

## RETAIL VENDING CONCESSION AGREEMENT

**TENANT:** \_\_\_\_\_

NOW, THEREFORE, in consideration of the foregoing and mutual promises and covenants set forth, Lessee and Metropolitan Airports Commission ("MAC") hereby agree as follows:

### 1. **TERM**

**Term:** \_\_\_\_\_ **Rent Start Date:** \_\_\_\_\_

This Agreement is cancelable upon 30 (thirty) days written notice by either party.

### 2. **AUTHORIZED USE**

Lessee shall have the non-exclusive right to provide, maintain and operate Retail Vending Unit(s) in the Leased Premises. Lessee is authorized to sell only the products listed in the approved "Use Clause" attached here as **Exhibit B – Use Clause**. Exhibit B may be amended from time to time upon the signature of the parties.

Each unit's expected product assortment, and any subsequent product assortment changes must be approved in writing by MAC prior to implementation. No food and beverage products are allowed as part of this Agreement without MAC's prior approval.

In the event MAC determines, in its sole and absolute discretion, that any of Lessee's products are objectionable for display or sale in the Airport, MAC shall provide written notice to Lessee to remove such merchandise. Lessee shall remove such merchandise within twenty-four (24) hours of receipt of notice from MAC.

Lessee may not improve or otherwise alter the Leased Premises in any manner or fashion without the prior written approval of MAC.

**Lessee's retail operation shall:** 1) Accept credit cards from not less than three (3) different credit companies (Visa and MasterCard included). 2) Display a local or toll free customer comment and complaint telephone number on each retail vending machine 24 hours a day, 7 days a week. Lessee shall provide to MAC, and update as necessary, contact information for an authorized representative of Lessee to allow MAC to contact them in emergencies or during non-business hours.

### 3. **LEASED PREMISES**

MAC will provide floor space and electrical outlets for the operation of Lessee's retail operations in accordance with the attached **Exhibit A – Leased Premises**.

### 4. **RENT AND FEES**

Lessee shall pay to MAC advance rent for each month equal to the Minimum Monthly Guarantee ("MMG"), due on or before the 1<sup>st</sup> of each month. If at the conclusion of the month the percentage of the Gross Revenues as defined below for that month exceeds the MMG, Lessee must pay the difference to MAC by the 15<sup>th</sup> of the following month. Lessee shall submit a percentage report to MAC by the 15<sup>th</sup> of each month which includes a statement of Gross Revenue (Sales Statement) for the preceding month at the time that the additional rent payment is submitted, pursuant to **Section 13**.

Tenant #: \_\_\_\_\_

Lease #: \_\_\_\_\_

MAC Staff Use

**Definition of Gross Revenues:** Gross Revenues for the purposes of this Agreement include all payments derived from all business conducted by Lessee at the Leased Premises. Gross Sales shall include all payments for products, services, retail display allowances, or any other item whether by cash or credit, or by way of rentals or fees, discounts or credits, except as specifically excluded from Gross Revenue.

**Gross Revenue shall exclude:** 1) The amount of any federal, state or local sales taxes separately stated and collected from customers. 2) Cash and credit card refunds to customers for merchandise returned. 3) Amounts and credits received in settlement of claims for loss of, or damage to merchandise. 4) Insurance proceeds. 5) Tax rebates.

MAC shall allow no deductions from Gross Revenues other than those specifically stated above.

**Minimum Monthly Guarantee Rent (MMG Rent) and Percent Rent**

MMG	Percent Rent
\$500	

**Security Deposit:** At the time this Agreement is executed, Lessee shall provide to MAC a security deposit of \$500 ("Lessee Security Deposit"), in the form of an irrevocable letter of credit from a lending institution or a bond, in a form acceptable to MAC, or by check or cash. The deposit will be returned to Lessee when this Agreement is terminated unless MAC chooses to apply it to unpaid rent or other damages. Lessee's Security Deposit will accrue no interest.

If Lessee defaults with respect to any provision of this Agreement, MAC may use, apply or retain all or any part of Lessee's Security Deposit for the payment of rent or any other sum in default and any amounts MAC may spend by reason of Lessee's default to the full extent permitted by law. If any portion of Lessee Security Deposit is so used, Lessee shall, within ten (10) days after written demand therefore, deposit with MAC, in a form acceptable to MAC, an amount sufficient to restore Lessee Security Deposit and the to the aforementioned amounts, and Lessee failure to do so shall be a material default and breach of this Agreement. MAC shall not be required to keep any security deposit separate from its general funds and Lessee shall not be entitled to protest on any such deposit.

**5. INTEREST AND LATE FEES**

All payments shall be considered completed upon receipt and deposit by MAC. Lessee shall pay a penalty for late or delinquent payments during the term of this Agreement and any extensions of eighteen percent (18%) per annum on the balance of the unpaid amount calculated from the date the amount is due until the close of the business day upon which the delinquent payment is received by MAC.

**6. OPERATION OF THE CONCESSION**

**Adequate and Competent Staff:** All personnel shall be clean, neat in appearance and attired in proper uniform, if required. Lessee shall ensure that all employees of Lessee conform to personal hygiene requirements established by MAC rules and regulations and/or by federal, state, or local laws or regulations, whichever is most stringent. Lessee must ensure all employees can adequately communicate in English and are professional and courteous in interactions with customers. Failure to comply with the requirements of this Section will result in liquidated damages as referenced in **Section 16** of this Agreement.

