



UNIVERSITY
of HAWAII®
SYSTEM

Office of Procurement and Real Property Management

June 7, 2019

Bottling Group LLC
Attn: Keri Sanders, Key Account Manager
99-1325 Halawa Valley Street
Aiea, Hawaii 96701

Phone No.: (808) 216-3166
Email: keri.sanders@pepsico.com

Dear Keri Sanders:

Subject: Notice to Proceed

Transmitted herewith for your files is one duly executed copy of Contract No. C190193, for the University of Hawaii Concessions Contract for Beverage Rights and Beverage Concessions at Honolulu Community College (Honolulu, HI) and Windward Community College (Kaneohe, HI).

You are hereby authorized to proceed with the work effective July 1, 2019, in strict accordance with the contract documents attached hereto. The term of the contract shall be for the period July 1, 2019 through June 30, 2026.

Very truly yours,

A handwritten signature in black ink, appearing to read "Duff Zwald".

Duff Zwald
Director

DZ:dh

Enclosures

c: Brian Pactol, Derek Inafuku

CONCESSIONS CONTRACT

**BEVERAGE RIGHTS AND BEVERAGE CONCESSIONS
FOR
HONOLULU COMMUNITY COLLEGE & WINDWARD COMMUNITY COLLEGE**

This CONTRACT, made and entered into as the 7th day of June, 2019, by and between the University of Hawai'i – Honolulu Community College with its principal place of business and main campus at 874 Dillingham Blvd., Honolulu, HI 96817 ("HCC") and the University of Hawai'i – Windward Community College with its principal place of business and main campus located at 45-720 Kea'ahala Road, Kane'ohe, HI 96744 ("WCC"), hereinafter collectively referred to as "UNIVERSITY," and Bottling Group LLC, 99-1325 Halawa Valley Street, Aiea, HI 96701, hereinafter referred to as the "CONTRACTOR."

WITNESSTH THAT:

WHEREAS, the University and CONTRACTOR desire to enter into a Contract that sets forth agreed upon terms and conditions to provide beverage concession and vending services for Honolulu Community College and Windward Community College, the terms of which are hereby made a part of this Contract;

NOW, THEREFORE, the Contractor agrees to accept the Beverage Rights and Beverage Vending Concession Rights for the University of Hawai'i – Honolulu Community College and Windward Community College in strict accordance with, and in consideration of, the mutual promises hereinafter set forth, the parties agree as follows:

1. DEFINITIONS

- A. BEVERAGE or BEVERAGES – 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 and fluid replacements); (vi) energy drinks; (vii) bottled or canned water whether carbonated or still (spring, mineral or purified).
- B. BEVERAGE RIGHTS – The exclusive rights to provide fountain beverages at all Food Service Outlets within the HCC and WCC campuses and the exclusive rights for eighty (80) percent of beverage shelf space for the CONTRACTOR'S prepackaged beverages all all Food Service Outlets within the campuses.
- C. BEVERAGE VENDING CONCESSIONS – The right to install and operate all full service beverage vending machines on HCC and WCC campuses at the current locations listed on ATTACHMENT B attached hereto and incorporated herein by reference, with any other

additional locations requiring the prior written approval of the UNIVERSITY and an amendment to this CONTRACT sign by both parties.

- D. COMPETITIVE PRODUCTS – Any and all BEVERAGES other than the PRODUCTS.
- E. CONTRACT – The written agreement between the parties and CONTRACT amendments, if any; and the resulting BEVERAGE RIGHTS and BEVERAGE VENDING CONCESSIONS CONTRACT between the UNIVERSITY and CONTRACTOR.
- F. CONTRACT LIAISON – The Vice Chancellor for Administrative Services at each respective campus will serve as the liaison between the CONTRACTOR and the UNIVERSITY.
- G. CONTRACTOR – The person, entity or organization with whom the UNIVERSITY has contracted for rights and obligations pursuant to this CONTRACT or otherwise referred to in this document as “Bottling Group LLC”.
- H. FACILITIES – Designated to be all premises owned and occupied by the UNIVERSITY or its INSTITUTIONAL VENDORS at the main campus of HCC and WCC, respectively. Excludes campus property that may be leased to external parties.
- I. FOOD SERVICE OUTLETS – All locations where INSTITUTIONAL VENDORS operate food service concessions with HCC and WCC campuses, which locations are listed on ATTACHMENT A attached hereto and incorporated herein by reference.
- J. INSTITUTIONAL VENDORS – Companies that operate food service concessions and serve at the FACILITIES at any point during the TERM.
- K. LIKE NEW – Equipment that has been completely cleaned, refurbished and had all mechanical parts checked with all defective and underperforming pieces replaced. The equipment is also visually indistinguishable from new and performs at original equipment manufacturers (OEM) standards.
- L. NEW PRODUCTS – Any new product (by name, size, packaging, SKU, initial offering, acquisition, etc.) offered by the CONTRACTOR.
- M. PRODUCTS – Any and all BEVERAGES now or in the future bottled, sold or distributed by CONTRACTOR.
- N. SUPPLIES – Any APPROVED CUPS, straws and lids necessary for the dispensing of the PRODUCTS.
- O. UNIVERSITY – Refers to the corporate entity known as the UNIVERSITY OF HAWAII for its Honolulu Community College and Windward Community College campuses or otherwise referred to in this document as “UNIVERSITY.”

2. SCOPE OF BEVERAGE RIGHTS AND BEVERAGE VENDING CONCESSIONS

The UNIVERSITY grants to the CONTRACTOR the BEVERAGE RIGHTS AND BEVERAGE VENDING CONCESSION at Honolulu and Windward Community College.

3. BEVERAGE RIGHTS FEE, VENDING COMMISSION, AND RELATED PAYMENTS

The CONTRACTOR shall pay to the UNIVERSITY the following amounts:

(1) \$3,500 dollars to each campus (HCC and WCC) prior to the commencement date for the first year of the CONTRACT TERM and no later than the anniversary date of the commencement date for each subsequent year during the CONTRACT TERM.

(2) Flex Fund support to enhance programs at HCC and WCC in the amount of \$2,000 annually over a 7-year term. HCC and WCC may request reimbursement of program need expenses of up to \$2,000 annually in total in support of program needs that come up during the school year.

(3) a monthly rebate of \$2.00 for each bottle and can case purchased by vendors for resale at food service outlets on the HCC and WCC campus, separately, within thirty (30) days of each 4-week period throughout the entire TERM, and;

(4) a monthly COMMISSION of not less than FORTY PERCENT (40%) of net sales from all beverage vending machines that are operated by, through, or under the CONTRACTOR during the CONTRACT TERM within thirty (30) days of each 4-week period throughout the entire TERM of the CONTRACT as described in Section 4 below. The UNIVERSITY agrees to allow CONTRACTOR the ability to increase the Mech Rate to not more than \$0.25 on all vending beverages from Year 4 of this contract.

In addition to the above considerations the CONTRACTOR shall provide HCC and WCC with an annual marketing budget of \$1,500 annually in total over a 7-year term to promote the sale of products at the campus.

4. PAYMENT

A. Submission of payments. All payments shall be made payable to the "University of Hawai'i" and submitted to each respective campus at:

Honolulu Community College Business Office
ATTN: Administrative Officer
874 Dillingham Blvd.
Honolulu, HI 96817

Windward Community College Business Office
ATTN: Administrative Officer
45-720 Kea'ahala Road
Kāne'ohe, HI 96744

The termination of the CONTRACT by default or other wise shall not relieve the CONTRACTOR of its obligations under the CONTRACT or for charges accrued while the CONTRACT was in effect by remaining unpaid at the time of termination.

- B. Late payments. Any amounts owing by the CONTRACTOR under the terms of the CONTRACT shall bear interest from the date such amounts become due until paid. The rate of such interest shall be either (a) at the specific maximum rate, if any, then allowed by the appropriate statutes of the State of Hawaii, or any successor law or statute, or (b) if there is no such maximum rate, TWO (2) percentage points above the large business prime rate of interest then being charged by the bank principally used by the UNIVERSITY.

5. **TERM**

The CONTRACT shall be effective from date of Notice to Proceed (on or around July 1, 2019), and be in effect through June 30, 2026 (hereafter the "EXPIRATION DATE").

