

**PUBLICATION VENDING BOX/KIOSK AGREEMENT**

**THIS AGREEMENT** made in duplicate this \_\_\_\_ day of \_\_\_\_\_, 2019

**B E T W E E N:**            **CITY OF TORONTO** hereinafter called the "**City**"

- and -

name of licensee hereinafter called the "**Licensee**"

(Please Print Name)

WHEREAS the Licensee has made application to the City for permission to install and maintain publication vending boxes /kiosks on the sidewalks within certain public highways in the City of Toronto (the "Streets"), the locations of which are designated in Schedule "A" as amended from time to time by the General Manager of Transportation Services (the "General Manager") in accordance with the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as amended or replaced from time to time ("Chapter 743");

WHEREAS the said publication vending boxes are hereinafter referred to as "the Installations"; and

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the covenants and agreements hereinafter contained on the part of the Licensee to be observed, fulfilled and performed, the City hereby grants to the Licensee permission (the "Permit") to install and maintain the Installations in their respective proposed positions as herein before set out.

AND IN CONSIDERATION of the granting of such permission the Licensee hereby covenants and agrees with the City as follows:

1. The Permit issued to the Licensee under Chapter 743 and this Agreement shall be for a term of one year, and shall renew automatically on January 1 of each year provided that the Licensee has paid the fees as required under this section and is not in violation of Chapter 743 or this Agreement (collectively "the Term"). In consideration of the Permit, the Licensee shall pay to the City an annual rental fee in the amounts set out in Chapter 743, as amended from time to time, for each of the Installations listed in Schedule "A", as updated under this Agreement (and any other Installations actually placed on the Streets whether or not so listed), and any additional or other charge that may be levied in respect of the Installations permitted over and upon the Streets.
2. No person, including the Licensee, shall sell or dispense, or permit the sale or dispensing of, any item from an Installation other than one or more publications.
3. Each Installation authorized under this Agreement shall be affixed with a readily visible and legible at all times notice containing the contact name, address, e-mail address (if applicable) and telephone number of:
  - (a) the Licensee;
  - (b) the circulation department of the publication owner; or
  - (c) the person in control of the Installation.

4. An Installation shall remain situated at the location as approved by the General Manager, and no person shall relocate an Installation unless the relocation has been authorized in advance by the General Manager.
5. That the Licensee will always indemnify and keep indemnified the City, its elected officials, officers, employees and agents, from and against all actions, suits, claims and demands which may be brought against or made upon them and from all loss, costs, charges and expenses (including legal expenses) which may be suffered, incurred, sustained or paid by any of them by reason of, in consequence of, or incidental to the existence of the Installations over and upon the Public Highways or the exercise by the Licensee of the permission hereby granted to install and maintain the Installations over and upon the Public Highways and/or anything in any manner relating thereto, and that in case any such action, suit, claim or demand is brought against or made upon the City or any of its elected officials, officers, employees and agents the City may, upon written notice to the Licensee, settle any such action, suit, claim or demand on such terms as the City shall see fit and the Licensee shall thereupon pay to the City the sum or sums to be paid, together with such sum as shall represent the reasonable costs of the City in defending or settling any such action, suit, claim or demand, but if no settlement is reached then the Licensee may be made a party to such action or suit and will in every case fully indemnify the City and its elected officials, officers, employees and agents.
6. That the Licensee will always maintain the minimum percentage of forty percent (40%) of recycled fibre content in all paper material placed in the Installations as required under Chapter 743. That the Licensee shall, on or before December 15 of each year of the Term of this Agreement, provide:
  - (a) written verification to the satisfaction of the General Manager of Transportation Services for the City (the "General Manager") as to the amount of recycled fibre content in the paper material being distributed from the Installations for the previous 12-month period, including confirmation by the paper supplier, as required under Chapter 743; and
  - (b) A detailed, accurate, up-to-date inventory of all Installations located on, along and within the City's streets.
7. Any concrete pad, "T-bar" or similar railing device required to be installed for the placement or installation of an Installation will be installed by the Licensee, at the sole expense of the Licensee, to the satisfaction of the General Manager.
8. The maximum dimensions of any publication dispensing box or unit Installation inclusive of any ballast shall, as of January 1, 2009, with respect to any Installation for which a Permit has been issued by the City after September 24, 2003, be as follows:
  - (a) A height of 1.3 metres from grade;
  - (b) A width of 0.6 of a metre; and
  - (c) A depth of 0.6 of a metre.
9. (1) That any permit for any or all of the Installations may be revoked at any time by Council for

failure to comply with the provisions of Chapter 743 or this Agreement, provided that Council shall not revoke a permit unless the Licensee has been given an opportunity to be heard. The Licensee further covenants and agrees that the City shall not be liable to pay any compensation whatsoever for any loss, costs, or damages which may be suffered or incurred by the Licensee or any person claiming under the Licensee by reason of the revocation and the Licensee will not make any claim against the City on account of the removal.

