

METROPOLITAN AIRPORTS COMMISSION

REQUIRED CONTRACT PROVISIONS

The Metropolitan Airports Commission (hereinafter, "MAC") is required by state and federal law, as well as by its grant obligations, to include several standard provisions in each of its contracts. In addition, MAC has several other provisions that address regulatory or statutory requirements to which MAC is subject. The following provisions are applicable to this Agreement between MAC and [INSERT VENDOR'S LEGAL NAME] (hereinafter, "Vendor") (as used in this document, "Agreement" refers to either: (1) this document when no signed agreement between MAC and Vendor exists, or (2) the existing signed agreement between MAC and Vendor):

1. **Minnesota Government Data Practices Act and Non-Disclosure.** [Minn. Stat. § 13.05, subd. 11]. Vendor is notified that the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13. ("the Act") places obligations upon Vendor. All data shared with MAC are subject to the requirements of the Act. In no circumstances will the Agreement impair MAC's ability to comply with the Act. If applicable, Vendor will comply with the requirements articulated in Minnesota Statutes, section 13.05, subdivision 11(a) with respect to all data created, collected, received, stored, used, maintained, or disseminated in the course of performance of this Agreement ("the Data"). The civil remedies of Minnesota Statute, section 13.08 apply to the release of Data. If Vendor receives a request to release Data, Vendor must immediately notify MAC. MAC will give Vendor instructions concerning the release of Data to the requesting party before Data is released. If Vendor requires non-disclosure assurances from MAC, MAC will provide a copy of its form Mutual Non-Disclosure Agreement to the Vendor for execution.
2. **Audit.** [Minn. Stat. § 16C.05, subd. 5.]. If the Agreement requires payments by MAC to Vendor for the provision of goods or services, Vendor and sub-contractors to this Agreement, shall keep at their principal office, in a system acceptable to MAC, accurate books, accounts, records and documents relevant to the work conducted under this Agreement, and shall keep such information for a period of six (6) calendar years. MAC and the Minnesota Legislative Auditor shall have the right, at all reasonable times during normal business hours, to inspect the books, accounts, records, documents, interview current and former employees, accounting procedures and practices relative to the work conducted under this Agreement. Contracts entered into with sub-contractors to this Agreement shall contain this same contract audit clause. Vendor shall pay all audit costs when an audit discloses overcharges exceeding one percent (1%) of the total contract.
3. **Reimbursable Expenses and Prompt Payment.** [Minn. Stat. § 471.425]. Reimbursement for travel and subsistence expenses actually and necessarily incurred by Vendor as a result of any work conducted under this Agreement will only be reimbursed in the manner and in no greater amount than is provided for in the current "MAC Out of Town and Local Expense Guidelines" promulgated by, and available from, the MAC Finance Coordinator. If payment terms are not addressed by the Agreement, this Section 3 governs MAC's payments to Vendor. MAC agrees to pay Vendor within thirty (30) days of the completion of its audit of a properly received invoice from Vendor. If an invoice is incorrect, defective, or otherwise improper, MAC will notify Vendor within ten (10) days of discovering the error, and will pay Vendor within thirty (30) days of the completion of its audit of a properly received, corrected invoice from Vendor. Payments not made within thirty (30) days after the date MAC's audit of the invoice is completed, unless contested by MAC, shall bear interest at a rate of one and one-half percent (1.5%) per month, unless otherwise provided in Minn. Stat. § 471.425. Such interest shall begin to accrue thirty (30) days following the date MAC's audit of the invoice, or corrected invoice, is completed.
4. **Subcontractor Prompt Payment.** [Minn. Stat. § 471.425, subd. 4a.; Minn. Stat. § 473.142]. Vendor shall pay any subcontractor to this Agreement within ten (10) days of Vendor's receipt of payment from MAC for undisputed services provided by the subcontractor. If Vendor does not make said payment to a subcontractor within the specified time, Vendor must pay interest of one and one-half percent (1.5%) per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, Vendor shall pay the actual penalty due to the subcontractor. To the extent a sub-contractor provides for earlier or larger payments, Vendor shall make payment to the sub-contractor as provided for therein irrespective of the date or amount of any payment made by MAC. A subcontractor who prevails in a civil action

to collect interest penalties from Vendor must be awarded its costs and disbursements, including attorney fees, incurred in bringing the action.

