

**OLD DOMINION UNIVERSITY
STANDARD CONTRACT
CONTRACT NO. 24-ODU-10-HRS**

This contract entered into by and between **Pepsico Beverage Sales LLC** hereinafter called the "CONTRACTOR", and **Old Dominion University**, hereinafter called the "University".

WHEREAS the CONTRACTOR was selected by the University to enter into an agreement FOR THE SPECIFIED GOODS/SERVICES.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises and agreements herein contained, the CONTRACTOR and University agree as follows:

I. PERIOD OF PERFORMANCE:

- A. The contract shall commence January 1, 2025, and will be in effect through June 30, 2029, unless earlier cancellation/termination;
- B. Upon mutual consent, Contractor and University shall reserve the right to renew this agreement for two (2) additional five-year options unless otherwise modified; and
- C. Any necessary amendments or modifications to the terms and conditions of said agreement shall be in writing as a modification to this agreement, and enforceable as though written herein.

II. ENTIRE CONTRACT AGREEMENT:

The following documents, by inclusive and/or reference, shall constitute the *Contract Documents* for this Agreement, in order of precedence as follows:

- a. This fully executed agreement;
- b. The Request for Proposals #24-ODU-10-HRS dated March 14, 2024, Addendum 1 dated March 29, 2024; Addendum 2 dated April 1, 2024, and Addendum 3 dated April 17, 2024,
- c. The Contractor's proposal response dated April 24, 2024.

III. 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 contracts to allow any public body, public or private health or educational University's, 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 **Old Dominion**

University 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 **Old Dominion University**. **Old Dominion University** 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 **Old Dominion University** 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.

IV. SCOPE OF WORK

Contractor shall work in collaboration with the University to provide rights to sell beverage products. Exclusivity will exist for Athletics and/or vending and dining locations. Contractor shall provide:

1. quality equipment and services,
2. sponsorship support to the University for the Contract Period and pursuant to payment terms set forth in the contract as negotiated,
3. Commission for the contract period in accordance with Exhibit A,
4. Marketing and advertising strategies and support,
5. Contract pricing to campus dining contractor and concession contractor,
6. Menu boards and/or banners as needed in current campus venues, including any new constructed buildings on campus,
7. Maintain ePort cellular vending machine readers on vending machines,
8. Provide complimentary cases of product to be provided to the University on an annual basis in accordance with Exhibit A,
9. Provide strategies and support for sustainability and recycling efforts on campus using marketing funds in accordance with Exhibit A,
10. Support Scholarship fund in accordance with Exhibit A,
11. Support internships upon availability and mutually agreed upon funds in accordance with Exhibit A,
12. Support sustainability initiatives using marketing funds in accordance with Exhibit A.

This contract shall include vended, canned, bottled, and fountain beverages served on campus and/or other areas identified by the University. The contract excludes hot beverages and specific beverage required by onsite franchise, such as Starbucks, including all dining facilities on campus.

Equipment:

1. The contractor shall provide all required equipment including Full-Service Vending Machines, Fountain Equipment and Coolers at no expense to the University. Required equipment shall be

mutually determined by the University and the Contractor. Unless otherwise indicated, the Contractor shall retain title to such equipment. Upon termination of the contract, the University will assume no liability for damage to the equipment from fire, theft, vandalism, or other cause. The University, however, will use reasonable precaution to protect the Contractor's equipment.

2. If any type of equipment provided by the contracted supplier will not fit into existing areas, any modifications (i.e., new counters, etc.) shall be made at the University's or Food Service supplier expense. Proposed renovations must be approved in writing by the University's administration. Appearance of all equipment shall be aesthetically appealing, as determined by the University.
3. Utilities to the equipment will be provided by the University wherever possible. Contractor shall bear the cost of connecting its equipment to these utilities. The University cannot guarantee an uninterrupted supply of water, steam, electricity, or heat except that it shall be diligent in restoring service following an interruption. The University shall not be liable for any loss, which may result from the interruptions or failure of any such utility services. The Contractor shall not place equipment in any location without the prior written approval of the University.
4. The Contractor will provide on-call maintenance and repair service for its machines 24-hours a day, seven days a week. It will give the University representative a toll-free telephone number for service calls and will respond on-site to calls within four hours between 7:30 AM and 5:30 PM, Monday through Friday. Contractor will keep at least one on-duty supervisor available from 8:00 AM to 5:00 PM each day that the University is open, and at least one on-call supervisor available at other times. The Contractor's representatives may enter the University's property at reasonable times to install, repair, supply, and remove the machines. On a quarterly basis the Contractor and the University shall review equipment repair log. The equipment repair log and the service call log will be made available to the University upon request.
5. The Contractor will maintain a program of regular preventive maintenance and replacement of worn, damaged, or malfunctioning machines. The University may require that the Contractor replace machines that cannot be returned to service within four working days of the service call. The replacement machines will be at least as good as the machines replaced.
6. All equipment must comply with the Americans with Disabilities Act (ADA).
7. As 'state of the art' soft drink dispensing capabilities evolve, the University and Contractor will discuss the feasibility and terms of installing equipment and programs for new technological developments at mutually agreed locations. For security purposes, the Contractor shall provide the University with a list of all machines or equipment installed on campus. The University reserves the right to negotiate the type of equipment installed at each location. Contractor will be responsible for removal of all equipment at the end of the contract.