6. **BEVERAGE RIGHTS**

- A. Exclusive right. The CONTRACTOR shall have the exclusive right to have its fountain beverages sold at all FOOD SERVICE OUTLETS with HCC and WCC campus. The UNIVERSITY and the CONTRACTOR agree that beverage products manufactured, sold and distributed by the CONTRACTOR shall be the exclusive beverage sold, dispensed, served, distributed as free samples, advertised, or promoted anywhere, anytime on HCC and WCC campuses unless the distribution as free samples, advertisement, or promotion is connected to a sponsorship agreement.
- B. Rights of first refusal. The CONTRACTOR shall be provided first right of refusal in the soft drink category for sponsorship of events being held by the UNIVERSITY within HCC and WCC campuses. This shall include advertising and promotional opportunities.
- C. Sponsorship of events. For events which the UNIVERSITY seeks sponsorship, the UNIVERSITY shall have the opportunity to negotiate with all soft drink companies including the CONTRACTOR. If the UNIVERSITY reaches tentative agreement with a soft drink company other than the CONTRACTOR to sponsor such event, the UNIVERSITY will notify the CONTRACTOR of the terms of such tentative sponsorship agreement. The CONTRACTOR will thereafter have fourteen (14) calendar days to match or exceed the terms of the tentative sponsorship agreement offered by any other soft drink company. If the CONTRACTOR fails to respond or otherwise match or exceed the terms of the tentative sponsorship agreement offer within such fourteen (14) day period, the UNIVERSITY is free to accept the offer from the other soft drink company, finalize such tentative agreement, and sign it.
- D. Permitted exceptions.
1. 20% exception. Bottled and canned beverages sold in the campus bookstore store, FOOD SERVICE OUTLETS, and other retail operations within campus properties, provided that the beverages not produced by the CONTRACTOR do not exceed

TWENTY (20) percent of the beverage shelf space in the location and are not stored within coolers supplied by the CONTRACTOR.

2. Specialty drinks. Specialty drinks that are not manufactured, sold and distributed by the CONTRACTOR or the CONTRACTOR'S main competitor.
3. Alcoholic beverages. Alcoholic beverages, non-alcoholic beers, non-alcoholic wines, and non-alcoholic mixers associated with alcoholic drinks such as but not limited to sweet sour mix, grenadine, margarita mix, pina colada mix, and mai tai mix.
4. Milk. Fresh milk, protein milk, and bottled milk beverages, to include products such as almond and soy milk.
5. Juices. Freshly squeezed juices, locally bottled juices, and locally bottled nectars.
6. Coffee. Freshly brewed coffee and beverages (e.g. espresso, latte, and cappuccino), freshly brewed tea and freshly brewed tea products and hot chocolate.
7. Hot beverages and smoothies. Any contracted branded concept of hot beverages and freshly made smoothie drinks that are part of a specific company branded drink concept.
8. National branded restaurant concepts. Beverages associated with national branded restaurant concepts that have a specialty drink associated with their concept will be permitted, and other branded concepts that specialize in specialty drinks. National branded restaurant concepts shall be permitted to advertise their drinks on menu boards.
9. No use of approved cups. Beverages falling within any of the permitted exceptions, to the extent served or sold in cups, shall not be served or sold in approved cups supplied by the CONTRACTOR.
10. Miscellaneous. Nothing in this CONTRACT shall prevent:
 - i. Purchase outside of campus. On campus consumption of competitive products purchased by individuals outside of campus for individual consumption.
 - ii. Campus publications. Print and broadcast advertising for competitive products in campus publications and in UNIVERSITY programming on radio and television stations.
 - iii. Student groups. Sponsorships received by student groups and organizations from an entity (such as a branded restaurant concept) that includes the logo of a product as part of the advertising/publicity material.
 - iv. Not affiliated with the campus. The consumption of competitive products by persons not affiliated with the campus or UNIVERSITY and sponsoring, promoting, or performing in touring attractions or engaged as speakers or persons affiliated with the manufacturer or supplier of a competitive product,

who are utilizing campus FACILITIES on a limited basis, provided that no advertising is allowed with respect to such competitive products.

- E. Service all locations. CONTRACTOR shall service all locations at intervals necessary to keep each dispensing location supplied with syrup and CO2 gas. Volumes vary at each location. It shall be the responsibility of the CONTRACTOR to maintain records of volumes and their trends and fluctuations in order to ensure appropriate deliveries to ensure no out of stocks occur. These records shall be made available to the UNIVERSITY upon request.
- F. Install equipment. CONTRACTOR shall be required, at the inception and throughout the TERM of the CONTRACT, to supply, install, service and maintain all fountain, display, and other equipment used to sell, dispense or display beverages, without cost to the UNIVERSITY.
1. New equipment. All equipment used to sell, dispense or display beverages shall be new, state of the art, and remain state of the art for the entire term of the CONTRACT and shall include ice dispensing capability.
 2. Energy efficient. All equipment must be ENERGY STAR® products or be certified by the Federal Energy Management Program as energy efficient in all categories available. The CONTRACTOR shall submit evidence of the ENERGY STAR® status or certification for the beverage equipment that is being installed.
 3. New racks. The CONTRACTOR shall furnish new racks, CO2 handling components and any other equipment as deemed reasonably necessary by the UNIVERSITY at no charge to the UNIVERSITY.
 4. Refrigeration dispensers. Some areas shall require self-contained refrigeration dispensers and stands. The selection of products to be dispensed and the versatility of equipment required shall be determined by the UNIVERSITY based upon reasonable customer needs. Specific equipment to be provided shall be agreed upon by the CONTRACTOR and UNIVERSITY.
 5. Secured by locks. Dispensing equipment shall have a secured locking mechanism.
 6. Dispensers. The dispensers shall be filtered with a stainless steel, vented, double check backflow valve.
 7. Separate water supply. All dispensers shall be equipped with separate water supply shut off.
 8. Compatible equipment. Equipment provided shall be compatible with the existing equipment or be an acceptable replacement agreed to by the UNIVERSITY.
 9. Supply syrup lines. The CONTRACTOR shall supply and install necessary syrup lines for the equipment in a manner that will not detract from the décor of each location.

The CONTRACTOR must obtain the UNIVERSITY'S prior written approval for placement of any and all equipment, including the syrup lines.

10. CO2 lines. The CONTRACTOR shall be responsible for installing CO2 gas lines for CO2 tanks to dispensing equipment where such installation is necessary. The UNIVERSITY shall be responsible for providing passage through walls, ceilings, etc., if required at installation sites. The UNIVERSITY reserves the right to withhold approval of dispensing equipment installation depending upon the total cost required.

G. Menu boards. All point of sale locations shall require menu boards as needed. All menu boards shall be provided to the UNIVERSITY at no additional cost upon the UNIVERSITY'S request.

H. Advertising material placement. The UNIVERSITY shall cooperate with the CONTRACTOR to place advertisement materials in FOOD SERVICE OUTLETS and campus store locations in order to feature the CONTRACTOR'S products and stimulate sales. The UNIVERSITY reserves the right to reject or require the removal of any advertising that the UNIVERSITY feels is unacceptable. The UNIVERSITY further reserves the right to have any previously approved advertising removed by the CONTRACTOR due to unforeseen circumstances, including, without limitation, negative public reaction to the advertising.

I. CONTRACTOR to grant credit. The CONTRACTOR shall pick up and issue credit for items that are damaged, stale, have an expired shelf date, and/or in the UNIVERSITY'S opinion is a slow seller.

J. National price agreements. The CONTRACTOR shall honor all national price agreements with INSTITUTIONAL VENDORS of the UNIVERSITY, provided the pricing does not exceed the maximum price set forth in this CONTRACT.

K. Fair pricing to INSTITUTIONAL VENDORS. The CONTRACTOR shall extend fair pricing to INSTITUTIONAL VENDORS based on the pricing of local stores of similar size and taking into consideration the volume of sales of the campuses in aggregate. The INSTITUTIONAL VENDORS are not obligated to buy directly from the CONTRACTOR and may purchase the CONTRACTOR'S products through local wholesaler or retail stores to their advantage.

