

CONTRACT FISCAL INFORMATION SHEET

PLEASE COMPLETE THIS FORM AND ATTACH TO CONTRACT WHEN IT IS TIME TO ROUTE CONTRACT FOR APPROVALS AND SIGNATURES.

CONTRACTOR'S NAME: Essence Festivals Productions, LLC

CONTRACTOR'S ADDRESS: 135 West 50th Street, New York, NY 10020

CONTRACTOR'S FEDERAL ID#: 26-2792823 or

SOCIAL SECURITY # _____

CONTRACTOR'S CONTACT PERSON: Joy Collins, General Manager (Communications)

CONTRACTOR'S TELEPHONE: (212) 522-1498

EMAIL ADDRESS: jcollins@essence.com

TOTAL CONTRACT AMOUNT: \$3,101,739.00 Amendment Amount: N/A

PAYABLE THIS FISCAL YEAR: \$948,112.00

CONTRACT PERIOD: 09/29/11- 09/28/30/2013

FUNDING AGENCY: DCRT, Office of Tourism

SOURCE OF FUNDS: Agency Appropriation (N/A)
State: 100%
Federal _____ Percent
Self-generated _____ Percent

Organ. 6786	Object 4160	Sub object	Reporting Cat. 7213
Organ. _____	Object _____	Sub Object _____	Reporting Cat. _____
Organ. _____	Object _____	Sub Object _____	Reporting Cat. _____

BRIEF DESCRIPTION OF SERVICES:

Agency pass-through appropriation to support marketing activities and production of the Essence Music Festival, which activities are to be held at the Mercedes-Benz Superdome and Ernest N. Memorial Convention Center in New Orleans, July 6-8, 2012 for economic development purposes.

**STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE
PARISH OF ORLEANS**

COOPERATIVE ENDEAVOR AGREEMENT

THIS COOPERATIVE ENDEAVOR AGREEMENT (“Agreement”) is entered into by and between the Louisiana Department of Culture, Recreation and Tourism, Office of Tourism, hereinafter sometimes referred to as “CRT” or the “State”, and Essence Festivals Productions LLC, whose mailing address is 135 West 50th Street, New York, NY 10020, hereinafter referred to as “Contractor” or “Essence”.

WITNESSETH:

WHEREAS, Article VII, Section 14(c) of the Constitution of the State of Louisiana provides that “for a public purpose, the state and its political subdivisions...may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual”; and

WHEREAS, in accordance with La. R. S. 51:1254, the Office of Tourism is responsible for the design, plan, development and implementation of the effective and accurate promotion of Louisiana’s history, culture, art, folklife, recreational and leisure opportunities, natural and scenic resources, transportation, cuisine, sites, attractions, accommodations, and events and is mandated to assist local government and private sector development for the promotion of tourism; and

WHEREAS, in accordance with La. R. S. 51:1255(1) and (4), the Office of Tourism is also statutorily vested with the powers, duties, functions and responsibilities to promote and assist in the expansion of tourism and the tourism industry in Louisiana by conducting an ongoing promotional campaign of information, advertising and publicity to create and sustain an image and understanding of Louisiana that is responsible and accurate; and

WHEREAS, La. R. S. 51:1255 (7) authorizes the Office of Tourism to make and enter into contracts to provide the office with stipulated services for promotions, advertising, publicity, research, and marketing and La. R.S. 51:1255 (8) authorizes the Office to cooperate with all governmental agencies, tourists, promotion agencies, private industry and private nonprofit associations and organizations in the promotion, advertising and publicity of the state, including cooperative advertising; and

WHEREAS, Essence desires to present a three-day music festival (“ESSENCE Music Festival” or “Festival”) in New Orleans, Louisiana during the 4th of July holiday, which activities shall take place in the Mercedes-Benz Superdome and Ernest N. Morial Convention Center and other venues designated by Essence in New Orleans, Louisiana, July 6-8, 2012 (the “Event”).

WHEREAS, the Festival has traditionally attracted more than 200,000 attendees annually to New Orleans, Louisiana for activities associated with the Festival, which includes music performances from internationally recognized artists. In 2011 it was reported that the Festival attracted approximately 420,000 attendees to New Orleans, Louisiana for the various activities, which also included self-help empowerment seminars and workshops; and

WHEREAS, 1) CRT (subject to the legislative appropriation and funding process mandated by Louisiana law), as a member of a group of Louisiana private and public entities committed to supporting the Events, along with the 2) the New Orleans Tourism and Marketing Corporation (“NOTMC”), 3) the City of New

Orleans ("City"), 4) the New Orleans Convention and Visitors Bureau ("NOCVB"), 5) the Greater New Orleans Hotel and Lodging Association ("GNOHLA"), 6) the New Orleans Multi-Cultural Tourism Network ("NOMTN"), 7) the Mercedes-Benz Superdome ("Superdome"), and 8) the Ernest N. Morial Convention Center ("Convention Center"; collectively with (1) – (7), the "Host Committee") have collectively committed to remit rights fees, promotional and media exposure, personnel services and venues appropriate for Essence to host the Event; and

WHEREAS, in Act 12 of the 2011 Regular Session of the Louisiana Legislature, the Louisiana Legislature appropriated funding within CRT's budget to be utilized for the 2012 Event taking place on July 6, 2012, July 7, 2012 and July 8, 2012, and CRT shall request legislative appropriation and funding for each of the subsequent Events scheduled to be held in each of 2013 and 2014 (as and if applicable); and

WHEREAS, the Event is expected to have a major economic impact on City of New Orleans and the State of Louisiana; and

