

# OLD DOMINION UNIVERSITY STANDARD CONTRACT

Contract No. 13-221-0013-CCC

This contract entered into by and between Peninsula Vending Services (hereinafter the "Contractor"), and Old Dominion University (hereinafter the "Client").

I. **WITNESSETH** that Contractor and the Client, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

II. **PERIOD OF PERFORMANCE:**

The contract period shall commence upon final contract acceptance and execution, as evidenced by the latest execution date on the contract signature page, and will be in effect through May 31, 2016.

Upon mutual agreement between both the Contractor and the Client, this contract and subsequent period(s) of performance may be renewed for up to two (2) additional one (1) year periods.

The Contractor agrees that as part of this agreement, Contractor's response and to the Client's RFP #13-221-0013-CCC, including any and all associated terms and conditions, scope of service, and related pricing for same shall remain in effect throughout any and all "periods of performance", unless otherwise modified.

III. **CONTRACT AGREEMENT:**

The contract agreement shall consist of the following documents:

- (1) This signed form;
- (2) Contractor's "Pricing Schedule", as specified in section VIII;
- (3) Vending Machines and Locations, as specified in Exhibit A;
- (4) Where this Agreement is silent, the Client's original Request For Proposal, all associated attachments, addenda, and all negotiated changes shall control.

IV. **SCOPE OF SERVICES:**

The Contractor shall provide to the Client, all supplies, material, equipment, all management and labor necessary for the professional, efficient, sanitary and ecologically sound operation of vending services as outlined in the original RFP (#13-221-0013-CCC), the original response to same by the Contractor to include all additional and clarification documents provided, and all addendum.

A. General Conditions:

1. The Contractor shall maintain good public relations with University students, faculty and staff.
2. Contractor shall provide vending services as listed in **Exhibit A**, of current vending facility locations and the respective number of machines initially desired at each location.
3. Soft drinks and juice beverage vending is not included in this contract. The requests for these services are handled under separate agreement with the Client. However, the Contractor will provide coffee (coffee pods), hot chocolate and other hot beverages as requested by the Client.

B. Specific Conditions:

The Contractor(s) shall service the Client's Main Campus (Norfolk, VA), the Virginia Beach Higher Ed Center (1881 University Drive, Virginia Beach, VA), the Peninsula

Higher Ed Center (600 Butler Farm Road, Hampton, VA) and the Tri Cities Higher Education Center (1070 University Blvd, Portsmouth, VA), and shall be responsible for:

1. Providing a sufficient number of vending machines in Client areas to satisfy the requirements of students, faculty and staff;
2. Furnishing, installing and maintaining as necessary, microwave ovens for the use of vending services. (Refer to **Exhibit A**) Additional microwave ovens, coffee pods, etc. may be required based upon sales volume;
3. Maintaining and servicing all vending equipment on a frequent and continuous basis. Each vending machine shall be serviced or restocked as necessary to maintain an adequate supply of fresh product, and/or when approximately 50% of its inventory has been sold;
4. Offering varied selections of product as requested by the Client;
5. Ensuring that non-biodegradable products (to include, but not limited to cups, plates, utensils) are not provided or used during the performance of contract;
6. Ensuring that at least 25% of the vending machines to be installed have "healthy choice" options to include but not be limited to low calorie, high fiber, natural, organic vending choices.

*Contractor will outfit all snack vending machines with their "Fit-Pick" program with nutritional criteria as recommended by American Heart Association, Alliance for a Healthier Generation.*

7. Retail Selling Prices:
  - a. Determining and establishing the "retail selling prices" for all Sundry vending items, with the approval from the Client's Contract Administrator;
  - b. If and when the Contractor(s) determines it necessary to change a certain selling price during the contract period, the Contractor(s) shall make those price changes only after the approval of the Client's Contract Administrator;
  - c. The Client shall approve retail selling price adjustments for both product cost decreases and increases, as necessary;
  - d. The Contractor(s) must ensure that the request for a retail selling price increase is substantiated with proper documentation; and
  - e. The Contractor(s) may be requested to adjust the guaranteed yearly payment and/or percentage of gross sales to the Client upon any contract price adjustment.
8. Contractor's Employees:
  - a. All employees on the Contractor's payroll shall be the Contractor's responsibility. The Contractor shall comply with all applicable governmental regulations related to employment, compensation and payment of personnel;
  - b. The Contractor shall utilize its own employees and equipment. It is the responsibility of the Contractor to provide a sufficient staff of employees, properly trained, to consistently maintain the contract;