**Minimum Hours of Operation:** Minimum hours of operation have been established for the Retail Vending program. The vending unit will be operational 24 hours a day, 7 days per week. Vending units may be serviced, stocked or maintained between 8:00 p.m. – 5:00 a.m. At the request of Lessee MAC may establish or approve other hours for service, stocking and maintenance of the units at MAC's discretion

**MAC Objections:** MAC shall have the right to object to the demeanor, conduct, and appearance of any of Lessee's employees, or those doing business with them, subject to applicable law. Lessee shall take all steps reasonably necessary to remedy the cause of the objection. After written notice from MAC, Lessee shall ensure the immediate removal from the Leased Premises or discipline in accordance with Lessee's employee discipline policy for any employee or other representative of Lessee who participates in improper or illegal acts on the Airport, who violates Airport rules and regulations or any provision of the Agreement, or whose continued presence on the Airport is, in the opinion of MAC, deemed not to be in the best interests of MAC. However, in certain situations, MAC shall have the right to request Lessee to take immediate action via a telephone call. Lessee shall not allow any of its contractors or employees to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner, and shall confine their business on the Airport to that of operating the concession unless otherwise approved in writing by MAC.

**MAC Not Liable for Employment Issues:** Lessee's Agreement with MAC is not one of agency by Lessee for MAC, but one with Lessee engaged independently in the business of managing the Lease Premises on its own behalf. All employment arrangements are, therefore, solely Lessee's concern, and MAC shall have no liability with respect thereto. Lessee shall defend, indemnify, and hold completely harmless, MAC from any claims or causes or action of whatever nature that may be brought by present or former employees, present or former independent contractors, present or former labor unions, including any labor unions seeking to represent Lessee's employees, or applicants with Lessee.

**Cash Handling Requirements of System:** Electronic or mechanical devices used for recording customers' sales, shall have a serial totaling unit built in them with a continual sequential recording of transaction of sales for proper sales accountability. Such sequential totaling unit shall be sealed or unsealed only in the presence of an authorized and designated representative of MAC. The totalizer of such units may not be turned back, but shall be continuous in adding to each transaction as made. All units, where MAC shall determine visible monitoring is to be made of customers' transactions, shall be placed so that said monitoring can be made readily, and the windows thereof shall be properly illuminated so that transactions can be viewed by customers from a reasonable distance when such equipment is in use.

Devices used in recording sales to customers shall have a non-resettable grand total that accumulates each transaction entered into these devices. All transactions recorded on these devices shall be visibly displayed so that the amount recorded can be viewed by customers from a reasonable distance. No device in which cash sales are recorded and deposited may be opened without recording the date and time of said opening.

Electronic or mechanical devices that total customers' transactions shall have a reading taken of same at least hourly and recorded for accounting purposes. Adequate security protection is to be maintained so that unauthorized persons may not tamper with the totaling unit of such devices.

All equipment handling sales shall promptly recover said sales (cash or credit) and electronic or mechanical devices and shall not delay or "gang" register or record such sales.

**Pricing Covenant:** Lessee covenants to MAC to offer for sale from the Leased Premises only high quality products at “Street Pricing” or offer merchandise at price points that are less than Street Pricing. For the purpose of establishing street prices, MAC shall use the Mall of America and Southdale Mall as the first two (2) comparable shopping locations that MAC believes would offer similar or identical products and services.

Results of any pricing survey by MAC or customer complaint will be given to Lessee, which will be given one (1) week to correct any price overage discrepancies or to submit written justification for retaining current prices for these items. In response to Lessee’s written justifications, MAC will determine whether overages must be eliminated, and if so, Lessee shall reduce prices within three (3) days of the date of MAC’s decision. Failure to bring pricing into compliance within three (3) days will result in the assessment of Liquidated Damages in accordance with **Section 16** of this Agreement.

When an item is pre-priced, Lessee shall not charge a price higher than the preprinted price.

Notwithstanding the foregoing, as long as Lessee is in good standing with MAC on all lease issues (including, but not limited to, rent and other payment obligations, lease/amendment documents and price checks), Lessee shall be permitted to charge up to ten percent (10%) above street pricing through the term of the Agreement.

**Additional Information:** MAC reserves the right to require additional reasonable sales information from Lessee in the future, including without limitation sales of particular products and/or sales during particular times, and MAC will give Lessee notice of any future requirements.

**Revenue Control:** Upon the request of MAC, Lessee is required to make available to MSP weekly sales data for each unit (“Point of Sale Data”), including but not limited to per day, daypart and product category totals for: weekly sales, average transaction values, average number of items sold per transaction, and the total number of transactions. MAC reserves the right to request sales data and other reports in electronic form on an occurrence to be directed by MAC.

Weekly data is to be made available no later than the following Tuesday at noon for the week ending at close-of-business Sunday.

## **7. OPERATING EXPENSES**

**Taxes and Fees:** Lessee or Lessee’s Subtenants shall pay all taxes of whatever character, license fees, permit fees and other charges or fees which may be levied or assessed against the fee title, Leased Premises, Leasehold Improvements, operations hereunder, and upon property or leasehold interests of Lessee and Lessee’s Subtenants located thereon or used in connection therewith, or which may be levied or assessed on account of the transaction of Lessee or Lessee’s Subtenants’ business in, on or about the Leased Premises. Taxes and other fees may be invoiced by a third party provider and/or MAC. Lessee or Lessee’s Subtenants is responsible without deduction or set-off for obtaining and paying for all licenses and permits necessary or required by law for the construction of improvements, installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder.