WHEREAS, La. R. S. 51:1253, defines "**economic impact**" as the value derived by the State of Louisiana and its political subdivisions in return for expenditures made on tourism advertising by CRT in terms of revenue generated, jobs created, income generated for individuals or businesses within Louisiana, changes in the number of tourist dollars spent in Louisiana, and such other results as may be appropriate to consider in calculating the justification for the expenditures authorized for tourism promotion; and

WHEREAS, economic indicators show that State of Louisiana and City of New Orleans will greatly benefit from the large attendance at the Event, as well as receive national and international recognition and media coverage through advertisements and other marketing activities associated with publicizing the Event. The State will also be recognized as a supporting contributor to the success of previous Festivals that have been supported by CRT; and

WHEREAS, it is anticipated that the public benefit of providing financial support to the Event in order to maintain awareness and a positive image of the State of Louisiana as a unique and desirable travel and tourism destination, is proportionate to the obligations undertaken by the State, and that the State of Louisiana's overall economy and tourism industry will benefit from this endeavor.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SCOPE OF SERVICES

- 1) **Presentation of ESSENCE Music Festival.** Essence agrees to present the Event in the Superdome and the Convention Center (and any other venues designated by Essence) in New Orleans, Louisiana, which shall include both nightly entertainment at the Superdome and a series of educational and empowerment programs at the Convention Center during the day, and shall be of the same quality as those Festivals previously presented in New Orleans, Louisiana. Except as otherwise provided in this Agreement, Essence shall present the Event at its sole cost and expense and shall be responsible for all promotion and advertising of the Event.

- a) Essence shall provide the State the advertising and tourism publicity benefits set out in

Exhibit B, attached hereto and incorporated herein by reference.

- b) Essence shall provide copies of any and all executed agreements that relate to the Event to which any member of the Host Committee and Essence are parties, subject to confidentiality provisions contained therein.
 - c) Essence shall submit to the State a written **Progress Report** (as defined herein) accompanied by copies of issues of ESSENCE magazine to verify the State’s receipt of advertising benefits in the productions of ESSENCE magazines as specified in Section 2(a) to 2(b) below. The “Progress Report” as used herein shall mean the preliminary itinerary of activities and a preliminary list of confirmed participating performers who have been secured for the Event. Contractor shall submit the Progress Report with an invoice for the State’s Rights Fees (as defined in Section 2 below.) no later than February 15th of 2012.
 - d) Upon conclusion of the Event and not later than September 30, 2012 Contractor shall provide the State with a **Final Recap Report** (as defined herein) of the Event’s activities, which report shall be consistent with the format of the 2011 Final Recap Report. In addition, Essence shall make copies of the Event’s program guide verifying the insertion of a full-page advertisement for the Louisiana Office of Tourism. As used herein, the “Final Recap Report” shall mean the report summarizing the activities that occurred during the Event, along with copies of all available magazines that will validate “Bonus” advertisements (as set forth in Exhibit B), and other related written promotional and marketing materials that were produced by Essence as a result of the Event. Contractor shall also provide the estimated number in attendance and any available economic data and/or statistics that will support the State’s investment in the Event.
- 2) **CRT’s Support.** Subject to the state legislature’s appropriation as set forth in Section 4 below, CRT hereby agrees to furnish its support to the Event on the terms and conditions set forth herein. In consideration for the services listed hereby, the State hereby agrees to pay Contractor up to a maximum amount of the following, in such allocation as set forth in Sections 3 and 4:

<u>Event Year</u>	<u>Amount</u>
2012	\$1,030,000, as modified herein
2013	\$1,060,900, as may be modified
2014	\$1,092,727, as may be modified

In accordance with Section 4 below, Essence has the right to accept an amount less than the agreed upon fee set forth above in the event the state legislature approves and appropriates an amount less than the amounts contemplated herein. The parties acknowledge that this is the case for the 2012 Event, and that the commitment for the 2012 Event as mutually agreed upon is \$948,112.

- a) **2012, 2013 and 2014 Advertising.** Upon execution and final approval of this Agreement by the director of the Louisiana Division of Administration, Office of Contractual Review and subject to the state legislature’s appropriation as set forth in Section 4 below, on or before March 15th of each of 2012, 2013, and 2014 (as and if applicable), payable upon receipt of the written **Progress Report** as specified, CRT shall pay Essence for the production and publication of a 10-page special advertising supplement promoting the City of New Orleans, the State of Louisiana and the Event

(the "Ad") to be placed in each December issue of ESSENCE magazine during the Term in the following amounts (the "Ad Funding Commitment"):

<u>Festival Year</u>	<u>Essence Issue</u>	<u>Amount</u>
2012	Dec. 2011	\$875,500.00, as modified herein
2013	Dec. 2012	\$901,765.00, as may be modified
2014	Dec. 2013	\$928,817.95, as may be modified

In accordance with Section 4 below, Essence has the right to accept an amount less than the agreed upon Ad Funding Commitment set forth above in the event the state legislature appropriates an amount less than the Ad Funding Commitment contemplated herein. The parties acknowledge that this is the case for the 2012 Event, and that the Ad Funding Commitment for the 2012 Event shall be \$850,000. Additionally, the parties acknowledge that the 2014 amount shall be payable only if this Agreement is extended pursuant to Section 3 below. CRT shall deliver all prerequisite and CRT-approved branding campaigns, trademarks, logos, labels, designs, artwork and other print creative materials for inclusion in the Ad to Essence no later than September 15th of each of 2011, 2012 and 2013 (if and as applicable). The Ad may also include the logos of the Host Committee members, in such location and format as mutually agreed upon. The Ad, copy and placement shall be subject to the Essence Standard Advertising Terms and Conditions and the approval of CRT, which approval shall not be unreasonably withheld, delayed or conditioned. This provision is a material term of the Agreement.