Sustainability:

1. Contractor will work collaboratively with the University on sustainability initiatives to include, but not limited to, recycling programs or other sustainability resources that will benefit the University.

Service:

1. Contractor will work with University to identify potential options, areas for additional machines, as appropriate.
2. Prices and portions will be reviewed by the University and the Contractor periodically. Any adjustments agreed upon shall go into effect in August prior to the start of each academic year.
3. Contractor will stock its machines adequately, with only the products, brands, and sizes the University specifies, and will not change products, brands, or sizes without the University's prior approval. The Contractor will supply the machines at least once every other day, Monday through Friday, between 7:30 AM and 5:30 PM unless the University directs otherwise or as often as necessary to ensure machines do not run out of product. The parties may agree that reduced service and selections are appropriate during summer school, holidays, or building shutdowns.
4. The University may occasionally request filling of a machine on the weekend during special events. The University will attempt to request this service at least two weeks in advance. Additionally, the Contractor will ensure all machines are filled prior to any forecasted inclement weather, prior to major events such as the Superbowl, NCAA Final Four, NCAA Championship, etc.
5. The Contractor will maintain fresh products in the machines and will comply with state, federal, local laws, and regulations in regard to storage and transport of beverage items.
6. The Contractor will keep machines and adjacent areas neat and sanitary, clean spills that occur while filling or cleaning machines, clean the front of the machines each time Contractor supplies them, and remove packaging and waste from the University campus. The Contractor will work with the University to coordinate moving of the machines for floor maintenance. The Contract shall provide machines that accept coins in varying denominations as well as bills.
7. In order to allow students to make purchases from accounts held on their *Monarch Plus Card*, all full-service vending machines on the University campus shall be equipped with an approved cellular based card reader which connects to the University's CBord CS Gold card system. The soda Contractor will be responsible for the purchase, installation, and maintenance of these devices. Each device shall be checked each time a route driver fills a machine or collects revenue, and they shall report any malfunctions to both the University Card Office and the Contractor's designated person(s) for repair. The Contractor shall stock

sufficient levels of spare equipment in order to replace broken or malfunctioning units and no machine shall have a unit that is inoperable more than 5 business days. Contractor shall contact designated University personnel at least 3 business days in advance when assistance is needed for repair of units or when a machine is replaced.

8. On each machine, Contractor will place instructions on how to: (1) operate the machine, (2) report malfunctions, (3) comment on product quality, and (4) request refunds.
9. Contractor is responsible for providing the designated university department representative's telephone number and email address on each piece of equipment to allow customers to contact the university regarding service or support. The Contractor will coordinate with the University and perform the necessary steps to unplug equipment that may be in buildings that may be vacant during the summer months to reduce electrical usage. Product will be removed from these machines based on Contractor's best practices and freshness in this type of situation.

Financial Considerations:

1. The Contractor shall pay the University in accordance with the specific details in Attachment A – Financial Considerations and Schedule. Checks and supporting documentation shall be submitted to the designated University Contract Administrator by the specified due date.

Fountain Equipment, Coolers, Mix and Supplies:

1. Dispensing equipment and coolers will be supplied, installed, serviced, and maintained by the Contractor at no cost to the University. All fountain equipment and coolers will be new, state-of-the-art equipment.
2. All dispensers should be equipped with a lock-out device either controlling the pour or a hood. Equipment must meet all state and local health department requirements.
3. All products shall be in accordance with the RFP and comply with all state and federal regulations.

Advertising, Marketing and Promotional Opportunities:

The Contractor will work collaboratively with the University on various advertising, marketing, and promotional opportunities.