**Costs:** Lessee shall bear or cause its Subtenants to bear all costs and expenses (including, but not limited to, building permit fees as approved by the Commission annually) involved in the operation of business or arising from the occupancy by Lessee and Lessee’s Subtenants of the Leased Premises, as well as repair and maintenance incident thereto.

Utilities: MAC shall provide at no cost to Lessee normal 110 power to operate their Retail Vending Equipment within the Airport but Lessee's usage of such power shall be limited to the existing source of power closest to the Leased Premises. In the event that the enlargement, improvement or expansion of existing sources of supply or distribution points are necessary to meet Lessee's requirements, such enlargement, improvement or expansion shall be subject to the Commission's approval and, if approved, shall be the obligation and expense of Lessee.

#### **8. INSTALLATION AND MAINTENANCE**

Lessee agrees to clean and keep in good appearance the Leased Premises as well as keep in first class condition and in working order Lessee's Retail Vending Unit(s). MAC reserves the right to note deficiencies in cleanliness or appearance and such deficiencies must be remedied within a reasonable time period by Lessee. Repeated violations will result in liquidated damages in accordance with **Section 16** of this Agreement.

Lessee agrees to respond to passenger and maintenance problems as quickly as possible, and in all cases within one-hundred eighty (180) minutes of notification during normal business hours (7:00 a.m. – 8:00 p.m./seven (7) days per week). In the event that a passenger misses a flight due to the negligence of Lessee, Lessee shall be liable to the passenger for any increased travel costs incurred. Any such passenger is an intended third party beneficiary of this paragraph.

Upon the expiration or cancellation of this Agreement for any reason whatsoever, Lessee agrees to return the Leased Premises to its condition at the time Lessee took possession.

To the extent that Lessee uses subcontractors to fulfill any of its obligations under this Agreement, MAC, in its sole discretion, shall have a right of rejection of any such employee or agent of subcontractor.

#### **9. DAMAGE TO OR DESTRUCTION OF LEASED PREMISES**

**Repair:** All damage or injuries to the Leased Premises and to fixtures, appurtenances, and equipment by Lessee, moving property in or out of the Leased Premises or by installation, removal of furniture, fixtures, equipment, or other property by Lessee, or resulting from any other cause of any other kind or nature whatsoever due to carelessness, omission, neglect, improper conduct, or other causes of Lessee, or their subtenants, invitees, agents, or employees shall be repaired, restored, or replaced promptly by Lessee within fifteen (15) days at its sole cost and expense to the satisfaction of MAC. MAC will notify Lessee in writing if MAC determines repairs must be made. No rent shall abate if damage resulted from any act of Lessee or their subtenants, invitees, agents or employees. If repairs are not made within fifteen (15) days of the notification of the damage, and MAC was not responsible for the damage, MAC will notify Lessee in writing that MAC will make the repairs and charge Lessee the current hourly rate for labor and materials at cost, unless otherwise agreed to. An administrative overhead charge of fifteen percent (15%) is added to the total cost (employee plus material cost) of the billing. Additional interest at the rate of eighteen percent (18%) per year shall accrue if the sum is not paid within five (5) days after rendition of a bill or statement therefore. If MAC and its employees or agents damage the Leased Premises through their gross negligence or intentional act, MAC will be solely responsible for the repairs.

If damage occurs that is not the fault of Lessee, or any of their subtenants, invitees, agents, or employees in any way making the Leased Premises unusable, and the Leased Premises are rendered unusable, rent and all other charges shall be abated on a per day pro-rated basis during the time the Leased Premises are unusable.

Notwithstanding the foregoing, if the Leased Premises are completely destroyed as a result of the sole negligent or willful act or omission of Lessee, or any of their subtenants, invitees, agents, or employees the rent shall not abate and MAC may, in its discretion, require Lessee to repair and reconstruct the Leased Premises within six (6) months of such destruction and pay the costs therefore; or, should Lessee refuse to reconstruct or make repairs, MAC may repair and reconstruct the Leased Premises and Lessee shall be responsible for reimbursing the costs and expenses reasonably incurred in such repair of the Leased Premises plus fifteen percent (15%) of the total costs and expenses, plus additional interest at the rate of eighteen percent (18%) per year, accruing beginning on the date such expenses are incurred.

Should any Leasehold Improvements, or any portion thereof, be destroyed or damaged, they shall in all instances be repaired or replaced by Lessee whether or not such damage or destruction is covered by insurance, provided that this Agreement has not been canceled in accordance with the terms hereof, unless caused by MAC, or its employees, agents or contractors. If Lessee fails to repair or replace such damaged Leasehold Improvements in accordance with a schedule approved by MAC and provided that this Agreement has not been canceled, MAC may make such repairs or replacement and recover from Lessee the cost and expense of such repair or replacement, plus fifteen (15%) percent thereof, plus additional interest at the rate of eighteen percent (18%) per year, accruing beginning on the date such expenses are incurred.