7. BEVERAGE VENDING CONCESSIONS

A. The CONTRACTOR shall have the exclusive BEVERAGE VENDING CONCESSION rights for the HCC and WCC campuses which shall include, but not limited to bottle and can beverages.

1. Change in location/numbers. Locations and numbers of the beverage vending machines may be changed with the UNIVERSITY'S prior written approval. The current

locations and numbers of the vending machines are listed in ATTACHMENT B attached hereto and incorporated herein by reference.

2. Only within the campus. The CONTRACT shall not include vending machines located off or outside of the campuses except as defined in ATTACHMENT B.
 3. No filling of reusable water containers. The Vending Rights under this CONTRACT shall not extend to or include the exclusive right to operate vending machines that dispense water into a reusable container or a container provided by the customer.
- B. CONTRACTOR responsibilities. The CONTRACTOR, by and through its representatives, agents, subcontractors, and/or independent contractors, shall be responsible for all product, equipment, service, and revenue generation and accounting in connection with the operation of the vending machines.
- C. Point of sale advertising. At the CONTRACTOR'S expense, the CONTRACTOR may supply point-of-sale advertising promoting the CONTRACTOR'S beverages. The UNIVERSITY reserves the right to reject and/or remove any advertising that interferes with HCC and WCC operations.
- D. Commission payable to the UNIVERSITY. The CONTRACTOR shall pay to the UNIVERSITY a minimum monthly commission of FORTY PERCENT (40%) of net sales from its vending operations on the campuses. Net sales shall be calculated as gross sales collected minus the applicable Hawai'i general excise tax and the Hawai'i redemption value for the beverage containers used in the beverage vending machines.
- E. Payment of commissions. The monthly commission payments owed by the CONTRACTOR to the UNIVERSITY are due and payable within thirty (30) days of each 4-week period during the TERM without exception.
1. Inclusion of revenue. The monthly revenue generated by each beverage vending machine shall be included in the monthly net sales used in the calculation of the UNIVERSITY'S monthly commission payment due to each campus. Causes of abnormal or unusual reduction in the revenue generated by the beverage vending machine shall be noted and explained.
 2. Losses absorbed by the CONTRACTOR. Losses incurred from or attributed to the operation of beverage vending machines and/or equipment due to theft, fire, vandalism, damage, etc., shall be absorbed by the CONTRACTOR and shall not be factors in the computation of the commissions due and payable to the UNIVERSITY.
- F. Debit/Credit card technology. The CONTRACTOR shall purchase and install in its beverage vending machines equipment capable of taking or process payment by debit and credit cards. The CONTRACTOR shall obtain the UNIVERSITY'S written approval for the debit/credit card technology and equipment to be used in the beverage vending machines before the CONTRACTOR purchases or installs any beverage vending machines.

- G. Identification. Each beverage vending machine shall be clearly identified with a number or other identifying feature acceptable to the UNIVERSITY on its front so that reports of malfunctions can accurately traced to a particular beverage vending machines.
1. Clearly labeled. In a manner acceptable to the UNIVERSITY, each beverage vending machine is to be clearly labeled near eye level in the vicinity of the coin/bill or debit/credit card acceptor with the HCC or WCC campus telephone number to report malfunctions, and the respective HCC or WCC location to receive refunds when money is accepted and no product is dispensed or an unsatisfactory product is dispensed.
 2. Removal of notices. Information regarding the UNIVERSITY'S refund process, including the campus telephone number, shall be removed from the beverage vending machine when the machines are removed from the campus.
- H. Refunds. Refunds to the customer will be available through an on-site campus location at each campus. The CONTRACTOR shall reimburse each campus location for money lost in the beverage vending machines. Reconciliation of refunds from the UNIVERSITY and reimbursement to the refund account by the CONTRACTOR shall be done upon request of the UNIVERSITY.
- I. Subcontractor. The CONTRACTOR'S responsibility for operating the beverage vending machines may be fulfilled through the use of a subcontractor that is acceptable to the UNIVERSITY. In order to obtain the UNIVERSITY'S prior written approval for the use of any subcontractor, the CONTRACTOR shall do the following:
1. Describe and identify subcontractor. The CONTRACTOR shall identify the subcontractor(s) and the qualifications of the subcontractor(s) in writing.
 2. Current listing of clients. Provide a list of current clients or customers of all proposed subcontractors and a description of how the subcontractor will contribute to or comply with all of the CONTRACTOR'S obligations in operating the beverage vending machines.
 3. Meetings. The UNIVERSITY may request a meeting with any or all of the proposed subcontractors.
 4. Prior written approval. The CONTRACTOR shall obtain the UNIVERSITY'S prior written approval for the use of any subcontractor to perform any obligations under this CONTRACT relating to the operation of the beverage vending machines. The UNIVERSITY reserves the right to reject any and all subcontractors.
 5. CONTRACTOR not relieved. The use of a subcontractor does not relieve the CONTRACTOR of any of its obligations and responsibilities to the UNIVERSITY under this CONTRACT.
- J. Equipment voltage. The beverage vending machine equipment shall operate on 110-115 volts and be UL listed.

- K. Coin/bill acceptors. Equipment shall include coin mechanisms and bill acceptors that accept current U.S. coin and currency, and shall be promptly updated as needed to accept future U.S. coin and currency.
- L. Sales metering. All electrically operated machines shall be equipped with resettable cash metering devices. The required capacity of each machine shall depend on the needs and requirements of each location.
- M. ADA compliant. All equipment shall meet current Americans with Disabilities Act (ADA) standards. All selection buttons, coin mechanisms, and bill acceptors shall be no higher than 54 inches.
- N. CONTRACTOR to maintain beverage vending machines. All beverage vending machines and equipment shall be kept clean and in a sanitary condition. Any parts of the machine that are broken, scratched, or dented are to be repaired or replaced to maintain a clean appearance and prevent vandalism.
- O. Prices. Prices shall remain fixed and shall not exceed current UNIVERSITY approved vending prices from the COMMENCEMENT DATE to at least June 30, 2020, provided that the Federal and Hawaii state tax structure and the statutory minimum wage requirements remain the same. However, this does not preclude downward adjustments in prices during this period. Current UNIVERSITY approved prices for beverages to be dispensed by the CONTRACTOR using the beverage vending machines allowed under this CONTRACT are included in ATTACHMENT C attached hereto and incorporated herein by reference.
1. No current UNIVERSITY approved price. In cases where a current UNIVERSITY approved price is not available for a product, pricing will be based on an equivalent product. The UNIVERSITY shall be the sole judge of quality and equivalency of products offered. In the alternative, the CONTRACTOR shall seek the UNIVERSITY'S prior written approval for the pricing for such product.
 2. No current price and no equivalent. In cases where a current UNIVERSITY approved price is not available for a product and there are no equivalent products with current UNIVERSITY approved pricing, the CONTRACTOR and the UNIVERSITY shall mutually agree upon a price for the item.
 3. No agreement. If the UNIVERSITY and the CONTRACTOR are unable to reach agreement on the price of any new item or product to be offered for sale in the beverage vending machines, the CONTRACTOR shall not offer such item or product for sale.
- P. CONTRACTOR shall service. The CONTRACTOR shall, at the CONTRACTOR'S sole cost and expense, supply, install, fill, service, stock, and maintain all beverage vending machines and equipment.

1. Stocking. The CONTRACTOR shall keep full service beverage vending machines stocked at appropriate serving temperature so as to provide, under normal conditions, sufficient amounts of products, dispensed in conformity with all applicable Federal, State and local laws.
2. Inspection program. The CONTRACTOR shall establish a recurring inspection and preventative maintenance program to ensure that the beverage vending machines remain in sound operative condition. Throughout the term of the CONTRACT, the CONTRACTOR shall perform annual inspections of each beverage vending machine, with or accompanied by a UNIVERSITY representative, to evaluate the beverage vending machines for replacement and/or repair.
3. Dispose of packing material. All cartons or packing material left over from stocking the beverage vending machines shall be removed from the premises used by the CONTRACTOR within the campus under this AGREEMENT (the "Premises").

