

EVENT FACILITY NAMING RIGHTS AGREEMENT

This NAMING RIGHT AGREEMENT (the "Agreement") is made as of _____, 2017 by and between XXXXX, a corporation duly incorporated under the laws of Ontario (the "Licensee"), and the Corporation of the Township of Russell (the "Township")(collectively, the "Parties")

In consideration of their mutual promises, the Parties agree as follows:

RECITALS

WHEREAS, the Township owns, manages and operates the future event facility located at 150 Sports Plex Street, Embrun, Ontario (the "Sports Dome");

WHEREAS, the Township desires to grant the Licensee the license to name the Sports Dome, consisting of the Venue, the Office Building and the Field, as defined below, and related ancillary benefits in consideration for the Licensee's agreement to pay the Naming Rights Fee as set forth herein;

WHEREAS the Licensee wishes to provide the Naming Rights Fee in return for receiving sponsorship recognition at the Sports Dome pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of these Recitals, hereby incorporated into this Agreement, the following mutual promises, and all other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

AGREEMENT

1. **DEFINITIONS.** As used in this Agreement, the following terms will have the following meanings:
 - a. "Event" means any non-Game presentation, including, but not limited to, athletic events, shows, public gatherings, or any other scheduled happening, taking place at the Venue.
 - b. "Field" means the turf and/or field located within the Venue.
 - c. "Field Mark(s)" means the Name, Logos, and/or any stylized form or combination thereof.
 - d. "Game" means any game designated as a local sports team's home game to be played at the Venue, as defined herein.
 - e. "Marks" means, collectively, the Venue Marks, the Office Building Marks, and the Field Marks.

- f. "Name" the official word, term or phrase by which the Venue will be called as of the Effective Date or as amended or changed in accordance with this Agreement.
- g. "Naming Rights" means the exclusive license to name the Venue pursuant to the terms of this Agreement.
- h. "Naming Rights Fee" means the sum plus HST to be paid by the Licensee to the Township each year during the term of this Agreement, as agreed to herein.
- i. "Office Building" means the office building appurtenant to the Venue.
- j. "Office Building Mark(s)" means the Name, Logos, and/or any stylized form or combination thereof.
- k. "Venue" means the event facility located at 150 Sports Plex Street, Embrun, Ontario, owned, managed, and operated by the Township, but excluding the office building appurtenant to the Venue.
- l. "Venue Mark(s)" means the Name, Logos, and/or any stylized form or combination thereof.

2. NAMING RIGHTS AND ANCILLARY BENEFITS

- a. **Venue, Office Building & Field Name.** During the Term of this Agreement, the Township hereby grants to the Licensee the exclusive license to name the Venue, Office Building & Field pursuant to the terms hereunder (the "Naming Rights"). As of the Effective Date, the official name of the Venue, Office Building & Field will be " _____ " (the "Name"), unless amended or changed in accordance with this Agreement.
- b. **Venue Marks, Office Building Marks, and Field Marks (collectively referred to as the "Marks").** During the Term of this Agreement, the Parties agree that the Licensee may develop, at the Licensee's expense, a graphic design incorporating the Name to be used as the primary logo associated with the Venue, Office Building & Field (the "Primary Logo"). The Licensee may also develop, at the Licensee's expense, derivative graphic designs related to the Primary Logo to be used periodically for ancillary marketing and promotional purposes pursuant to this Agreement (the "Secondary Logos")(collectively, the "Logos"). The Logos will be mutually agreed upon by the Parties.
- c. **Signage and Exposure.** In connection to the Naming Rights granted to the Licensee hereunder, the Licensee will be entitled to have certain signage or other forms of exposure of the Marks placed on the Venue, Office Building & Field exterior, including, without limitation, the entrances, and the Sports Dome (the "Signage"), provided such Signage shall consist of the Marks. The appearance

and location of all Signage will be mutually agreed upon by the Licensee and the Township.

d. **Venue, Office Building & Field Promotion and Publicity**

i. Branding and Collateral Materials. In connection to the Naming Rights granted to the Licensee hereunder, the Township agrees to support the brand exposure of the Marks through the following branding channels (the "Branding and Collateral Materials"):

1. *Website and Digital Media*. As of the Effective Date, the Township will cause its website to contain information and promotional material relating to the Venue, Office Building & Field (the "Website"), and will create other social media outlets as agreed upon by the Parties for the promotions of the Venue, Office Building & Field (the "Digital Media Outlets").