**Application of Insurance Proceeds:** Whenever MAC repairs the damage, proceeds of Lessee's and MAC's property insurance on the Leased Premises and Leasehold Improvements shall be applied to the cost of the repairs and replacement of the Leased Premises and Leasehold Improvements. Lessee is responsible for payment of all repair and replacement costs and expenses exceeding insurance proceeds for all non-structural portions of the Leased Premises in any event, and for all structural portions of the Leased Premises only in the event the damage resulted from Lessee's negligent or intentional act or omission, provided this provision does not waive any claims against Lessee. If MAC is not required to and elects not to repair the Leased Premises, the proceeds of all applicable insurance shall be paid over to MAC and Lessee as their interests appear. MAC is entitled to all insurance proceeds attributable to structural portions of the Leased Premises and all Leasehold Improvements funded by MAC in any portion.

**Exceptions from Liability:** MAC shall not be liable or responsible to Lessee for any damage or destruction to Lessee's property from any cause other than its own intentional or negligent acts.

## **10. RELOCATION**

MAC may, at any time after providing thirty (30) days advance written notice, require the temporary or permanent removal and/or relocation of the Leased Premises and Retail Vending Unit, should the development or operation of the Airport require the removal and/or relocation. Lessee agrees that it shall promptly cooperate with the removal/relocation and promptly remove merchandise at its own cost and expense. Lessee may terminate all or the affected portion of this Agreement upon providing thirty (30) days advanced written notice if Lessee does not agree with the proposed relocation.

Should MAC determine that any portion or all of the Leased Premises provided are permanently required for another Airport use, MAC will use its best efforts to provide an equivalent amount of comparable space in a mutually satisfactory location elsewhere in the Terminal Buildings. MAC will provide Lessee with at least thirty (30) days written notice of the new location. Within thirty (30) days after such notice is given, Lessee shall relocate to the designated alternative premises. If Lessee does not agree to the alternate location proposed by MAC, Lessee may terminate the affected portion of this Agreement upon providing thirty (30) days advanced written notice to

MAC and Lessee's improvements and products will be removed from the Terminal Building by Lessee at Lessee's expense. MAC shall have final determination of whether alternate space is available and its location.

Even though such activities may inconvenience and partially impair the Lessee, it agrees that no liability shall attach to MAC, its officers, agents, or employees by reason of such inconvenience or impairment. Lessee waives any right to claim damages of any kind including indirect and consequential damages, resulting from such inconvenience or impairment.

## **11. REDELIVERY**

**Title and Property Rights During Term:** All improvements, additions and alterations made to the Leased Premises by Lessee or Lessee's Subtenants, regardless of whether paid for by MAC in any portion, shall be considered the property of Lessee or Lessee's Subtenant during the Term with respect to all requirements hereunder, including without limitation insurance and maintenance requirements. At the termination of the Agreement (whether by expiration of the term, cancellation, forfeiture or otherwise), all Leasehold Improvements, additions and alterations shall be removed and the cart returned to its original configuration. If the improvement, addition or alteration is not removed within seventy-two (72) hours of the termination of the Agreement it shall become the property of MAC, at MAC's option and at no cost to MAC. However, notwithstanding the above subsections, proprietary Leasehold Improvements that include branded signs, logos, items displaying names or logos, and applicable franchise or concept rights for all current and future Airport locations shall remain the property of Lessee throughout the Term of the Agreement, and after the termination of the Agreement. At the termination of the Agreement, all such proprietary items shall be removed from the Leased Premises at the Lessee's expense.

**Title and Property Rights Upon Termination:** If Lessee shall fail to remove any of its personal property within seventy-two (72) hours of termination of this Agreement, other than Leasehold Improvements, then at the option of MAC, the same shall either be deemed abandoned and become the exclusive property of MAC, or MAC shall have the right to remove and store or dispose of the property, at the expense of Lessee, without further notice to or demand upon Lessee, and hold Lessee responsible for any and all charges and expenses incurred by MAC therefor.

## **12. ADVERTISING, SIGNAGE AND APPEARANCE**

No advertising, signage, or television content shall be permitted in or on the Leased Premises other than that which identifies the Lessee's trade name, products, price, directions for use, other signage required by this Agreement, or signage that may be required by applicable laws or regulations. Lessee agrees not to install any signs without prior written approval of MAC. The terms "signs" shall mean advertising signs, billboards, identification signs or symbols, posters, displays, decorative items or logos, videos or any similar devices.

All signage and any modification thereto shall be approved by MAC, in writing, prior to installation. Lessee must display a local or toll free customer comment and complaint telephone number. Lessee shall also display signage, provided by MAC, stating contact information for retail cart opportunities.

## **13. STATEMENTS, BOOKS AND RECORDS**

**Monthly Reports:** On the fifteenth (15th) day of each month, through and including the month following termination of this Agreement, ("Payment Day") during the Term, including any holdover period, Lessee shall submit to MAC, electronically at MAC's option, through its Director of Finance, a statement ("Sales Statement"), in a form satisfactory to MAC, showing the Gross Sales and other sales-related information for Lessee's business at the Leased Premises for

the preceding calendar month and the cumulative Gross Sales for that year, through the last day of the preceding month, from all such business, accompanied by payment. MAC reserves the right to prescribe and revise the format of the Sales Statements at any time.

Lessee shall comply with all requirements under this Section or Lessee will incur liquidated damages as referenced in **Section 16** of this Agreement.