- c. All employees of the Contractor who handle cash shall be bonded and a list of the employees shall be furnished to the Client's Contract Administrator;
  - d. All of the Contractor's servicing and delivery employees shall have a proper driver's license;
  - e. Employee uniforms shall be furnished by the Contractor, which will easily and appropriately identify the Contractor and the employee by name. Exceptions shall be determined by mutual agreement between the Client's Contract Administrator and the Contractor. All Contractor employees must present a neat and clean appearance while performing under this contract;
  - f. Employees of the contractor shall observe all regulations of the Client. Failure to observe such regulations may be grounds for removal from the Client campus.
9. Management:
- a. The Contractor is responsible for establishing effective management controls in the performance of the contract;
  - b. The Contractor shall appoint a Contractor's Management Agent who will routinely review and inspect operations, personally fill staff vacancies, if necessary, and consult with the Client on current and future service programs. The Contractor's Agent shall be thorough familiar with all aspects of the contract and should have full authority on the Contractor's behalf in any and all matters pertaining to the contract.
10. The Contractor is responsible for control of all keys or access cards issued to its representative by the Client and the security of the vending areas when they are used by the Contractor. The Contractor shall be responsible for immediately reporting all of the facts relating to losses incurred, equipment damage or break-ins to its equipment and the areas of incidents within the Client's campus. The Client shall designate the authority who shall receive these reports and be responsible for key and card issuance and periodic review of key and card control.
11. The Contractor assumes full risk and responsibility for any loss, destruction or damages resulting from this contract occurring to Commonwealth of Virginia property, to include the Client property, and to any of the Contractor's property.
12. Initial Equipment Installation:  
The Contractor shall coordinate the initial installation of new machines by location over a five day period. It is the responsibility of the Contractor to ensure a phased-in coordination with the current Contract to ensure no interruption of vending service to the Client.
13. All expenses for the installation or removal of vending machines shall be borne by the Contractor.
14. Refund Policy:
- a. The Client shall designate personnel (Client refunders) at each vending location to issue refunds and to document the machine and the date and time from which the refund was issued. The Contractor shall be provided

- with a list of Client refunders broken down by vending location;
- b. The Contractor shall provide each designated Client refunder per vending location with a twenty dollar (\$20.00) "change bank" fund for refunds, or another amount as deemed an appropriate and necessary by the Client. Refund change fund banks shall be small, lockable cash boxes with one key. The key shall remain in the possession of the Client refunder. Change fund bank boxes shall meet with the Client's approval. The refund change banks shall remain the property and responsibility of the Contractor at all times;
  - c. The Contractor shall reimburse all refund change fund banks weekly, at a minimum, and shall inform the Contract Administrator of any refund bank discrepancies due to shortages/overages to include lost or stolen cash, within twenty-four (24) hours of identification.

*In addition, the Contractor will implement a refund policy through the contractor's QR codes on the side of each machines. The QR code will provide the Contractor's refund procedures, machine issues, and product request with future up-grades to follow in the near future.*

15. Space and Storage of Contractor's Property:

The Contractor shall not be required to pay any rental for the space occupied by the vending machines furnished when in use on the premises of the Client. The Contractor is not authorized to make any improvement or alteration to the space or to the facilities in which the machine(s) are installed, without the prior written approval of the Client.

The Client permits the Contractor to use such spaces as necessary to carry out the terms of this contract; such spaces are those areas presently used for vending equipment. Any new areas not presently utilized as vending space must be mutually agreed upon, in writing, between the Client and the Contractor.

16. Utilities:

- a. The Contractor is responsible for inspecting facilities and identifying available utilities for placement of machines.

Any alteration to utilities will be the responsibility of the Contractor whereby all installations are approved by the Client. Where necessary, utilities shall be brought to the vending areas by the Client. The contractor shall be responsible for paying the cost of connections from the main utility source to the equipment, including all other associated costs of installation of said equipment.