- b) **Rights Fees.** Subject to the state legislature's appropriation as set forth in Section 4 below, within sixty (60) days following each Event during the Term, CRT shall pay Essence the following amounts ("State Rights Fees") for ancillary support to cover promotions, marketing and other Event-related activities, in addition to advertising and promotions on various travel websites, newsletters and public relations efforts in support of the Event, all as selected by Essence:

<u>Event Year</u>	<u>Amount</u>
2012	\$154,500, as modified herein
2013	\$159,135, as may be modified
2014	\$163,909, as may be modified

In accordance with Section 4 below, Essence has the right to accept an amount less than the agreed upon State Rights Fees set forth above in the event the state legislature appropriates an amount less than the State Rights Fees contemplated herein. The parties acknowledge that this is the case for the 2012 Event, and that the State Rights Fees for the 2012 Event shall be \$98,112, payable upon receipt of the written **Final Recap Report** as specified. Additionally, the parties acknowledge that The State Rights Fees for 2014 shall be payable only if this Agreement is extended pursuant to Section 3 hereof. This provision is a material term of the Agreement.

Therefore the maximum amount payable under this agreement, subject to annual

legislative appropriation as set forth herein and the exercise by Essence of its option to extend the agreement through September 28, 2014, shall not exceed the total sum of \$3,101,739.00 (Three Million One Hundred One Thousand Seven Hundred Thirty-Nine Dollars), which sum is inclusive of all costs, fees, and expenses to be paid by the State in connection with the services and deliverables to be provided pursuant to this agreement over three fiscal years, during the Term of this agreement:

FY 2011 – 2012 Maximum Amount	\$ 948,112.00
FY 2012 – 2013 Maximum Amount	\$1,060,900.00
FY 2013 – 2014 Maximum Amount	\$1,092,727.00

- c) Payment of the Ad Funding Commitment and the State Rights Fees will be made only on approval of the Contractor’s invoices by the CRT’s Contract Monitor designated in Exhibit A, his designee, supervisor or successor, which such approval shall not be unreasonably withheld, conditioned and delayed.
- d) Travel and other reimbursable expenses shall constitute part of the total maximum payable and shall not be reimbursed or paid separately.

3) **Term.** Subject to Section 4 and unless sooner terminated pursuant to Section 5 and Section 16 of this Agreement, the term of this Agreement shall begin on September 29, 2011 and shall end on September 28, 2013 (the “Initial Term”), unless extended for one additional year pursuant to this Section 3. Essence shall present the Events on the following dates, unless otherwise mutually agreed upon in writing:

- 2012 Event July 6, 7 and 8, 2012.
- 2013 Event July 5, 6 and 7, 2013.

Option to Extend. Essence may extend this Agreement for an additional one-year term (i.e., through September 28, 2014) by giving written notice to CRT of its election to do so on or before August 31, 2013 (“2014 Event Option”). In the event Essence exercises the 2014 Event Option, Essence shall present an Event in the Superdome and the Convention Center on July 4, 5 and 6, 2014 on the same terms and conditions set forth in this Agreement (“Extended Term”, collectively with the Initial Term, the “Term”).

The ~~amended~~ Term of this Agreement, subject to appropriation and all notices and options described herein, shall begin on September 29, 2011 and shall end on September 28, 2014.

Funding Clause.

- a) All obligations of CRT to remit Fees pursuant to Sections 2(a) and 2(b) above in each of 2012, 2013 and 2014 (as and if applicable) are subject to an annual appropriation of funding by the Louisiana State Legislature. CRT has agreed to include a request for the Fees for each Event taking place during the Term in the State’s annual budget request and in its annual master plan for tourism.

- b) In Act 12 of the 2011 Regular Session of the Louisiana Legislature, the Louisiana Legislature appropriated funding within CRT's budget to be utilized for the three-day 2012 Event taking place on July 6, 2012, July 7, 2012 and July 8, 2012, and such amounts are hereby guaranteed, subject to Essence's performance of the services and the State's receipt of all deliverables contemplated under the terms of this Agreement.
- c) The continuation of this Agreement is contingent upon the appropriation of funds during the Term to fulfill the requirements of the Agreement by the Louisiana Legislature. If the Legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Agreement, the Agreement shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated. Termination of this contract pursuant to this section shall not affect Contractor's rights to payment of all amounts earned by Contractor prior to the date of termination. Essence hereby acknowledges that no funds appropriated by the Louisiana State Legislature shall be transferred to an entity that is not a budget unit of the State unless the entity executes an agreement, and submits to the State for approval a comprehensive Budget (the budget for the 2012 Event is attached hereto as **Exhibit C**) showing all anticipated uses of the appropriation, an estimate of the duration of the project, and a plan showing specific goals and objectives for the use of such funds, including measures of performance. CRT shall submit with due speed this Agreement (and any other required CEA that is executed by the parties, as and if required), the Budget, and any other required information to the Louisiana Legislative Auditor.
- d) On or before each of July 31st of each of 2011, 2012, and 2013, as the case may be, CRT must notify Essence in writing whether sufficient funds for CRT to remit the Fees have been appropriated by the State Legislature during the Regular Legislative Session for the succeeding year's Event ("Funding Notice").
- i) If CRT does not provide Essence with the Funding Notice by July 31st of each of 2011, 2012 and 2013, or notifies Essence in such Funding Notice that the Ad Funding Commitment and State Rights Fees are less than those contemplated in Section 2 above, Essence may, but is not obligated to, terminate this Agreement immediately upon providing written notice to CRT no later than August 31, 2011, August 31, 2012 and August 31, 2013, as the case may be.
- ii) If the appropriation of the Fees for an Event is subsequently vetoed following appropriation of the Fees, and Essence's acceptance of such appropriation, Essence shall have the right to terminate this Agreement immediately upon providing written notice to CRT.
- 4) **Termination for Material Breach.**
- a) In addition the termination rights set out in Section 4 of this Agreement, this Agreement may be terminated (i) by the non-defaulting party upon thirty (30) days' prior written notice to the defaulting party of a material breach of this Agreement, (ii) by Essence immediately upon notice of its termination of the Superdome Use Agreement by reason of a breach by SMG, or its successor, of its obligations thereunder, (iii) by Essence immediately upon notice of its termination of the Convention Center Facility Use Contract by reason of breach by the New Orleans Public Facility Management, Inc., or its successor, of its obligations thereunder; (iv) by Essence immediately upon notice of its

