

Old Dominion University

Contract

Contract #09-221-0020-HRS

THIS CONTRACT (hereinafter referred to as the “**Contract**”) made as of this 1st day of July, 2009 (the “**Effective Date**”) by and between Old Dominion University, an Institution of Higher Education governed under the laws of the Commonwealth of Virginia, with its principal place of business located in Norfolk, Virginia (hereinafter referred to as the “**University**”) and Bottling Group, LLC d/b/a The Pepsi Bottling Group, a Delaware limited liability corporation with its principal place of business at One Pepsi Way, Somers, New York 10589 and with an office at 17200 Warwick Boulevard, Newport News, Virginia (hereinafter referred to as “**Contractor**”).

WHEREAS, Contractor desires the right to be the exclusive supplier of beverages to the University; and

WHEREAS, Contractor has submitted an offer in response to a Request for Proposals (RFP) issued by the University for the exclusive right to develop and carry out a program for the sale of its beverage products in all the schools of the University and in all other facilities owned or operated by the University; and

WHEREAS, Contractor is experienced in installing, operating, servicing and maintaining equipment for dispensing beverage products and the University has determined that it is in the best interests of the University to contract with Contractor to provide services for the sale of beverage products; and

WHEREAS, Contractor wishes to identify itself with the University and the Teams (as defined below) and to have its products promoted and sold at the Facilities (as defined below) and further wishes to receive the other marketing and promotional benefits provided for by the University in this Contract; and

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and the other mutual promises set forth herein, the parties agree as follows:

CONTRACT

I. PERIOD OF PERFORMANCE:

The Contract period shall commence on July 1, 2009, and will be in effect through June 30, 2019 (the “Term”). Upon mutual agreement between both Contractor and University, this contract may be renewed for one (1) additional 5-year term.

II. Contract:

The Contract shall consist of the following documents:

- (1) This signed Contract; and
- (2) Where this Contract is silent, the University’s original Request for Proposal and all associated addenda and The Beverage Partnership Proposal dated April 17, 2009 shall control.

III. DEFINITIONS:

A. “Affiliate” means, as to any entity, any other entity which is controlled by, controls, or is under common control with such entity.

B. “Contract Year” means each and every consecutive twelve (12) month period during the Term, beginning with the Effective Date and subsequent anniversaries thereof.

C. “Ambush Marketing” shall mean an attempt by any third party, without Contractor’s consent, to associate Competitive Products with the Facilities, University, University Marks, Team Marks, and/or the Team, or to suggest that Competitive Products are endorsed by or associated with the Facilities, University, University Marks, Team Marks, and/or the Team by referring directly or indirectly to the Facilities, University, University Marks, Team Marks, and/or the Team.

D. "Approved Cups" means the disposable cups approved by Contractor from time to time as it standard trademark cups and other containers approved by Contractor from time to time and bearing the trademark(s) of Pepsi and/or other Contractor Products on the cup service. In addition, Contractor agrees that the University shall have the right to produce limited-run commemorative plastic cups reasonably acceptable to Contractor for use at the Facilities and that such cups shall also be considered to be Approved Cups, provided that Contractor's trademark(s) for Contractor® shall be included on such commemorative cups. The use and size of Contractor's trademark(s) on such commemorative cups shall be mutually agreed to.

E. "Beverage" or "Beverages" means all carbonated and non-carbonated, non-alcoholic drinks, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks, energy and fluid replacements); and (vi) bottled or canned water whether carbonated or still (spring, mineral or purified).

F. "Facilities" means the entire premises of every school and facility owned, leased, occupied or operated by the University or its Food Service Provider, now or in the future, including all buildings, the grounds, parking lots, dining facilities, snack bars, food carts, athletic facilities and concession stands, and, for each building, the grounds, parking, lots, dining facilities, unbranded and branded food service outlets and vending areas.

G. "University Marks" means (i) the Designations (as defined below) and (ii) the University's characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the University and which relate to the Facilities and the Teams and which are in existence on the Effective Date or which will be created during the Term, except the University seal.

H. "Competitive Products" shall mean any and all Beverages other than the Products.

I. "Designations" shall include, but not be limited to, the following: "A Proud Sponsor of Old Dominion University"; "Official Soft Drink of Old Dominion University"; and/or "Official Sponsor of the Monarchs.

J. "Food Service Provider" shall mean Aramark Educational Services and/or their associates or any food service provided which may serve at the Facilities at any point during the Term.

K. "NCAA" or "The National Collegiate Athletic Association" shall mean the sanctioning body of intercollegiate sports.

L. "Products" means any and all Beverage products now or in the future bottled, sold or distributed by Contractor.

M. "Sampling" means distributed at no cost.

N. "Sponsorship Fees" shall mean the fees to be paid by Contractor to the University under this Contract as set forth in Section V.

O. "Supplies" shall mean any Approved Cups, straws and lids necessary for the dispensing of the "Designated Products" (as defined in Article II.A (1) below).

P. "Teams" shall mean all intercollegiate athletic teams associated with the University.

Q. "Team Marks" means the characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the University and which relate to the University and which are in existence on the Effective Date or which will be created during the Term, but excluding any of such marks or other rights to the extent that such rights are controlled by the University.

R. "Term" means the initial Contract period beginning on the Effective Date and continuing up to and including June 30, 2019, unless sooner terminated as provided herein.

IV. SCOPE OF SERVICES:

A. Grant Of Beverage Availability And Merchandising Rights:

During the Term, University hereby grants to Contractor the following exclusive Beverage availability and exclusive Beverage merchandising right as set forth and described below:

1. Beverage Availability at the Facilities:

(a) Grant of Rights:

(i) Subject to Section IV.F herein, Contractor, except as otherwise provided herein, shall have the exclusive right to make Beverages available for sale, distribution or sampling on the Facilities, including the right to provide all Beverages sold at athletic contests (i.e., concession stands, sales in stands (hawking) or other means), booster club activities, and all other special events conducted at or any location on the Facilities (“Special Events”); and

(ii) Contractor shall have the exclusive right to install full service vending machines (“Vending Machines”), retail single-serve food service equipment (“Retail Equipment”) and fountain service equipment (“Fountain Equipment”) (Vending Machines, Retail Equipment and Fountain Equipment is collectively referred to as the “Equipment”) throughout the Facilities. Contractor shall have the further right to install additional Vending Machines, Retail Equipment and Fountain Equipment in buildings and facilities acquired and/or constructed by the University after the date of this Contract. Contractor shall install the Vending Machines, Retail Equipment and Fountain Equipment at its sole expense. Contractor shall have the right to place full trademark panels on all sides of its Vending Machines, Retail Equipment and Fountain Equipment. Contractor, or one of its affiliates, shall retain title to all Vending Machines, Retail Equipment and Fountain Equipment. The Products shall be the only Beverages sold, dispensed or served at the Facilities (i.e., at concession stands, sales in stands (hawking) or other means), and the Products shall be sold at all concession or vending locations located within the Facilities.

(b) Purchasing of Postmix Products:

The Postmix Products, which are produced and/or sold by Contractor (the “Postmix Products”) shall be purchased by University or the Food Service Provider from Contractor at the prices established by Contractor from time to time. Current pricing for Postmix Products is as set forth in Exhibit A attached hereto.

(c) Purchasing of Packaged Products:

The Products produced and/or sold in bottles and/or cans by Contractor (collectively, the “Packaged Products”) shall be purchased by University or the Food Service from Contractor at prices established by Contractor from time to time. Current pricing for Packaged Products is as set forth in Exhibit A attached hereto.

(d) Food Service:

During the Term, Contractor shall work directly with, University through its Director of Food Services or University’s alternate designee (the “ University Representative”) and the Food Service Provider for the Facilities, to provide all of its requirements for the Products. University shall cause its Food Service Provider to purchase the Products from Contractor at prices as determined by Contractor. The University shall cause its Food Service Provider to purchase Products from Contractor in sufficient quantities to ensure the regular and continuous distribution of the Products at the Facilities. The University shall cause its Food Service Provider to purchase Approved Cups from Contractor for dispensing of Postmix Products at the Facilities. Contractor shall work directly with University and its Food Service Provider to promote sales of the Products through appropriate point-of-sale and other advertising materials bearing the trademarks of the Products at Contractor’s expense.