The Township will maintain and have control of the Website and all Digital Media Outlets during the Term of this Agreement, and the content of the Website and the Digital Media Outlets. The Digital Media Outlets will display the Marks and include Venue, Office Building & Field-specific web pages providing relevant Venue, Office Building & Field information, as determined by the Township and subject to the reasonable approval of the Licensee.

2. *Printed Materials*. As of the Effective Date, the Township, at the Township's cost, will cause the Marks to be incorporated and used in the printed business, marketing, promotional and press materials of the Venue, Office Building & Field, including, without limitations, letterhead, Game and Event tickets, and such other forms of identification as agreed upon by the Parties.

ii. Event and Game Promotion. The Parties agree that each will make reasonable efforts during the Term to identify the Venue, Office Building & Field by the Marks in all written and oral references to the Venue, Office Building & Field and with respect to any Game or Event scheduled to take place at the Venue, Office Building & Field, including, without limitation, all official documents, press releases and other public announcements.

iii. Third Party Media and Broadcasters. The Parties agree that each will make reasonable efforts during the Term to cause the media,

broadcasters, and other third parties, including, without limitation, news outlets, web, radio and television broadcasters of the Games and/or Events, sports teams, services providers, advertisers, promoters and sponsors, to identify the Venue, Office Building & Field by the Marks; provided that any failure of such third parties to refer to the Venue, Office Building & Field by the Marks will not be considered a breach of this Agreement by the Parties.

iv. Promotional Campaign. The Parties will cooperate in jointly planning a mutually agreeable and mutually executed public relations campaign to announce the Name and Logo of the Venue, Office Building & Field as of the Effective Date.

3. **TERM**. The Term of this Naming Rights Agreement will begin on _____, 2017 (the "Effective Date") and continue until _____, 2022 or 2027 (the "Expiration Date"), unless extended or terminated in accordance with the terms hereof (wholly, the "Term").

a. **Option to Extend**. If the Licensee is not in default of this Agreement, then the licensee will have the option to extend the term of this Agreement (the "Option") for an additional five (5) year period through _____, 2032 (the "Extension Term"). The Township will provide the Licensee with written notice of its Option as of _____, 2025, and the Licensee will have until _____, 2025 to give notice to the Township of its decision to exercise its Option hereunder (the "Option Period"). In the event the Licensee does not give notice to the Township, to exercise its Option within the Option Period, the Licensee will be deemed to have conclusively declined its Option to extend the Term hereof, and the Township will be free to immediately enter into negotiations with third parties regarding the purchase of the Venue, Office Building & Field naming rights to take effect following the Expiration Date of this Agreement.

4. **FEES AND COSTS**.

a. **Naming Rights Fee**. In consideration of the Naming Rights and ancillary benefits granted by the Township hereunder, the Licensee agrees to pay a Naming Rights Fee in the manner and amounts set forth below (the "Naming Rights Fee").

i. Naming Rights Fee Schedule

Year	Naming Rights Fee	HST	Total
2017-2018	\$ _____	\$ _____	\$ _____
2018-2019	\$ _____	\$ _____	\$ _____

2019-2020	\$ _____	\$ _____	\$ _____
2020-2021	\$ _____	\$ _____	\$ _____
2021-2022	\$ _____	\$ _____	\$ _____
2022-2023	\$ _____	\$ _____	\$ _____
2023-2024	\$ _____	\$ _____	\$ _____
2024-2025	\$ _____	\$ _____	\$ _____
2025-2026	\$ _____	\$ _____	\$ _____
2026-2027	\$ _____	\$ _____	\$ _____

5-Year Extension Term (Option)

2027-2028	\$ _____	\$ _____	\$ _____
2028-2029	\$ _____	\$ _____	\$ _____
2029-2030	\$ _____	\$ _____	\$ _____
2030-2031	\$ _____	\$ _____	\$ _____
2031-2032	\$ _____	\$ _____	\$ _____

b. Costs and Expenses

i. Venue Marks, Office Building Marks, and Field Marks. The Licensee will be responsible for all costs and expenses associated with development of the Marks, including costs for any third-party designer services used in the development of the Marks and any related artwork and/or style manuals for the approved forms of the Marks

ii. Building Signage.