termination of the Event Support Agreement (and/or any other agreements between and/or among Essence and the following entities), or their respective successors, by reason of a breach by (A) the New Orleans Tourism and Marketing Corporation, (B) the New Orleans Convention & Visitors Bureau, (C) the New Orleans Multi-Cultural Tourism Network, (D) the Greater New Orleans Hotels & Lodging Association, and/or (E) the City of New Orleans provided, however, in the case of Section 5(a)(i), in the event of any such breach of this Agreement, the breaching party must be allowed thirty (30) days in which to cure the breach or, if it is not practicable to effect the cure within thirty (30) days, such additional time as may be required if the breaching party promptly begins within thirty (30) days and continues diligently and in good faith to effect a cure.

- b) This Agreement may be terminated by CRT if Essence ceases to do business or ceases to do business in Louisiana. If Essence ceases to do business or ceases to do business in Louisiana **after** receipt of the appropriated Ad Funding Commitment and State Rights Fees for the applicable Event in which the funds were received and **before** the completion of services contemplated herein for such Event, Essence shall be required to repay CRT the Ad Funding Commitment and the State Rights Fees for the applicable Event less the amounts owed for media placed and/or contracted for (and that cannot be cancelled without penalty) as of the date of the State's exercise of its termination rights contained herein.
- 6) **Taxes.** Essence hereby agrees that the responsibility for payment of taxes from the Ad Funding Commitment and the State Rights Fees paid under this Agreement shall be Essence's obligation. Essence hereby provides its Federal tax identification number: 26-2792823.
- 7) **Remedies for Default.** Any claim or controversy arising out of this Agreement shall be resolved by the provisions of La. R.S. 39:1524-1526 to the extent an Executive Order subjects agreements of this Agreement's type to the aforementioned Statutes (and CRT hereby agrees to provide such copy of the Executive Order to Essence as requested). Notwithstanding the foregoing, Essence hereby reserves all of its rights and remedies available to it under the law and in equity to the further extent possible.
- 8) **Ownership.** All records, reports, documents and other material delivered or transmitted to Essence by the State shall remain the property of the State, and shall be returned by Essence to the State, upon written request, at Essence's expense, at termination or expiration of this Agreement. The Progress Report and Final Recap Report and/or other State-related materials shall become the property of the State. Nothing herein is intended to confer to the State with any right, title, or interest to the Events, ESSENCE Music Festival, ESSENCE magazine and/or anything else not otherwise expressly set out herein.
- 9) **Trademarks and Approval of Materials.**
- a) **Essence's Intellectual Property.** Essence's trademarks, trade name, logos, label designs, product identifications, artwork, or other creative materials, and other symbols and devices associated with Essence's products or services and the Event logo(s) (collectively, the "**Essence's Intellectual Property**") are and shall remain Essence's sole and exclusive property. Essence hereby grants the CRT a non-exclusive, non-assignable, non-sublicensable, non-transferrable, royalty-free limited license to use the Essence Intellectual Property for printed, electronic and broadcast matter developed by or produced by CRT to advertise and promote the Event ("**CRT's Materials**") during the

Term of this Agreement, provided that any and all such uses of the CRT's Materials shall be subject to Essence's prior written approval in each instance. CRT shall submit all CRT's Materials to Essence in writing and CRT's Materials containing Essence's Intellectual Property shall not be deemed approved unless and until approved in writing by Essence. All uses of Essence's Intellectual Property by CRT shall inure solely to the benefit of Essence. CRT shall not directly or indirectly manufacture or sell, or license the manufacture and/or sale of any merchandise or other materials which bear Essence's Intellectual Property without Essence's prior written consent. All Essence Materials (defined below) shall be and shall remain the sole and exclusive property of Essence and shall not be used by CRT without the express written permission of Essence.

