

## VENDING MACHINE AGREEMENT

This VENDING MACHINE AGREEMENT (“AGREEMENT”) is entered into with an effective date of \_\_\_\_\_ (“EFFECTIVE DATE”) by and between \_\_\_\_\_ [enter company’s name], a \_\_\_\_\_ [enter state] \_\_\_\_\_ [enter business entity type] with its principal place of business at \_\_\_\_\_ [enter address] (“COMPANY”) and \_\_\_\_\_ [enter vendor’s name], a \_\_\_\_\_ [enter state] \_\_\_\_\_ [enter business entity type] with its principal place of business at \_\_\_\_\_ [enter address] (“VENDOR”).

### RECITALS

Whereas, Vendor is engaged in the business of purchasing, installing and servicing vending machines (“VENDING MACHINE”) containing \_\_\_\_\_ [describe products] and other drinks and/or snacks (“VENDING PRODUCTS”);

Whereas, pursuant to the terms and conditions of this AGREEMENT, COMPANY desires to appoint VENDOR as an independent contractor to install and service such VENDING MACHINE at its location \_\_\_\_\_ [enter address] (“LOCATION”); and

Whereas, VENDOR desires to provide such VENDING MACHINE to COMPANY.

Now therefore, in consideration for the mutual promises contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

**1. Term.** This AGREEMENT shall be effective as of the EFFECTIVE DATE and shall have an initial term of \_\_\_\_\_ [enter number of months or years]. Upon the expiration of such term (or any renewal term), this AGREEMENT shall automatically renew for an additional \_\_\_\_\_ [enter number of months or years] period unless either party notifies the other party at least \_\_\_\_\_ days prior to the applicable renewal date of its intention not to renew the AGREEMENT (the initial term and any renewal term shall be collectively referred to as the “TERM”).

#### **2. Appointment of VENDOR.**

2.1. Grant to VENDOR. Subject to all the terms and conditions of this AGREEMENT and the limitations set forth below, the COMPANY hereby grants permission to VENDOR to install VENDING MACHINE at LOCATION. COMPANY agrees that it does not currently, and will not through the TERM of this AGREEMENT, represent, distribute or promote any other vending machines featuring VENDING PRODUCTS that compete with VENDOR’s VENDING MACHINE at the LOCATION. COMPANY hereby grants VENDOR exclusive rights to installing and selling such VENDING PRODUCTS at LOCATION.

2.2. Ownership. COMPANY hereby acknowledges that all right, title and interest in VENDING MACHINE and VENDING PRODUCTS shall at all times remain that of VENDOR, including all monetary

profits (with the exception of COMPANY PAYMENT, defined below) with respect to VENDING MACHINE. COMPANY shall have no right, title or interest therein, and COMPANY is not authorized to grant any right or license with respect thereto except as expressly set forth in and permitted under this AGREEMENT.

2.3. Theft and Vandalism. Except as is reasonably attributable to the acts or omissions of COMPANY's personnel or other contractors, VENDOR shall bear the risk of loss to the VENDING MACHINE, monies contained therein, and any VENDING PRODUCTS from theft or vandalism while the VENDING MACHINE is placed at LOCATION. COMPANY shall take all reasonable precautions to assure that VENDING MACHINE is not vandalized, damaged or manipulated in any way. Should theft of the VENDING MACHINE or VENDING PRODUCTS contained in the VENDING MACHINE or vandalism to the VENDING MACHINE itself occur, COMPANY shall notify VENDOR as soon as practicable. In the event that theft and/or vandalism continues, VENDOR reserves the right to remove VENDING MACHINE without notice and without penalty, loss or default under this AGREEMENT.

2.4. Utilities. COMPANY shall provide electricity, water and/or any other utility service required to operate VENDING MACHINE at COMPANY's expense.

2.5. Maintenance and Repair. COMPANY shall not itself, and shall not permit any other party to, repair, service, maintain, replace, relocate, move, remove or stock VENDING MACHINE. VENDOR shall use its commercially reasonable efforts to keep the VENDING MACHINE in good working order and condition at all times during the TERM. VENDOR shall have the exclusive right to repair, replace, refurbish or remove VENDING MACHINE. Notwithstanding the foregoing, COMPANY agrees to use its best efforts to keep the VENDING MACHINE in clean and sanitary condition, wholly free of all advertising and other materials, at all times. In addition, COMPANY agrees to promptly notify VENDOR of any need for repair or service, of any consumer complaints respecting the VENDING MACHINE. COMPANY further agrees to fully cooperate with VENDOR in effecting any necessary repairs or service, or in addressing any consumer complaints received.