- (e) Vending:
During the Term, Contractor shall provide the University with full-service vending of bottle/can Products, and shall have the right to install all Product Vending Machines at the Facilities for dispensing the Products, provided, however that Contractor shall work with University to identify optimal locations for such equipment. Contractor shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to Vending Machines.
- (f) Exclusivity:
The University shall purchase, and shall require that all concessionaires, Food Service Providers, and booster clubs selling Beverages on the Facilities purchase all Products, cups, lids and carbon dioxide directly from Contractor, except that University may purchase bulk tanks of CO2 (i.e., tanks in excess of 25 pounds) from a supplier other than Contractor.
- (g) Pricing:
 - (1) Vending Prices:
The vending pricing set forth in Exhibit C (the "Vend Prices") will remain in effect through Contract Year Three. On July 1st of Contract Year four and each Contract Year thereafter, Vend Prices will be subject to an annual increase. In addition, Vend Prices may be subject to additional adjustments based upon other cost elements such as Contractor's production cost, ingredient and delivery costs, and a competitive evaluation of pricing in the local market surrounding the Facilities. Contractor will provide University with thirty (30) days advance written notice of any Vend Price increases.
 - (2) Product Pricing:
The Products shall be purchased by University or the Food Service Provider from Contractor at prices established by Contractor from time to time. Current pricing for the Products are as set forth in Exhibit A attached hereto. Contractor will provide University with thirty (30) days advance written notice of any Product price increases.
 - (3) Food Service Provider Pricing:

The University acknowledges and agrees that if Contractor has a separate national or regional agreement with the Food Service Provider, then pricing for Products purchased by such Food Service Provider shall be pursuant to such national and/or regional agreement.

2. Product Merchandising Rights:

- (a) Menu Board Advertising:
University agrees that Contractor's trademarks for products shall be listed on the menu boards at concession locations in which Products are served to University at the Facilities. All brand identification containing Contractor trademarks and/or service marks for menu boards set forth herein will be prepared and installed by University at University's sole cost and expense.
- (b) Approved Cups; Product Hawking and Catering:
University agrees that all Products served, sold or dispensed at concession locations in which Products are served to University at the Facilities shall be served in Approved Cups and all other Beverages served, sold or dispensed within the Facilities shall be served in either Approved Cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of Competitive Products. Contractor agrees to make Approved Cups available to University or its Food Service Provider and University shall itself purchase or cause the Food Service Provider to purchase such Approved Cups only from Contractor, at prices determined by Contractor.

University will promote the sale of the Products by causing the Products to be “hawked” at the Facilities at all events and served as part of the catering selection in private boxes, suite, backstage areas, locker rooms and press areas. University further agrees that Products to be “hawked” in the stands shall be sold only in Approved Cups. As used herein, “hawking” shall refer to the sale of single servings of a product in the seating areas of the Facilities through the use of vendors circulating through such seating areas.

B. Grant of Advertising And Promotional Rights:

During the Term, University hereby grants to Contractor the right to advertise and promote Products in and with respect to the University, the Team and the University Marks upon the terms and conditions contained in this Contract and as set forth and described below:

1. Advertising

(a) Facilities Advertising:

As specified in Exhibit B, specifically Section II., Scoreboard Signage, A. – E.

(b) Print Advertising:

As specified in Exhibit B, specifically Section IV., Media Benefits, C.

(c) Design and Installation of University Advertising:

Contractor agrees, at its own cost, to provide University with the general design of all University Advertising. The University Advertising shall be constructed and installed by University (or an agent thereof) at University’s sole cost and expense. All University Advertising shall be in conformity with the general scheme and plan of the University and the surrounding areas.

(d) Advertising/Signage Changes:

University recognizes Contractor’s right to change, modify and alter its advertising for, or identification of, any of the Products or to discontinue the manufacture of any of the Products. Contractor shall reimburse University for all reasonable costs and expenses incurred by University in changing or modifying or altering any Facilities Advertising, menu boards and other Contractor identification or references to any of the Products necessitated by Contractor’s changes to the advertising, trade marks or trade names, designations or identification thereof. Contractor shall have the right to modify change or alter the promotional messages appearing thereon and all such modifications, changes and/or alterations shall be at Contractor’s sole cost and expense. University shall use reasonable efforts to minimize the cost to Contractor for modifying, altering and/or changing Contractor’s advertising.

(e) Maintenance of Signage:

University shall maintain all Facility Advertising and other signs and advertising for Products in good order. University shall affect any necessary repairs reasonably determined by University at University’s sole cost and expense. Where practical, University shall consult with Contractor prior to incurring any material signage or other related maintenance expenses.

2. Promotional Rights:

(a) General Sponsorship Designation:

University hereby agrees that Contractor shall have the right to promote the fact that Contractor is an official sponsor of the Team and the University and that the Products are available at the Facilities, including the right of Contractor to refer to itself using the Designations. Such promotion may be conducted through the distribution channels of television, radio and print media, on the packaging of (including cups and vessels) and at the point-of-sale of any and all Products wherever they may be sold or served.

(b) Grant of License to Use the Team Marks and the University Marks for Promotional Activities:

University hereby grants to Contractor a nonexclusive license to use the name of the Team, the Facilities, the Team Marks and the University Marks, except as otherwise provided herein, for the limited purposes of promoting Products within the context of promotional activities. Contractor acknowledges that, in order to make full use of the rights granted in this Contract, Contractor shall conduct the promotional activities through its primary distribution channels in which Contractor sells Products to the ultimate consumer, such as at the retail level, within drug stores and other retail outlets, by and through mass merchandise campaigns and together with Contractor's food service accounts and University. Any and all promotions as described above shall be approved by the University prior to promotional launch.

3. Representations, Warranties and Covenants Regarding the Ownership and Protection of the Team Marks and the University Marks and Related Proprietary Rights:

University represents and warrants that it is the sole and exclusive owner of all right, title and interests in and to the Team Marks and the University Marks (including without limitation, all goodwill associated therewith) and Contractor's use of the Team Marks and the University Marks pursuant to this Contract will not infringe the rights of any third parties. Contractor acknowledges that nothing contained in this Contract shall provide Contractor with any right, title or interest to the Team Marks or the University Marks other than the right to use such Team Marks and University Marks granted under this Contract. Contractor (on behalf of itself and its Affiliates) agrees that it shall not attack the title or any rights of University and its Affiliates and cooperate with University and its Affiliates to procure any protection or to protect any of the rights of University and its Affiliates in and to the Team Marks and University Marks. Contractor shall cause to appear on all materials incorporating the Team Marks and the University Marks such legends, markings and notices as University or its Affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Team Marks and the University Marks. Contractor shall not make any alterations or changes to the design or type of the Team Marks and University Marks without the prior written consent of University.

4. Representations, Warranties and Covenants Regarding the Ownership and Protection of Proprietary Rights of Contractor:

Contractor represents and warrants that Contractor is authorized to use certain names, logos, service marks and trademarks of PepsiCo, Inc. (including without limitation, all goodwill associated therewith) (the "Pepsi Marks") under a license from PepsiCo, Inc. University acknowledges that nothing contained in this Contract shall provide University with any right, title or interest to the names, logos, service marks and trademarks of PepsiCo, Inc. without the prior written approval of PepsiCo, Inc. University (on behalf of itself and its Affiliates) agrees that it shall not attack the title or any rights of PepsiCo, Inc., Contractor and its Affiliates and cooperate with PepsiCo, Inc., Contractor and its Affiliates to procure any protection or to protect any of the rights of PepsiCo, Inc., Contractor and its Affiliates in and to the Pepsi Marks. University shall cause to appear on all materials incorporating the Pepsi Marks such legends, markings and notices as Contractor or its Affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Pepsi Marks. University shall not make any alterations or changes to the design or type of the Pepsi Marks without the prior written consent of PepsiCo, Inc.

C. Grant of Other Rights:

1. Tickets and Hospitality:

As specified in Exhibit B, specifically Section V., Hospitality/Tickets, A. – D.