- b. The Client shall not guarantee an uninterrupted supply of water, electricity, or heat except that it shall be diligent in restoring service following an interruption. The Client shall not be liable for any losses which may result from the interruptions or failure of any such utility services.

17. Trash Removal:

Contractor shall not be permitted to utilize the Client's dumpsters and trash receptacles for disposal of the Contractor's trash and debris.

18. Pest Control:

The Client shall be responsible for insect and pest control in all food and drink

vending service areas. The Contractor shall be responsible for pest control inside of the machines.

19. Maintenance Services:

The Contractor shall provide vending equipment maintenance and repair service seven (7) days a week.

The Contractor shall, at all times, at its expense, maintain the vending machines, including any meters and special attachments, in proper mechanical working order and make all necessary repairs and replacement of parts. The Contractor shall also keep the vending machines, material handling equipment and properly identified service vehicles, in a clean, attractive and sanitary condition to the satisfaction of the Client. Microwave ovens, coffee pods, etc. are considered the same as vending machines for purposes of this contract.

Contractor should respond to emergency service calls within four (4) hours of notification. Equipment which cannot be returned to full service within 48 hours of notification of needed repair shall be replaced with comparable equipment of like quality until the original equipment is returned to service or permanently replaced at no cost to the Client.

20. The premises, equipment, supplies and facilities shall be maintained throughout the life of the contract in a condition satisfactory to the Client. The Contractor shall ensure adherence to the highest standards of cleanliness and sanitary practices to insure continual sanitation in all functions and matters related to the execution of the terms of this contract. The Contractor will be responsible for cleaning of machines including microwaves, coffee pods areas, vents, and fans on a schedule mutually agreed to by the Client. On a semi-annual basis, the Contractor should coordinate with the Building and Grounds Department of the University to clean behind and under all machines.

21. Free Services:

The Contractor shall not furnish free or discounted service to any individual(s) who utilizes the vending services.

22. Consulting:

a. Facilities:

The Client may, from time to time, request the services of the Contractor to assist with the development of layouts and specifications for new or remodeled coin-operated vending service facilities. These consulting services should be provided at no charge to the Client;

b. Product:

The Client may request that the Contractor provide new products for evaluation by 20-30 people to demonstrate new product innovations and ideas at no cost to the Client.

23. Promotions:

*It has been determined that the Client will use part of the commission rate toward the promotional events, the Contractor shall only be responsible for the established commission rates as stated under the Pricing Schedule.*

24. Use, Sale or Other Disposal of Contractor's Equipment:

Any vending equipment not removed from the Client locations on termination of the

contract and/or after ten (10) days written notice to the Contractor, may be removed and placed in storage by the Client. The Contractor shall be responsible for costs of removal, storage and revenue loss. If after sixty (60) days from the date of written notice for removal the equipment remains at the Client, the disposition shall be at the discretion of the Client and at the expense of the Contractor.

25. Card Readers:

The contractor shall also install credit card readers on at least 66% of the total vending machines to be installed. These credit card readers shall be Wi-fi enabled and not be part of the Client information system.

*The Contractor will implement 80% of the machines with Credit Card readers with the balance to be provided within the first terms of the contract period.*