8. ANNUAL SUPPLY OF PRODUCTS FOR INSTITUTIONAL SUPPORT

- A. Chancellor's office. The CONTRACTOR shall supply the UNIVERSITY annually with no less than 150 cases (24 units each) of 12 oz. can product or 16.9 oz. bottled water offered by the CONTRACTOR to be split evenly with each campus (75 cases to HCC and 75 cases to WCC) to be used at the discretion of each respective campus Chancellor for use in support of institutional special events and Student Life programs. A single point of contact in each respective Chancellor's office shall be designated to contact CONTRACTOR key account manager to arrange for the delivery of supply.
- B. Timeframe for supply of product. The annual period for the supply of CONTRACTOR'S product to the UNIVERSITY shall start on July 1st and run through June 30th of the following year. Product shall be delivered by the CONTRACTOR to the campus at the request of the UNIVERSITY.

9. CONTRACTOR'S RESPONSIBILITIES

- A. Ensure correct functioning. The CONTRACTOR shall ensure correct functioning of the beverage dispensing and fountain equipment by working with the various vendors or UNIVERSITY programs within the campuses to train staff on appropriate use. In no even shall the UNIVERSITY be held liable or responsible for any costs associated with the maintenance or repair of the beverage dispensing and fountain equipment and/or beverage vending machines or equipment (collectively the "Contractor's Equipment").
- B. Preventative maintenance. The CONTRACTOR shall be responsible, at the CONTRACTOR'S sole cost and expense, for preventive maintenance and remedial service for all of Contractor's Equipment in accordance with the manufacturer's recommendations and guidelines.
- C. Calibration. The CONTRACTOR shall be responsible for supplying technical service personnel at least once a year to calibrate the beverage dispensing and fountain

equipment to ensure the proper ratio of syrup to soda water. The CONTRACTOR shall respond to the UNIVERSITY'S request for additional technical service assistance and personnel if the UNIVERSITY deems it necessary due to concerns of the quality of product.

D. Maintain UNIVERSITY specified equipment. The CONTRACTOR shall be required, at the inception and throughout the TERM of the CONTRACT, to furnish, supply, install, service, and maintain all specified coolers, fountain units, vending machines, CO2, displays, and other such equipment used to sell, dispense or display BEVERAGES at NO CHARGE to the UNIVERSITY.

1. Equipment. All equipment used to sell, dispense or display BEVERAGES shall be new or "LIKE NEW", and continue to be maintained as such for the entire TERM of the CONTRACT. Fountain BEVERAGE dispensers shall include ice-dispensing capabilities provided by the CONTRACTOR. BEVERAGE vending machines shall be technologically current and/or ENERGY STAR rated.
2. Beverage vending machines. The CONTRACTOR shall supply, install, fill, service and maintain all BEVERAGE vending equipment.

E. NFC readers. The CONTRACTOR shall install near field communication (NFC) readers on the beverage vending machines that accept both credit cards and debit cards, and are mutually agreed upon with the UNIVERSITY. All costs associated with the readers, including but not limited to, installation, removal, maintenance, replacement, connectivity, and transaction fees shall be the sole responsibility of the CONTRACTOR.

1. Maintain card readers. The CONTRACTOR shall be responsible for maintaining the card readers in compliance with Payment Card Industry Data Security Standard.
2. Remove card readers. The CONTRACTOR shall remove the card readers at the UNIVERSITY'S request for any of the following reasons:
 - a. Non-compliance with Payment Card Industry Data Security
 - b. Data security issues related to the card readers.
 - c. The implementation of a University One Card system that will replace the credit card readers.
 - d. Any non-resolvable or ongoing issue with the technology that prevents the readers from properly functioning.
 - e. Any non-resolvable or on-going customer service issue related to the readers.
 - f. Interference with UNIVERSITY communication network.
3. Connectivity of readers. The CONTRACTOR shall be responsible, at the CONTRACTOR'S cost, for connectivity of the readers and will not have access to any UNIVERSITY maintained network. If a wired connection is required for the connectivity of the readers, the CONTRACTOR shall be responsible for the cost of the wiring connection.

- F. Energy efficient. All equipment shall be ENERGY STAR products or be certified by the Federal Energy Management Program as energy efficient in all categories available. The CONTRACTOR shall submit evidence of the ENERGY STAR status or certification for the Contractor's Equipment that is being provided under this CONTRACT.
- G. Loaner equipment. The CONTRACTOR shall furnish/deliver applicable loaner equipment in the case of a major breakdown, at no charge to the UNIVERSITY. A major breakdown is defined as equipment that cannot be repaired in the time frames outlined in Item J of this section.
- H. Advertising material. The CONTRACTOR shall furnish Contractor's Equipment and advertising material to properly merchandise the CONTRACTOR'S products. The requirement to provide necessary Contractor's Equipment to the UNIVERSITY shall continue through the CONTRACT term, including accommodating the UNIVERSITY'S needs for upgrading, additional sites, and/or unanticipated circumstances. The CONTRACTOR shall change the beverage dispensing equipment as mutually agreed upon with the UNIVERSITY.
- I. Other equipment. The CONTRACTOR shall furnish new racks, CO2 handling components and any other equipment as deemed reasonably necessary by the UNIVERSITY at no charge to the UNIVERSITY (collectively the "Other Equipment"). The Other Equipment shall be considered part of the Contractor's Equipment.
- J. Technical service personnel. Technical service personnel shall be available and shall respond to requests to replace or repair malfunctioning Contractor's Equipment.
1. Retail locations. With respect to all retail locations, an appropriately trained technician shall be on-site and working diligently to return malfunctioning Contractor's Equipment to normal operation within FOUR (4) hours of the service call for a given incident and shall have the Contractor's Equipment back in service within TWENTY-FOUR (24) hours of the time the service call was placed.
 2. Replacement. At its discretion, the UNIVERSITY may require the CONTRACTOR to replace or upgrade any of the Contractor's Equipment that frequently malfunctions or exhibits excessive downtime. Any change in the Contractor's Equipment, including replacement with similar or like models, shall require the CONTRACTOR to obtain the UNIVERSITY'S prior written approval.
 3. UNIVERSITY may act. Should the CONTRACTOR not perform the necessary repairs in the time-frame stated above, the UNIVERSITY reserves the right to hire a company of its choice to complete the necessary repairs. The UNIVERSITY shall forward all invoices for repairs and related expenses to the CONTRACTOR for payment, and shall be reimbursed by the CONTRACTOR for any product substitutions to provide the level of service required for each venue.

4. Special events. With respect to special events, such as but not limited to graduation, concerts, etc., the UNIVERSITY may require on-site repair personnel during these events.
5. Beverage vending machines. With respect to vending machines, technical service personnel shall have the beverage vending machine repaired, restocked, or replaced within SIXTEEN (16) working hours of being notified of a malfunctioning machine or insufficiently stocked machine. If a beverage vending machine is not repaired, restocked, or replaced within SIXTEEN (16) WORKING HOURS OF NOTIFICATION, the UNIVERSITY reserves the right to charge the CONTRACTOR a FIFTY AND NO/100 DOLLARS (\$50) fee for each day that the beverage vending machine is in an unacceptable condition.
- K. Vehicles. The CONTRACTOR shall provide all vehicles to be used for restocking and servicing the beverage vending machines. All vehicles shall be the property of the CONTRACTOR or the UNIVERSITY approved Subcontractor and shall be identified with the CONTRACTOR'S or the Subcontractor's logo. All vehicles shall be maintained in accordance with State of Hawaii Department of Health standards for transporting food and beverage.
- L. Sufficient inventory. The CONTRACTOR agrees to keep a sufficient variety and quantity of post mix syrup, CO2, and prepackaged beverages in stock at the CONTRACTOR'S warehouse to enable the CONTRACTOR to continue the beverage service operations for at least seven (7) days in case of cessation of beverage deliveries to the State of Hawai'i.
- M. Health tests. The CONTRACTOR shall provide and require health and tuberculosis examinations for all employees in accordance with applicable laws and shall ensure that any Subcontractor provides and requires the same for its employees.
- N. Control of keys. The CONTRACTOR shall be responsible for control of keys obtained from the UNIVERSITY and for the security of any areas upon which is located any of the Contractor's Equipment.
- O. Report losses. The CONTRACTOR shall immediately report the loss of any UNIVERSITY key and all facts relating to losses incurred as a result of break-ins or vandalism to the CONTRACT LIAISON and Campus Security.
- P. Cost of rekeying. The CONTRACTOR shall be responsible for the costs of rekeying facility door locks if key security is compromised due to an act or omission of the CONTRACTOR or its employees, its agents, or its Subcontractor's employees or agents.
- Q. Uniforms. The CONTRACTOR shall provide all CONTRACTOR employees (service personnel, drivers, stock persons, and delivery persons) with uniforms and nametags that are to be worn at all times while on or within a UNIVERSITY campus.
- R. Payment of parking fees. The CONTRACTOR shall require all CONTRACTOR employees parking a vehicle on campus to pay the prevailing parking fees charged by the

UNIVERSITY to its own employees. The UNIVERSITY reserves the right to determine the number parking permits (when necessary) to be issued as well as the location of any designated loading zone or parking areas.