2. Sampling:

University agrees to permit, at Contractor's sole cost and expense, limited Sampling of students at the Facilities in a form and manner as specifically authorized and approved by University and in accordance with rules and procedures established by University, in its sole discretion, as may be amended or supplemented from time to time by University.

3. Option to Purchase Game Tickets.

University agrees to offer for sale to Contractor, and Contractor shall have the first opportunity to purchase from University any other tickets in connection with any University related event and/or game, at a price payable by Contractor to the University in an amount equal to the face-value for each ticket. In connection with the foregoing, University shall provide Contractor with notice as to the availability and price of any such tickets and if Contractor fails to remit payment in full to University within forty-eight (48) hours following such notice.

D. Exclusivity:

1. During the Term, University, the Team and its players, coaches and staff (i) shall not themselves nor shall they permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products at the Facilities or in connection with the University, the Team, the Team Marks or any of its players, coaches and staff and (ii) shall ensure that the Products are the only Beverages sold, served, promoted, marketed, advertised, merchandised, sponsored or endorsed, at the Facilities or in connection with the University, the Team, the Team Marks or any of its players, coaches and staff.
2. University recognizes that Contractor has paid valuable consideration to ensure an exclusive associational relationship with the Facilities, University, University Marks, Team Marks, and/or the Team with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Contractor's valuable rights. Accordingly, the University will promptly oppose Ambush Marketing and take all reasonable steps to stop Ambush Marketing and to protect the exclusive associational rights granted to Contractor pursuant to this Contract. In the event any such Ambush Marketing occurs during the Term, each party will notify the other party of such activity immediately upon learning thereof.

E. Equipment and Service:

1. Beverage Dispensing and Other Equipment:

- (a) Contractor shall, based upon Contractor's survey of the Facilities' needs, provide and install all Equipment at the Facilities for the dispensing of Product during the Term. Title to all Equipment shall be with Contractor or its affiliates.
- (b) During the Term and at no cost to the University, Contractor will service and stock, if necessary, (i) the Equipment and (ii) any additional Equipment determined by the parties to be installed at new locations on the Facilities.
- (c) The Equipment may not be removed from the Facilities without Contractor's written consent, and the University agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by Contractor. At the end of the Term, Contractor shall have the right to, and shall upon request of the University, remove all Equipment from the Facilities at no expense to the University.
- (d) Contractor shall be responsible for collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for all cash monies collected there from. The University agrees to provide reasonable assistance to Contractor in apprehending and prosecuting vandals. Contractor shall not be obligated to pay commissions as provided in this Contract on documented revenue losses resulting from vandalism or theft of product with respect to any Vending Machines on the Facilities.
- (e) Vending Machines in locations specified by the University will also be fitted by Contractor with magnetic stripe card on-line or chip card off-line readers at Contractor's expense in accordance with a mutually agreed to conversion schedule. Contractor will not be responsible for any transaction or maintenance fees on the debit card readers affixed to the Vending Machines. The University shall arrange for the collection of monies from debit card transactions on Vending Machines equipped with debit card readers. The University shall retain title to the debit card readers. On or before the first Monday of each month during the Term, the University and/or its authorized debit card agent shall be responsible for providing a weekly report to Contractor, in a form reasonably satisfactory to Contractor, detailing the transactions and the dollar amounts grossed during the immediately

preceding weekly period through each Vending Machines equipped with a debit card reader. On or before the first Monday of each month during the Term, the University and/or its authorized debit card agent shall remit payment to Contractor for the monies collected through debit card readers during the immediately preceding monthly period. The University agrees to indemnify and hold Contractor harmless from and against losses or costs incurred by Contractor as a result of any dispute between the University and the debit card agent over monies owed to Contractor for the sale of Contractor product through the Vending Machines equipped with debit card readers or the failure of the debit card agent to remit payment in a timely manner if the dispute remains unresolved for a period of sixty (60) days.

- (f) Contractor reserves the absolute right to remove any glass front Vending Equipment that sells less than eight (8) cases of Product per week or any other Vending Equipment that sells less than two (2) cases of Product per week.

2. Service to Equipment.

Other than routine maintenance, which shall be the responsibility of and completed by University or its designee, Contractor or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. Preventative maintenance of the Equipment shall take place at the Facilities no less than once every six (6) months. Contractor shall provide University with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. Contractor shall respond to each University request and use reasonable efforts to remedy the related Equipment problem as soon as possible.

F. Permitted Exceptions:

1. Food Service Provider:

Contractor acknowledges that the University is under contract with the Food Service Provider, which acts as the University's exclusive agent for the operation of food and beverage concessions and a catering business at the Facilities and that pursuant to such agreement the Food Service Provider subcontracts with branded coffee and tea companies, currently Starbucks Coffee and First Colony Coffee & Tea Company which sell their Competitive Beverages in leased spaces within the Webb University Center, Batten Arts and Letters and the Constant Convocation Center. Contractor acknowledges and agrees that the sale of such Competitive Beverages at the above locations are an exception to exclusivity and the sale of such Competitive Beverages at those locations will not be considered a breach of this Contract, provided that all such sales are limited to those vendors listed above. If, however, the vendors listed above cease to operate at Facilities for any reason, and at that time Contractor is able to provide such beverages then the University will give Contractor first right to enter into a contract for the exclusive sale of such beverages with the vendors at the locations listed above, however, if Contractor is unable to provide such beverages then the University have the right to work with similar vendors after obtaining Contractor's approval, which approval will not be unreasonably withheld if the vendors do not compete with Sponsor. The merchandising for such Competitive Beverages, however, will only be permitted in the retail space within the Webb University Center, Batten Arts and Letters and the Constant Convocation Center. In addition, University agrees that if it operates or becomes a subtenant of any such retail space where Beverages are sold, University will sell only the Products in the retail space.

2. National Collegiate Athletic Association (NCAA):

This Contract is subject to the rules and agreements of the NCAA and of any conference of which University is a member (collectively "League Rules"). In the event any League Rule (or the change in interpretation of any League Rule) restricts or limits Contractor's rights hereunder, then:

- a. Contractor and University shall negotiate in good faith for a period of ninety (90) days for an adjustment in the consideration for the remaining portion of the Term and University shall pay to Contractor a pro rata refund of any prepaid amounts, which may be paid by setoff of the Fee by mutual agreement to reflect the diminution of value of the rights granted hereunder.
- b. In the event the parties cannot agree upon such an adjustment or in the Fees, then either party may terminate this Contract and University shall pay to Contractor a pro rata refund of any prepaid consideration. Such refund shall be made in accordance with Section VI.(2)(K) herein.
- c. No such adjustment shall be required if the League Rules merely result in the covering of Contractor's advertising and recognition panels during NCAA or conference tournaments, play-offs or championship events as long as each of the University's contractor's is treated equitably.

