the requirement -- she -- the requirement --
22 there was no requirement for her to be at the Venetian.
23 So the -- this notion that what she was doing at
24 the time is inex- -- you know, inextricably tied to the
25 Venetian is frankly not the case.

1 This is a slip and fall that happened on their
2 -- on their premises.
3 And, again, it's a slip and fall, which means
4 it's a risk that was not inherent with her selling tickets.
5 This same risk, this same injury, could have
6 befallen any of the hundreds of other people in that lobby at
7 the same time.
8 There's nothing inherent -- there's no inherent
9 risk tied to her selling tickets, which if a close reading of
10 Richards makes it pretty clear, Judge, and that's going to be
11 -- it's on page -- the language that you're going to want to
12 look at is on page 1224 in the Richards opinion, it makes it
13 very clear that it's not just enough that they're in course and
14 scope, it's not just enough that they're an independent
15 contract or even that they're in the same trade, but the injury
16 has to come from something that is contemplated and is a -- is
17 a definite part of that contract.
18 And there's no way they get there in this case,
19 Judge.
20 This is a slip and fall. It could have happened
21 to anybody, at any time, due to a slippery floor.
22 It had nothing to do with whether she's selling
23 tickets, if she was over there selling cigarettes or whatever
24 she was doing, there's just no nexus.
25 And, again, Judge, in order for this -- it's an

1 extraordinary remedy to allow a Third-Party to get off the hook
2 for a premises case, and because of that it's a very -- it's a
3 very discrete set of facts, and there's just no way that under
4 these circumstances that the Venetian can -- can fulfill those
5 facts.
6 THE COURT: All right. Thank you.
7 Mr. Royal, go ahead.
8 MR. ROYAL: Your Honor, first of all, this is a
9 joint venture. I think we cited the Radiker -- yeah, the
10 Radiker case, where it -- it -- yes, we have a contract that
11 says specifically it's not a joint venture, but you have to
12 look at also how the parties -- how they interact with one
13 another.
14 And so even though --
15 THE COURT: I don't think it would be preclusive
16 to apply here that it says that language in the contract. I
17 don't find it applies here.
18 MR. ROYAL: Okay.
19 THE COURT: So we'll move on from there.
20 MR. ROYAL: Okay. Okay. Let me just say a
21 couple things.
22 Number one, on Richards, that's a 6.4 case.
23 That's a construction case. This is not a construction case.
24 And one thing counsel didn't address is that the
25 Haze case, which very broadly, Your Honor, builds in this same

1 trade and occupation issue that we raise, which is: What's our
2 desire? What's our joint desire? We both want tickets to be
3 sold.
4 And so, you know, to that extent, certainly
5 we're in the same trade.
6 And, you know, counsel's representation that she
7 could have never step foot in the Venetian is impos- -- I mean,
8 that's -- that's just not true.
9 She had -- it's established, as you know, it's
10 undisputed facts, she had to park at the Venetian every day.
11 She got a badge to walk on the Venetian properties, everyone
12 knew who she was. She had access to all of the back areas of
13 the Venetian. And based on her own testimony, she was walking
14 through that same area several times a day, hundreds of times
15 over the year prior to the incident.
16 So, you know, for -- she simply would not have
17 been on the property, doing what she was doing, but for the
18 fact that she was working for Brand Vegas and had a contract
19 with the Venetian.
20 So, Your Honor, I won't belabor the point, and I
21 know you've got a lot of other things to get to, but I just
22 want to add that I think the Venetian has certainly met its
23 burden as to its demonstrating that: A, there are no issues of
24 fact. There's no genuine issues of fact. They weren't argued
25 in the brief. They weren't argued today. And the Court has

1 all of the information it needs in order to grant the Motion
2 for Summary Judgment in Venetian's favor. Thank you.
3 THE COURT: All right. I will -- let me start
4 with that last point because that's a good place to start.
5 I do agree that the facts related to this
6 Summary Judgment Motion do not appear to be in material dispute
7 that would allow the Court to make the decision.
8 So my denial of the Motion for Summary Judgment
9 is not based on the genuine issues of material fact for trial
10 on this issue.
11 My denial is that I believe, as a matter of law,
12 that the Venetian would not be entitled to the relief.
13 I am persuaded by the opposition that ultimately
14 the immunity is not available to the Venetian under any of the
15 scenarios the Venetian has put forward.
16 I think it is very creative and I think I
17 understand certainly why we would want to sort of extrapolate
18 to -- we have such a large casino concern and we have a small
19 contractor/vendor, however you want to phrase it, in this Grand
20 Canal Shops adjacent to and overlap between the two, to say
21 that somehow this, you know, slip and fall happened in the
22 course and scope of the employment for her with that employer
23 and so, therefore, we should get the benefit of that immunity.
24 But I am ultimately persuaded by counsel's
25 argument again in the opposition that the definition from NRS