**Books and Records:** MAC reserves the right to require all data submitted by Lessee to MAC be in electronic form. Lessee shall be responsible for maintaining adequate accounting records, in accordance with generally accepted accounting principles, generally accepted auditing standards and the requirements of this Agreement, for: **1)** all transactions relevant to this Agreement (collectively “Books and Records”), and **2)** all exclusions from Gross Sales claimed by Lessee. All Books and Records shall be retained for a period of at least two (2) years after the end of the applicable contract year, or in the event of a claim by MAC, until such claim of MAC has been fully ascertained, resolved and paid, whichever is later.

Books and Records shall include detailed analysis listing all of Lessee operations at the Leased Premises in the form of printed, written or electronic media. Books and Records shall also include, but are not limited to: **1)** all original accounting source documents and detail transactions relevant to this Agreement, including but not limited to (a) operating/financial statements, (b) a complete (cumulative) general ledger, (c) monthly sales journals detailing each transaction for the month, (d) reconciliation between the financial records and monthly Sales Statements submitted to MAC, (e) any applicable bank statements, (f) annual audited financial statements and related reports on internal controls (including management representation letters) concerning Lessee’s business at the Leased Premises, if applicable, (g) electronic media documenting accounting records, and (h) other sales-related documents; and **2)** all exclusions from Gross Sales claimed by Lessee.

**Final Certified Report:** At the end of the lease term, Lessee shall submit to MAC a final detailed statement of Gross Sales, rents payable, rents due from any subtenants for the term of this agreement, and any other Books and Records reasonably requested by MAC, in a form acceptable to MAC. This report shall be submitted to the address provided in **Section 19** of this Agreement.

Such statement shall be certified as correct by an authorized representative of Lessee and be accompanied by Lessee’s payment covering any underpayment between payments made during the term of the lease and payments due under the terms of this agreement.

MAC retains the right to audit Lessee’s books pursuant to the Audit section below.

**Audit Findings:** At any time upon ten (10) days written notice, MAC reserves the right to audit the books and records of Lessee relating to operations at the Leased Premises for the purpose of verifying Gross Sales for any period within the two (2) years prior to the beginning date of such audit. Lessee will be provided with a copy of the results of any audit. If, as a result from such audit, it is established that there has been an understatement of the Gross Sales received from all operations at the Leased Premises by three percent (3%) or more (after the deductions and exclusions allowed in this Agreement) the entire reasonable expense of such audit and applicable attorney’s fees shall be borne by Lessee. Any additional monies due as a result of the audit shall be paid by Lessee to MAC with interest at eighteen percent (18%) per annum from the date such additional monies became due. If Lessee has overpaid rent, MAC will credit the amount of the overpayment against future rent payments. A second audit during the Term that shows an

understatement of Gross Sales by three percent (3%) or more will be considered an event of default, with the potential for termination by MAC as defined in **Section 15** of this Agreement.

Lessee shall comply with all requirements under this Section or Lessee will incur liquidated damages as referenced in **Section 16** of this Agreement.

**Provision of Audit Workspace:** Lessee will also make the requested original books and records available within ten (10) working days from the date of written request by MAC's representative ("MAC auditor") and will freely lend its own assistance in conducting the audit. Such records shall be provided to MAC auditor in the Minneapolis metropolitan area for inspection during business hours or via electronic form or copy shipped to MAC auditor. Lessee agrees that in the event that the requested documentation is not provided within such ten (10) working day period, Lessee shall bear the expense of MAC auditors to travel to and return from the location(s) where such records are maintained to conduct the audit. Such expenses will include transportation, lodging, food and other out-of-pocket expenses for the full duration of the time needed to complete the audit.

**Survival of Lessee's Duties and MAC's Rights:** Lessee's duty to maintain books and records and MAC's rights under this Agreement to inspect and audit the books and records of Lessee shall survive the expiration or earlier termination of this Agreement.

**Computerized Data:** In those situations where Lessee's records have been generated from computerized data (whether mainframe, minicomputer, or PC-based computer systems), Lessee agrees to provide MAC's representative with extracts of data files in a computer readable format on data disks, E-mail with attached files or suitable alternative computer data exchange formats.

#### **14. INDEMNIFICATION AND INSURANCE**

**Indemnification:** To the fullest extent permitted by law, Lessee does hereby covenant and agree to protect, defend indemnify and hold completely harmless MAC and its Commissioners, officers, agents and employees (collectively "Indemnitees") from and against any and all liabilities, losses, damages, suits, actions, claims, charges, judgments, settlements, fines or demands of any person arising by reason of injury or death of any person, or damage to any property, or any allegation of such injury, death or property damage, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorney's fees, court costs and expert fees) of any nature whatsoever arising out of or as a result of Lessee's operation at or about the Leased Premises and the Airport except when solely caused by the negligence of the MAC.

MAC shall give Lessee reasonable notice of any such claim or action. In indemnifying or defending an Indemnatee, Lessee shall use legal counsel reasonably acceptable to MAC. MAC, at its option, shall have the right to select its own counsel or to approve joint counsel as appropriate (considering potential conflicts of interest) and any experts for the defense of claims. Lessee, at their expense, shall provide to MAC all information, records, statements, photographs, video, or other documents reasonably necessary to defend any claims.

This provision shall survive expiration or earlier termination of the Agreement. The furnishing of the required insurance hereunder shall not be deemed to limit Lessee's obligations under this Agreement.