- d. Nothing herein shall prevent or in any way restrict University from participating in conference or non-conference games or NCAA championships off Facilities grounds or from appearing on television during off Facilities grounds games.
 - e. Nothing herein shall prevent or in any way restrict University from participating in conference or non-conference games or NCAA championships at the Facilities or from appearing on television during off Facilities grounds games, so long as:
 - i. Competitive Beverages are not served on the Facilities;
 - ii. Competitive Beverages are not advertised on the Facilities, except during Conference or NCAA championships, only when the conference or NCAA has a contract with a Competitive Beverage for sponsorship of such championship.
 - iii. In the event of such conference or NCAA championship, University shall have the right to allow temporary signage, advertising or trademark visibility for Competitive Products to be displayed at the Facilities, however, under no conditions will Competitive Products be sold during such conference; and
 - iv. University does not contract with a Competitive Beverage for sponsorship of such an event (although the NCAA or conference may).
 - v. University shall not take any action or acquiesce in any action which would amend any League Rule in a manner which would materially limit or restrict the rights of Sponsor under this Contract.
 - f. Except as otherwise provided in this Contract during the Term, University will not, and will not permit others to, display advertising or promotional messages or the name of any Competitive Beverage in or upon the premises of the Facilities, including without limitation, the seating areas, team benches, locker rooms and interview rooms of the athletic facilities.
3. Radio or Television "Broadcaster" Advertising:
University does not warrant that it has control over television or radio Broadcaster advertising, including any associated Ambush Marketing, during or for any events at the Facilities, and such advertising shall be exempt from the terms and requirements of this Contract. All television or radio advertising that University has control over will be subject to the terms of this Contract and University must not grant any advertising or promotional rights—including use of the University and Athletic Marks—to third parties (including Broadcasters) in a way that permits those third parties to use those rights in association with Competitive Beverages. However, Broadcasters may sell in-game spot advertising for Competitive Beverages, so long as the spots do not display or refer to University and Athletic Marks or otherwise associate the University, the Facilities or the University and Athletic Marks with Competitive Beverages through on-air mentions or on-screen images or text.
4. Special Promotional Events:
- a. University shall have the right to all temporary signage, advertising or trademark visibility for Competitive Products to be displayed at the Facilities during Special Promotional Events (defined below); provided, however, that (i) Sponsor's exclusive Beverage availability will not be otherwise affected during such Special Promotional Events and (ii) no Competitive Products may be sold, served or otherwise made available during any such Special Promotional Event.
 - b. University shall provide Contractor with no less than 30 days' prior notice that it intends to designate an event as a Special Promotional Event. "Special Promotional Event" means and shall be limited to (i) events that are part of a national multi-market pre-sponsored touring show that is sponsored by a manufacturer, licensee or distributor of a Competitive Product and for which advertising rights for a Competitive Product are mandated in an agreement between such sponsor and the athletes, artists or others performing or participating in such event, or (ii) locally sponsored events held at the Facilities to the extent that such events have preexisting agreements or a historical relationship with a Competitive Product.

V. CONSIDERATION AND PAYMENT DATES:

A. In consideration for the advertising, merchandising, promotional rights, and the other related rights and benefits provided to Contractor by University as described herein, and provided University is not in breach of this Contract, Contractor agrees to pay to University:

1. Annual Sponsorship Funds as follows (“Annual Sponsorship Funds”):

Contract Year	Annual Sponsorship Funds	Applicable Time Period	Payment Due to Athletics within Thirty (30) days of:
One	\$298,000.00	July 1, 2009 – June 30, 2010	NLT January 15, 2010
Two	\$298,000.00	July 1, 2010 – June 30, 2011	August 1, 2010
Three	\$298,000.00	July 1, 2011 – June 30, 2012	August 1, 2011
Four	\$298,000.00	July 1, 2012 – June 30, 2013	August 1, 2012
Five	\$298,000.00	July 1, 2013 – June 30, 2014	August 1, 2013
Six	\$298,000.00	July 1, 2014 – June 30, 2015	August 1, 2014
Seven	\$298,000.00	July 1, 2015 – June 30, 2016	August 1, 2015
Eight	\$298,000.00	July 1, 2016 – June 30, 2017	August 1, 2016
Nine	\$298,000.00	July 1, 2017 – June 30, 2018	August 1, 2017
Ten	\$298,000.00	July 1, 2018 – June 30, 2019	August 1, 2018

The University will provide Contractor with invoices for each *annual sponsorship funds payment*, and such invoices shall be provided to Contractor at least forty-five (45) days prior to the due date of each payment.

2. Guaranteed Annual Commissions:

- a. Contractor will provide University with a minimum annual commission based on Product sales through Contractor’s full service Vending Machines in the amount of One Thousand Ninety Four Thousand Dollars (\$194,000) (the “Guaranteed Annual Commissions”).
- b. The Guaranteed Annual Commissions shall be payable in equal quantity installments of \$48,500 to University within 45 days of the end of each quarter (due November 14th, February 14th, May 15th, and August 14th of each Contract Year). Contract Year 1 first quarter payment shall be due NLT December 22, 2009.
- c. The University will provide Contractor with invoices for each quarterly Guaranteed Annual Commission *payment*, and such invoices shall be provided to Contractor at least forty five (45) days prior to the due date of each payment.

3. Annual Merchandising Fee in the amount of Fifteen Thousand Dollars (\$15,000) (“Annual Merchandising Fee”). The Annual Merchandising Fee will be payable as follows:

- a. The first Annual Merchandising Fee payment shall be payable within thirty (30) days of the signing of this Contract by both parties.
- b. Merchandising Fee payments for contract years two through ten shall be payable on or before July 15th of each subsequent contract year, and shall be due until the end of the Term of this Contract. The total number of Annual Merchandising Fee payments will not to exceed ten (10) consecutive payments.
- c. The University will provide Contractor with invoices for each *Annual Merchandising Fee payment*, and such invoices shall be provided to Contractor at least forty-five (45) days prior to the due date of each payment.

4. Annual Marketing Fee in the amount of Twelve Thousand Dollars (\$12,000) (“Annual Marketing Fee”). The Annual Marketing Fee will be payable as follows:

- a. The first Annual Marketing Payment shall be payable to Auxiliary Services within thirty (30) days of the signing of this Contract by both parties.
- b. Annual Marketing Fee payments for contract years two through ten shall be payable on or before July 15th of each subsequent contract year, and shall be due until the end of the Term of this

Contract. The total number of Annual Marketing Fee payments will not to exceed ten (10) consecutive payments.

- c. The University will provide Contractor with invoices for each *Annual Marketing Fee payment*, and such invoices shall be provided to Contractor at least forty-five (45) days prior to the due date of each payment.

5. Annual Product Donation:

Contractor will provide annual Product donations consisting of 12 oz. cans and 16.9 oz. Aquafina of up to a total of six hundred (600) cases per Contract Year upon University's request, provided however, that the University will administer all requests through a central contact so that the University may prioritize the requests. University acknowledges and agrees that donated Product requests not used/made in any Contract Year shall not be carried over to the subsequent Contract Year.

A. Calculation of Commissions that may exceed the Guaranteed Annual Commissions during any Contract Year:

The University acknowledges and agrees that during each Contract Year the Contractor shall calculate Commissions due to the University based on the calculation formula set forth below "(Actual Annual Commissions)". If at the end of a Contract Year the commissions for Products sold through Contractor's full service Vending Machines exceeds the Guaranteed Annual Commissions paid for such Contract year, then within forty-five (45) days after the end of such Contract Year, the Contractor shall pay the University the difference between the Actual Annual Commissions and the Guaranteed Annual Commissions.

Commission Calculation Formula:

Commission shall be calculated, as a percentage of the actual cash ("cash in bag" or "CIB") collected by Contractor from the Vending Machines placed at the Facilities, less any applicable fees or deposits ("Commissions"). Such Commissions shall be calculated at the rate(s) set forth below (the "Commission Rate"), as follows:

$$(CIB - \text{applicable fees/deposits}) * \text{Commission Rate} = \text{Commission due}$$

Product	Minimum Vend Price	Commission Rate*
ALL (excluding Gatorade, SoBe Energy)	\$1.25	40%
Gatorade & SoBe	\$1.50	25%
Energy	\$2.50	25%

*Commission Rate stated above shall only apply to Products sold by Contractor through its Vending Machines at the beginning of the Term. If Contractor proposes any new products to the University during the Term, then Contractor shall have the right to apply a different Commission Rate and/or Minimum Vend Price for such new product.

(1) Change to Commission Rate. University acknowledges and agrees that Contractor established the Commission Rate based on any applicable sales tax associated with the sale of the Products through the Vending Machines as of the commencement date of this Contract. If, during the Term, sales taxes should increase by more than five percent (5%), then Contractor shall have the right to automatically reduce the Commission Rate by the same percentage amount.

(2) In addition to the consideration specified above, Contractor shall provide the University with sufficient recycling containers to accommodate the anticipated number of empty containers to be generated from the sale of Products on the Facilities. The University shall have the right to redeem the bottles returned from the Facilities.

VI. TERMS AND CONDITIONS:

The following terms and conditions shall remain in effect throughout the Term of the Contract, including any and all renewal periods.