Reporting and Delivery Requirements:

1. Management Reports: The Contractor should provide, at the frequency designated by the Contract Administrator, unit sales reports by sale site, i.e., vending location, athletic events, cash operation, board units and convenience store.
2. Equipment: The Contractor will provide the University with an updated list of all machines or equipment installed on campus. This list should include the machine or equipment serial number, manufacturer, meter reading when installed and location. This report will be updated on the anniversary of each contract year.
3. Financial Statements: All period financial statements and payments pertaining to the operation of the vending services shall be sent to the Contract Administrator.

4. **Contract Review:** At least once a year, the Contractor shall meet with the University and review each period statement, explain deviations, discuss problems, and mutually agree on the courses of action to improve the results of the required services included in this contract. Period statement adjustments required as a result of review and/or audit should be identified and reflected on the next period.
5. **Records:** All records pertaining to the operations of the vending service shall be open for inspection and/or audit by the University at any reasonable time.
6. **Independent Audits:** The University shall be advised by the Contractor of any scheduled independent audit of its vending operation. The University shall have the option to participate in the Contractor's audits and may request a full report of such audits.
7. **Refunds:** A voucher refund system shall be required and shall involve dispersing of funds through representatives of the University at each location determined by the University. The voucher system shall include a form supplied by the Contractor and approved by the University to be filled out by the person making a refund claim and shall include the following information: what machine, amount of refund, when, what happened, date, building, and who suffered loss. The Contractor shall expedite and be liable for the supply and maintenance of funds for such refunds to the satisfaction of the University.
8. **Contractors Route:** A representative of the University may accompany the Contractor's route employees when meter counts and money collections are made at a time predetermined and agreed upon by the University. Cash receipts collected from the equipment may be jointly counted by the University and the route employee at a location and by means determined by the University and mutually agreed upon by the Contractor.

Checks/Payments:

1. Payments shall be in accordance with the schedule identified in Attachment A.
2. Payments shall be submitted to the University designated Contractor Administrator with corresponding supporting documentation.

V. FEES AND PRICING

Unless otherwise mutually negotiated by the University, financial considerations shall be in accordance with Attachment A.

VI. REPORTING AND DELIVERY REQUIREMENTS

UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES: The following reports shall be submitted as indicated:

- A. **Periodic Progress Reports/Invoices:** The Contractor shall provide a report on involvement of small businesses and businesses owned by women and minorities on a quarterly basis to the Contract Officer. This report will specify the actual dollars contracted to be spent to date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority businesses.

- B. Final Actual Involvement Report: The Contractor shall submit to the Contract Officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the bid, and the actual percent of the total estimated contract value.

VII. GENERAL TERMS AND CONDITIONS

- A. ADVERTISING: Contractor agrees that no indication of such sales or services to the University will be used in product literature or advertising.
- 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 University and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 23-38.90). The Contractor shall comply with all applicable federal, state and local laws, rules and regulations and policies of the University.
- C. APPLICABLE LEGISLATION AND MANUAL: This 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 Universities of Higher Education and their Contractors 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 under "Information for Contractors".
- D. ASSIGNMENT OF CONTRACT: This contract shall not be assignable in whole or in part without the written consent of the University.
- E. AVAILABILITY OF FUNDS: The University shall be bound hereunder only to the extent of the funds available or which may hereafter become available during each subsequent fiscal year and/or contract term, as applicable, and any requirement by Contractor for any total or partial compensation or payment by the University of unpaid fees, whether current or future, for lost profit and/or as liquidated damages in the event of early termination of the then current term if for other than breach by the University is prohibitive.
- F. AUDIT: The Contractor shall retain all books, records, and other documents relative to any resulting contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

G. CHANGES TO THE CONTRACT: During the term of any resulting contract, including any and all applicable extensions and/or renewals, changes may 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 contract to modify the scope of the contract.
2. The University may request and issue change orders 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 University 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 University'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 University with all vouchers and records of expenses incurred and savings realized. The University 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 University within thirty (30) days from the date of receipt of the written order from the University. 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 Universities of Higher Education and their Contractors*. 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 University or with the performance of the contract generally.

H. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the University, 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 University may have.

I. **DISCOUNTS:**

1. **Prompt Payment Discounts:** The University will pay within 30 days after acceptance. A prompt payment discount offered for prompt payment of (20) calendar days or longer will be calculated in determining net low proposal.
2. **Special Educational Or Promotional Discounts:** The Contractor shall extend any special educational or promotional sale prices or discounts immediately to the University during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

J. **DRUG-FREE WORKPLACE:** *(the Rules §11.)*

During the performance of any resulting 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 Contractor.

