



## Vending Machine Agreement

**Document 4072A**

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## VENDING MACHINE AGREEMENT

This VENDING MACHINE AGREEMENT (the "**Agreement**") is made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (the "**Effective Date**"), by and between [COMPANY NAME], a \_\_\_\_\_ corporation with its principal place of business at [PRINCIPAL ADDRESS] (the "**Company**") and [VENDOR NAME] a \_\_\_\_\_ corporation with its principal place of business at [PRINCIPAL ADDRESS] (the "**Vendor**").

### RECITALS

WHEREAS, Vendor purchases, installs and services vending machines containing certain [DESCRIBE PRODUCTS] ("**Vending Products**") and other snacks (the "**Vending Machines**"); and

WHEREAS, pursuant to the terms and conditions of this Agreement, the Company desires to appoint Vendor as an independent contractor to install and service such Vending Machines at specific business locations set forth on Exhibit A ("**Locations**") and Vendor desires to provide such vending machines to Company;

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

**1. Term.** This Agreement shall be effective as of the Effective Date and shall have an initial term of \_\_\_ (\_\_) months. Upon the expiration of such term (or any renewal term), this Agreement shall automatically renew for additional \_\_\_ (\_\_) month periods unless either party notifies the other party at least thirty (30) 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 Machines at the Locations as set forth in Exhibit A [and all future locations that will be designated by Company.]

The 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 [DESCRIBE PRODUCTS] that compete with Vendor's Vending Machines at the Locations. The Company hereby grants Vendor exclusive rights to installing and selling such [DESCRIBE PRODUCTS] at both the Locations.

2.2 Ownership. Company hereby acknowledges that all right, title and interest in Vending Machines shall at all times remain that of the Vendor, including all monetary profits (with the exception of Company Payment) with respect to Vending Machines. 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.** Company shall take all reasonable precautions to assure that the Vending Machine(s) are not vandalized, damaged or manipulated in any way. Should theft of the products contained in the Vending Machine(s) or vandalism to the Vending Machines itself occur the Company shall notify Vendor as soon as practicable. In the event that theft and/or vandalism continues Vendor reserves the right to remove the Vending Machine(s) without notice and without penalty, loss or default under this Agreement. All other Locations shall remain active.

**3. Vendor's Obligations.** Vendor shall use its commercially reasonable efforts to install, regularly service and properly maintain Vending Machines to Company at the Locations. [Vendor shall install Vending Machines as soon as reasonably possible].

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

4.1 **Vendor Fees.** Vendor hereby agrees to pay to Company [AMOUNT] (\$ \_\_\_\_\_) Dollars per month per Location (“**Company Payment**”).

4.2 **Payment Terms.** Payments shall be paid on or before the last day of each month and shall be made in U.S. Dollars. Payments to [COMPANY] shall be made to [ADDRESS].

4.3 **Late Payments.** Amounts not paid when due shall be subject to interest at one and one-half percent (1-1/2%) 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, the party entitled to payment shall be entitled to recover from the other party the costs and expenses incurred in connection with collecting the same (including costs of investigation and attorneys 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 MACHINES 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 Warranty), 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 or 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 the 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 the 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 is and will continue to be an independent merchant or enterprise within the meaning and requirement of any laws or customs [in the Territory]. Vendor will comply with the Company's policies and all applicable laws, rules, regulations and expressed public policies of [STATE] and will take no action in connection with his duties under this Agreement that would violate any such laws, rules, regulations and policies.

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

**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 the Company, provided that Vendor shall continue to remain obligated to the 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 thirty (30) days' prior written notice.

**11. Miscellaneous.**

11.1 Entire Agreement. The provisions of this Agreement, including any Exhibits, 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.

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

11.3 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 to 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.

11.4 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, 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 11.4, 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.

11.5 Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled by binding arbitration in [CITY/STATE]. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of [NAME OF ARBITRATOR], with the following exceptions if in conflict: (a) one arbitrator shall be chosen by [ARBITRATOR]; (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 HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO

11.6 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to the parties at the addresses first referenced above.

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this section. All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

11.7 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 include all genders, (c) "or" has the inclusive meaning frequently identified with the phrase "and/or," (d) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (e) references to "hereunder," "herein" or "hereof" relate 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.

11.8 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.

11.9 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.

11.10 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 duty authorized representative as of the Effective Date.

[NAME OF COMPANY]

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[NAME OF VENDOR]

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**LOCATIONS**

Current Locations (the "Locations")
1.
2.
3.
4.