1. GENERAL TERMS AND CONDITIONS:

- A. **Applicable Laws and Courts:** This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- B. **Anti-Discrimination:** Contractor certifies to the University that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

- (1) During the performance of this contract, the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- C. **Immigration Reform And Control Act Of 1986:** Contractor certifies that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- D. **Debarment Status:** Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting bids on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- E. **Accounting, Records, Reports And Methods Of Payment:**
- (1) **To the University:**
- a. Throughout the Term the University shall have full access at all times to the accounting records relating to this Contract. Accounting records will be made available at Contractor's local offices.
- b. Contractor shall maintain complete and accurate accounts and records, in accordance with nationally accepted industry standards, of all revenues, cost of goods and all other expenses in connection with the operation provided under the terms of the Contract. All such accounts and records shall be retained by the operation and may be inspected and reviewed by the University;

- c. On termination of the Contract, commissions will be paid to the University on sales up to the final day of the Contract. The commission due the University for any portion of an Contract Year shall be calculated on a percentage basis.
- (2) To Subcontractors:
Contractor is hereby obligated:
- a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the University for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - b. To notify the University and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason;
 - c. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract.

F.Precedence Of Terms: Paragraphs a-e of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions, the Special Terms and Conditions shall apply.

- F. **Assignment Of Contract:** This Contract shall not be assignable by either party in whole or in part without the other party's written consent. Notwithstanding the foregoing, Contractor shall be entitled to assign its rights and obligations under this Contract to PepsiCo, Inc. or its subsidiary or affiliate.
- G. **Changes To The Contract:** Changes can be made to the Contract in any of the following ways:
 - (1) The Contractor and University may agree in writing to modify the scope of the Contract
 - (2) The University may order changes within the general scope of the Contract at any time by written notice to the Contractor. Changes within the scope of the Contract include, but are not limited to, things such as services to be performed including the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the University a credit for any savings. Said compensation shall be determined by mutual agreement between the Contractor and University in writing; or
- H. **Failure To Deliver Goods:** In case of failure to deliver goods or services in accordance with the Contract terms and conditions, the University, after forty-eight (48) hours due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional costs over what University would have paid had they purchased the Product from Contractor. This remedy shall be in addition to any other remedies which the University may be entitled to.
- I. **Taxes:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- J. **Insurance:**
 - 1. Each party hereto maintains and agrees to maintain, at all times during the Term and for a period of three (3) years thereafter, a comprehensive program of risk retention and insurance in such amounts of insurance coverage as listed below.

INSURANCE COVERAGES AND LIMITS REQUIRED:

- (1) Workers' Compensation - Statutory requirements and benefits.
- (2) Employer's Liability - \$2,000,000 per occurrence.
- (3) Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations

Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

- (4) Automobile Liability - \$500,000 - Combined single limit. (Only used if motor vehicle is to be used in the contract.)

2. University shall have the right, during the Term from time to time, to request copies of such certificates of insurance and/or other evidence of the adequacy of the above insurance coverages

- M. **Drug-Free Workplace:** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of who are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

2. **SPECIAL TERMS AND CONDITIONS:**

- A. **Advertising:** Contractor shall make no indication of such sales or services to University in any product literature or advertising without first obtaining written consent from the University.
- B. **Audit:** Documents and other records relative to the Contract will be retained for three years following the end of each Contract Year with regard to such year. Any claim or dispute relating to Commissions payable in addition to the Guaranteed Annual Commissions must be brought by the University in writing within one year of the date of such qualifying Contract Year. Records shall be made available to University at Contractor's local offices. The University, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- D. **Availability Of Funds:** It is understood and agreed between the Contractor and University herein that the University shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract. However, if University elects to terminate this Contract due to the unavailability or non-availability of funds, then the University must provide Contractor with at least sixty (60) days prior written notice of such termination and the University must reimburse Contractor all unearned funds paid to the University by Contractor pursuant to Section VI.2.K. and all outstanding payments due to Contractor shall be paid by the University.
- E. **Minority/Women Owned Businesses Subcontracting And Reporting:** Contractor shall provide quarterly reports indentifying the subcontractors used during the performance of this contract. The reports shall include:
- (1) Name of subcontractor, including Federal Identification Number;
 - (2) If applicable, DMBE certification number and SWaM designation;
 - (3) Scope of goods/services provided during associated period;
 - (4) Total payment to subcontractor for current quarter, **and** year-to-date totals;
 - (5) Percentage of payments for current quarter, **and** year-to-date percentages, as related to "overall" spend.

- F. **Subcontracts:** No portion of the work shall be subcontracted without prior written consent of the University. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the University the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- G. **Warranty (Commercial):** Upon University's request Contractor will provide University with its Continuing Food Guaranty.
- H. **University's Termination Rights:** Without prejudice to any other remedy available to University at law or in equity in respect of any event described below, this Contract may be terminated by University at any time effective fourteen (14) days following written notice to Contractor from University if:
- (1) Contractor fails to make any payment due hereunder, and such default shall continue for thirty (30) days after written notice of such default is received by Contractor; or
 - (2) Contractor breaches or fails to perform any other material term, covenant or condition of this Contract or any representation or warranty shall prove to have been false or misleading in any material respect and Contractor fails to cure such breach within forty-five (45) days after written notice of default is delivered to Contractor. If such cure cannot reasonably be accomplished within such forty-five (45) day period, this provision shall not apply where Contractor shall have, in good faith, commenced such cure and thereafter shall diligently proceed to completion; provided, however, that such cure is completed to the reasonable satisfaction of University within ninety (90) days from the date of Contractor's receipt of such written notice of default.
- I. **CONTRACTOR'S TERMINATION RIGHTS:** Without prejudice to any other remedy available to Contractor at law or in equity in respect of any event described below, this Contract may be terminated in whole or in part by Contractor at any time, effective thirty (30) days following written notice to the University if (i) any of the Products are not made available as required in this Contract by the University, their agents or concessionaires; (ii) any of the rights granted to Contractor herein are materially restricted or limited during the Term of this Contract; or (iii) a final judicial opinion or governmental regulation prohibits the availability of Beverages, whether or not due to a cause beyond the reasonable control of the University, then Contractor may give the University written notice of such event and the University shall have a thirty (30) day period within which to cure such breach. If University fails to cure such breach within a thirty (30) day period, Contractor may terminate this Contract and to recover from the University a reimbursement in accordance with Section VI.(2)(K) below.
- J. **Additional Termination Rights Available To Contractor And University:** Without prejudice to any other right or remedy available to either party at law or in equity of any event described below, this Contract may be terminated by either party if the other party, or any parent of such other party, shall:
- (1) have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within sixty (60) days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e)(2)(A) of Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Contract;
 - or (2) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affair in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within 60 days thereafter); or (3) admit in writing its inability to pay its debts as such debts become due.
- K. **Sponsorship Fees In The Event Of Termination:**
If Contractor terminates this Contract pursuant to Section VI.2.I. or D., then Contractor shall be entitled to and from the University, without prejudice to any other right or remedy available to Contractor, and University shall pay to Contractor (i) a reimbursement of any unearned Annual Sponsorship Funds,

Annual Merchandising Fee and Annual Marketing Fee paid by Contractor to University for the Contract Year in which such termination occurs. The amount of such reimbursement shall be determined by multiplying the Annual Sponsorship Funds, Annual Merchandising Fee and Annual Marketing Fee paid in the Contract Year during which such termination occurs by a fraction, the numerator of which is the number of months remaining in such Contract Year at the time of such termination and the denominator of which is twelve (12); (ii) a reimbursement of any unearned portion of the Guaranteed Annual Commissions paid by Contractor to University for the quarter in which such termination occurs, University shall pay Contractor the difference between the portion of the Guaranteed Annual Commissions paid and the actual Commissions earned by the University during the quarter as of the date of termination (based on the Commission calculation formula set forth in Section V.B.; and (iii) an amount as liquidated damages, and not as a penalty, for lost profits and/or expenses suffered or incurred by Contractor as a result of such termination, which amounts would be difficult or impossible to determine, equal to the sum of: (a) cost of the Products multiplied by the projected number of gallons that University would have purchased during the remainder of the Term, which shall be based on the volume of gallons purchased from Contractor during the twelve (12) months immediately preceding the termination or for the initial Contract Year, the projected volume for that Contract Year plus (b) cost of the Products multiplied by the projected number of eight ounce case equivalents of the canned and/or bottled products ("Cases") that University would have purchased during the remainder of the Term. Such projected volume of Cases shall be based on the volume of Cases either sold to University during the twelve (12) months immediately preceding the termination or for the initial Contract Year, the projected volume for that Contract Year.