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

K. **EMPLOYMENT DISCRIMINATION:** *(the Rules §10.)*

During the performance of any resulting contract, the Contractor agrees to:

1. 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, and to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the above nondiscrimination clause.
2. State in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that such Contractor is an equal opportunity employer.

3. Certify all notices, advertisements and solicitations shall be placed in accordance with federal law, rule or regulation deemed sufficient for the purpose of meeting these requirements.
 4. Include the provisions of foregoing paragraphs 1., 2., and 3. in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.
- L. ENVIRONMENTAL LIABILITY: Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any cleanup activities, removals, remediations, responses, damages, fines, administrative or civil penalties or charges imposed on the Contractor, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any federal, state or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, subcontractors, consultants, sub consultants, or any other persons, corporations or legal entities employed, utilized, or retained by Contractor) in the performance of any resulting Contract or related activities, shall be paid by Contractor. This paragraph shall survive the termination, cancellation or expiration of this Contract.
- M. EXCLUSIVITY: The University reserves the right to procure goods or services covered under any resulting contract from a third party when, in the University's sole discretion, it is deemed to be in the University's best interest.
- N. FORCE MAJEURE: Neither party will be responsible for any losses resulting from delay or failure in performance resulting from any cause, event, or occurrence beyond the control and without the negligence of the parties. Such events, occurrences, or causes include, without limitation: war, strikes or labor disputes, civil disturbances, government orders, pandemics, fires, natural disasters, and acts of God.
- O. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the University, 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 University or to failure of the University to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.
- P. PAYMENT PROVISIONS:
1. By the University:
 - a. Prompt Payment: *(the Rules §42.)*
 - i. The University shall promptly pay for the completely delivered goods or services by the required payment date.

- ii. 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.
 - iii. 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.
- b. Defect Or Impropriety In The Invoice Or Goods And/Or Services Received: ***(the Rules §43.)***
 In instances where there is a defect or impropriety in an invoice or in the goods or services received, the University shall notify the Contractor of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.
- c. Date Of Postmark Deemed To Be Date Payment Is Made: ***(the Rules §44.)***
 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.
- d. Interest Penalty; Exceptions: ***(the Rules §44.)***
 - i. Interest shall accrue, at the rate determined pursuant to subsection ii., on all amounts owed by the University to a Contractor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.
 - ii. The rate of interest charged the University pursuant to subsection i. shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.
 - iii. Notwithstanding subsection i., no interest penalty shall be charged when payment is delayed because of disagreement between the University and a Contractor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.
 - iv. This section shall not apply to retainer on construction contracts that provides for progress payments, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent

a Contractor from receiving interest on such funds under an approved escrow agreement.

- v. Notwithstanding subsection i., no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection 2. on amounts withheld that remains unpaid after seven days following the payment date.

2. To Contractor:

Contractor is hereby obligated:

- i. To submit all invoices for goods/services ordered, delivered and accepted directly to:
 - a. Old Dominion University
Accounts Payable
Rollins Hall, Room 202
Norfolk, Virginia 23529; or
 - b. invoice@odu.edu
- ii. All invoices shall include:
 - a. Vendor Name, 'Remit To' Address, FEIN, or Social Security Number (Individual Contractor);
 - b. Invoice Number, Invoice Date, Payment Terms and Discounts, and Payment Due Date;
 - c. Purchase Order Number;
 - d. University Contact;
 - e. Description of provided goods/services;
 - f. Quantity Delivered per line item;
 - g. Unit and Extended Cost per line item; and
 - h. Total Amount Due
- iii. 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.
- iv. All goods or services provided shall be billed by the Contractor at the agreed to contract price.
- v. **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 University 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 the University of its prompt payment obligations with respect to those charges which are not in dispute.

- vi. When applicable, Contractor shall deliver to the University, 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 University, or other appropriate penalties may be assessed in lieu of withholding such payment.

3. To Subcontractors: ***(the Rules §45.)***

Under any resulting contract, Contractor shall be obligated:

- i. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the University for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- ii. To notify the University and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- iii. 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 University, 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 University.