As a distinct and separate indemnification obligation, Lessee shall protect, defend, indemnify and hold completely harmless the Indemnitees from any claims or liabilities arising out of Lessee's Retail Vending Concession Agreement

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failure or alleged failure to procure and to keep in force the insurance required as part of this Agreement.

Lessee shall not use or permit the Premises to be used in any manner that would void Lessee or MAC's insurance or increase the insurance risk. Lessee shall comply with all requirements imposed by the insurers for MAC and Lessee.

**Insurance:** Lessee shall maintain insurance in companies acceptable to the MAC the kinds and in the amounts herein specified, with companies licensed and admitted to conduct business within the State of Minnesota, and having a current A. M. Best Key Rating of at least A-, in the prescribed form set forth herein. If any work provided for or to be performed under this Agreement is sublet (as otherwise permitted by the terms of this Agreement), Lessee shall require the subcontractor to maintain and furnish it with satisfactory evidence of worker's compensation, employer's liability and such other forms and amounts of insurance which Lessee deems reasonable, to include placements of the insurance with companies licensed and admitted to conduct business within the State of Minnesota, and having a current A. M. Best Key Rating of at least A-.

In accordance with the above, Lessee and any Subtenants will maintain the following insurance coverage:

<u>Forms of Coverage</u>	<u>Minimum Limits of Liability</u>
1. Comprehensive Worker's Compensation and Occupational Diseases	Statutory Limits for Minnesota
2. Employer's Liability	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Diseases	\$500,000 policy limit
Bodily Injury by Diseases	\$100,000 each employee

The policy or policies shall contain a waiver of subrogation against MAC by endorsement or terms and conditions of the policy.

3. Comprehensive General Liability or Commercial General Liability on an occurrence basis as follows:

Combined Single Limit; or	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal Injury and Advertising Injury	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Damage Limit	\$50,000
Medical Expense Limit	\$5,000

and will include these coverages:

- Contractual Liability
- Contractors Protective Liability;
- Explosion, Collapse and Damage to Underground Utilities;
- Completed Operations for twenty-four (24) months after the work has been completed

The Broad Form Comprehensive General Liability Endorsement or terms and conditions of the policy including all of the aforementioned coverages. The policy or policies shall be primary and non contributory by endorsement or terms and conditions of the policy.

4. Commercial Automobile Liability, for owned, non-owned, hired, leased and rented vehicles operating Landside:

Combined Single Limits	\$1,000,000
Uninsured Motorists	\$1,000,000

5. Property Insurance

All Risk to the full replacement value of the Lessee's property. The policy or policies shall contain a waiver of subrogation against MAC by endorsement or terms and conditions of the policy.

6. Additional Insurance, please explain coverages.

Lessee shall name the Metropolitan Airports Commission as additional insured by endorsement or terms and conditions to the policy or policies with respect to Comprehensive General Liability or Commercial General Liability, Commercial Umbrella or Excess Liability. The limits of the policy shall not limit the liability of Lessee. Lessee shall defend at its expense any and all claims or suits brought against the MAC, its representatives, officers, agents and employees of each by any employee or other person (whether employed by selected Lessee or not) for damage to property and/or injury to persons (including death) alleged or claimed to have been caused by or through the performance by Lessee under this Agreement, or the condition of the premises, and shall indemnify and hold harmless the MAC, its representatives, officers, agents and employees of each of them from and against any and all claims arising out of the operations by Lessee, and whether or not such claim or claims are based in whole or in part on the negligence of any one or more of them; Lessee, shall pay, liquidate or discharge any and all claims or demands for personal injury (including death), and for loss or damage to any and all property caused by, growing out of or incidental to the performance by Lessee or the condition of the premises, including, without limitation, damage to the property of the MAC, and including all other damages and all costs and expenses of such claims or suits and investigative and attorneys' fees, unless such loss or damage is due to the gross negligence of MAC or its employees. The obligation set forth in this Article shall specifically include, without limitation, all claims and judgments arising or alleged to arise with respect to protection of or damages to adjacent premises. In the event of any such injury (including death) or loss or damage (or claim or claims therefore), Lessee shall give immediate notice thereof to the MAC.

Lessee will submit, along with the executed Agreement, as provided herein, the most current standard "ACORD" insurance certificate forms and policy endorsements or terms and conditions of the policy acceptable to the MAC signed by an authorized representative of the insurance company, certifying that the insurance coverage required hereunder is in effect for the work covered by this Agreement. Said insurance certificate shall indicate that the MAC will be given written notice at least thirty (30) days prior to cancellation or non-renewal of any insurance required hereunder. Lessee shall further agree to keep current copies of certificates of insurance on file with the MAC throughout the Term of the Agreement, and deliver copies of any insurance policies covering the insurance required hereunder to the MAC within ten (10) days following a request by the Commercial Management & Airline Affairs Department for such copies. To the fullest extent permitted by law, Lessee does hereby covenant and agree to protect, defend indemnify and hold completely harmless MAC and its Commissioners, officers, agents and employees (collectively "Indemnitees") from and

against any and all liabilities, losses, damages, suits, actions, claims, judgments, settlements, fines or demands of any person arising by reason of injury or death of any person, or damage to any property, or any allegation of such injury, death or property damage, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorney's fees, court costs and expert fees) of any nature whatsoever arising out of or as a result of Lessee's operation at or about the Leased Premises and the Airport except when solely caused by the negligence of the MAC.