L. Taxes:

Contractor shall be responsible only for the payment of taxes on the sales of Products through Vending Machines at the Facilities. Contractor shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to Vending Machines.

Q. Confidentiality:

1. To the extent permissible by Commonwealth of Virginia law, or the rules or regulations of any national securities exchange or the rules or regulation of the University, the University and Contractor agree not to disclose Confidential Information (as hereinafter defined) to any third party other than to their respective directors, officers, employees and agents (and directors, officers, employees and agents of their respective Affiliates) and advisors (including legal, financial and accounting advisors) (collectively, "Representatives"), as needed.

2. "Confidential Information" shall include all non-public, confidential or proprietary information that University or its Representatives make available to Contractor or its Representatives or that Contractor or its Representatives make available to University or its Representatives in connection with this Contract. It is expressly understood that the disclosure in or pursuant to this Contract by University, Contractor or their respective Representatives of Confidential Information is not a public disclosure thereof, nor is a sale or offer for sale of any product, equipment, process or service of University or Contractor.

The provisions of this Section VI.2.Q. and the obligations of the parties hereunder will survive the expiration or sooner termination of this Contract for a period of three (3) years following such date of expiration or termination of this Contract

R. Representations, Warranties And Covenants:

1. University hereby represents and warrants to Contractor as follows:

- (a) University has full power and authority to enter into this Contract and to grant and convey to Contractor the rights set forth herein; and
- (b) All necessary approvals for the execution, delivery and performance of this Contract by University have been obtained and this Contract has been duly executed and delivered by University and constitutes the legal, valid and binding obligation of University enforceable in accordance with its terms, and nothing contained in this Contract violates, interferes with or infringes upon the rights of any third party;

- (c) The signatory of this Contract is duly authorized and empowered to bind University to the terms and conditions of this Contract for the duration of the Term;
 - (d) University has complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Contract and its performance hereunder; an
 - (e) To the extent that the Team is relocated to a venue which is not within the Complex as its home venue, University agrees that it shall ensure all rights of Contractor hereunder shall be extended to such alternate venue as to the Team and any advertising and pouring rights contained herein.
2. Contractor hereby represents and warrants to University as follows:
- (a) Contractor has full power and authority to enter into and perform this Contract;
 - (b) All necessary approvals for the execution, delivery and performance of this Contract by Contractor have been obtained and this Contract has been duly executed and delivered by Contractor and constitutes the legal, valid and binding obligation of Contractor enforceable in accordance with its terms and nothing contained in this Contract violates, interferes with or infringes upon the rights of any third party;
 - (c) The signatory of this Contract is duly authorized and empowered to bind Contractor to the terms and conditions of this Contract for the duration of the Term;
 - (d) Contractor has complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Contract and its performance hereunder.
3. Each of the parties hereto agree that (i) the representations, warranties and covenants contained herein shall survive the execution and delivery of this Contract, and (ii) except as expressly set forth herein, neither party has made, and neither party is relying on, any representation or warranty, express or implied, with respect to the subject matter hereof.

S. **Indemnification:**

1. **University's Indemnification Obligations:** ***To the extent permissible by Commonwealth of Virginia law,*** University shall defend, indemnify and hold Contractor, its Affiliates and the officers, directors, agents and employees of each harmless from and against any and all claims, suits, damages, losses, liabilities, obligations, fines, penalties, costs and expenses, (whether based on tort, breach of contract, product liability patent or copyright infringement or otherwise), including reasonable attorneys' costs and fees, arising out of or based on:
- (a) any breach or other failure of University to perform any of the agreements, terms, representations, warranties, covenants or conditions of this Contract to be performed;
 - (b) claims, demands or litigation alleging that any of the Team Marks or the University Marks violates or infringes on trademarks, trade names, copyrights or proprietary rights, provided that the Team Marks or the University Marks have been used by Contractor in the exact manner provided by University; or
 - (c) any act or omission or violation of any contractual arrangement of University or its Affiliates, or the officers, directors, agents or employees of each in connection with its or their performance relating to this Contract.

Note: Contractor agrees that the obligations set forth above shall not apply to any loss or damage to the extent caused by the acts, omissions or negligence of the party seeking to be indemnified.

2. **Contractor's Indemnification Obligations:** Contractor shall defend, indemnify and hold University, its Affiliates and the officers, directors, agents and employees of each harmless from and against any and all claims, suits, damages, losses, liabilities, obligations, fines, penalties, costs and expenses (whether based on tort, breach of contract, product liability patent or copyright infringement or otherwise), including reasonable attorneys' costs and fees, arising out of or based on:
- (a) any breach or other failure by Contractor to perform any of the agreements, terms, representations, warranties, covenants or conditions of this Contract to be performed by Contractor; or
 - (b) the sale or offering for sale, use or consumption of any of Products at the Facilities.

Note: University agrees that the obligations set forth above in this Article XIII.B. shall not apply to any loss or damage to the extent solely caused by the acts, omissions or negligence of the party seeking to be indemnified.

T. **Notices:**

Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or by telecopy, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Contractor:

The Pepsi Bottling Group
17200 Warwick Boulevard
Newport News, Virginia 23603
Attn: Merritt Mizelle, Key Account Manager

If to University:

Old Dominion University
4401 Powhatan Avenue, Suite 111
Norfolk, Virginia 23529
Attn: Harry R. Smithson, Jr., CPPO

With a copy to:

The Pepsi Bottling Group
One Pepsi Way
Somers, NY 10589
Attn: Legal Department

U. **Force Majeure:**

If the performance by either party hereto of its respective nonmonetary obligations under this Contract is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance only to the extent such performance or obligation is so delayed or prevented by such occurrence without liability of any kind. Nothing contained herein shall be construed as requiring either party hereto to accede to any demands of, or to settle any disputes with, labor or labor unions, suppliers or other parties that such party considers unreasonable.

V. **Release, Discharge Or Waiver:**

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Contract, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

W. **Prior Negotiations; Entire Contract:**

This Contract and the exhibits attached hereto, set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Contract shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Contractor and/or any of its Affiliates and any Affiliate of University.

X. **Relationship of The Parties:**

The parties are independent contractors with respect to each other. Nothing contained in this Contract will be deemed or construed as creating a joint venture partnership between the parties.

Y. **Construction:**

This Contract has been fully reviewed and negotiated by the parties hereto, including their respective legal counsel. Accordingly, in interpreting this Contract, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Contract provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties.

Z. **Severability:**

If any term or provision of this Contract shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Contract within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Contract shall be given effect as if the parties had not included the severed term herein.

AA. **Amendments:**

No provision of this Contract may be modified, waived or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, waivers or amendments shall not require additional consideration to be effective.

IN WITNESS WHEREOF, the undersigned have caused this Contract to be duly entered into as of the date above written.

Bottling Group, LLC
d/b/a The Pepsi Bottling Group

By: _____
Merritt Mizelle

Title: Key Account Manager

Date: June 26, 2009

Old Dominion University

By: _____
Robert L. Fenning

Title: Vice President, Administration & Finance

Date: June 26, 2009

EXHIBIT A
CURRENT PRICING FOR PACKAGED PRODUCTS AND POSTMIX PRODUCTS
(Effective January 1, 2009)