- b) **CRT's Intellectual Property.** CRT's trademarks, logos, label designs, artwork, or other creative materials and other symbols and devices associated with it (the "**CRT's Intellectual Property**") are and shall remain the CRT's sole and exclusive property. CRT hereby grants to Essence a limited, non-exclusive, non-assignable, non-sub-licensable, non-transferrable license to use such CRT's Intellectual Property for printed, electronic and broadcast matter developed or produced by, or on behalf of, Essence to advertise and/or promote the Festival (the "**Essence Materials**") during the Term. All such uses of CRT's Intellectual Property shall be subject to CRT's prior written approval. Essence shall submit all Essence Materials that include any of CRT's Intellectual Property to CRT in writing and such Essence Materials containing CRT's Intellectual Property shall not be deemed approved unless and until approved in writing by CRT. All uses by Essence of CRT's Intellectual Property shall inure solely to the benefit of CRT. Other than as part of its promotion of the Events, Essence shall not directly or indirectly manufacture, sell or license the manufacture and/or sale of any merchandise or other materials that bear CRT's Intellectual Property without CRT's prior written consent. CRT's Materials developed by or produced by CRT pursuant to the terms of this Agreement shall be, and shall remain, the sole and exclusive property of CRT, and shall not be used by Essence without the express written permission of CRT.
- 10) **Ambush Marketing/Anti-Piracy Programs.** The parties agree to cooperate in developing and implementing plans to prohibit and discourage third party ambush marketing programs and piracy related to the Events.
- 11) **Assignment.** Essence shall not assign any interest in this contract and shall not transfer any interest in same (whether by assignment or novation), without prior written consent of the State, which shall not be unreasonably withheld, delayed or conditioned, provided however, that claims for money due or to become due to Essence from the State may be assigned to a bank, trust company, or other financial institution without such prior written consent, provided that the State remains primarily liable for the obligations contained hereunder. Notice of assignment or transfer by either party shall be furnished promptly to the other.
- 12) **Auditors Clause.** It is hereby agreed that in accordance with La.R.S. 24:513, the Legislative Auditor of the State of Louisiana, the Office of the Governor, Division of Administration auditors, and the Department of Culture, Recreation and Tourism auditors shall have the option, at its sole cost, during the Term and for three years following the expiration or termination of this Agreement of auditing all records and accounts of Essence related to the Ad Funding Commitment and State Rights Fees upon providing Essence with reasonable advance written notice. The audit shall be conducted during normal business hours and on such day, time and location as mutually agreed upon.

- 13) **Discrimination Clause.**
- a) Essence agrees to abide by the requirements of the following, as and if applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and the Americans with Disabilities Act of 1990.
 - b) Essence agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Essence or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.
- 14) **Indemnification.**
- a) Essence hereby agrees to defend, indemnify and hold harmless CRT, together with its agents, employees and other representatives, from and against any and all losses, liabilities, costs, expenses, damages, claims, demands, actions, suits, judgments and other obligations including, without limitation, reasonable attorney's fees and court costs (collectively, "**Losses**") arising from or as a result of (i) injury to or death of persons or any loss of or damage to property arising at or in connection with its Event activities to the extent Losses are caused in whole or part by the fault of Essence and its respective employees, contractors, subcontractors, agents or invitees, or (ii) any actual or alleged breach or failure of performance hereunder by or on the part of Essence.
 - b) CRT hereby agrees to defend, indemnify and hold harmless Essence, together with its owners and their respective officers, partners, members, principals, agents, employees and other representatives, from and against any and all Losses arising from or as a result of (i) injury to or death of persons or any loss of or damage to property arising at or in connection with its Event activities to the extent Losses are caused in whole or part by the fault of CRT and its employees, contractors, subcontractors, agents or invitees, or (ii) any actual or alleged breach or failure of performance hereunder by or on the part of CRT.
 - c) The obligations of the parties under this Section 14 shall survive the expiration or termination of this Agreement.
- 15) **Amendments in Writing.** Any alteration, variation, modification, or waiver of provisions of this Agreement shall be valid only when it has been reduced to writing, executed by the parties hereto and approved by the Director of the Louisiana Division of Administration, Office of Contractual Review.
- 16) **Force Majeure.**
- a) No party hereto shall be liable to the any other party for any failure, inability or delay in performing its obligations under this Agreement if caused by an act of God, war, strike, lock-out, fire, terrorism or threat of terrorism (or any security measure connected thereto) or any other cause beyond the reasonable control of the party so failing ("**Force Majeure Event**"); but due diligence shall be used in curing such cause and in resuming performance at the earliest possible time and mitigating any losses. If a Force Majeure Event prevents the staging of an Event during the Term of this Agreement, the CRT shall not be liable for the payment to Essence of any amount due for the year under this

Agreement other than (i) a pro-rata share of the Rights Fee owed as of the date of the Force Majeure Event; and (ii) that portion of the Ad Funding Commitment actually paid or required to be paid for advertising placed and/or scheduled to run (and that cannot be cancelled) as of the date of the Force Majeure Event.

- b) In the event the State receives federal, state, city or other third party marketing dollars earmarked to mitigate the impact of tourism as a result of a hurricane, oil spill or other such Force Majeure Event (“Marketing Funds”), the State agrees to notify Essence of such available Marketing Funds and to provide Essence with the opportunity to receive consideration from such Marketing Funds within thirty (30) days of receipt of such Marketing Funds.

17) **Representations and Warranties.**

- a) Essence hereby represents and warrants solely as to itself that:
 - (i) it has the full right and legal authority to grant the rights expressly granted hereunder and to enter into and fully perform this Agreement in accordance with its terms without violating the rights of any other person, or the terms of any other agreement to which Essence is a party;
 - (ii) it owns all rights to the trademarks, trade name and trade dress in Essence’s Intellectual Property;
 - (iii) it has all licenses or other authorizations necessary to conduct the Festivals as contemplated under this Agreement; and
 - (iv) it will comply with all applicable laws, regulations and ordinances pertaining to the promotion and conduct of the Festivals.

- b) CRT hereto hereby represents and warrants solely as to itself that:
 - (i) it has the full right and legal authority to enter into this Agreement;
 - (ii) it has the full right and legal authority to perform the obligations and to grant the rights contemplated under this Agreement in accordance with its terms without violating the rights of any other entity;
 - (iii) it has the right to license its Intellectual Property consistent with the terms hereunder; and
 - (iv) it will comply with all applicable laws, regulations and ordinances that impact the Festivals (except as it relates to promotion and conducting the Festivals).