1. *Production and Installation.* The Licensee will be responsible for paying all costs and expenses associated with the initial preparation, production, mounting, power connections, and/or installation of all signage that is attached at any location, including to, but not limited to, the Venue and/or Office Building and/or the Field (the "Building Signage") provided hereunder (the "Initial Signage Costs").

2. *Maintenance and Replacement.* Preceding the initial preparation, production, mounting and installation, the Township will be responsible for providing necessary power to the Office Building Signage only and paying the costs and expenses associated with and the routine and preventative repair and maintenance of all Building Signage. Licensee is responsible to replace bulbs, and to connect power to Office Building signage.

3. *Licenses and Permits.* The Licensee will be responsible for obtaining, at its sole cost and expense, any and all licenses and permits required in connection with providing the Signage under this Agreement.
 4. *Removal.* The Licensee will be responsible for paying for all costs and expenses related to the removal of the Building Signage at the end of the Term and any Extension Terms, and shall be responsible for any damage that has been caused to the Venue, the Office Building, and the Field as a result of the Building Signage.
- iii. *Branding and Collateral Materials.* Except as specifically provided in this Agreement, the Township will be responsible for all costs and expenses associated with the initial design, production and/or purchase of Branding and Collateral Materials reflecting the implementation of the Name and Logo(s) as of the Effective Date. The Licensee will be responsible for all costs and expenses associated with the subsequent removal, destruction, discarding, design, production, replacement and/or purchase of Branding and Collateral Materials, whether related to a substitution, modification or change of the Branding and Collateral Materials inventory set forth herein and/or a change or modification of the Marks.
- iv. *Subsequent Name Change.* In the event the Licensee or its successor or assignee changes or causes the change of the Name, Logo and/or the Marks in accordance with the terms hereof, the Licensee agrees to pay, or cause its successor or assignee to pay, all costs and expenses associated therewith, including, without limitation, the cost and expense of: (i) removing, destroying and/or discharging signage reflecting the prior Marks, (ii) preparing, producing, replacing, mounting and/or installing new or altered signage to reflect the name change, (iii) removing, destroying and/or discarding merchandise, equipment or other collateral materials related to the Venue, Office Building & Field branding, promotion and publicity displaying the prior Marks, and (iv) preparing, producing, replacing and/or distributing merchandise, equipment or other collateral materials related to the Venue, Office Building & Field branding, promotion and publicity reflecting the name change.

c. Damage

- i. The Licensee will be responsible to repair all damages at its sole cost done to the Venue, the Office Building, and/or the Field by their employees, agents, and/or subcontractors.

d. Payment.

- i. Payment Due Date. All payments shall be due thirty (30) days after the Township has submitted its invoice to the Licensee in accordance with the Invoice Date pursuant to the Payment Invoice Schedules and the following invoice instructions below:
- ii. Invoicing Instructions. All invoices shall be sent in PDF format to the Licensee by email to _____, or, if an electronic invoice cannot be sent, the paper-based original invoice shall be mailed to _____, Attn: Accounts Payable. All invoices must include the following information: (i) Purchase Order number, (ii) business name of the Licensee, (iii) Township invoice number, (iv) Invoice date, (v) amount due, and (vi) remittance instructions.
- iii. Additional Payments. The Township will submit invoices in accordance to this section to the Licensee for any other amounts due under this Agreement as such amounts are incurred by the Township and/or otherwise become due by the Licensee hereunder. The Licensee will pay in accordance with this section.

5. INTELLECTUAL PROPERTY AND OWNERSHIP

- a. Ownership of Venue, Office Building & Field Marks. The Parties agree that Licensee shall own all right, title and interest in the Marks, including, without limitation, the trademark and copyrights associated therewith.
- b. License to Use Venue, Office Building & Field Marks. The Licensee hereby grants to the Township a limited, non-exclusive, royalty free, personal, non-transferable license only to use the Marks, solely for purposes related to performance under this Agreement and subject to the Licensee's approval. The Licensee reserves all rights in the Marks and the Township shall have no rights in the Marks other than those expressly granted hereunder.