Packaged Products

Bottle & Can Packages	Wholesale	Discount	Net Cost	Unit Cost	Retail	Margin
6.5 oz Starbucks Double Shot, 1/24 Cans	\$40.00	\$4.01	\$35.99	\$1.50	\$2.19	31.5%
8.3 oz SoBe Adrenaline Rush, 1/24 Cans	\$40.00	\$4.01	\$35.99	\$1.50	\$2.19	31.5%
9.5 oz NR 1/12 Frappuccino	\$25.00	\$8.58	\$16.42	\$1.37	\$2.19	37.5%
10 oz NR 4/6	\$25.00	\$12.34	\$12.66	\$3.17	\$2.19	37.5%
10 oz NR Dole	\$25.00	\$13.56	\$11.44	\$0.48	\$1.29	63.00%
11 oz NR 1/12 Starbucks Iced Coffee	\$25.00	\$4.19	\$20.81	\$1.73	\$2.39	27.40%
13.7 oz NR 1/12 Frappuccino	\$30.00	\$10.99	\$19.01	\$1.58	\$2.39	33.70%
13.8 oz NR 1/12 Tazo Tea	\$30.00	\$15.80	\$14.20	\$1.18	\$2.39	50.50%
14 oz NR 1/12 Muscle Milk	\$30.00	\$1.50	\$28.50	\$2.38	\$2.39	0.60%
15.2 oz NR 1/12 Dole/Ocean Spray Juices	\$20.00	\$9.36	\$10.64	\$0.89	\$1.59	44.20%
16 oz Can AMP 1/12	\$30.00	\$9.99	\$20.01	\$1.67	\$2.29	27.20%
16 oz NR 1/12 Lipton Teas	\$20.00	\$9.36	\$10.64	\$0.89	\$1.59	44.20%
16 oz SoBe 1/12 Cans (No Fear/Adren Rush/Gold)	\$30.00	\$10.00	\$20.00	\$1.67	\$2.29	27.20%
20 oz NR 1/24 (CSD's/Lipton/Tropicana)	\$30.00	\$12.99	\$17.01	\$0.71	\$1.39	49.00%
20 oz NR 1/24 (Aquafina – all Flavors)	\$30.00	\$19.18	\$10.82	\$0.45	\$1.39	67.50%
20 oz NR 1/12 SoBe	\$25.00	\$10.71	\$14.29	\$1.19	\$1.69	29.50%
20 oz NR 1/12 SoBe Life Water	\$25.00	\$11.17	\$13.83	\$1.15	\$1.59	27.50%
24 oz NR 1/12 Mountain Dew / AMP	\$50.00	\$24.00	\$26.00	\$2.17	\$2.99	27.50%
20 oz Gatorade 1/24	\$30.00	\$12.57	\$17.43	\$0.73	\$1.89	61.50%
20 oz Gatorade Propel 1/24	\$30.00	\$6.00	\$24.00	\$1.00	\$1.89	47.10%
1 Liter Big Slam 1/12	\$20.00	\$5.38	\$16.62	\$1.22	\$1.69	27.90%
1 Liter Aquafina Water 1/12	\$20.00	\$6.50	\$13.50	\$1.13	\$1.69	33.40%
12 oz Cans – Core	\$15.00	\$6.56	\$8.44	\$0.35	\$1.00	65.00%
12 oz Cans – Flavors	\$15.00	\$7.73	\$7.27	\$0.31	\$1.00	69.00%
2 Liter 1/8	\$20.00	\$12.36	\$7.64	\$0.96	\$1.99	52.00%

PostMix Products

Carbonated Soft Drinks	5 Gallon BIB	3 Gallon BIB
Pepsi	\$10.79	\$11.15
Caffeine Free Pepsi	\$10.79	\$11.15
Wild Cherry Pepsi	\$10.79	\$11.15
Mountain Dew Code Red	\$10.79	\$11.15
Sierra Mist	\$10.79	\$11.15
Mug Root Beer	\$10.79	\$11.15
Diet Pepsi	\$10.79	\$11.15
Caffeine Free Diet Pepsi	\$10.79	\$11.15
Diet Mountain Dew	\$10.79	\$11.15
Sierra Mist Free	\$10.79	\$11.15
Diet Frozen Carbonated Beverages	N/A	\$27.63
Mirinda Flavors	\$10.79	\$11.15
Patio Flavors	\$10.79	\$11.15
Frozen Carbonated Beverages	\$12.24	12.57
Tropicana	5 Gallon BIB	3 Gallon BIB
Orange Twister	\$10.79	\$11.15
Lemonade	\$10.79	\$11.15
Pink Lemonade	\$10.79	\$11.15
Sugar Free Lemonade	\$10.79	\$11.15
Fruit Punch	\$10.79	\$11.15

EXHIBIT A (continued)
CURRENT PRICING FOR PACKAGED PRODUCTS AND POSTMIX PRODUCTS
(Effective January 1, 2009)

<i>Season's Harvest Juice/Blends</i>	<i>3 Gallon BIB</i>
100% Orange Juice	\$26.39
100% Apple juice	\$26.39
Grapefruit Juice	\$23.30
Cranberry Cocktail	\$23.30
Pineapple Juice	\$23.30
Sour Mix	\$20.54

<i>Lipton Iced Teas</i>	<i>5 Gallon BIB</i>	<i>3 Gallon BIB</i>
Lemon Sweetened	\$10.79	\$11.15
Peach	\$10.79	\$11.15
Raspberry	\$10.79	\$11.15
Sweetened	\$10.79	\$11.15
Plain	\$10.06	\$10.42

EXHIBIT B
Advertising and Promotional Rights

I. Logos and Marks:

Contractor shall receive the right to use the logos and marks of Old Dominion University Athletics, as well as to any and all Team Monarch identification marks and logos. The use of the “marks” shall be on a royalty-free basis, and used for mutually agreeable promotional purposes. All registered marks to be used in such promotions must be approved in writing by the University. Pass through of rights to vendors subject to category availability and prior approval by the University and Old Dominion University Sports Properties (“ODU SP”).

II. Scoreboard Signage:

A. Foreman Field – Home of “ODU Monarch’s Football”:

1. Presenting Sponsor of new Football Video Scoreboard: Contractor will receive:
 - a. Two (2) 3’ x 12’ permanent ad panels; and
 - b. Contractor will be the only Presenting Sponsor, and one (1) of five (5) Sponsors featured on the main scoreboard permanent ad panels.
2. Field Level: Contractor will receive a minimum of one (1) field level advertising position along the sideline or end-zone of Foreman Field.
3. LED Digital Displays: Contractor will receive a minimum of two (2) minutes of game time advertising on Foreman Field LED displays during each ODU home football game (one (1) minute per half). Two (2) LED displays will be located on the game day building (approximately 3’ x 20’ each) and one (1) LED display will be located at the bottom of the new Football Video Scoreboard (approximately 4’ x 51’).
4. Video-board Replays: Contractor will receive shared rotation with other Team Monarch members with Contractor logo connected to select replays on main video-board.
5. Video-board Feature: Contractor will be exclusive sponsor of one (1) video-board feature (specific content TBD), to include Contractor’s graphic and accompanying audio for all home games.
6. Team Monarch LED and Video-board Domination: Once per game, all Team Monarch partners, including Contractor, will be simultaneously recognized on all LED Displays and the Main Video-board.

B. Ted Constant Convocation Center – Home of ODU Men’s and Women’s Basketball:

1. Main Scoreboard: Contractor will receive four (4) static backlit signs on the top corner sections of the Ted Constant Center scoreboard (3’2” x 2’8”). The “main scoreboard” signage is exclusive to Team Monarch partners or University entities.
2. Courtside Rotational: Contractor will receive advertising on the new courtside rotational system for no less than two (2) minutes of game time during each ODU controlled home game (3’ x 40’).
3. LED Digital Displays: Contractor will receive one (1) minute of game time advertising on each of the arena’s four (4) LED displays (thirty (30) seconds per half). Each LED display measures approximately 2’8” x 29’.
4. Video-board Replays: Contractor will receive shared rotation with other Team Monarch members with Contractor logo connected to select replays on main video-board.
5. Video-board Feature: Contractor will be exclusive sponsor of one (1) video-board feature (specific content TBD), and includes Contractor graphic and accompanying audio for all home games.
6. Team Monarch LED and Video-board Domination: Once per game, all Team Monarch partners, including the Contractor, will be simultaneously recognized on all LED Displays and the Main Video-board.

EXHIBIT B (CONTINUED)
Advertising and Promotional Rights

C. ODU Soccer Stadium – Home of ODU Men’s and Women’s Soccer:

The Contractor will receive signage on two (2) permanent, static advertising panels on the main scoreboard. Each panel is approximately 2’x 5’..

D. Bud Metheny Baseball Complex – Home of ODU Baseball:

1. Contractor partner will receive two (2) permanent signs (2’6” x 9’) on the Scoreboard, will be the only Presenting Sponsor, and will be one (1) of five (5) partners featured on the main scoreboard permanent signage.
2. Contractor will be exclusive sponsor of one (1) video-board feature (specific content TBD) on an 8’ x 12’ video panel.