- A. SEVERABILITY: The provisions of any resulting contract shall be deemed to be severable, and should any or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.
- B. TERMINATION WITH CAUSE:
1. In the event that the Contractor shall for any reason or through any cause be in default of the terms of the contract, the University may give the Contractor written notice of such default by certified mail/return receipt requested.
 2. In the alternative, the University may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor that the causes of termination will be remedied in a time and manner which the University finds acceptable. If at any time more than ten (10) days after the notice of termination, the University determines that Contractor has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the University may immediately terminate the contract for cause by giving written notice to the Contractor.
 3. Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.
 4. In the event of violations of law, safety or health standards and regulations, the contract may be immediately cancelled and terminated by the University and provisions herein with respect to opportunity to cure default shall not be applicable.
- C. TERMINATION FOR NON-APPROPRIATION OF FUNDS: The University may terminate this Agreement upon thirty (30) days written notice given by the University if sufficient funds are not provided or allotted in future approved budgets of the University at the time the University's payment obligation may be required to continue this Agreement. Notwithstanding the foregoing, if access to the Subscribed Products was provided but not yet paid for prior to termination, Contractor will be entitled to receive a pro rata portion of the Fees attributable to the period of time that access was provided.
- D. TERMINATION BY UNIVERSITY FOR CONVENIENCE: The University may terminate any resulting contract at any time for convenience, in whole or in part, upon giving the Contractor notice of such termination.
- TESTING AND INSPECTION: The University reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

- E. WAIVER: No failure of the University to exercise any right or power given to it by law or by any resulting contract, or to insist upon strict compliance by Contractor with any of the provisions of any resulting contract, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the University's right to demand strict compliance with the terms of any resulting contract.

VIII. SPECIAL TERMS AND CONDITIONS

A. CONTRACT AND RENEWAL TERM:

1. The initial term of this contract shall commence January 1, 2025 and expire on June 30, 2029;
2. Any resulting contract may be renewed by the University for two successive five-year periods, or as mutually agreed upon, under the terms and conditions of the original contract except as stated in 2a. and 2.b. below. Cost considerations may be negotiated only at the time of renewal. Written notice of the University's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
 - a. If the University elects to exercise the option to renew the contract for an additional five-year period *after the initial term*, the contract price(s) for the additional one year shall not exceed the contract price(s) of the initial contract term by the lesser of (1) the percentage increase/decrease of the Consumer Price Index (CPI) for All Urban Wage Earner and Clerical Workers (CPI-W), All U.S. Items, for base period 1982-84=100, for the previous twelve (12) month period, or (2) not to exceed 5%.
 - b. If during any subsequent renewal periods, the University 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 by the lesser of (1) the percentage increase/decrease of the Consumer Price Index (CPI) for All Urban Wage Earner and Clerical Workers (CPI-W), All U.S. Items, for base period 1982-84=100, for the previous twelve (12) month period, or (2) not to exceed 5%.

B. COMPANY PERSONNEL STANDARDS:

1. Contractor shall provide trained personnel who shall be qualified to properly maintain/perform/test for services specified herein. If any of the Contractor's personnel are not satisfactory in the performance of services to be furnished hereunder in a proper manner and satisfactory to the University, the Contractor shall remove any such personnel and replace them with satisfactory personnel.
2. Contractor shall use all reasonable care, consistent with its rights to manage and control its operations, not to employ any persons or use any labor or have any equipment or permit any condition to exist which shall or may cause or be conducive

to pose any liability to the general public as well as any activity to be construed as a nuisance. The University retains the right to require the Contractor to halt all work activities until such conditions are resolved.

- C. **INSURANCE:** By signing this contract the Contractor certifies it will have the following insurance coverage at the time the contract is awarded and through the term of each contract renewal period:

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The University must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)
5. Professional Error & Omission - \$1,000,000
6. Crime/Fidelity - \$1,000,000
7. Data Breach - \$1,000,000

- D. **LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the Contractor will not be liable under this contract for an indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

IX. ADDITIONAL SPECIAL TERMS AND CONDITIONS

A. **DEFINITIONS:**

1. "Contract" includes the contract, this addendum and any additional addendums and attachments to the contract.
2. "Equipment": The terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals

with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.

3. "Personally Identifiable Information" includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as defined in Virginia Code section 18.2-186.6 and/or any successor laws of the Commonwealth of Virginia; personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g; "medical information" as defined in Virginia Code Section 32.1-127.1:05; "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver's license numbers; and state- or federal -identification numbers such as passport, visa or state identity card numbers.
4. "Security Breach" means a security-relevant event in which the security of a system or procedure involving University Data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or use.
5. "Service" or "Services" means any goods or services acquired by the University from the Contractor.
6. "Securely Destroy" means taking actions that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary and extraordinary means. These actions must meet or exceed those sections of the National Institute of Standards and Technology (NIST) SP 800-88 guidelines relevant to data categorized as high security.
7. "Software": The terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.
8. "University Data" includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and patient, student and personnel data.