Anything to the contrary in the Agreement notwithstanding, this Section 4 is for the benefit of any subcontractor to this Agreement and confers upon any subcontractor all remedies, claims, reimbursements, causes of action, and other rights granted to it by this Section 4.

5. **Insurance and Indemnification Requirements.** If provided by MAC, Vendor agrees to comply with the requirements included on the Insurance and Indemnification Requirements Addendum.
6. **Minnesota Human Rights Act Affirmative Action Requirements.**

6.1. *Affirmative Action Requirements for the Agreement if in Excess of \$100,000 and if Vendor has More than 40 Full-Time Employees in Minnesota or in its Principal Place of Business.* If the Agreement exceeds \$100,000 and if Vendor employed more than forty (40) full-time employees on a single working day during the twelve (12) months previous to the Agreement's execution either in Minnesota or in the state where it has its primary place of business, then Vendor must comply with the requirements of Minnesota Statute, section 363A.36 and Minnesota Rules Part 5000.3400 through Part 5000.3600.

6.1.1. Minn. Stat. § 363A.36. Minnesota Statute, section 363A.36 requires Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in the event of a revocation. A contract awarded without a certificate of compliance may be voided.

6.1.2. Minn. R. Part 5000.3400 through Part 5000.3600. Minnesota Rules Part 5000.3400 through Part 5000.3600 implement Minnesota Statute, section 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota Rules Part 5000.3400 through Part 5000.3600.

6.1.3. Affirmative Action for Disabled Workers. [Minn. R. Part 5000.3550]. (a) Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. (b) Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act. (c) In the event of Vendor's noncompliance with the requirements of this Section 6.1.3, actions for noncompliance may be taken in accordance with Minnesota Statutes, section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act. (d) Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees. (e) Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Vendor is bound by the terms of Minnesota Statutes, section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

6.2. *Affirmative Action Requirements for the Agreement if in Excess of \$500,000 and if Vendor has More than 40 Full-Time Employees in Minnesota or in its Principal Place of Business.*

- 6.2.1. Minn. Stat. § 363A.44. If the Agreement exceeds \$500,000 and if Vendor employed more than forty (40) full-time employees on a single working day during the twelve (12) months previous to the Agreement's execution either in Minnesota or in the state where it has its primary place of business, then Vendor must comply with the requirements of Minnesota Statute, section 363A.44. If applicable, Minnesota Statute, section 363A.44 requires Vendor to have an Equal Pay Certificate. Such Equal Pay Certificate shall be obtained prior to the execution of the Agreement. If Vendor was required to have an Equal Pay Certificate, but did not obtain one, the Commissioner may void the Agreement on behalf of the state. Upon revocation of Vendor's Equal Pay Certificate, MAC may abridge or terminate this Agreement.
- 6.3. *Consequences*. The consequences of Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Agreement by the Commissioner or the State.
- 6.4. *Vendor Certification*. Vendor hereby certifies that it is in compliance with the requirements of Minnesota Statute, section 363A.36 and Minnesota Rules Part 5000.3400 through Part 5000.3600 and is aware of the consequences for noncompliance.
7. **General Federal Civil Rights Provision**. In all its activities within the scope of its airport program, Vendor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. The above provision binds the Vendor and subcontractors from the bid solicitation period through the completion of the Agreement.
8. **Civil Rights – Title VI Assurance. Compliance with Nondiscrimination Requirements:**
During the performance of this Agreement, Vendor, for itself, its assignees and successors in interest (hereinafter referred to as "Vendor") agrees as follows:
1. **Compliance with Regulations**. Vendor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
 2. **Nondiscrimination**. Vendor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Vendor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
 3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment**. In all solicitations, either by competitive bidding or negotiation made by Vendor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Vendor of Vendor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
 4. **Information and Reports**. Vendor will provide all information and reports required by the Nondiscrimination Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by MAC or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Vendor is in the exclusive possession of another who fails or refuses to furnish the information, the Vendor will so certify to MAC or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of Vendor's noncompliance with the non-discrimination provisions of this contract, MAC will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to;