- (a) Despite Subsection 10(1), the General Manager may, at the sole expense of the Licensee, require the temporary relocation of an Installation or order the temporary suspension or revocation of a permit in the following circumstances:
    - (a) Where required in the interests of pedestrian, vehicular or public safety;
    - (b) Where required to accommodate a special event; or
    - (c) Where required to accommodate the installation, construction, maintenance or repair of a street, transit facilities or a public utility or service.
  - (b) Neither the City, the Toronto Transit Commission or a public utility shall be responsible for any claim for loss or damage as a result of a relocation, suspension or revocation under Subsections 10(1) or (2).
  - (c) Despite Subsection 10(1), where an Installation is left unstocked for a period greater than 21 consecutive days, the General Manager may require that the Licensee remove the Installation at no cost to the City.
10. Upon removal of the Installations from the Public Highways for any reason, the Licensee covenants and agrees to restore the Public Highways to a safe and proper condition at the Licensee's own cost and expense and to the satisfaction of the General Manager.
11. In the event that the Licensee neglects, refuses or fails so to do within the time specified in the said notice, then the General Manager may remove the Installations from the said streets and restore the street to a safe and proper condition and may charge the costs to the Licensee and the certificate of the General Manager or either of them shall be final and binding the City may recover the costs from the Licensee in any court of competent jurisdiction as a debt owing by the Licensee to the City.
12. Any Installation that has been placed or maintained contrary to Chapter 743 or this Agreement shall be removed by the Licensee or an authorized agent of the Licensee within 48 hours of notification, failing which the General Manager or any person authorized by the General Manager may seize and remove from the street the Installation which has been placed or maintained contrary to Chapter 743 this Agreement, and the General Manager shall store any Installation so seized, and shall return any Installation to the Licensee upon the Licensee paying to the City the costs of removal and storage of the Installation, plus administration costs as set out in Chapter 743. Despite any other provision of Chapter 743 or this Agreement, no prior notice shall be required in the event that the Installation, in the opinion of the General Manager, poses a risk to public safety.
13. The General Manager may dispose of any Installation so seized at the expiry of 60 days from the later of the date of seizure of the Installation and the date notice of the seizure is given to the Licensee of the installation.

14. That the Licensee shall, at the expense of the Licensee, at all times during the Term of the Agreement, place, install repair and maintain the Installations and the area in and around the Installations, including the stocking and removal of publications, to the entire satisfaction of the General Manager in accordance with Chapter 743.
15. No advertising, notices or signs shall be permitted on an Installation except as permitted under Chapter 743.
16. The Licensee shall provide and maintain for the Term of this Agreement, public liability and property damage insurance with an insurer satisfactory to the General Manager naming the City as an additional insured, in an amount not less than \$2,000,000, in a form approved by the Deputy City Manager and Chief Financial Officer, and shall file a certificate of insurance with the City evidencing the form and amount of coverage, a cross-liability/severability of interests clause; a provision that the insurance is primary before the insurance of the City and that the insurer shall provide the City with 30 days' notice of any intention to cancel or not renew the policy.
17. That in the event that the City or any Public Utility Company or System are required to remove all or any part the Installations, for the purpose of repairing, maintaining or constructing a public utility or service street or transit facility the Licensee will pay to the City Toronto Transit Commission or public utility as the case may be, the additional cost, if any, incurred by it or them by reason of the existence of the Installations; the certificate of the CFO of the City as to the amount of such additional costs, if any, shall be final and binding.

AND IT IS FURTHER UNDERSTOOD AND AGREED by and between the parties hereto as follows:

- (a) That nothing herein contained shall be construed as giving to the Licensee anything more than permission to install and maintain the Installations as herein set out until such time as notice as hereinafter set out shall have been given to the Licensee to remove the same.
- (b) That for the purpose of this Agreement notice may be given to the Licensee by personal service or by mailing the same by registered mail addressed to the Licensee at the address as set out below. Notice given by registered mail shall be deemed effective two days after the date of mailing.
- (c) This Agreement shall not be transferred or assigned in any manner whatsoever by the Licensee without the prior written consent of the General Manager. For the purposes of this section, "assignment" or "transfer" shall not include a transfer to an affiliate, subsidiary or holding corporation of a corporate permit holder or a change in control of ownership in a corporate Licensee. No assignment shall be permitted under this section, with or without consent, unless the Licensee is in compliance with Chapter 743 and this Agreement and proposed the proposed assignee has first entered into an agreement with the City on the same terms and conditions as required under Chapter 743.
- (d) All previous agreements pertaining to the placement, installation and maintenance of Installations entered into prior to September 24, 2003 between the Licensee and the City are deemed to be null and void effective October 1, 2006, and are hereby superseded and replaced by this Agreement.
- (e) The Licensee acknowledges being advised of the opportunity to seek legal advice prior to executing this Agreement. The Licensee further acknowledges having read, understood and agreed to the provisions of

this Publication Vending Box/Kiosk Agreement and therefore executes this Agreement as of the date set out above.

IN WITNESS WHEREOF the parties hereto have, as attested by the hands of their respective proper officers in that behalf duly authorized, executed this Agreement.

NAME AND ADDRESS OF LICENSEE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature of Licensee

\_\_\_\_\_  
Witness

If Licensee is a Corporation, please ensure that agreement is signed here below by authorized signing officer(s), print the name and title of person(s) signing and affix Corporate Seal.

Per: \_\_\_\_\_

Per: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

c/s

I/We have the authority to bind the Corporation.

CITY OF TORONTO

Per: \_\_\_\_\_

Name: Ryan Lanyon

Title: Manager, Transportation Services, Public Realm, Street Furniture

I have authority to bind the City of Toronto.