- S. Point of sale advertising. At the CONTRACTOR'S expense, the CONTRACTOR may supply point-of-sale advertising to promote the CONTRACTOR'S beverages. The UNIVERSITY reserves the right to reject and/or remove any advertising that interferes with campus operations.
- T. No EPS foam. The CONTRACTOR shall not use EPS foam foodservice products. EPS foam food service products are defined for this purpose as expanded polystyrene (EPS) foam packaging including but not limited cups.
- U. Institutional Vendors. The CONTRACTOR shall extend the UNIVERSITY'S pricing to its INSTITUTIONAL VENDORS.

10. **UNIVERSITY'S RESPONSIBILITIES**

- A. Utilities. The UNIVERSITY shall provide electrical and water connections necessary for the operation of all of the Contractor's Equipment at no cost to the CONTRACTOR. The UNIVERSITY shall provide for installation of data lines for the CONTRACTOR'S use when required for services mandated by the UNIVERSITY. The UNIVERSITY does not guarantee an uninterrupted supply of data, electricity, and water. However, the UNIVERSITY shall be diligent in restoring service following an interruption. The UNIVERSITY shall not be liable for any product loss or additional costs from the interruption or failure of any such utility service. The CONTRACTOR shall make final connections necessary to operate equipment for all beverage dispensing and vending machines.
- B. Placement of advertising. The UNIVERSITY shall cooperate with the CONTRACTOR to place advertisement materials throughout its FACILITIES in order to feature the CONTRACTOR'S products and to stimulate sales. The UNIVERSITY reserves the right to reject and/or require the removal of any advertising that the UNIVERSITY finds or determines to be unacceptable (e.g., if the advertising generates negative public reaction).

11. **PRODUCT STANDARDS AND ADDITIONAL BEVERAGES**

- A. Beverages to be identified. All beverages including juice and isotonic beverages, packed, manufactured, or distributed by the CONTRACTOR shall be identified (by complete description including name, SKU, size, packaging, etc.).
- B. Additional beverages. The UNIVERSITY recognizes that, regardless of the beverages currently approved by the UNIVERSITY for sale under this CONTRACT, the market for beverage products packed, manufactured, distributed, or available through other arrangements by the CONTRACTOR will change and additional beverages may become available for possible sale and added to beverage selection covered under this CONTRACT.

1. Offer submission. To be considered for inclusion in this CONTRACT the CONTRACTOR shall submit to the CONTRACT LIAISON a full product description in writing.
2. UNIVERSITY approval. The CONTRACTOR will obtain the UNIVERSITY'S prior written approval of any additional beverages and if deemed necessary by the UNIVERSITY, an amendment to add any such approved additional beverages to the CONTRACT will be executed by the CONTRACTOR and the UNIVERSITY.
- C. Flavor dispensing. The CONTRACTOR and UNIVERSITY shall mutually determine, with the UNIVERSITY having final authority for the decision, all flavors to be dispensed at each location whether fountain, retail, vending or other.
- D. Portion/size adjustments. The CONTRACTOR shall revise portion sizes and specifications in order to better respond to consumer demand.

12. **SPECIAL PROVISIONS**

- A. Contract invalidation. If any provision of this CONTRACT is found to be invalid, such invalidation will not be construed to invalidate the entire CONTRACT.
- B. Prohibitions. The CONTRACTOR shall preclude its employees, representatives, agents, and/or subcontractors from:
 1. No illegal acts. Using the FACILITIES for illegal acts or purposes.
 2. No lodging. Using the FACILITIES for lodging.
 3. No objectionable smoke, gases, or noise. Generating or causing the generation of noxious and objectionable smoke, gases, vapors, sounds, or noise.
 4. No flammable liquids. Storing or accumulating flammable liquids and materials which may invalidate any insurance coverage for fire and safety carried by the UNIVERSITY, as possible non-compliance/non-adherence to applicable Underwriter's rules regulations or any other codes and ordinances of the State of Hawaii or Honolulu City & County.
 5. No unauthorized signs. Posting of unauthorized bills, posters, and signs, within the FACILITIES.
 6. No stacks of boxes. Stacking of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or about the FACILITIES.
 7. No overloading. Overloading of FACILITIES floors or storage areas.
 8. No objectionable use. Using the FACILITIES in any manner found objectionable by the UNIVERSITY. The use of the FACILITIES for purposes other than as specified in this CONTRACT is prohibited.
- C. Contractor's Personnel. CONTRACTOR'S personnel shall comply with established UNIVERSITY policies with regard to Policy and Procedure on Sex Discrimination and Gender-Based Violence, Workplace Non-Violence, Illegal Drugs and Alcohol Abuse, and Clery Act requirements. The UNIVERSITY reserves the right to request the CONTRACTOR to remove personnel from servicing its accounts. The UNIVERSITY will

not tolerate objectionable or inappropriate behavior. Please refer to <http://www.hawaii.edu/policy/> for information regarding applicable UNIVERSITY policies.

- Policy on Consensual Relationships (Executive Policy E1.203).
- Interim Policy and Procedure on Sex Discrimination and Gender-Based Violence (Executive Policy E1.204).
- Workplace Non-Violence (Executive Policy E9.210).
- Illegal Drugs, Alcohol and Substance Abuse (Executive Policy E11.201).

- D. Additional Locations. The UNIVERSITY reserves the right to add locations for BEVERAGE vending machines and retail operations during the term of this CONTRACT. Additional locations shall be governed by the terms and scope of this CONTRACT.
- E. Management Team. The UNIVERSITY reserves the right to require a change in the CONTRACTOR'S sales and service team assigned to the UNIVERSITY if performance is deemed unsatisfactory.
- F. Risk of Loss. Any and all goods, wares, merchandise, furniture, equipment and personal property of any kind or description which may be on the premises at any time during the TERM of the CONTRACT, in connection with the CONTRACTOR'S performance of this CONTRACT, shall be at the sole risk and hazard of the CONTRACTOR, and the CONTRACTOR shall not hold the UNIVERSITY liable or responsible for any loss thereof or damage thereto caused by water, gas, defective electrical wiring, fire, or by or for any other cause whatsoever unless the same shall be due to any act of omission of the UNIVERSITY, its officers, agents, employees or invitees.
- G. Taxes. The CONTRACTOR shall be responsible for the payment of all taxes, fees or other tax liability on the sale of PRODUCTS through BEVERAGE vending machines at the FACILITIES. The UNIVERSITY acknowledges and agrees that neither the CONTRACTOR nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the UNIVERSITY in connection with any fees payable by the CONTRACTOR under this CONTRACT.
- H. Premises/Property upon termination. Upon expiration or termination of the CONTRACT, the CONTRACTOR shall remove non-UNIVERSITY equipment from the FACILITIES and restore the FACILITIES to as good a condition as at the commencement of the operations, alterations to the premises which had been previously approved by the UNIVERSITY, ordinary wear and tear excepted. CONTRACTOR and the UNIVERSITY shall jointly conduct a closing inspection. Surrendered premises shall be left in a clean and orderly state satisfactory to the UNIVERSITY. To accomplish this, the CONTRACTOR and the UNIVERSITY shall establish a checklist of the work that shall be done to restore the premises in a clean and orderly condition at least ONE (1) month prior to termination.
- I. Transition upon termination. The CONTRACTOR agrees to permit prospective service providers for a subsequent contract access to the premises for the purpose of inspecting equipment and facilities during the subsequent call for offers or negotiations at mutually agreeable times between the CONTRACTOR and the UNIVERSITY. After the new contract is awarded, the CONTRACTOR shall permit the new contractor access to the

premises at mutually agreeable times between the CONTRACTOR and the new contractor for an orderly phase-in of the new contract.