- (a) Withholding payments to Vendor under the contract until Vendor complies; and/or
- (b) Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions.** Vendor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Vendor will take action with respect to any subcontract or procurement as MAC or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Vendor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Vendor may request the MAC to enter into any litigation to protect the interests of the MAC. In addition, Vendor may request the United States to enter into the litigation to protect the interests of the United States.

9. **Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Agreement, Vendor, for itself, its assignees, and successors in interest (hereinafter referred to as "Vendor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Operators, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations(ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).
10. **On-Premises Work.** If the goods or services provided to MAC under this Agreement require Vendor, Vendor's agents, a subcontractor of Vendor's, or any of that subcontractor's agents to enter premises owned by MAC, Section 10.1 applies.
- 10.1. Security.*
- 10.1.1. Airport Security. Vendor 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.
- 10.1.2. Penalties Assessed by the TSA. Vendor 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 Vendor, its agents, or its subcontractors or subcontractor's agents, Vendor 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 Vendor notice of the allegation, investigation or proposed or actual civil penalty. Failure of Vendor 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 under this Agreement.
11. **Sale of Goods.** If the Agreement includes a sale of goods, as defined by Minnesota Statutes, chapter 336, Section 11 applies.
- 11.1. Delivery.* Goods will be delivered by Vendor to MAC at the expense of Vendor, unless otherwise specified. Deliveries shall be made within MAC's business hours for receiving deliveries by the date specified in the Purchase Order provided by MAC.
- 11.2. Receipt of Goods.* Goods sold under this Agreement shall be deemed received by MAC when delivered to MAC at stated address and when received at that address by person reasonably appearing to be the authorized agent or employee of MAC.
- 11.3. Risk of Loss.* Risk of loss will be with Vendor until goods have been delivered and acknowledged by MAC.
- 11.4. Time is of the Essence.* Time is of the essence for delivery of goods.
- 11.5. Removal of Defective Goods.* Vendor will promptly remove and provide credit for any goods that MAC designates as non-conforming or defective.
- 11.6. Warranty.* Vendor warrants that all goods will be new (unless otherwise allowed in the Agreement), of merchantable quality, and free of defects and damage. Vendor will repair or replace defective goods at no expense to MAC, for a period of one year after delivery of the goods, unless otherwise addressed in the Agreement.
- 11.7. Warranty of Title.* Vendor warrants that they neither know, nor have reason to know, of the existence of any outstanding title or claim of title hostile to the rights of Vendor in the goods subject to this Agreement.
- 11.8. Right of Inspection.* MAC shall have the right to inspect the goods on arrival. Within a reasonable period of time, after delivery, MAC must give notice to Vendor of any claim for damages or rejection on account of condition.
- 11.9. Shipment of Nonconforming Goods.* Any nonconforming goods shipped by Vendor to MAC are sent for accommodation only and not as an acceptance of the Agreement.
12. **Acceptance Not a Waiver of Breach.** The acceptance of the goods or services subject to the Agreement is not a waiver of any right of action that MAC may have for breach of warranty or any other cause.
13. **No Waiver of Terms.** Any waiver of any provision of this Agreement shall not be construed as a waiver of that right or any other right or provision at any future time, unless expressly stated in writing.
14. **Right to Cancel Prior to Scheduled Delivery.** MAC reserves the right to cancel this Agreement without obligation prior to scheduled delivery of goods or first receipt of services.
15. **Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of MAC's Bylaws and Minnesota Statutes. No charge will accrue under this Agreement unless and until funds are properly appropriated by MAC to fund the charge. This Agreement will terminate without penalty, liability, or expense of any kind to MAC if funds are not appropriated to pay for this Agreement. If funds are appropriated for a portion of the costs incurred under this Agreement, this Agreement will terminate, without penalty, liability, or expense of any kind