6. CONFIDENTIALITY AND COMMUNICATIONS

- a. Confidential and Proprietary Information. The Parties acknowledge that, through the course of performance of this Agreement, each party may have access to information which relates to the other party's business or affairs, gives the other party a competitive advantage, and/or is a "trade secret," including, but not limited to: (i) planning data and marketing strategies, (ii) financial results and business conditions, (iii) software, software applications, and software-related developments, whether in source or object code, including unique ideas and techniques embodied or expressed therein, (iv) documentation, (v) surveys, (vi) data, (vii) drawings, (viii) designs, (ix) procedures, processes and "know how", and (x) any other information that is not generally known to the public (the "Confidential Information"). The Parties agree to keep all Confidential Information in strict confidence and will not use or disclose, directly or indirectly, both during and after the Term of this Agreement, any such Confidential Information, except as may be necessary in the regular course of performance hereunder or as required under this Agreement. Each party specifically acknowledges that Confidential Information derives independent economic value from not being readily known to or ascertained by proper means by others who can obtain economic value from the disclosure or use of Confidential Information, that reasonable efforts have been put forth the owning party to maintain the secrecy of Confidential Information, that Confidential Information is and will remain the sole property of the owning party, and that any physical or mental retention and/or use of Confidential Information during or after the expiration or termination of this Agreement (except in the regular course of performance hereunder or as otherwise required under this Agreement) will constitute a misappropriation of Confidential Information. Notwithstanding the foregoing, the Parties may disclose Confidential Information as required by law or court order, provided such disclosure is limited to the information specifically required to be disclosed. If either is required to disclose Confidential Information, the disclosing party agrees to promptly notify and cooperate with the owning party to permit the owning party to take any appropriate action it deems necessary to protect its interests thereunder. Each party's obligations under this provision will survive the expiration or termination of this Agreement indefinitely and will remain in full force and effect regardless of any actual or alleged breach of this Agreement by either party, unless and until any such Confidential Information has become, through no fault of non-owning party, generally known to the public.
- b. Public Statements. Each party agrees that it will not directly or indirectly make or encourage the making of any defamatory or disparaging statements about the other, or any statements that could reasonably be expected to impact negatively on the name, business or reputation of either party. The Parties agree to consult

and cooperate with each other with respect to timing, content, and form of any media statements, press releases or other public disclosures (the "Public Statements") made by either party related to performance under this Naming Rights Agreement. Each party further agrees that any such Public Statement will be made in furtherance of the good faith performance of this Naming Rights Agreement and the contractual relationship of the Parties.

- c. Municipal Freedom of Information and Protection of Privacy Act. The Parties acknowledge that any documents retained by the Township in the course of its business may be subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act*.

7. REPRESENTATIONS AND WARRANTIES

- a. **Compliance with Laws, Regulations, and Bylaws.** This Agreement is subject to the terms of, and each Party hereby warrants and certifies that it will comply with, all applicable laws, statutes, rules, regulations, bylaws, decisions and orders in the performance of this Agreement, and specifically the Township of Russell Corporate Sponsorship and Advertising Policy, Sign By-Law, attached as **Exhibit X**. The Licensee and its agents/subcontractors shall comply with all Provincial laws and regulations, including but not limited to, the applicable health and safety laws and regulations and worker's compensation laws. The Licensee shall, if requested by the Township, provide a WSIB Clearance Certificate.
- b. **Cooperation.** The Parties agree to cooperate in the performance of each of their obligations under this Agreement, including, but not limited to, obtaining, agreeing to, distributing and/or enforcing any waivers, rules and regulations, licenses and permits, and other required certifications related to the benefits granted hereunder.
- c. **Non-Infringement.** Each party hereby warrants that, in the course of performance under this Agreement, it will not violate or infringe upon any proprietary rights of any third party, including, without limitation, confidential relationship, trade secrets, patent, trademark or copyright rights.
- d. **Township Representations.** The Township acknowledges, represents and warrants the following:
 - i. The Township owns the right to name the Venue, Office Building & Field, and the naming of the Venue, Office Building & Field as contemplated by

this Agreement is in accordance with all applicable laws, regulations and bylaws of the Township;