- J. Rights and remedies of the UNIVERSITY for default by CONTRACTOR. In the event the operations of the CONTRACTOR in the performance of the CONTRACT should fail to conform to the terms of the CONTRACT, the UNIVERSITY may reject the same, and it shall thereupon become the duty of the CONTRACTOR to correct same to conform to terms of this CONTRACT, without expense to the UNIVERSITY, provided that should the CONTRACTOR fail, neglect, or refuse to do so, the UNIVERSITY shall thereupon have the right to perform the CONTRACTOR'S obligation and the CONTRACTOR shall pay the cost incurred by the UNIVERSITY in performing the CONTRACTOR'S obligation.
- K. Examination and Audit. The CONTRACTOR shall allow the UNIVERSITY to audit its accounts related to this CONTRACT as well as:
1. Accurate records. The CONTRACTOR shall maintain accurate, complete and separate books of accounts according to generally accepted accounting principles reflecting the beverage operations at the UNIVERSITY together with appropriate supporting data and documents.
 2. Make records available. The CONTRACTOR shall make said books of accounts and supporting data and documents available in the State of Hawai'i for inspection, reproduction, and audit by the UNIVERSITY at all times, and shall retain and make available said books, data, and documents at all reasonable times for a period of THREE (3) years after the close of each AGREEMENT YEAR. If a dispute, discrepancy, litigation, or claim is instituted before the expiration of the THREE (3) year period the CONTRACTOR shall retain all books of account, data, and supporting documents until such disputes, discrepancies, claims, litigations, or audit findings are resolved.
 3. Submit operating statements. The CONTRACTOR shall submit to the UNIVERSITY operating statements, including but not limited to, vending sales receipts by machines and category of sales with meter readings, etc., by location within THIRTY (30) days after the close of each of the CONTRACTOR'S 4-week accounting cycle. Causes of abnormal revenue deviation shall be noted by the CONTRACTOR as part of the operating statement.
 4. Sales/commission annual audit. The CONTRACTOR shall conduct an annual sales and commission audit for each CONTRACT year, in accordance with generally accepted auditing standards and by an independent certified public accounting firm at the expense of the CONTRACTOR. The scope of this examination shall be such that an auditor's opinion shall be issued. The CONTRACTOR shall notify the UNIVERSITY, in writing, of any deficiency made known as a result of said audits. The CONTRACTOR shall submit copies of the audit report, including the auditor's opinion, to the UNIVERSITY. The CONTRACTOR shall, within THIRTY (30) days of receipt of audit report, correct any deficiencies noted by said audit, in its accounting procedures. If the audit should uncover the under reporting of sales, the CONTRACTOR shall make the appropriate payment to the UNIVERSITY. If the result of the audit is an

overpayment by the CONTRACTOR to the UNIVERSITY, the UNIVERSITY shall refund or credit the CONTRACTOR for the amount overpaid.

- L. Escalation Clause. All product sale prices set forth in ATTACHMENT C and ATTACHMENT D shall remain fixed from the start of the CONTRACT (defined as the NOTICE TO PROCEED DATE) through June 30th of the subsequent year. Thereafter, prices may be changed annually and will be communicated to the UNIVERSITY in writing. Any price increases shall not exceed THREE PERCENT (3%) annually. CONTRACTOR shall meet with the UNIVERSITY THIRTY (30) days prior to any price increases during the TERM in order to provide advance notice of such price increase. Each price adjustment approved by the UNIVERSITY shall be held firm for a period of TWELVE (12) months. The CONTRACTOR shall submit to the UNIVERSITY monthly and on an agreed upon form, all new beverage items to be introduced. Subject to the approval of the UNIVERSITY, new products may be sold in the vending machines, and prices shall remain fixed for the period through each subsequent June 30th. The UNIVERSITY approved prices shall become effect July 1st of each year during the CONTRACT term.
- M. Independent Contractor. In the performance of its operations under this CONTRACT, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under the CONTRACT; however, the UNIVERSITY shall have a general right to inspect the operations to determine whether, in UNIVERSITY'S opinion, the operations are being performed by the CONTRACTOR in full compliance with the CONTRACT. The CONTRACTOR and CONTRACTOR'S employees and agents are not by reason of the CONTRACT, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents in the course of their employment, and to any individual not a party to the CONTRACT, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
- N. Jurisdiction/Service of Process. The CONTRACTOR, by execution of the CONTRACT, acknowledges that the CONTRACTOR is transacting business within the State of Hawai'i and hereby submits to the jurisdiction of the courts of the State of Hawai'i as to any cause of action arising out of the performance and/or breach of this CONTRACT. The CONTRACTOR further agrees that when absent from the State of Hawai'i any service of process may be made by leaving a certified copy of a summons with the Director or Deputy Director of the Department of Commerce and Consumer Affairs, State of Hawai'i, and mailing by certified or registered mail, postage prepaid, a copy of said summons to CONTRACTOR.

- O. Indemnification. The CONTRACTOR shall indemnify, defend and hold harmless the UNIVERSITY and the State of Hawaii, and their officers, employees, agents, or any person acting on their behalf (collectively, the "Indemnified Parties") from and against: (a) any claim or demand or loss, liability or damage, including, but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any act or omission by the CONTRACTOR, or any of its officers, employees, subcontractors, assignees, or representatives in the performance of the CONTRACT, except liability arising out of the sole negligence of UNIVERSITY or its employees, agents, or any person acting on their behalf; (b) all claims, suits and damages by whomsoever brought or made by reason of the nonobservance, or nonperformance by the CONTRACTOR, or any of its officers, employees, subcontractors, assignees, or representatives of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments. Furthermore, CONTRACTOR shall reimburse the UNIVERSITY and the State of Hawai'i, and their officers, employees, agents, or any person acting on their behalf for all attorney's fees, costs, and expenses incurred in connection with the defense of any such claims.
- P. Insurance. The CONTRACTOR shall maintain commercial or comprehensive general liability insurance acceptable to the UNIVERSITY in full force and effect throughout the TERM of this CONTRACT. The policy or policies of insurance maintained by CONTRACTOR shall provide Combined Single Limit Coverage (bodily injury and property damage) in the amount of \$1,000,000 per occurrence, and \$5,000,000 in the aggregate. Insurance shall be in force the first day of the term of this CONTRACT.
1. Each insurance policy required by this CONTRACT shall contain the following THREE (3) clauses:
 - a. "This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after THIRTY (30) days' written notice has been give to the University of Hawai'i, Director of Office of Procurement and Real Property Management."
 - b. "It is agreed that any insurance maintained by the University of Hawai'i will apply in excess of, and not contribute with, insurance provided by this policy."
 - c. "The University of Hawai'i is added as an insured with respect to operations performed for the University of Hawai'i."
 2. CONTRACTOR agrees to deposit with UNIVERSITY, on or before the effective start date of this CONTRACT, certificates of insurance necessary to satisfy the UNIVERSITY that the insurance provisions of this CONTRACT have been complied with and to keep such insurance in effect and the certificates therefore on deposit with the UNIVERSITY during the entire TERM of this CONTRACT.
 3. The UNIVERSITY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the UNIVERSITY, the insurance provisions in this CONTRACT do not provide adequate protection for the UNIVERSITY, the UNIVERSITY may require CONTRACTOR to obtain insurance

sufficient in coverage, form, and amount to provide adequate protection. The UNIVERSITY'S requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks, which exist at the time a change in insurance is required.