1 616.560, which third parties can be sued by innocent election
2 (phonetic) did an injured employee, would encompass the
3 Venetian in this circumstance and that the immunity and -- and
4 the -- the limitations on, you know, when this -- when this
5 could occur, and the benefit of that, it goes to the employer
6 and co-employees just simply does not stretch over to the
7 Venetian's scenarios.
8 I know there has been a number of scenarios that
9 have been offered potentially.
10 I agree with Mr. Galliher's assessment that this
11 is not qualifying under the normal work test, and that the
12 various other again scenarios that are put forward. It's just
13 -- they don't apply here for the reasons that have been argued.
14 And I do think, and I'm being candid, I think
15 it's a bit of a slippery slope. I think that -- I didn't look
16 at the Richards' decision. I looked at the Haze decision. I
17 looked at what was being offered here because I hadn't looked
18 at anything like this in a while to have this issue come up.
19 And, of course, I'm familiar with this case for other reasons
20 because we've had a number of arguments in terms of this
21 scenario. Who this employee was, where she was, what the
22 circumstances were.
23 And, you know, I'm not making findings, like:
24 No, she didn't have to go into the Venetian. No, she didn't
25 have to -- you know, it's not those circumstances.

1 The path of travel and the course of scope of
2 her employment did put her into contact with Grand Canal Shops,
3 potentially Venetian, various things.
4 So, again, I don't think the facts really are in
5 dispute.
6 I think the question is: Does the immunity
7 attach to the Venetian in the scenario that we have here?
8 I don't think there's any basis upon which we
9 can look at the relationship between these two entities, her
10 employer and the Venetian, and take the immunity of her
11 employer is entitled to extrapolate over the Venetian issues.
12 I'm not persuaded this exists, and I am
13 concerned that if we were to find that that existed in this
14 scenario, that we would be opening up a door to a slippery
15 slope for which we would never recover for any scenario where
16 someone is -- is working for a company within another company's
17 location and somehow that works.
18 I get it that there were relationships between
19 the Venetian and her employer. But, again, in terms of what
20 the Industrial Insurance Act and what the -- what the various
21 definitional statutes related to that tell us about who's
22 immune and who could be sued. I think, Venetian is not immune
23 and Venetian can be sued based on how you interpret reading
24 those statutes.
25 So that's the longer winded way to articulate

1 that. But it's a very close call.
2 But I think at the end of the day I would be
3 making a mistake to again find that immunity applies. So I am
4 going to deny that on that basis.
5 I will ask Mr. Galliher the unenviable task to
6 write up the order, since I am denying Mr. Royal his relief.
7 But, of course, Mr. Royal, I want you to weigh
8 in on that, and I appreciate this too could be a subject of
9 some further exploration by an appellant court.
10 MR. ROYAL: That was my -- that's what I was
11 going to ask. I assume this is denied with prejudice?
12 I mean, this is the last time the Court is going
13 to hear it?
14 The Court indicated there's no issues of fact
15 and, I mean, right?
16 THE COURT: No. There wouldn't be any scenario
17 that I could see that I could revisit it, so if you wanted to
18 have some sort of a 54(b) certification, it's kind of weird
19 because it's a denial.
20 But we do have to have Findings of Fact and
21 Conclusions of Law even in the denial.
22 I think you would probably have to writ it
23 rather than -- you would appeal it, but that would be up to you
24 to figure out for certain.
25 But terms of it's finality its finality --

1 MR. ROYAL: Your Honor, could I just ask if the
2 Court would give us -- grant any kind of a stay allowing us
3 time to --
4 THE COURT: I typically won't do that at this
5 level. But here's the thing: We could certainly, if you were
6 going to writ it, you could go ahead and, I think, ask for the
7 stay directly up there, because when you look at Enre 8, and it
8 talks about the stay, you have to either ask the District Court
9 or you have to have some reason to believe it would be futile
10 to ask the District Court.
11 And at this point you know my indication would
12 be that I denied the Motion For Summary Judgment.
13 The case, I believe, needs to proceed to trial.
14 It's not a genuine issue of material fact issues. It's an
15 application of law issue.
16 I've made my rulings on the law and the
17 Appellate Courts would probably look at that and say your
18 remedy is to go to trial and if you lose, you lose, and then
19 you can appeal this and other issues.
20 But there could potentially be some grounds for
21 writ. Again, I'm not certain what they would be. But if you
22 wanted to challenge it now, I think you would have to ask for
23 the stay up there.
24 But I would indicate to you now that I would not
25 be inclined to grant a stay here and that should give you that

1 quick are purchase that way if you wanted to.
2 But, anyway, Mr. Gallon, here --
3 MR. ROYAL: Could we have that in the order as
4 well?
5 THE COURT: I think it should be.
6 MR. ROYAL: Yeah, okay.
7 MR. GALLIHER: I'll do it, Your Honor.
8 THE COURT: That's final.
9 And the Court believes that based on its
10 termination and the progression of the case, that the case
11 should go to trial and not inclined to grant the stay at this
12 stage. Thank you.
13 I think the proper remedy is to go forward with
14 the case and then, again, if you prevail, it's a moot issue;
15 and if you don't prevail, you will have appellant issues.
16 MR. GALLIHER: Thank you, Your Honor.
17 MR. ROYAL: All right.
18 THE COURT: All right. And speedy remedy and
19 all of that.
20 (Proceedings concluded.)
21 * * * * * *
22
23 ATTEST: Full, true and accurate transcript of proceedings.
24
25 /S/Renee Silvaggio
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