- B. RIGHTS AND LICENSE IN AND TO UNIVERISTY DATA: All rights including all intellectual property rights in and to University Data shall remain the exclusive property of the University, and the Offeror has a limited, nonexclusive license to use these data as provided in any subsequent agreement solely for the purpose of performing its obligations hereunder. The

agreement shall not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in any subsequent agreement.

C. AUDITS:

1. The University reserves the right in its sole discretion to perform audits of the Contractor at the University's expense to ensure compliance with the terms of this Agreement. The Contractor shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which the Contractor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
2. If the Contractor must under this agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information, protected health information, or financial or business data that is considered restricted data such as transaction data, the Contractor will at its expense conduct or have conducted at least annually a(n):
 - a. American Institute of CPAs Service Organization Controls (SOC) Type II audit, or other security audit with audit objectives deemed sufficient by the University, which attests the Contractor's security policies, procedures and controls;
 - b. Vulnerability scan, performed by a scanner approved by the University, of the Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this Agreement; and
 - c. Formal penetration test, performed by a process and qualified personnel approved by the University, of the Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this Agreement.
3. Additionally, the Contractor will provide the University upon request the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under this Agreement. The University may require, at University expense, the Contractor to perform additional audits and tests, the results of which will be provided promptly to the University.

D. COMPLIANCE:

1. The Contractor will comply with all applicable laws and industry standards in performing services under this Agreement. Any Contractor personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to the Contractor upon request.
2. The Contractor warrants that the service it will provide to the University is fully compliant with and will enable the University to be compliant with relevant

requirements of all laws, regulation, and guidance applicable to the University and/or the Contractor, including but not limited to: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), Section 508 of the Rehabilitation Act via a Voluntary Product Accessibility Template (VPAT), Federal Export Administration Regulations, Defense Federal Acquisition Regulation, and NIST 800-171 for Controlled Unclassified Information.

3. If the Payment Card Industry Data Security Standards (PCI-DSS) are applicable to the Contractor's service provided to the University, the Contractor will furnish proof of compliance with PCI-DSS.

E. CONFIDENTIALITY (University): The University agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with *the Rules §34*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the University.

F. CONFIDENTIALITY (Contractor): The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this contract, and will not be divulged without the individual's and the agency's written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.

G. EMPLOYEE BACKGROUND CHECKS AND QUALIFICATIONS:

1. The Contractor shall ensure that its employees have undergone appropriate background screening and possess all needed qualifications to comply with the terms of this contract including but not limited to all terms relating to data and intellectual property protection.
2. If the Contractor must under this contract create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information or financial or business data, the Contractor shall perform the following background checks on all employees who have potential to access such data in accordance with the Fair Credit Reporting Act: Social Security Number trace; seven (7) year felony and misdemeanor criminal records check of federal, state, or local

records (as applicable) for job related crimes; Office of Foreign Assets Control List (OFAC) check; Bureau of Industry and Security List (BIS) check; and Office of Defense Trade Controls Debarred Persons List (DDTC).

- H. NO END USER CONTRACTS: This Contract, incorporating RFP dated March 14, 2024, Addendum 1 dated March 29, 2024; Addendum 2 dated April 1, 2024, and Addendum 3 dated April 17, 2024, and Contractors presentation dated August 19, 2024, is the entire contract between the University (including University employees and other End Users) and the Contractor. In the event that the Contractor enters into terms of use contracts or other contracts or understandings, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such contracts shall be null, void and without effect, and the terms of this Contract shall apply.

CONTRACTOR:
Pepsico Beverage Sales, LLC

By: Jeff Brooks
Name: Jeff Brooks

Title: Food Service Sales Senior
Manager South Division

Date: 11-12-2024

UNIVERSITY:
Old Dominion University

By: Chad A. Reed
Name: Chad A. Reed

Title: Executive Vice President,
Administration & Finance

Date: 11-12-24

Jeff Brooks
Digitally signed by Jeff
Brooks
Date: 2024.11.12
10:39:00 -05'00'

Attachment A: Financial Considerations and Schedule

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

- A. **Annual Sponsorship Fees:** Each Calendar Quarter throughout the Term, Pepsi shall calculate the total applicable Cases of Packaged Products and applicable Gallons of Post mix Products purchased from Pepsi by University, its Food Service Provider or any other entity pursuant to this Contract and shall provide the University with rebates calculated based on applicable amounts set forth below (the "**Rebates**"). The Rebates, if applicable, shall be paid by Pepsi within sixty (60) days of the end of each applicable Calendar quarter during the Term.