**C. Good-Faith Small, Woman and Minority (SWAM) Owned**

1. The Client is committed to (a) achieving the Commonwealth of Virginia's aspirational goal of forty percent (40%) SWAM participation for combined *prime contractor* and *subcontractor* spend, and (b) increasing participation of **Department of Minority Business Enterprise (DMBE) Certified** (i) small businesses, (ii) small woman-owned businesses, (iii) small minority-owned businesses, and (iv) businesses owned by service disabled veterans. The Client also encourages Contractor to provide for participation of small businesses, businesses owned by women and minorities, and businesses owned by disabled veterans through partnerships, joint ventures, subcontracts, or other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses, and plans for involvement on this contract are required.
2. The Contractor is encouraged to subcontract any applicable services by partnering with qualified vendors that have also been certified as small, small woman-owned, small minority-owned, or service disabled veteran owned businesses through the Commonwealth of Virginia's Department of Minority Business Enterprise (DMBE).
3. **Contractor** shall be required to provide quarterly reports to the Client's Contract Administrator. The reports shall identify the subcontractors used during the performance of any subsequent contract, as follows:
  - a. For **DMBE Certified** subcontractors, quarterly reports verifying (i) those DMBE certified subcontractors being used, (ii) scope of goods and/or services being provided, (iii) payments to subcontract vendor(s) for current quarter **and** year-to-date totals, and (iv) percentage of same payments related to "overall" contract totals for current quarter **and** year-to-date totals; and
  - b. For **non DMBE Certified** subcontractors providing services for contracts that exceed **\$200,000**, quarterly reports verifying (i) non-certified subcontractors being used, (ii) scope of goods and/or services being provided, (iii) payments to subcontract vendor(s) for current quarter **and** year-to-date totals, and (iv) percentage of same payments related to "overall" contract totals for current quarter **and** year-to-date totals.

**Note:** Failure to provide the quarterly reports as requested will result in non-payment to Contractor for any services provided and invoiced during that period, shall remain unpaid until such reports are provided, and unless provided will be considered a breach of contract.

4. For the purposes of this section, the following definitions shall apply:
  - a. **Good faith SWAM owned business participation efforts:** The sum total of efforts by a particular business to provide equitable participation of SWAM subcontractors in the operations and contracts of such businesses.
    1. For past efforts, this sum total shall be comprised of the record of minority participation over the past two (2) years through employment, retention and promotion: subcontracting or joint ventures in the private sector; or a combination thereof.

2. In connection with the performance of this contract, good faith efforts shall mean those measures which are proposed to allow equitable participation of SWAM subcontractors.
- b. **Minority Owned Business Enterprise:** a business concern which is at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals.
  - c. **Minority Individual:** "Minority" means a person who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:
    1. **Asian Americans:** means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Marianas, the Philippines, U. S. territory of the Pacific, India, Pakistan, Bangladesh and Sri Lanka and who are regarded as such by the community of which these persons claim to be a part.
    2. **African Americans:** means all persons having origins in any of the original peoples of Africa and who are regarded as such by the community of which these persons claim to be a part.
    3. **Hispanic Americans:** means all persons having origins in any of the Spanish speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who are regarded as such by the community of which these persons claim to be a part.
    4. **Native Americans:** means all persons having origins in any of the original peoples of North America and who are regarded as such by the community of which these persons claim to be a part or who are recognized by a tribal organization.
    5. **Eskimos and Aleuts:** means all persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia and who are regarded as such in the community of which these persons claim to be a part.
  - d. **Small Business Enterprise:** an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.
  - e. **Woman Owned Business Enterprise:** a business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals.

## V. TERMS AND CONDITIONS:

The following terms and conditions shall remain in effect for the duration of the contract period, including and all renewal periods:

- A. **LAW:** This solicitation and any resulting contract is subject to the provisions of the Commonwealth of Virginia, specifically § 23-38.90 of the Code of Virginia and its associated *Rules Governing the Procurement of Goods, Services, Insurance and Construction ("the Rules")* and the *Purchasing Manual for Institutions of Higher Education and their Vendors* and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is accessible on the Internet at [www.odu.edu/procurement](http://www.odu.edu/procurement) under "Information for Vendors".
- B. **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.

- C. **ANTI-DISCRIMINATION:** Contractor certify to the Commonwealth 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. (Rules §10) 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. (Rules §36)

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. Old Dominion University is an equal opportunity/affirmative action institution providing access to education and employment without regard to age, race, color, national origin, gender, religion, sexual orientation, veteran's status, political affiliation or disability. As such, 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.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- D. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Contractor shall 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.

- E. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

F. **PAYMENT:**

1. To Prime Contractor:
  - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices



shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§2.2-4800 et seq.) of the Code of Virginia (Rules §42.A).
- e. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution (Rules §42.B).

The payment date shall be the later of 30 days from the date of the receipt of goods or invoice, or the date establish by the contract. In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made (Rules §44). All contract also shall require prompt payment of subcontractors by the general contract, upon receipt of payment by the Client (Rules §VIII.B).