E. Powhatan Field – Home of ODU Women’s Field Hockey and Women’s Lacrosse:

The Contractor will receive signage on two (2) permanent, static advertising panels on the main scoreboard. Each panel is approximately 2’x 5’.

III. Game Day Sponsorships:

A. Football – Exclusive presenting sponsorship of one (1) football game per season:

1. Rotating game selection rights with other Team Monarch members;
2. Logo recognition on all game season tickets;
3. Logo inclusion on the cover of the Game Day program;
4. Twenty (20) tickets and four (4) parking passes to sponsored football game;
5. Twenty (20) passes to the ODU Sports Properties Hospitality Tent;
6. Opportunity for recognition to be held on-field during time-out or half-time of sponsored game;
7. Two (2) LED and video-board recognitions as presenting sponsor;
8. Two (2) :10 live reads during the radio play by play broadcast;
9. Two (2) on-air mentions during the weekly coaches radio show broadcast;
10. One (1) on-air radio interview with sponsor representative during the play by play broadcast;
11. Recognition on ODUSports.com the week prior to the game;
12. Sponsor inclusion in all promotional materials for specific game;
13. Ability to give away premium items to all fans in attendance (Contractor to cover premium costs);
14. Event marketing display in and around the stadium;
15. Four (4) field passes for use during one (1) quarter; and
16. One (1) reserved table at the weekly coaches radio show broadcast (pending off-site location).

B. Men’s and Women’s Basketball - Exclusive presenting sponsorship of one (1) Men’s and one (1) Women’s basketball game per season:

1. Two (2) LED and video-board recognitions as presenting sponsor;
2. Two (2) :10 live reads during the radio play by play radio broadcast;
3. Two (2) on-air mentions during the weekly coaches radio show broadcast;
4. One (1) on-air interview with sponsor representative during the play by play broadcast;
5. Recognition on ODUSports.com the week prior to the game;
6. Logo inclusion on Game Day roster card;
7. Sponsor inclusion in all promotional materials for specific game;
8. Pre-game/Halftime Ceremony: Option to conduct customized on-court ceremony;
9. Ability to give away premium items to all fans in attendance (Contractor to cover premium costs);
10. Event marketing display in and around the arena;

EXHIBIT B (CONTINUED)
Advertising and Promotional Rights

- C. ODU Baseball – Exclusive presenting sponsorship of one (1) 3-game Baseball series per season**
1. Recognition as game sponsor on video board two (2) times per game;
 2. Recognition on ODUSports.com the week prior of the game;
 3. Logo on Game Day roster card;
 4. Sponsor inclusion in all promotional material for specific game;
 5. Ability to give away premium items to all fans in attendance (Contractor to cover premium costs);
 6. Event marketing display in and around the stadium;
 7. Pre-game/Between innings: Option to conduct customized on-field ceremony.

IV. Media Benefits:

A. Radio:

1. Football – Play By Play Broadcasts:

- a. One (1) thirty-second (:30) pre-game and one (1) thirty-second (:30) post-game spot for each football radio broadcast. All regular season broadcasts (12 broadcasts, total of 24 spots);
- b. Two (2) thirty-second (:30) in-game spots for each football radio broadcast. All regular season broadcasts (12 broadcasts, total of 24 spots);
- c. One (1) in-game spot during each broadcast will receive position “A” placement within commercial break. Commercial lead-in will be provided prior to the position “A” commercial, thus Contractor will receive the following mention, “We’ll be right back after a message from Team Monarch Partner Contractor.”; and
- d. Contractor to receive exclusive Team Monarch opening and closing billboards each broadcast.

2. Football Coaches Show Broadcasts:

- a. One (1) thirty-second (:30) spot for each Coaches “call-in” radio show broadcast. (12 broadcasts, total of 12 spots);
- b. One (1) spot during each broadcast will receive position “A” placement within commercial break. Commercial lead-in will be provided prior to the position “A” commercial, thus Contractor will receive the following mention, “We’ll be right back after a message from Team Monarch Partner Contractor.”; and
- c. Contractor to receive exclusive Team Monarch opening and closing billboards each broadcast.

3. Men’s and Women’s Basketball Play By Play Broadcasts:

- a. One (1) thirty-second (:30) pre-game and one (1) thirty-second (:30) post-game spot for each Men’s and Women’s basketball radio broadcasts. (54 broadcasts, total of 108 spots);
- b. Two (2) thirty-second (:30) in-game spots for each Men’s and Women’s radio broadcast. (54 broadcasts, total of 108 spots);
- c. One (1) in-game spot during each broadcast will receive position “A” placement within commercial break. Commercial lead-in will be provided prior to the position “A” commercial, thus Contractor will receive the following mention, “We’ll be right back after a message from Team Monarch Partner Contractor.”; and
- d. Contractor to receive exclusive Team Monarch opening and closing billboards each broadcast.

EXHIBIT B (CONTINUED)
Advertising and Promotional Rights

4. **Men's and Women's Basketball Coaches Show Broadcasts:**

- a. One (1) thirty-second (:30) spot during each Men's and Women's Basketball Coaches "call-in" radio show broadcast. (34 broadcasts, total of 68 spots);
- b. One (1) spot during each broadcast will receive position "A" placement within commercial break. Commercial lead-in will be provided prior to the position "A" commercial, thus Contractor will receive the following mention, "We'll be right back after a message from Team Monarch Partner Contractor."; and
- c. Contractor to receive exclusive Team Monarch opening and closing billboards each broadcast.

B. **Internet – ODUSports.com:**

1. **Banner ads:** One Million (1,000,000) impressions guaranteed annually;

C. **Print:**

1. **Football:**

- a. One (1) full page, four-color advertisement in football Game Day program;
- b. One (1) full page, four-color Team Monarch recognition;
- c. Logo inclusion on back of schedule cards;
- d. Logo inclusion on front of schedule posters; and
- e. Logo inclusion on front of schedule magnets.

2. **Men's and Women's Basketball:**

- a. Team Monarch and Contractor logo on the back of the Men's and Women's roster card;
- b. Logo inclusion on back of Men's and Women's basketball schedule cards ;
- c. Logo inclusion on the front of Men's and Women's basketball schedule magnets; and
- d. Logo inclusion on front of Men's and Women's team schedule posters.

3. **Additional Print:**

- a. Logo inclusion on front of all *Fall* and *Spring* pocket schedule cards;
- b. Logo inclusion on the front of all Men's and Women's soccer schedule magnets; and
- c. Logo inclusion on Team Monarch commemorative concession cups.

V. **Hospitality / Tickets:**

A. **Football:**

1. Eight (8) season tickets;
2. Eight (8) pre-game hospitality passes;
3. Two (2) parking passes for each home football game;
4. Rights four (4) post-season tickets, as available.

B. **Basketball:**

1. **One (1) Suite** at Constant Convocation Center – includes (12) Men's and Women's basketball season tickets for half of all home Men's and Women's games, specific games to be determined on an annual basis. Rights to purchase tickets to non-athletic events held at Constant Convocation Center.

EXHIBIT B (CONTINUED)
Advertising and Promotional Rights

2. Four (4) season tickets and four (4) club season seats to Men's and Women's home basketball games;
 3. Two (2) VIP parking passes for each Men's and Women's home basketball game;
 4. Four (4) tickets to the Men's and Women's CAA Conference Tournament; and
 5. Rights to four (4) post season tickets for both Men's and Women's post season play.
- C. **Olympic Sports:**
Five hundred (500) combined tickets for use at ODU Field Hockey, Women's Lacrosse, ODU Soccer and ODU Baseball events.
- D. **Corporate Outings:**
1. Invitation for one (1) foursome to the annual ODU Sports Properties Golf Outing;
 2. Four (4) invitations to annual team awards banquet

EXHIBIT C
Vending Pricing
Contract Years 1 – 3

<u>Product Type</u>	<u>Vend Rate</u>
“Soda” Bottles / 20 ounce	\$1.25
Specialty Products	\$1.50
Vitamin Water	\$1.50
Energy/Feature/Other	\$2.50