18) **Confidentiality.**

- a) **Definition.** “Confidential Information” means any information of a confidential nature, whether disclosed in oral, written, visual, electronic or other form, which any party or any

of its employees, or agents learns in connection with their obligations under this Agreement. Confidential Information includes, but is not limited to, business plans, strategies, forecasts and analyses; financial information; research data; marketing plans; employee, customer and vendor information; product and service specifications; and purchasing, logistics, sales, marketing and other business processes, and this Agreement and the terms and conditions thereof. The parties recognize and acknowledge that the unauthorized use or disclosure of Confidential Information could be extremely detrimental to the other parties.

- b) Confidential Information shall not include information defined as Confidential Information above if such information: (i) is or becomes generally available to the public other than by a disclosure of Confidential Information by the receiving party in violation of this Agreement; (ii) was known to the receiving party or its affiliates prior to disclosure of it by the disclosing party; (iii) is or becomes known to the receiving party from a source other than the disclosing party, provided that such source is not known by the receiving party to be bound by a confidentiality agreement with the disclosing party; or (iv) is developed by the receiving party or its affiliates or agents independently of any disclosure of Confidential Information by the disclosing party.
 - c) Obligations Concerning Confidential Information. Except as otherwise required by Louisiana Public Records Law, R.S. 44:1 et seq., each of the parties hereto agrees that with respect to Confidential Information of any other party:
 - i) To treat in a confidential manner all such Confidential Information using the same degree of care it uses for its own confidential information;
 - ii) Not to copy, use or disclose such Confidential Information to any third parties without the express written consent of the other party except: (a) to the extent necessary to perform their obligations under this Agreement or to enforce rights under this Agreement, or (b) in response to a valid subpoena or other valid legal process (“**Request for Information**”) (after giving the disclosing party prompt written notice of such Request for Information in order to afford it ample time to take appropriate action to protect such information at its sole cost and expense).
 - iii) To restrict disclosure of such Confidential Information to its employees who have a need to know such information to perform their obligations under this Agreement and who have agreed to be bound by the terms of this Section 18.
 - d) Survival. The obligations of the parties under this Section 18 shall survive the expiration or termination of this Agreement
- 19) Miscellaneous.
- a) Independent Contractor. All persons employed by the contracting parties hereto and all third party suppliers hired by such parties in furtherance of the performance of services hereunder shall be under the sole and exclusive direction and control of such employer, and for no purpose shall they be considered the employees of the other party. Each party hereto shall remain at all times independent contractors and shall be responsible for and shall promptly pay all federal, state and municipal taxes, chargeable or assessed with

respect to its employees, including but not limited to, social security, unemployment, federal and state withholding, and all other taxes, as and if applicable.

- b) Severability. If any term or provision of this Agreement shall be found to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such provision shall be deemed modified to the extent necessary to make such provision enforceable by such court, and the invalidity in whole or in part of any portion of this Agreement shall not impair or affect the validity or enforceability of the remaining provisions of this Agreement.
- c) Notices. All notices provided for or which may be given in connection with this Agreement shall be in writing and shall be delivered in person, by a nationally recognized overnight courier service, by facsimile (with electronic confirmation to sender) or by registered or certified mail with postage prepaid and return receipt requested.

If to CRT: Ms. Desiree Honoré
Undersecretary
Office of the Lieutenant Governor
Department of Culture, Recreation and Tourism
P.O. Box 94361
Baton Rouge, LA 70804-9291
Phone: 225-342-8201
(225) 342-0761 (fax)
email: dhonore@crt.la.gov

If to Essence: Essence Festivals Productions LLC
Attention: General Manager
135 West 50th Street
New York, New York 10020
Fax No.: (212) 467-5073
Email: jcollins@essence.com

With a copy to: Time Inc.
Attention: General Counsel
1271 Avenue of the Americas
New York, New York 10020
Fax No.: (212) 467-0905

With a copy to: Law Offices of Mechelle Evans LLC
55 Madison Avenue, Suite 400-4101
Morristown, NJ 07960
Attention: Mechelle Evans, Esq.

or to such other address as a party, by like notice, shall designate. Such notices, if sent by United States mail, shall be deemed to have been given upon three (3) business days after being deposited in the United States mail. Such notices, if sent by facsimile (with electronic confirmation to sender) or nationally recognized overnight courier service, shall be deemed to have been given one (1) day after being sent. Such notices, if

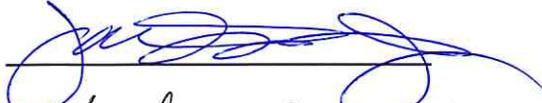
delivered in person, shall be deemed to have been given upon receipt by the receiving party.

- d) Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Louisiana, without regard to conflicts of law provisions thereof.
- e) Waiver. No delay, omission or failure to exercise any right or remedy provided for in this Agreement shall be deemed to be a waiver of the right or acquiescence in the event giving rise to such right or remedy, but every such right or remedy may be exercised from time to time and so often as may be deemed necessary by the party exercising such right or remedy.
- f) Cumulative Rights. All rights and remedies under this Agreement are cumulative, and the exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided for herein or at law or in equity.
- g) Drafting of Agreement. Despite the possibility that one party may have prepared this Agreement, the parties agree that no party shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision of this Agreement may be ambiguous, no such provision shall be construed in favor of one party on the ground that it was drafted by the other.
- h) Sections and Headings. The section headings in this Agreement have been placed thereon for the convenience of the parties and shall not be considered in any construction or interpretation of this Agreement.
- i) Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered (via mail) shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.
- j) Entire Agreement. Except with respect to the Superdome Use Agreement, the Convention Center Facility Use Contract, Event Support Agreement, and the Master Hotel Agreement, this Agreement sets forth the entire agreement between the parties concerning the subject matter of this Agreement and that upon full execution by the parties hereto supersedes all prior agreements, term sheets, negotiations and discussions.
- k) Not Exclusive. Nothing in this Agreement shall be deemed to prohibit Essence from soliciting and/or obtaining additional sponsors, partners and participants to provide additional sources of assistance, including financial assistance, to the production of the Festival. The parties acknowledge and agree that Essence shall be entitled to seek such assistance from any and all private and public sources.