4. The UNIVERSITY shall notify the CONTRACTOR in writing of changes in the insurance requirements; and if CONTRACTOR does not deposit copies of acceptable insurance policies with the UNIVERSITY incorporating such changes within SIXTY (60) days of receipt of such notice, this CONTRACT shall be in default without further notice to CONTRACTOR and the UNIVERSITY shall be entitled to all legal remedies.
 5. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR'S liability hereunder or to fulfill the indemnification provisions and requirements of this CONTRACT. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obligated for the full and total amount of any damage, injury, or loss arising from its acts or omissions with respect to this CONTRACT.
- Q. Termination of CONTRACT. In the event the CONTRACTOR fails to meet all commitments in accordance with this CONTRACT and does not remedy such default within THIRTY (30) days after receipt of written notice from the UNIVERSITY, the UNIVERSITY may terminate the CONTRACT. Should the UNIVERSITY exercise its right of termination, such exercise shall be without prejudice to any other remedy or right of action which the UNIVERSITY may have for any preceding or other breach of this CONTRACT by the CONTRACTOR.
- R. CONTRACTOR'S right to terminate. The CONTRACTOR will have the right to terminate this CONTRACT upon 45 days' prior written notice to UNIVERSITY at any time if the UNIVERSITY breaches any material term or condition of this CONTRACT, and the UNIVERSITY fails to correct or cure any such breach within a 45 day period after receiving written notice from the CONTRACTOR clearly describing the material term or condition of the CONTRACT and the alleged breach of such material term or condition by the UNIVERSITY. The UNIVERSITY will not be deemed in breach if the UNIVERSITY commences such correction or cure during said 45 day period and continues to diligently work toward completing such correction or cure thereafter.

13. GENERAL CONDITIONS

- A. Laws to be Observed. The parties shall at all times observe and comply with all federal, state, and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the operation of concessions under the CONTRACT, and the conduct of the work. The parties shall also comply with all such orders, and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.
- B. Patented Article. The CONTRACTOR will be required to, and shall hold the UNIVERSITY and its officers, employees, agents, and any person acting on its behalf harmless against all demands, claims, actions, suits or liabilities arising from the use of any patented article, patented process or patented appliance used in connection with this CONTRACT. Any

royalties due or becoming due for the use of any patented article or process shall be paid by the CONTRACTOR.

- C. Subcontracting and Assigning. The parties shall not subcontract, convey, transfer or assign any of the concession rights under this CONTRACT, nor shall the parties assign the CONTRACT to any other person or firm without written permission from the other party, and no subcontract or assignment made without such permission will be recognized. No subcontract shall, under any circumstances, relieve the parties of their obligation and liability under this CONTRACT, and all persons engaged in performing services covered by the CONTRACT shall be employees of the parties.
- D. Governing Law. The CONTRACT and any of its terms and provisions, as well as the rights and duties of the parties to the CONTRACT, shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of the CONTRACT shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.
- E. Severability. In the event that any provision of the CONTRACT is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of the CONTRACT.
- F. Waiver. The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision, or condition of the CONTRACT shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY'S right to enforce the same in accordance with the CONTRACT.
- G. Modifications to Goods and Services Contracts. Subject to mutual written agreement, the parties to the CONTRACT may make modifications within the general scope of this CONTRACT.
- H. Novation or Change of Name. Recognition of a successor in interest; novation. When in the best interest of the UNIVERSITY, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee and the UNIVERSITY shall agree that: the transferee assumes all of the transferor's obligations; and the transferor remains liable for all obligations under the CONTRACT but waives all rights under the CONTRACT as against the UNIVERSITY. When a CONTRACTOR requests to change the name in which it holds a CONTRACT with the UNIVERSITY, the UNIVERSITY shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting CONTRACTOR to effect such change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the CONTRACT are thereby changed.
- I. Use of Name. The CONTRACT conveys no right to the CONTRACTOR to use the name "University of Hawaii", "University of Hawai'i – Honolulu/Windward Community College", or "Honolulu/Windward Community College", with respect to or in connection with any of its operations, and, upon the termination of this CONTRACT for any reason, CONTRACTOR

shall have no right to indicate its relationship with the UNIVERSITY with respect to any of its operations except with the written consent of the UNIVERSITY.


- J. Furnished Property. The CONTRACTOR assumes complete responsibility for equipment and facilities furnished by the UNIVERSITY in connection with the CONTRACT and CONTRACTOR agrees to pay for all such equipment and facilities damaged or not accounted for to the UNIVERSITY'S satisfaction. The furnishing to CONTRACTOR of any equipment or facilities in connection with this CONTRACT shall not, unless otherwise expressly provided, be construed to vest title thereto in CONTRACTOR.

In the event of an inconsistency among the terms of this CONTRACT and CONTRACTOR'S offer, the inconsistency shall be resolved in the following order of precedence:

1. CONTRACT; and
2. CONTRACTOR'S Offer.

This concludes the terms, conditions and provisions of this CONTRACT IN WITNESS WHEREOF, each of the parties have executed this CONTRACT effective the day and year first above written

UNIVERSITY OF HAWAII

By 
Duff Zwald, Director
Office of Procurement and Real Property Management

BOTTLING GROUP LLC

By 
Keri Sanders
Key Account Manager, Bottling Group LLC

ATTACHMENT A – BEVERAGE RETAIL AND FOUNTAIN OPERATIONS

ATTACHMENT B – BEVERAGE VENDING MACHINE OPERATIONS

ATTACHMENT C – APPROVED BEVERAGE VENDING MACHINE PRICES

ATTACHMENT D – APPROVED PRODUCT PRICES

ATTACHMENT A

BEVERAGE RETAIL AND FOUNTAIN OPERATIONS

The UNIVERSITY currently distributes and/or promotes BEVERAGES through its operations, including but not limited to:

LOCATION (Building, Floor)	RETAIL	FOUNTAIN
Windward CC		
Hale Akoakoa, Campus Center, Dining Room First Floor	Soft Drinks: refrigerated dispenser (1)	Beverage fountain (1)
Library Learning Commons (opened June 2012)	Possible: Soft Drinks refrigerated dispenser (1), Specialty coffee maker (1)	Possible: Beverage fountain (1)
Honolulu CC		
8804-Cafeteria -1 st Floor	Energy(16oz)/Soft Drinks (20oz)/Sports(15oz) Drinks & Juices: 9 refrigerated dispensers of various sizes.	One multi-drink beverage fountain

ATTACHMENT B

BEVERAGE VENDING MACHINE OPERATIONS

The current locations of all bottle and can BEVERAGE vending machines at the UNIVERSITY are identified below. CONTRACTOR shall install equipment at additional locations as requested by the UNIVERSITY.

LOCATION (Building, Floor)	NUMBER OF VENDING MACHINES AT LOCATION	TYPE OF MACHINE
HONOLULU CC		
HCC - 8805-Breeze way, 874 Dillingham	2	20-ounce bottles; 12-ounce cans
HCC - 8805-Breeze way, 874 Dillingham	1	Red Bull Energy drink
HCC - 8807-Stairwell, 874 Dillingham	2	20-ounce bottles; 12-ounce cans
HCC - 8807-Stairwell, 874 Dillingham	1	Red Bull Energy drink
HCC - 8814-Hallway, 874 Dillingham	2	20-ounce bottles
HCC - 8843-1 st floor, 444 Kokea Street, Hon, HI	2	20-ounce bottles; 12-ounce cans
HCC - 8850-1 st floor, 10 Sand Island Rd, Hon, HI	1	20-ounce bottles
HCC - 8852-1 st floor, 140 Iako, Honolulu , HI	1	20-ounce bottles
HCC - 8857-1 st floor, Barbers Pt, Kalaeloa	1	20-ounce bottles
WINDWARD CC		
WCC - Hale Alakai, First Floor Lobby	1	12- ounce cans
WCC - Hale Imiloa, First Floor Lanai	1	20-ounce bottles
WCC - Hale Palanakila, First Floor Hallway	2	20-ounce bottles, Red Bull
WCC - Hale Akoakoa, First Floor Atrium	1	20-ounce bottles
Additional:		
WCC - Hale Manaopono, Lobby	1	20-ounce bottles
WCC - Hale Kuhina, Hallway	1	20-ounce bottles

Total

ATTACHMENT C

APPROVED BEVERAGE VENDING PRICES

PRODUCT NAME	PACKAGE SIZE	VENDING PRICE*
Juice 100%	15.2-ounce	\$2.50
Bottled Water	20-ounce	\$1.50
Carbonated Soft Drinks	20-ounce	\$1.75
Iced Tea	20-ounce	\$1.75
Sports Drink	20-ounce	\$2.25
Vitamin Infused Water Drink	20-ounce	\$2.25
Coffee Energy	15-ounce	\$2.50
Coffee Refreshers	12-ounce	\$2.50
Energy Drink	16-ounce	\$2.50

Note: Vending prices shall remain as noted above until June 30, 2020.