Rebate Amount	Applicable Products
\$4.75/Gallon	All Post mix Products
\$4.75/Case	All Cases including Full-Service Vending

"Cases" shall mean the number of cases of Packaged Products purchased under contract from Pepsi or a Pepsi partner, initially delivered in quantities of 24, 15, and 12 bottle/can units, and thereafter in such other size, quantity and type of containers as determined by Pepsi, from time to time.

"Gallons" shall mean the number of gallons of the Post mix Products purchased under this contract.

- B. **General Scholarship Fund,** payable annually in the amounts below and targeted as described below and payable on a schedule determined by the parties:

Contract Year	Applicable Time Period	Amount*	Due Date: within 60 days after:
1	January 1, 2025 - June 30 th 2025	\$50,000	Execution of this Contract
2	July 1, 2025-June 30 th 2026	\$50,000	July 1, 2025
3	July 1, 2026-June 30 th 2027	\$50,000	July 1, 2026
4	July 1, 2027-June 30 th 2028	\$50,000	July 1, 2027
5	July 1, 2028-June 30 th 2029	\$50,000	July 1, 2028
<u>5 Year Option Exercised</u>			
6	July 1, 2029-June 30 th 2030	\$50,000	July 1, 2029
7	July 1, 2030-June 30 th 2031	\$50,000	July 1, 2030
8	July 1, 2032-June 30 th 2032	\$50,000	July 1, 2031
9	July 1, 2024-June 30 th 2033	\$50,000	July 1, 2032
10	July 1, 2024-June 30 th 2034	\$50,000	July 1, 2033

The General Sponsorship Fees are earned throughout the Year in which they are paid. In the event Pepsi terminates this Contract due to the University's failure to cure a breach hereof, the unearned General Scholarship fund will be repaid to Pepsi pursuant to the terms of Section H(A) herein (Sponsorship Fees in the Event of Termination).

- C. **ODAF Scholarship Support**, payable annually in the amounts below and targeted as described below and payable on a schedule to be determined by the parties):

Contract Year	Applicable Time Period	Amount*	Due Date: within 60 days after:
1	January 1, 2025 - June 30 th 2025	\$100,000	Execution of this Contract
2	July 1, 2025-June 30 th 2026	\$100,000	July 1, 2025
3	July 1, 2026-June 30 th 2027	\$100,000	July 1, 2026
4	July 1, 2027-June 30 th 2028	\$100,000	July 1, 2027
5	July 1, 2028-June 30 th 2029	\$100,000	July 1, 2028
<u>5 Year Option Exercised</u>			
6	July 1, 2029-June 30 th 2030	\$100,000	July 1, 2029
7	July 1, 2030-June 30 th 2031	\$100,000	July 1, 2030
8	July 1, 2032-June 30 th 2032	\$100,000	July 1, 2031
9	July 1, 2024-June 30 th 2033	\$100,000	July 1, 2032
10	July 1, 2024-June 30 th 2034	\$100,000	July 1, 2033

The ODAF Scholarship Support is earned throughout the Year in which they are paid. In the event Pepsi terminates this Contract due to the University's failure to cure a breach hereof, the unearned fees will be repaid to Pepsi pursuant to the terms of Section H(A) herein (Sponsorship Fees in the Event of Termination).

- D. **Sports Product Support**: Pepsi will provide the University Sport Product Support listed below. This money will be accrued annually and may be paid by various invoices to various suppliers. Any unused money will be paid to University at the end of the applicable time period.

Contract Year	Applicable Time Period	Amount*	Due Date: within 60 days after:
1	January 1, 2025 - June 30 th 2025	\$24,000	Upon Invoice Date
2	July 1, 2025-June 30 th 2026	\$24,000	Upon Invoice Date
3	July 1, 2026-June 30 th 2027	\$24,000	Upon Invoice Date
4	July 1, 2027-June 30 th 2028	\$24,000	Upon Invoice Date
5	July 1, 2028-June 30 th 2029	\$24,000	Upon Invoice Date

Contract Year	Applicable Time Period	Amount*	Due Date: within 60 days after:
<u>5 Year Option Exercised</u>			
6	July 1, 2029-June 30 th 2030	\$24,000	Upon Invoice Date
7	July 1, 2030-June 30 th 2031	\$24,000	Upon Invoice Date
8	July 1, 2032-June 30 th 2032	\$24,000	Upon Invoice Date
9	July 1, 2024-June 30 th 2033	\$24,000	Upon Invoice Date
10	July 1, 2024-June 30 th 2034	\$24,000	Upon Invoice Date

The Sport Product Support Fees are earned throughout the Year in which they are paid. In the event Pepsi terminates this Contract due to the University's failure to cure a breach hereof, the unearned fees will be repaid to Pepsi pursuant to the terms of Section H(A) herein (Sponsorship Fees in the Event of Termination).