- ii. This Agreement and all documents delivered pursuant hereto have been duly authorized, and when executed and delivered by the Parties, will be a legal, valid, binding and enforceable obligation of the Township; do not violate any provisions of any agreement or judicial order to which the Township is a party or subject; and no other consents or actions of any third parties, entities or governmental bodies or agencies is required to effectuate this Agreement or the actions of the Township and the Licensee taken hereunder;
 - iii. The Township does not obtain any rights in the Marks or any other Licensee Marks;
 - iv. The Township approves and agrees to the naming rights provisions and all other terms and conditions of this Naming Rights Agreement;
 - v. As of the Effective Date, the Township agrees to use all reasonable efforts to cause new promotional materials, press releases and announcements related to and made by the Township, including, without limitation, and Township-related website, to refer to the Venue, Office Building & Field by the Name specified hereunder.
- e. **Licensee Representations.** The Licensee hereby acknowledges, represents and warrants the following:
- i. If the Licensee is a corporation, subsidiary, partnership sole proprietorship it is duly incorporated pursuant to the laws of Ontario or Canada, and has the full right and authority from all necessary sources to enter into and fully perform this Agreement in accordance with its terms;
 - ii. The Licensee has the authority to use the Name, the Marks, and any and all branding and design that may be used in conjunction with this Agreement;
 - iii. If the Name is a trade name or variation thereof, the Licensee has duly registered that trade name in accordance with all provincial or federal laws and regulations and will maintain said registration for the duration of this Agreement;
 - iv. The Licensee has read and agrees to abide by:
 - 1. the Township of Russell Corporate Sponsorship and Advertising Policy;
 - 2. the Township of Russell Sign By-Law; and
 - 3. and the United Counties of Prescott & Russell Sign By-Law.

- v. The Licensee's representations and warranties made to the Township in the course of the Request for Proposal process and the negotiation of the within Agreement are true;
- f. **Authority.** Each party hereby represents and warrants that it has the full right and authority from all necessary sources to enter into and fully perform this Agreement in accordance with its terms. In addition, each individual representing the Parties in signing this Agreement (the "Undersigned") is duly authorized to bind his or her respective party to the terms contained herein, all Parties are entitled to rely on the representations of the Undersigned without any duty of investigation, and this Agreement will be binding and enforceable upon the execution by the Undersigned.

8. EXCLUSIVITY AND OTHER ADVERTISING

- a. The Township agrees that the Licensee shall have the exclusive Naming Rights for the Venue, the Office Building, and the Field.
- b. The Licensee agrees and understands that it does not have the exclusive right to advertise at the Sports Dome. In particular, it is agreed and understood that the Township shall have the ability to sell and display advertisements for other persons at the Venue, the Office Building, and the Field. Such advertisements and promotional materials may be displayed at the Sports Dome without limitation.

9. INDEMNIFICATION AND LIMITATION OF LIABILITY

- a. **Township Indemnification.** The Township shall indemnify, defend and hold the Licensee, its affiliated companies, licensees and their respective officers, directors, employees, shareholders, members, partners, agents, representatives, successors and assigns (collectively the "Licensee Indemnitee(s)") harmless from and against any and all claims, losses, liabilities, damages, and expenses, including reasonable legal fees, incurred by any of the Licensee Indemnitees, or which the Licensee Indemnitees may suffer or become liable for, as a result of, or in connection with, or in consequence of any breach of any warranty, representation, term, obligation or covenant of the Township contained in this Agreement, or any actual or alleged infringement or misappropriation of, or other conflict with, any intellectual property right of a third party, provided the Licensee shall give prompt notice of any such claim to the Township. The Township has the right, subject to the written consent of the Licensee Indemnitees, to take carriage of any such legal action provided all settlement

negotiations with respect thereto shall first be consented to by the Licensee Indemnatee.

- b. **Licensee Indemnification.** The Licensee shall indemnify, defend and hold the Township, its affiliated companies, licensees and their respective officers, directors, employees, shareholders, members, partners, agents, representatives, successors and assigns (collectively the "Township Indemnatee(s)") harmless from and against any and all claims, losses, liabilities, damages, and expenses, including reasonable legal fees, incurred by any of the Township Indemnitees, or which the Township Indemnitees may suffer or become liable for, as a result of, or in connection with, or in consequence of any breach of any warranty, representation, term, obligation or covenant of the Licensee contained in this Agreement, or any actual or alleged infringement or misappropriation of, or other conflict with, any intellectual property right of a third party, provided the Township shall give prompt notice of any such claim to the Licensee. The Licensee has the right, subject to the written consent of the Township Indemnitees, to take carriage of any such legal action provided all settlement negotiations with respect thereto shall first be consented to by the Township Indemnatee.
- c. **Limitation of Liability.** Under no circumstances shall the parties be liable to one another or any other party for any consequential, special, indirect, incidental, punitive, exemplary or aggravated loss, damage, cost, or expense, including, without limitation, loss of good will, loss of business profits, computer failure or malfunction, data loss, or lost profits and opportunity costs. The foregoing limitation will not apply to damages awarded with respect to third party claims for which the parties have an obligation to indemnify under this Agreement. This limitation furthermore does not apply to Liquidated Damages, as defined below, and Liquidated Damages shall be payable despite this paragraph.
- d. **Insurance.** During the Term of this Agreement, the Township and the Licensee each agrees to maintain at its own expense commercial general liability and commercial automobile liability insurance with limits of \$5,000,000.00 per occurrence and in the aggregate for each policy. Upon written request from any party, each party agrees to furnish to the requesting party a Certificate of Insurance evidencing such coverage. Both parties agree to endeavour to each other thirty (30) days prior written notice in event of or cancellation of policies required herein.