MAC shall give Lessee reasonable notice of any such claim or action. In indemnifying or defending an Indemnitee, Lessee shall use legal counsel reasonably acceptable to MAC. MAC, at its option, shall have the right to select its own counsel or to approve joint counsel as appropriate (considering potential conflicts of interest) and any experts for the defense of claims. Lessee, at their expense, shall provide to MAC all information, records, statements, photographs, video, or other documents reasonably necessary to defend any claims.

This provision shall survive expiration or earlier termination of the Agreement. The furnishing of the required insurance hereunder shall not be deemed to limit Lessee's obligations under this Agreement.

As a distinct and separate indemnification obligation, Lessee shall protect, defend, indemnify and hold completely harmless the Indemnitees from any claims or liabilities arising out of Lessee's failure or alleged failure to procure and to keep in force the insurance required as part of this Agreement.

Lessee shall not use or permit the Premises to be used in any manner that would void Lessee or MAC's insurance or increase the insurance risk. Lessee shall comply with all requirements imposed by the insurers for MAC and Lessee.

## **15. DEFAULT**

**If Lessee defaults by:** 1) Failing to pay rent and the default continues for ten (10) days after receiving written notice from MAC; or 2) Abandoning the property by being absent from the Leased Premises for more than five (5) days; or 3) Failing to perform any other term of this Agreement and the default continues for fifteen (15) days after receiving written notice from MAC; or 4) The transfer of Lessee's interest in this Agreement by execution or other process of law when said process of law is not discharged within fifteen (15) days thereafter; or 5) The adjudication of Lessee as bankrupt, Lessee's general assignment for the benefit of creditors, the utilization of the benefits of any insolvency act, or the appointment of a permanent receiver or trustee in bankruptcy for Lessee's property if the appointment is not vacated within ninety (90) days; or 6) Abandonment of Lessee's operations, which shall be defined as Lessee's failure to conduct regular and continuing operations at the Leased Premises in accordance with the requirements of this Agreement for five (5) days;

**MAC has the right to:** 1) Terminate this Agreement immediately or at any time after the default; 2) Reenter and remove Lessee and its property from the Leased Premises by lawful proceedings under Minnesota law; and 3) Pursue any other action against Lessee allowed by law.

MAC's termination and reentry do not prevent MAC from seeking damages and past due rent for the full term of the Agreement based on the Lessee's failure to perform under this Agreement. Lessee agrees to indemnify MAC against all loss of rents and expenses including reasonable attorney's fees MAC has suffered or paid by reason of such termination during the remainder of the term.

Any waiver by MAC of any breach of covenants herein contained to be kept and performed by Lessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent MAC from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

#### **16. LIQUIDATED DAMAGES**

The failure of Lessee to adhere to MAC's concession operating standards will result in inconvenience to the public and will adversely affect the operation of the Airport. Quantification of the resulting damages is difficult. The parties agree that the liquidated damages set forth below are reasonable estimates of the actual damages that would be incurred by the public and MAC for the specified breaches of the foregoing operating standards, and Lessee agrees to pay to MAC liquidated damages in accordance with this section, at the rates or in the amounts specified below, upon the occurrence of the specified breach, and upon demand by MAC.

The liquidated damages required by this section are solely for inconvenience to the public and adverse effects on Airport operations; payment of liquidated damages shall not relieve Lessee of responsibility for physical damage, personal injury, or other harm caused by Lessee, or its employees, agents or contractors.

For non-monetary defaults under this Agreement, MAC in its sole reasonable discretion may determine if a violation of this Agreement has occurred and may impose the following charges. MAC shall provide written notice of each offense to Lessee. Failure to pay assessment within thirty (30) days of such notice shall constitute default under this Agreement.

The first offense in any category will result in a warning letter. The second offense will require Lessee to pay to MAC liquidated damages in the amount listed below. For a third and each subsequent offense in the same category, Lessee shall pay to MAC liquidated damages in the amount listed below. Lessee agrees that said amounts are fair compensation to MAC for said damage. MAC in no way waives its rights under this Agreement, such as default and termination, or other remedies as prescribed by law through the imposition of liquidated damages.

<b>VIOLATION</b>	<b>2<sup>ND</sup> OFFENSE</b>	<b>3<sup>RD</sup> AND SUBSEQUENT OFFENSES</b>
Failure to comply with the requirements as referenced in Section 6, Operation of the Concession.	\$250.00	\$500.00
Failure to comply with Installation and Maintenance requirements as referenced in Section 8.	\$250.00	\$500.00
Failure to comply with Advertising, Signage, and Appearance requirements as referenced in Section 12.	\$500.00	\$750.00
Failure to comply with the timing requirements of Section 13.	\$500.00	\$750.00
Product assortment violates Agreement terms.	\$500.00	\$750.00

Failure to respond to passenger problems in person or via telephone within 180 minutes during normal business hours (7:00 a.m. – 8:00 p.m./seven (7) days per week).	\$500.00	\$750.00
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## 17. **AFFIRMATIVE ACTION**

**Nondiscrimination:** Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as the Regulations may be amended.

Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities thereon, and (2) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.

Subject to 49 CFR Part 23.9, Lessee agrees that it will not discriminate against any business owner because of the owner's race, color, nation origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23. Furthermore, Lessee agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.

**Civil Rights:** Lessee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates Lessee or its transferee for the period during which federal assistance is extended to the airport program, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (1) the period during which the property is used by the sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (2) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.