ATTACHMENT D

APPROVED PRODUCT PRICES

<u>Product Name</u>	<u>Package Size</u>	<u>Qty. Per Case</u>	<u>Price Per Case</u>	<u>Price Per Unit</u>
<u>Water / Hydration</u>				
	20 oz.	24	\$	See
	1.5 Liter	12	\$	Attached
	23 oz.	24	\$	For
	20 oz.	12	\$	All
	20 oz.	24	\$	Items
	20 oz.	24	\$	
	20 oz.	24	\$	
<u>Soft Drinks / Juice Drinks / Teas</u>				
	12 oz.	24	\$	
	20 oz.	24	\$	
	15.2 oz.	12	\$	
	16 oz.	12	\$	
	20 oz.	12	\$	
<u>Energy Drinks</u>				
	16 oz.	12	\$	
<u>Read To Drink Coffee</u>				
	6.5 oz.	24	\$	
	13.7 oz.	12		
<u>Other</u>				
	14 oz.	12	\$	
<u>FTN Syrup</u>				
	BIB	5	\$	
	BIB	5	\$	
	BIB	5	\$	
	BIB	5	\$	
	BIB	5	\$	

Attachment - D Approved Product Pricing (page 1 of 2)
Honolulu & Windward Community College B&C Pricing



Brand	Package	#/Case	Cost Per Case	Cost Per Unit
Carbonated Soft Drinks	12oz Cans 6 pack 6/4	24	\$11.42	\$ 0.48
	12oz Cans Fridge Mate 12/2	24	\$11.31	\$ 0.47
	20oz PL 1/24	24	\$28.48	\$ 1.19
Mountain Dew	12oz Can Kickstart/Hyd Boost 1/12	12	\$18.27	\$ 1.52
	16oz Can Kickstart 1/12	12	\$15.55	\$ 1.30
	16oz Can AMP 1/12	12	\$22.07	\$ 1.84
	16oz Can AMP Game Fuel 1/12	12	\$19.00	\$ 1.58
Schweppes	12oz Can Sparkling 8/3	24	\$11.42	\$ 0.48
	12oz Can Fridge Mate 12/2	24	\$11.42	\$ 0.48
Aquafina	12oz CN 8/3S	24	\$18.37	\$ 0.77
	20oz PL 1/24	24	\$18.59	\$ 0.77
	1 Liter PL 1/15	15	\$20.77	\$ 1.38
	1.5 Liter PL 1/12	12	\$20.98	\$ 1.75
Menehune	23oz PL 24/1	24	\$18.48	\$ 0.77
	1 Liter PL 1/12	12	\$14.46	\$ 1.21
	1.5 Liter PL 1/12	12	\$15.44	\$ 1.29
	1 Gallon PL 1/6	6	\$16.30	\$ 2.72
Lifewater	20oz PL 1/24	24	\$27.00	\$ 1.13
	700ml PL 1/12	12	\$16.85	\$ 1.40
	1 Liter PL 1/12	12	\$20.11	\$ 1.68
Sobe	20oz PL Juices & Teas 1/12	12	\$20.44	\$ 1.70
	20oz PL Lifewater 1/12	12	\$20.11	\$ 1.68
ONE	16.9oz Carton 1/12	12	\$29.57	\$ 2.46
	33.8oz Carton 1/12	12	\$44.13	\$ 3.68
bubly	12oz Can 8/3 FM	24	\$12.66	\$ 0.53
	20oz PL 1/24	24	\$19.52	\$ 0.81
BRUNNEN	375ml NR 4/6	24	\$34.82	\$ 1.45

Brand	Package	#/Case	Cost Per Case	Cost Per Unit
Juices	15.2oz Dole PL 1/12	12	\$17.39	\$ 1.45
	15.2oz Ocean Spray PL 1/12	12	\$17.29	\$ 1.44
Lipton	12oz Can Fridge Mate 12/2	24	\$11.42	\$ 0.48
	14oz Pureleaf Tea House 1/12	12	\$22.07	\$ 1.84
	18.5oz PL Pureleaf 1/12	12	\$16.75	\$ 1.40
	20oz PL 1/24	24	\$28.70	\$ 1.20
	1 Gallon Jugs 1/4	4	\$15.22	\$ 3.81
Yachak Organic Tea	16oz Can 1/12	12	\$20.58	\$ 1.72
Starbucks	6.5oz Can DS 1/12	12	\$25.87	\$ 2.16
	6.5oz Can DS 4/6	24	\$43.15	\$ 1.80
	9.5oz Glass Frapp 4/6	24	\$45.11	\$ 1.88
	10oz Smoothie PL 1/12	12	\$29.65	\$ 2.47
	11oz Glass Iced 1/12	12	\$20.11	\$ 1.68
	11oz Glass Cold Brew 1/12	12	\$32.29	\$ 2.69
	11oz Can DS Protein 1/12	12	\$30.55	\$ 2.55
	12oz Can Refreshers 1/12	12	\$20.98	\$ 1.75
	13.7oz Glass 1/12	12	\$30.22	\$ 2.52
Muscle Milk	14oz Iced PL 1/12	12	\$29.02	\$ 2.42
	15oz Can DS 1/12	12	\$26.31	\$ 2.19
MUSCLE MILK	14oz PL 1/12	12	\$38.15	\$ 3.18
	14oz PL PRO 1/12	12	\$41.62	\$ 3.47
	15.8oz PL Smoothie 1/12	12	\$37.39	\$ 3.12
Gatorade	2.8oz Bars 1/12	12	\$21.20	\$ 1.77
	20oz PL 1/24	24	\$27.39	\$ 1.14
	20oz WM PL 8/3	24	\$27.39	\$ 1.14
	24oz PL 1/24	24	\$34.89	\$ 1.45
	28oz PL 1/15	15	\$23.59	\$ 1.57
	20oz PL 1/24	24	\$27.72	\$ 1.16

*Pricing does not include the \$.01 per unit Hawaii Beverage Container Fee, nor the \$.05 per unit Hawaii Beverage Container Deposit Charge

Attachment D - Approved Product Pricing (page 2 of 2)



Honolulu & Windward Community College

	<i>Brand</i>	<i>Price Per Gallon</i>	<i>Per Box</i>	<i>Per Finished Ounce</i>
5 GAL	Pepsi	\$15.37	\$76.85	\$0.020
	Diet Pepsi			
	Mist Twst LL			
	Mountain Dew			
	Tropicana Lemonade	\$16.45	\$82.25	\$0.036
	Generic Fruit Punch	\$17.10	\$85.50	\$0.037

3 GAL	Pepsi Diet Pepsi Pepsi Wild Cherry Mist Twst LL Mountain Dew Diet Mountain Dew Mug Root Beer Crush Orange	\$15.37	\$46.11	\$0.020
	Brisk Green Tea Peach 0 Cal Brisk Raspberry Brisk Unsweet No Lemon Tropicana Pink Lemonade Tropicana Fruit Punch	\$16.45	\$49.35	\$0.021
	SoBe Lifewater			
	Yumberry Pomegranate	\$16.45	\$49.35	\$0.021
	Gatorade			
	Lemon Lime	\$18.10	\$54.30	\$0.024
	Kickstart			
	Mtn Dew Kickstart	\$16.45	\$49.35	\$0.021
	Lipton - Liquid Concentrate Tea			
	Sweetened Green Tea Citrus UnSweetened	\$19.26	\$57.78	\$0.025
	Bar Gun Mixers			
	Schweppes Ginger Ale Schweppes Tonic	\$15.37	\$46.11	\$0.020

SUPPLIES				
<i>Brand</i>	<i>Package</i>	<i>Case Count</i>	<i>Cost Per Case</i>	<i>Cost per Unit</i>
Cups	16oz	1200	\$84.66	\$0.071
	22oz	1200	\$92.59	\$0.077
	32oz	600	\$86.50	\$0.144
	44oz	600	\$80.53	\$0.134
Lids	16oz/22oz	2400	\$73.25	\$0.031
	32oz	600	\$59.89	\$0.100
	44oz	600	\$39.12	\$0.065



CO2
20LB

Cost Per
Cylinder
\$33.59

Deposit per
Cylinder
\$75.00