**3. VENDOR's Obligations.** VENDOR shall install VENDING MACHINE as soon as reasonably possible. VENDOR shall maintain the VENDING MACHINE in good working order and regularly maintain and clean it as to not detract from the appearance of LOCATION. If there is a major equipment failure, VENDOR will make every effort to complete repair within \_\_\_\_ hours of receipt of parts necessary to make the repair. VENDOR shall use its commercially reasonable efforts to regularly service and properly maintain VENDING MACHINE to COMPANY at the LOCATION. COMPANY may terminate this AGREEMENT and require VENDOR to remove the VENDING MACHINE in the event that the VENDING MACHINE is unsightly or its ongoing malfunctions reasonably detract from the COMPANY's reputation. VENDOR will re-fill and re-stock the VENDING MACHINE on an "as needed" basis.

#### 4. Prices, Payments and Payment Terms.

4.1. VENDOR Fees. Vender hereby agrees to pay to COMPANY the following amount (“COMPANY PAYMENT”):

[ ] \$\_\_\_\_\_ per month

OR

[ ] \_\_\_\_\_% of revenue on beverage items and \_\_\_\_\_% of revenue on snack items, as a percentage of the actual cash (“cash in bag” or “CIB”) collected by VENDOR from the VENDING MACHINE placed at LOCATION, less any applicable fees, deposits and taxes (COMPANY shall have the right to periodically request a sales report from VENDOR to verify revenue)

4.2. Payment Terms. Payments shall be paid by VENDOR to COMPANY on or before \_\_\_\_\_ [enter due date for payment]. Payments shall be made in U.S. Dollars and shall be made to \_\_\_\_\_ [enter address].

\_\_\_\_\_. 4.3. Late Payments. Amounts not paid when due shall be subject to interest at a rate of \_\_\_\_\_% per month or, if less, the maximum rate of interest allowed by law, calculated from the due date. If any amount is not paid when due hereunder, in addition to such past-due amounts, COMPANY shall be entitled to recover from VENDOR the costs and expenses incurred in connection with collecting the same (including costs of investigation and attorney fees).

**5. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT FOR LOSS OF PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY. EXCEPT WITH RESPECT TO A BREACH OF THIS AGREEMENT, THE LIABILITY OF EITHER PARTY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY VENDOR WITH RESPECT TO THE VENDING MACHINE GIVING RISE TO SUCH CLAIM.

**6. Indemnity of the Parties.** If notified promptly in writing of any action (and all prior claims relating to such action) against either party based on a claim arising from Section 5 (Limitation of Liability), any material breach of this AGREEMENT, or the negligence or willful misconduct of either party, the other party shall indemnify the other party and hold the other party harmless from and against any judgment, damage, liability, or expenses, including reasonable attorney’s fees, arising out of any claim with respect to the breach or alleged breach of such warranty of this AGREEMENT or such negligence or willful misconduct; provided that the other party shall have had sole control of the defense of any such action and all negotiations for its settlement or compromise; and, provided further, that no cost or expense shall be incurred for the account of the other party without its prior written consent.

#### 7. Independent Contractor Relationship.

7.1. No Employer-Employee Relationship. It is expressly understood and agreed that during the TERM of this AGREEMENT, VENDOR’s relationship to COMPANY will be that of an independent contractor and

that neither this AGREEMENT nor the services to be rendered hereunder shall for any purpose whatsoever or in any way or manner create any employer-employee relationship.

7.2. Taxes. VENDOR shall have sole and exclusive responsibility for the payment of all federal, state and local income taxes, for all employment and disability insurance, and for social security and other similar taxes, in each case with respect to any compensation or benefits provided by COMPANY hereunder.

7.3. Compliance with Law. VENDOR shall assume and accept all responsibilities which are imposed on independent contractors by any applicable statute, regulation, ruling or otherwise. VENDOR represents and warrants that he/she/it is and will continue to be an independent merchant or enterprise within the meaning and requirement of any laws or customs in \_\_\_\_\_ [enter state]. VENDOR will comply with COMPANY's policies and all applicable laws, rules, regulations and expressed public policies of \_\_\_\_\_ [enter state] and will take no action in connection with his/her/its duties under this AGREEMENT that would violate any such laws, rules, regulations and policies.

7.4. VENDOR Not Authorized to Bind COMPANY. VENDOR shall not hold himself/herself/itself out or permit himself/herself/itself to be described otherwise than as an independent contractor of COMPANY, and unless specifically authorized in advance in writing by COMPANY, VENDOR shall not enter into, assume or incur any obligation on COMPANY's behalf or transact any business for COMPANY.

**8. Compliance with Applicable Laws.** VENDOR shall, at its own expense, comply with all applicable laws and make, obtain and maintain in force at all times during the TERM of this AGREEMENT, all filings, registrations, reports, licenses, permits and authorizations required under applicable law, regulation or order required for VENDOR to perform its obligations under this AGREEMENT.

**9. Assignment.** VENDOR [ ] may / [ ] may not assign, transfer or otherwise dispose of this AGREEMENT in whole or in part to any individual, corporation or other entity without the prior written consent of COMPANY, provided that VENDOR shall continue to remain obligated to COMPANY for the assignee's performance or breach of VENDOR's duties and obligations hereunder.