## 18. **SECURITY**

**Airport Security:** All employees, agents, and/or subcontractors of Lessee must meet the requirements of the Airport Police Department with regard to security badging access. All

security badging questions must be referred to the Airport Police Department Badging Office at 612-467-0623. All necessary badging shall be Lessee's sole expense.

Lessee agrees to be familiar with the physical layout and general operating conditions at MSP.

Lessee at its own expense shall abide by all Transportation Security Administration ("TSA") or MAC security requirements, ordinances or security directives, including but not limited to, security badge qualifications, access, display, and use, restrictions on sale of dangerous items and limited security area access abilities.

The security of the airport environment, especially in the sterile area, requires constant vigilance and control by MAC. Pursuant to TSA requirements, MAC is only allowed to permit access to the sterile area to individuals who have a business purpose inside the area. Because of this requirement on MAC, security badges issued to Lessee, Lessee's subcontractors, or independent contractors may be deactivated at the end of the day of termination of the Agreement. Badges and facility keys need to be turned into MAC upon termination of this Agreement.

**Penalties Assessed by the TSA:** Lessee understands and agrees that in the event the TSA assesses a civil penalty or fine against MAC for any violation of Transportation Security Regulation or other federal statute as a result of any act or failure to act on the part of Lessee, its Subtenants, or subcontractors, Lessee will reimburse MAC in the amount of the civil penalty assessed plus any costs for defending the civil penalty, including reasonable attorneys' fees. MAC will provide Lessee notice of the allegation, investigation or proposed or actual civil penalty. Failure of Lessee to reimburse MAC within one hundred twenty (120) days of receipt of written notice of the assessed civil penalty shall be an event of default.

## **19. GENERAL PROVISIONS**

**Sublease or Assignment:** Lessee shall not sublease, transfer, assign or allow any other person or entity operating rights under this Agreement without MAC's prior written consent. This Agreement is binding on all legal representatives, successors or assigns. Consent is subject to payment of all rents and the performance of all covenants, conditions and terms contained in this Agreement by Lessee. In no case shall MAC be obligated to consent to any sublease, transfer or assignment.

**Attorney's Fees:** In the event any action, suit or proceeding is brought to collect the rent or fees due or to become due hereunder or any portion thereof or to take possession of any area covered by this Agreement or to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement, Lessee agrees to pay MAC such sum as the court may adjudge reasonable as attorney's fees to be allowed in the suit, action or proceeding.

**Waiver:** The waiver or breach by MAC or Lessee of any term of this Agreement shall not be deemed waiver of any subsequent breach of the same term or any other term of this Agreement.

**Relationship of Parties:** It is understood and agreed that nothing herein contained is intended or shall be construed as in anyway creating or establishing the relationship of co-partners between the parties hereto, or as constituting the Lessee as the agent, representative or employee of MAC for any purpose or in any manner whatsoever. The Lessee is to be and shall remain an independent lessee with respect to all services performed under this Agreement.

**Headings:** The headings incorporated in the Agreement are for convenience in reference only and are not a part of the Agreement and do not in any way limit or add to the terms and provisions hereof.

**Severability:** If any term, condition, or provision of the Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder thereof and the application of such terms, provisions, and conditions to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and the Agreement and all the terms, provisions, and conditions hereof shall, in all other respects, continue to be effective and to be complied with to the full extent permitted by law.

**Condemnation:** If it shall be in the public interest, MAC shall have the power to condemn the property interests created by this Agreement even though it is itself a party to the Agreement, provided that this provision shall not be construed as a waiver by Lessee of its rights to contest the validity of any such condemnation.

In the event of a taking by MAC of the Agreement or any portion of the Leased Premises or other property of Lessee, Lessee's award shall be limited solely and exclusively to Lessee's relocation expenses and those relating to a permanent taking of Lessee's personal property. Lessee, at its option, may terminate all of or the affected portion of this Agreement in the event of a taking by MAC. In no event shall Lessee be entitled to any award relating to the value of any expired portion of the term of this Agreement, the leasehold improvements, any fixture located on or about Lessee's area, or any loss, damage or diminution in Lessee's business. Lessee hereby waives all provisions of applicable law which are or may become inconsistent with this section.

**Compliance with All Laws:** Lessee shall comply with all applicable federal, state and local laws, including those of MAC. MAC shall have the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, Terminal Building and related facilities, which Lessee agrees to observe and obey.

**Minnesota Law:** This Agreement is governed by Minnesota law. Lessee consents to personal jurisdiction and venue in the courts of the State of Minnesota

**Parking:** No parking is provided as part of this Agreement. Lessee and Subtenants may contract separately for employee parking on a space available basis. Contact MAC's Landside Operations Office for more information. (612-726-5578)

**Notice:** All notices required by law or this Agreement must be in writing and delivered in person or sent by mail to the following addresses or to any other address that one party provides to the other party in writing as the official address. Notice is deemed given when it is hand delivered or placed in the mail.

**MAC Address:**

Director, Commercial Management & Airline Affairs  
Metropolitan Airports Commission  
6040 – 28th Avenue South  
Minneapolis, MN 55450

**Lessee Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_by \_\_\_\_\_

\_\_\_\_\_, the \_\_\_\_\_ on behalf of \_\_\_\_\_, a \_\_\_\_\_ company,  
on behalf of the company.

Notary Public