THUS DONE AND SIGNED AT Baton Rouge, Louisiana on January 10, 2012.

WITNESSES:

DEPARTMENT OF CULTURE, RECREATION & TOURISM


Mark Curcio


LeAnne Weill, Interim Assistant Secretary
Office of Tourism

THUS DONE AND SIGNED AT Baton Rouge, Louisiana on January 17, 2012.

WITNESSES:

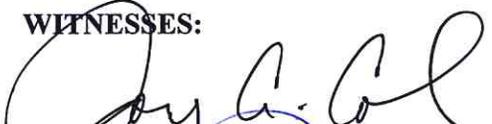
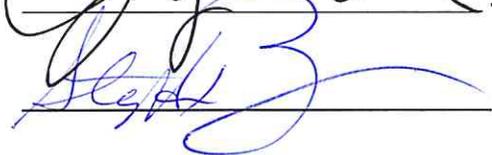

Valerie Davis


Charles R. Davis, Deputy Secretary
Office of the Lieutenant Governor
Louisiana Department of Culture, Recreation & Tourism

THUS DONE AND SIGNED AT New York, New York on January 5, 2012.

WITNESSES:

ESSENCE FESTIVALS PRODUCTIONS LLC


Michelle Ebanks, President

EXHIBIT A

Agency Name: Office of Tourism
Contractor's Name: Essence Festivals Productions, LLC
Contract Monitor: Jack Warner, Deputy Assistant Secretary

Goal: The goal of this endeavor is to increase positive exposure for and attendance at the 2012 ESSENCE Music Festival, which this year will be held on July 6-8, 2012. A high-quality Event, consistent with past Festivals held in New Orleans, and positive publicity associated with the Event assist in achieving Louisiana's tourism goal of presenting Louisiana as a unique and desirable tourism destination and expanding the tourism industry in Louisiana. The parties share these goals for 2013 and 2014, subject to appropriation of adequate annual funding by the Louisiana State Legislature.

Objective: The objectives are to attract visitors and present a positive image of Louisiana as a tourism destination in marketing, advertising and other publicity efforts, operating in collaboration with the "Host Committee" for the Event. The State also wishes to ensure a successful event and maximum return on investment for the benefit of Louisiana's overall economy and image.

Deliverables: Deliverables include all services specified in Exhibit B, including proof of advertising benefits, copies of magazine advertisements, a Progress Report, the Final Recap Report, a fully executed copy of this Agreement (and other CEA agreements between the parties related to the Event, based upon the same terms and conditions contained in this Agreement), and accompanied by supporting documentation to verify services as applicable.

Performance Measures for this Project: The Contractor's performance will be measured by 1) total Event attendance; 2) the amount of publicity and advertising exposure that Louisiana receives in advertisements and publicity, on screen at the Event, through publications, and through verbal acknowledgements; 3) the level of inclusion that the Office of the Lieutenant Governor and the Office of Tourism receives as a prominent supporting partner; 4) the relevance of information provided in the Progress and Final Recap Reports; 5) the supporting documentation for advertising and publicity benefits; 6) documentation for financial obligations; and 7) by the estimated economic impact of the Event on New Orleans and Louisiana.

Monitoring Plan: Contractor's performance will be monitored and evaluated to ensure compliance with all terms of the agreement as follows:

- Contract Monitor will verify performance of services and receipt of deliverables and will review information provided to the State regarding placement of the Ads, in the Progress Report, and in the Final Recap Report to ensure compliance in accordance with the terms of the Agreement, prior to authorizing any release of payment to Contractor in accordance with the payment schedule set forth in this Agreement.
- Contract Monitor will evaluate services and benefits to ensure that the stated goals and objectives have been accomplished.
- Contract Monitor shall complete and submit a performance evaluation to the DCRT, Office of Management and Finance within 45 days of the termination or expiration of this Agreement.

Utility of Final Product: The ESSENCE Music Festival is the nation's largest annual internationally recognized African-American event that celebrates African-American music, fashion and culture,

receiving both national and international media exposure. The State is dedicated to supporting events that provide economic benefits to Louisiana, as well as promote Louisiana's culture and tourism assets and industries. Associated advertising and marketing will stimulate interest and increase travel to the state, impacting the overall tourism economy and will assist in presenting Louisiana as a unique and desirable tourism travel and entertainment destination for future travel.

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EXHIBIT B

CRT Sponsorship Benefits

As a prominent supporting partner of the Event, CRT is provided with the following sponsorship benefits upon CRT's delivery to Contractor of all prerequisite trademarks, logos, label designs, artwork and other symbols and devices:

- a) Production and publication of a ten (10)-page print *Louisiana: Pick Your Passion* special advertising supplement to be placed in the December issue of ESSENCE magazine. Such advertising, copy and placement shall be subject to the Essence Standard Advertising Terms and Conditions and the approval of CRT, which approval shall not be unreasonably withheld, delayed or conditioned.