once the appropriated funds are expended. MAC's Board of Commissioners has no obligation to make appropriations for this Agreement. MAC budget decisions are subject to the discretion of the Executive Director/CEO and the Board of Commissioners. Vendor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

16. **No Conditional Acceptance.** Acceptance of this Agreement by Vendor signifies complete acceptance of the terms and conditions of this Agreement and bars the addition of conditions without agreement in writing by MAC.
17. **Subordinate to the Federal Government.** This Agreement is subordinate to the provisions of and requirements of any existing or future agreement between MAC and the United States, relative to the development, operation, or maintenance of the Airport. This Agreement and all the provisions hereof are subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation, and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.
18. **Severability.** Invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision.
19. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Agreement shall be Hennepin County, Minnesota.
20. **No Other Agreement.** If no other executed contract document exists, this Agreement is the final agreement between the parties. If an executed contract document exists, this Agreement shall be construed as an amendment to the contract document and in the event of a conflict between the provisions set forth in this document and the provisions of any prior signed document, the conflict will be resolved by giving precedence to the provisions set forth in this document. No oral communication between the parties will modify or amend the Agreement. The Agreement may be modified only by a written document agreed to by both parties.
21. **Third Parties.** Other than Section 4, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties to this Agreement, any right to remedies, under or by reason of this Agreement.
22. **Requirement of Countersignature.** No order or other writing purporting to come from MAC or the Vendor, will be binding upon MAC unless and until it is signed by MAC and Vendor's representative.
23. **Vendor's Authorized Representative.** Vendor's authorized representative shall execute this Agreement. By executing, Vendor's authorized representative attests that he or she has authority to bind Vendor with respect to each obligation undertaken by Vendor pursuant to this Agreement.

IN WITNESS WHEREOF, MAC and Vendor have caused this Agreement to be executed by their authorized representatives as of the first date set forth below

METROPOLITAN AIRPORTS COMMISSION
By: _____
Authorized Representative Signature
Name: _____
Title: _____
Date: _____

VENDOR
By: _____
Authorized Representative Signature
Name: _____
Title: _____
Date: _____

METROPOLITAN AIRPORTS COMMISSION
INSURANCE AND INDEMNIFICATION REQUIREMENTS ADDENDUM

1. **Indemnification.** To the fullest extent permitted by law, Vendor agrees to indemnify and defend MAC, its commissioners, its officers, employees or agents, and any successor or successors to MAC's interest (collectively "Indemnitees") against all losses and liabilities, or claims thereof, arising out of or related to goods or services covered by this Agreement, or acts or omissions of Vendor in carrying out this Agreement (hereinafter, "Loss"). In addition, Vendor agrees to bear all reasonable costs of the investigation of and defense against any Loss, including without limitation, the fees of attorneys, consultants, experts, and investigators. Notwithstanding the foregoing two sentences, Vendor is not obligated to indemnify nor defend an Indemnitee against any Loss to the extent a court of competent jurisdiction decides, or MAC and Vendor mutually in writing agree that, such Loss resulted from an Indemnitee's sole negligence or intentional acts.

MAC shall give Vendor reasonable notice of any Loss. In indemnifying or defending an Indemnitee, Vendor 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, and any experts for the defense against any Loss. Vendor, at its expense, shall provide to MAC electronic or physical data and give access to any persons reasonably necessary to investigate and defend against any Loss.

The provisions of this Section 1 shall survive expiration or earlier termination of this Agreement.

2. **Insurance.**

[If included, to be provided by MAC Assistant Director of Risk/Insurance]