Upon Contract Award, the Licensee shall provide the Township with a valid certificate of insurance that references this Agreement, confirms the above

requirements, identifies major exclusions in the policy, and adds the Township as additional insured. The Licensee shall carry insurance which names the following as additional named insured:

THE CORPORATION OF THE TOWNSHIP OF RUSSELL
717 Notre-Dame Street
Embrun, ON K0A 1W1

- e. **Liens.** The Licensee shall fully indemnify the Township and all of its officers, servants and employees from any and all liability or expenses by way of legal costs or otherwise in respect to any claim which may be made for a lien or charge at law or in equity or liability under the Construction Lien Act or to any attachment for debt, garnishee process or otherwise.

10. DEFAULT AND TERMINATION.

- a. **Default.** The occurrence of any one or more of the following events or actions will constitute a breach of this Agreement (the "Default") by the acting or relevant party (the "Defaulting Party").
 - i. Corporate Cessation. Cessation of either the Township or the Licensee to conduct business.
 - ii. Bankruptcy or Insolvency. The failure of the Township or the Licensee to pay its debts as they come due; filing, or having filed against it, relief under the *Bankruptcy and Insolvency Act* which is not discharged, dismissed or withdrawn within sixty (60) days of filing; or applying for or consenting to the appointment of a receiver for all or a substantial portion of its assets;
 - iii. Misrepresentation. The making of any representation or warranty by any party in this Agreement that it known or should have known was materially false as of the Effective Date.
 - iv. Disrepute. The Township shall be entitled, at its sole and absolute discretion, to terminate this Agreement, if in its reasonable opinion at any time during the course of this Agreement, the Licensee and/or the Name have or have developed or acquired a negative connotation for any

reason such that the reputation of the Sports Dome or the Township is or might be at risk.

- v. Other Material Breach. The breach of any other material covenant, agreement, representation or warranty made under this Agreement, if such breach has not been waived in writing and has not been cured by breaching party within thirty (30) days following receipt of written notice specifying the nature of such breach, or, as agreed by the Parties, is not capable of being cured within such thirty (30) day period.

- b. **Right to Terminate**. In the event of a Default as set forth herein, the party not in Default (the "Non-Defaulting Party") will have the right to terminate this Agreement upon written notice to the Defaulting Party. Upon termination of this Agreement in accordance with this provision, the Parties agree that the Parties will immediately cease to use or display the Marks, and the Defaulting Party will be liable to the Non-Defaulting Party for the payment of all costs and expenses incurred by the Non-Defaulting Party in removing, destroying, discarding and/or replacing all signs, materials or other uses of the Marks under this Agreement.

- c. **Remedies**. The Parties acknowledge and agree that the nature of entering into and granting the rights and benefits under this Agreement involves a complex and time-consuming legal, political and corporate process and, in the event of a Default resulting in the early termination of this Agreement, the Non-Defaulting Party will incur considerable cost and expense in effectuating a change of the Marks and soliciting and entering into a subsequent Agreement with a third party. Therefore, in the event of a Default by the Licensee resulting in the early termination of this Agreement, in addition to all other rights or remedies available to the Parties at law or in equity, the Licensee agrees to pay the Township, in addition to any and all amounts that would be due under this Agreement in connection with a change of the Venue, Office Building & Field Name as set forth in the foregoing **Section 9(b)**, liquidated damages in the sum of \$11,300.00, an amount equal to the payment of the Annual Naming Rights Fee as set forth in **Section 4(a)(i)** for one (1) additional year following such termination (the "Liquidated Damages"). The Licensee acknowledges that this is a genuine pre-estimate of the Township's damages.