- f. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Client shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Client for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract;
  - (2) To notify the Client and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Client, except for amounts withheld as stated in (2) above. 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. A contractor's obligation to pay an interest charge to a subcontractor may not

be construed to be an obligation of the Client.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
- G. **PRECEDENCE OF TERMS:** Paragraphs A-F 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 in this solicitation, the Special Terms and Conditions shall apply.
- H. **TESTING AND INSPECTION:** The Client reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the Scope of Services.
- I. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Client.
- J. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Client 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, 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 Client a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Client's right to audit the contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Client with all vouchers and records of expenses incurred and savings realized. The Client shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Client within thirty (30) days from the date of receipt of the written order from the Client. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Purchasing Manual for Institutions of Higher Education and their Vendors*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying

with the changes ordered by the Client or with the performance of the contract generally.

- K. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- L. **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 212-057-8029.
- M. **TRANSPORTATION AND PACKAGING:** By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- N. **INSURANCE and Licensing:** During the performance of this contract, including renewal periods, Contractor shall maintain the type of insurance coverage and minimum limits specified in the RFP, specifically those types and limits specified in section *III. General Terms and Conditions*.
- O. **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 whom 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.

- P. **NONDISCRIMINATION OF CONTRACTORS:** The Client's implementing policies and procedures provide for a nondiscriminatory procurement process that prohibits discrimination because of race, religion, color, sex, or nation origin of the Bidder in the solicitation and award of contracts. The policies include appropriate provisions for fair and reasonable consideration of women-owned, minority-owned, and small businesses and to promote and encourage a diversity of suppliers (Rules §VIII.F). A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, and (ii) shall be subject to the same rules as other organization that contract with the Client to account for the use of funds provided (Rules §36.E).

## VI. SPECIAL TERMS AND CONDITIONS:

- A. **ADVERTISING:** The Contractor shall not state in any of its advertising or products literature that the Client has purchased or uses its products or services.
- B. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Client, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Client shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- E. **AUTHORIZED CONTRACT PARTICIPATION:** In accordance with the *University's Rules Governing Procurement of Goods, Services, Insurance and Construction ("Rules Document")*, specifically §6, Cooperative Procurement, it is the intent of this solicitation to allow any public body, public or private health or educational institutions, or *Old Dominion University's* affiliated agencies and/or corporations, access and use of any subsequent contract(s), as authorized by the Contractor(s).

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), any resultant contract(s) may be extended to the entities as indicated above to purchase at contract prices in accordance with contract terms and conditions. The Contractor(s) shall notify the *Client* in writing of any entities accessing the contract. No modification of this contract or execution of a separate contract is required to participate. The Contractor(s) will provide semi-annual usage reports for all entities accessing the contract(s). Participating entities shall place their own orders directly with the Contractor(s), and shall fully and independently administer their use of the contract(s), including contractual disputes, invoicing and payments, without direct administration from *Client*. *Client* shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor(s) to extend participation and use of the contract(s). It is understood and agreed that *Client* is not responsible for the acts or omissions of any entity, and will not be considered in default of the contract(s) no matter the circumstances.

Use of this contract does not preclude any participating entity from using other contracts or competitive processes as the need may be.

- F. **CANCELLATION OF CONTRACT:** The Client reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- G. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.
- H. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized owners representative that the equipment / work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.
- I. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or

nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the Client or to failure of the Client to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

- J. **INSPECTION OF JOB SITE:** My signature on this contract constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Client.
- K. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- N. **RENEWAL OF CONTRACT:** This contract may be renewed by the Client for two, one year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Cost considerations may be negotiated only at the time of renewal. Written notice of the Client's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
- i. If the Client elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease in the ***Consumer Price index (CPI) for All Urban Consumers (CPI-U), All U.S. Items, for base period 1982-84=100.***, for the previous twelve (12) month period.
- ii. If during any subsequent renewal periods, the Client elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the ***Consumer Price index (CPI) for All Urban Consumers (CPI-U), All U.S. Items, for base period 1982-84=100.***, for the previous twelve (12) month period.
- O. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Client. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the Client 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.
- P. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Client's satisfaction at the contractor's expense.