**10. Termination.** Notwithstanding anything herein to the contrary, either party may terminate this AGREEMENT at any time with or without cause upon \_\_\_\_\_ days' prior written notice.

Upon termination of this Agreement by either party, COMPANY shall permit VENDOR reasonable access to the LOCATION, free from any claims of trespass, for purposes of removing the VENDING MACHINE and any other VENDOR property at the LOCATION within seven (7) days from termination of this Agreement. Until such time as all such VENDING MACHINE and property is removed, COMPANY's obligations with respect to care of the VENDING MACHINE shall continue as set forth herein, and COMPANY shall be responsible to VENDOR for all costs and expenses associated with damaged VENDING MACHINE or missing pieces/equipment, excepting reasonable wear and tear. VENDOR shall use its best efforts to leave each equipment site in the condition in which it existed prior to placement of the VENDING MACHINE, excepting reasonable wear and tear and any damage which may have occurred which was beyond VENDOR's reasonable control and/or anticipation.

**11. Confidentiality.** Except as may otherwise be required by law or legal process, neither party hereto shall disclose to any third party the terms and conditions of this AGREEMENT or any information respecting sales or revenue of the VENDING MACHINE, during the TERM or thereafter. This obligation shall survive termination of this AGREEMENT.

**12. Miscellaneous.**

12.1. Entire Agreement. The provisions of this AGREEMENT constitutes the entire agreement between the parties with respect to the subject matter hereof, and this AGREEMENT supersedes all prior agreements or representations, oral or written, regarding such subject matter. This AGREEMENT may not be modified or amended except in a writing signed by a duly authorized representative of each party.

12.2. Governing Law. This AGREEMENT will be construed in accordance with and governed by the laws of the state of \_\_\_\_\_ [enter state] without regard to the principles of conflicts of laws thereof. In addition, COMPANY and VENDOR acknowledge and agree that the courts located in \_\_\_\_\_ [enter county] County shall have exclusive jurisdiction in any action or proceedings with respect to this AGREEMENT, including federal district courts located in such county.

12.3. Successors and Assigns. Except as otherwise expressly provided in this AGREEMENT, this AGREEMENT will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties of this AGREEMENT. Nothing in this AGREEMENT is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this AGREEMENT, except as expressly provided in this AGREEMENT.

12.4. Force Majeure. If the performance of any obligation (other than payment obligations) under this AGREEMENT is prevented, restricted or interfered with by reason of war, acts of terrorism, act of God, civil commotion, acts of public enemies, blockade, embargo, strikes, order, proclamation, regulation, ordinance, demand, or requirement having a legal effect of any government or any judicial authority or representative of any such government, or any other act whatsoever, whether similar or dissimilar to those referred to in this Section 12.4, which is beyond the reasonable control of the party affected, then the party so affected shall, upon giving prior written notice to the other party, be excused from such performance to the extent of such prevention, restriction, or interference, provided that the party so affected shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed.

12.5. Disputes. Any controversy, claim or dispute arising out of or relating to this AGREEMENT, shall be settled by binding arbitration in \_\_\_\_\_ [enter city and state]. Such arbitration shall be conducted in accordance with the then-prevailing commercial arbitration rules of the American Arbitration Association, with the following exceptions if in conflict: (a) one arbitrator will be chosen by the American Arbitration Association; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the arbitrator's rules and regulations) of the proceeding has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the

issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection shall be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this AGREEMENT. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERTO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.

12.6. Construction. The titles of the sections of this AGREEMENT are for convenience of reference only and are not to be considered in construing this AGREEMENT. Unless the context of this AGREEMENT clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole; (b) references to one gender includes all genders; (c) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation”; and (d) references to “hereunder”, “herein” or “hereof” related to this AGREEMENT as a whole. Any reference in this AGREEMENT to any statute, rule, regulation or agreement, including this AGREEMENT, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

\_\_\_\_ 12.7. Entire Agreement. This AGREEMENT embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this AGREEMENT and supersedes all prior or contemporaneous agreements and understanding other than this AGREEMENT relating to the subject matter hereof. No course of prior dealing between the parties and no usage of the trade shall be relevant to supplement or explain any term used herein. Acceptance or acquiescence in a course of performance rendered hereunder shall not be relevant to determine the meaning of these terms and conditions even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

12.8. Amendment and Waiver. This AGREEMENT may be amended only by a written agreement executed by the parties hereto. No provision of this AGREEMENT may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this AGREEMENT. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

12.9. Counterparts. This AGREEMENT may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

In witness whereof, the parties have caused this AGREEMENT to be executed by their respective duly authorized representative as of the EFFECTIVE DATE.

**COMPANY**

**VENDOR**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Position: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_