- d. **Force Majeure**. Unless otherwise provided in this Agreement, if performance under this Agreement is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the Parties, including but not limited to, fire, flood, epidemic, earthquake, explosion, act of God or public enemy, riot or

civil disturbance, strike, labour dispute, war, terrorist threat or activity, any government law, order, or regulation, or order of any court or jurisdiction (a "Force Majeure"), the restricted party will not be in breach hereof and the performance or obligation of such party will be excused for a period of time equal to the period during which the Force Majeure prevents such performance. The financial condition, default, breach, or intentional or negligent act or omission of this Agreement by the party seeking excuse from performance will not constitute a Force Majeure.

11. GENERAL TERMS

- a. **Relationship of the Parties.** The Parties are independent contractors and nothing contained herein will be interpreted, construed or applied in practice, in any way, as creating or establishing a partnership, agency, joint venture or employment relationship among the Parties. Each party is solely responsible for the payment of all federal and provincial taxes and complying with all laws, regulations, bylaws, and/or requirements related to its business, and each party reserves the sole and exclusive right and authority to handle, decide, supervise, manage and control the financial and other policies related to its business and purpose.
- b. **Right to Further Sponsor.** Notwithstanding the rights provided in this Agreement to the Licensee, the Township shall retain the full right and entitlement to negotiate, procure and enter into separate and additional sponsorship, advertising or other promotional arrangements with other persons in relation to the Venue, Office Building & Field at any time during the Term or at any time thereafter, provided same do not conflict with the obligations of the Township and the rights granted to the Licensee in this Agreement.
- c. **Right to Manage.** Each party reserves the sole and exclusive right and authority to handle, decide, supervise, manage and control the financial and other policies of its business, including, without limitation, conducting its business operations, hiring and firing personnel, and performing any other administrative matters.
- d. **Right to Equitable Relief.** The Licensee and the Township agree that they shall not have and hereby waive the right to seek equitable relief related to the performance or breach of this Agreement by the other party.
- e. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the Province of Ontario. Any dispute arising under or in connection with this Agreement, or related to any matter thereof, will be subject

to the exclusive jurisdiction of the Superior Court of Ontario in the United Counties of Prescott and Russell.

- f. **Notices.** Any notice, request, approval or consent under this Agreement will be sufficiently given if in writing and delivered in person, mailed by certified mail, couriered, or electronically transmitted (with receipt of transmission) to the address set forth herein, or to such other address as the recipient may furnish in writing to the sender. Notice will be deemed effective upon the earlier of actual delivery or three (3) days following mailing.
- g. **Waiving and Amendment.** No modification, amendment or waiver of any provision of this Agreement will be binding or valid unless in writing and executed by all Parties. No failure to enforce any provision of this Agreement will be construed as a waiver or thereafter prevent any party from enforcing the same or any other provision of this Agreement.
- h. **Equal Bargaining Power.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, there will be no presumption or burden of proof favouring or disfavouring any party by virtue of the authorship of any provision of this Agreement.
- i. **Severability.** If any portion of this Agreement is judged to be illegal, invalid or unenforceable, such portion will be given effect to the maximum extent possible by narrowing, or enforcing in part, such portion to the minimum extent necessary to make it enforceable. Any such invalidity or unenforceability will not in any way affect the validity or enforceability of the remainder of this Agreement which will continue in full force and effect.
- j. **Captions.** The captions used in this Agreement are for convenience only and will not define, limit, or otherwise be used in the construction of this Agreement.
- k. **Assignment.** Except in the normal course of performance under this Agreement involving the Parties' engagement of subcontractors or sub-licensees to provide specific services related hereto, the Parties shall not assign or otherwise transfer any of their respective rights and obligations under this Agreement without the prior written consent of the other parties of which consent shall not be unreasonably withheld.
- l. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement, and will be binding

when one or more counterparts have been signed by each of the Parties and delivered, either manually or electronically, to the other party, it being understood that all Parties need not sign the same counterpart.

- m. **Entire Understanding.** This Agreement, including all schedules referred to herein, constitutes the entire understanding between the Parties and supersedes all prior or contemporaneous negotiations, discussions, understandings and agreements, whether written or oral.

IN WITNESS WHEREOF, the parties execute this Agreement as of the first date written below.