**VII. COMPENSATION AND METHOD OF PAYMENT:**

*Quarterly commission check(s) will be sent to the address shown below no later than twenty (20) days after each quarter.*

Contract Administrator  
Attn: Michael Joseph  
Old Dominion University  
Auxiliary Services  
1200 Webb Center  
Norfolk, VA 23529

At the request of the Contract Administrator, the Client shall have full access to audit, and examine any machine furnished by Contractor showing the total sales received and/or machine usage during said contract period.

**VIII. PRICING SCHEDULE:**

Commission options based on the percentage of gross sales to be provided to the Client:

Peninsula Vending Services:		
Option	Commission	Promotional Events
<i>Original</i>	35.5% Sales <\$200K 39.5% Sales >\$200K	\$ 0.00

Price Range for the product lines are as follows:

Product Lines	Price Range
<i>Candy Bars</i>	\$1.00 - \$1.50
<i>Pastry</i>	\$1.00 - \$1.50
<i>Chips</i>	\$1.00 - \$1.25
<i>Cookies</i>	\$1.00 - \$1.25
<i>Gum &amp; Mints</i>	\$.75 - \$1.00
<i>Eclipse / Dentyne</i>	\$1.25 - \$1.50
<i>Travel Aids</i>	\$0.50 - \$4.00
<i>Fresh / Frozen Food</i>	\$0.50 - \$3.50
<i>Ice Cream</i>	\$1.00 - \$2.00
<i>Coffee</i>	\$0.75 - \$1.00

Price listing for Hygiene product lines are as follows:

Product Lines	Price Listing
<i>Advil, 2-Tab</i> s	\$0.75
<i>Tylenol, 2-Tab</i> s	\$0.75
<i>Women's Deodorant</i>	\$2.25
<i>Men's Deodorant</i>	\$2.25
<i>Toothbrush</i>	\$2.00
<i>Travel Toothbrush and Toothpaste</i>	\$2.25
<i>Visine</i>	\$3.75
<i>Razor</i>	\$1.75
<i>Shampoo, Herbal</i>	\$2.75
<i>Hand Sanitizer</i>	\$2.75

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

**CONTRACTOR: Peninsula Vending Services**

**CLIENT: Old Dominion University**

By: *J. P. [Signature]*

By: *[Signature]*

Title: *Owner*

Title: *VP for Administration & Finance*

Date: *4/19/13*

Date: *4/20/13*

**Approved as to form and legal sufficiency**

By: *[Signature]*  
**Office of University Counsel**

## EXHIBIT A

### VENDING MACHINES AND LOCATIONS

Item No.	LOCATION	TYPE
1	Suffolk	Snack
2	VA Beach Grad	Snack and Coffee Pod
4	BAL 1 <sup>st</sup> Floor	Snack
5	BAL 2 <sup>nd</sup> Floor	Snack
6	BAL 3 <sup>rd</sup> Floor	Snack
7	Book Store	Snack
8	Campus Police	Snack
9	Chemistry	Snack
10	Constant Hall	Snack
11	Constant Hall 2 <sup>nd</sup> Floor	Snack
12	Dental Tech	Snack
14	Dragas Lobby	Snack
15	ECS Building	Snack
16	Education Building	Snack
17	England House	Snack
19	France	Snack
20	Gornto	Snack
22	Kaufman Hall	Snack
23	Koch Hall	Snack
24	Library	Snack, Coffee Pod
25	Monarch House	Snack
26	Oceanography 1 <sup>st</sup> Floor	Snack
28	Physical Plant	Snack
29	Powhatan 2 Rec Room	Snack
30	Quad 3, 1 <sup>st</sup> Floor Scotland	Snack, Convenience Goods
31	Quad 2, 2 <sup>nd</sup> Floor Virginia House	Snack, Convenience Goods
32	Quad 1, 3 <sup>rd</sup> Floor Ireland	Snack, Convenience Goods
33	Rogers Hall	Snack
35	Rollins, 1 <sup>st</sup> Floor	Snack
36	Spong Hall	Snack
37	SRC North Wing	Snack
38	SRC Main	Snack
39	TED Convocation Center	Snack
40	Tennis Building	Snack
42	Visual Arts Building	Snack
43	Webb Center Left	Snack
44	Webb Center	Snack