- b) **Bonus Advertising.** Contractor shall provide additional advertising (collectively "**Bonus Advertising**") promoting New Orleans, Louisiana and the Festival in: (i) advertising space in one or more of the following publications: *ESSENCE Magazine*, *TIME Magazine*, *FORTUNE Magazine*, *PEOPLE Magazine*, *ENTERTAINMENT WEEKLY Magazine*, *SOUTHERN LIVING Magazine* or *IN STYLE Magazine*; (ii) on-line advertising on www.essence.com and www.essencemusicfestival.com; (iii) promotions of the Event through email blasts to Event newsletter subscribers (subject to Essence's privacy policy); and (iv) Event collateral promotional materials (e.g. events brochures, flyers, palm cards) that are distributed before and during the Event, as applicable. The Bonus Advertising in printed publications will have a cumulative annual open rate value of at least \$250,000. All Bonus Advertising, copy and placement shall be subject to the relevant magazine's and website's Standard Advertising Terms and Conditions and the approval of CRT as to content, which approval shall not be unreasonably withheld, delayed or conditioned. For 2012, the CRT approved "Louisiana Pick Your Passion" logo inclusion in all Bonus Advertising and insertion of the official LouisianaTravel.com logo banner ad ("Louisiana Pick Your Passion"), hyperlinked to www.louisianatravel.com. The State's logo can be downloaded from the website <http://www.crt.state.la.us/tourism/industrypartners.aspx>.
 - i) Both the Contractor and CRT acknowledge that all prerequisite and CRT approved branding campaigns, trademarks, logos, labels, designs, artwork and other print creative materials have been delivered for the 2012 Event.
 - ii) CRT shall deliver all prerequisite and CRT approved branding campaigns, trademarks, logos, labels, designs, artwork and other print creative materials to Contractor no later than September 15th for inclusion in each of the 2012, 2013 and 2014 Event promotional campaigns (if applicable).
 - iii) Contractor shall provide CRT confirmation of placement of the Bonus Advertising, and shall provide tear sheets and copies of the issues in which any Bonus Advertising appears. Notwithstanding the foregoing, Essence shall have no obligations to CRT for Bonus Advertising if CRT does not remit its Ad Commitment Funding and State Rights Fees obligations for the applicable Event.

- c) **Spot Commercials, Program Displays and Booth (collectively "Onsite Promotions").** Contractor shall provide CRT with branding in:
 - i) One 30-second advertising display on the Superdome video screen during each concert or other event held in the Superdome in connection with the Festival (or

a total of three (3) thirty second spots (:30));

- ii) One full-page advertisement in all Festival programs;
- iii) On-site sampling/giveaway opportunities in the Convention Center of products featured as a part of CRT's promotion of tourism in Louisiana, as pre-approved by Contractor. Products may only be sampled with Contractor's prior written approval.
- iv) All Onsite Promotions (including copy and placement) shall be subject to Essence's Standard Advertising Terms and Conditions and the approval of CRT as to content, which approval shall not be unreasonably withheld, delayed or conditioned. For 2012, the CRT approved "Louisiana Pick Your Passion" logo inclusion in all Onsite Promotions. Contractor shall have no obligations to CRT for Onsite Promotions if CRT does not remit its Ad Commitment Funding for the applicable Event.

v)

- d) **Complimentary Tickets.** Contractor shall provide to CRT 432 complimentary tickets each night of the Festival concerts (for a total of 1,296 complimentary tickets for each Event) in the following locations:

- 50 Gold section tickets each night;
- 200 Front/Rear Floor section tickets each night;
- 82 Plaza section tickets each night; and
- 100 Loge section tickets each night.

Contractor shall use commercially reasonable efforts to provide the complimentary tickets to CRT at least fourteen (14) days prior to the Event. Notwithstanding the foregoing, Contractor shall have no obligations to CRT for Complimentary Tickets if CRT does not remit its Ad Fund Commitment by March 15, 2012. The State Rights Fees for the applicable Event shall be due and payable within sixty (60) days following Event.

- e) **VIP Suites.** Contractor shall provide to CRT full access to and complimentary tickets for suites 449 and 450 (individually, a "Box Suite" and collectively, the "Box Suites") each night of the Event concerts. Contractor shall provide catering for and additional tickets and passes to the Box Suites as approved by the Mercedes-Benz Superdome capacity policies. Both the Contractor and CRT acknowledge that the Superdome makes these Box Suites available to Contractor as a gratis benefit, and that unavailability of these suites in the Superdome shall not be considered a breach of this provision. Contractor shall serve prompt notification to CRT of Superdome's unavailability of these Box Suites. Contractor shall provide CRT the complimentary tickets for the Box Suites at least fourteen (14) days prior to the Event to the extent made available to Contractor. Notwithstanding the foregoing, Contractor shall have no obligations to CRT for the Box Suites if CRT does not remit its Ad Funding Commitment and State Rights Fees.
- f) **VIP Invitations:** Contractor shall provide a reasonable number of invitations to VIP receptions and parties to include in hospitality packages for trade for services. Contractor shall provide CRT with VIP invitations at least fourteen (14) days prior to the Event. Notwithstanding the foregoing, Contractor shall have no obligations to CRT for VIP Invitations if CRT does not remit the Ad Funding Commitment and State Rights Fees.

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EXHIBIT C

Projected Budget Estimates

Essence Festivals Productions LLC

2012 Essence Music Festival

State of Louisiana/DCRT Appropriation	\$948,112.00
Total Anticipated Income	\$ 948,112.00

Anticipated Expenses

Advertising/Publicity (State Rights Fee)	\$ 850,000.00
Ancillary Support (State Rights Fees)	\$ 98,112.00
Total Budgeted	\$ 948,112.00