- E. **Merchandise Support:** Pepsi will provide the University Merchandise Support listed below. This money will be accrued annually and may be paid by various invoices to various suppliers. Any unused money will be paid to University at the end of the applicable time period.

Contract Year	Applicable Time Period	Amount*	Due Date: within 60 days after:
1	January 1, 2025 - June 30 th 2025	\$15,000	Upon Invoice Date
2	July 1, 2025-June 30 th 2026	\$15,000	Upon Invoice Date
3	July 1, 2026-June 30 th 2027	\$15,000	Upon Invoice Date
4	July 1, 2027-June 30 th 2028	\$15,000	Upon Invoice Date
5	July 1, 2028-June 30 th 2029	\$15,000	Upon Invoice Date
<u>5 Year Option Exercised</u>			
6	July 1, 2029-June 30 th 2030	\$15,000	Upon Invoice Date
7	July 1, 2030-June 30 th 2031	\$15,000	Upon Invoice Date
8	July 1, 2032-June 30 th 2032	\$15,000	Upon Invoice Date
9	July 1, 2024-June 30 th 2033	\$15,000	Upon Invoice Date
10	July 1, 2024-June 30 th 2034	\$15,000	Upon Invoice Date

The Merchandise Product Support Fees are earned throughout the Year in which they are paid. In the event Pepsi terminates this Contract due to the University's failure to cure a breach hereof, the unearned fees will be repaid to Pepsi pursuant to the terms of Section H(A) herein (Sponsorship Fees in the Event of Termination).

- F. **Marketing Support:** Pepsi agrees to assist the University in promoting the University, and in enhancing student participation and driving beverage purchases at the Facilities through engaging in various marketing programs, promotions, and annual co-branded products as mutually agreed upon. Pepsi will provide the University Marketing Support listed below. This money will be accrued annually and may be paid by various invoices to various suppliers.

The annual declining balance is listed below. Any unused money will be paid to the University at the end of the applicable time period.

Contract Year	Applicable Time Period	Amount*	Due Date: within 60 days after:
1	January 1, 2025 - June 30 th 2025	\$15,000	Upon Invoice Date
2	July 1, 2025-June 30 th 2026	\$15,000	Upon Invoice Date
3	July 1, 2026-June 30 th 2027	\$15,000	Upon Invoice Date
4	July 1, 2027-June 30 th 2028	\$15,000	Upon Invoice Date
5	July 1, 2028-June 30 th 2029	\$15,000	Upon Invoice Date
<u>5 Year Option Exercised</u>			
6	July 1, 2029-June 30 th 2030	\$15,000	Upon Invoice Date
7	July 1, 2030-June 30 th 2031	\$15,000	Upon Invoice Date
8	July 1, 2032-June 30 th 2032	\$15,000	Upon Invoice Date
9	July 1, 2024-June 30 th 2033	\$15,000	Upon Invoice Date
10	July 1, 2024-June 30 th 2034	\$15,000	Upon Invoice Date

The Marketing Product Support Fees are earned throughout the Year in which they are paid. In the event Pepsi terminates this Contract due to the University's failure to cure a breach hereof, the unearned fees will be repaid to Pepsi pursuant to the terms of Section H(A) herein (Sponsorship Fees in the Event of Termination).

- G. **Commissions**, as a percentage of the actual vended amount collected by Pepsi from the Vending Machines placed at the Facilities, less any applicable fees or deposits ("Commissions"). Such Commissions shall be at the rate(s) set forth below (the "Commission Rate") and shall be calculated as follows:

(Revenue – applicable fees/deposits) * Commission Rate = Commission Due

Product	Minimum Vend Price	Commission Rate*
All products	\$2.25	35%
*Commission Rate stated above shall only apply to Products sold by Pepsi through its Vending Machines at the beginning of the Term. \$2.25 is the vend price for 20oz. Other packages vended pricing will follow market wide rates and be paid same commission. If Pepsi proposes any new Products to the Customer during the Term, then Pepsi shall have the right to apply a Vend Price for such new Product.		

1. **Commissions Payment.** Commissions shall be remitted by Pepsi to Old Dominion University within thirty (30) days of the end of each 4-week accounting period established by Pepsi. Pepsi shall make all pertinent revenue and sales records respecting the Vending Machines available to the University. The University is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by the University in writing within one (1) year of the date such Commissions payment is due. The University further acknowledges and agrees that it shall not receive any Commissions payment from Pepsi if Commissions fail to reach a certain threshold amount per period or quarter. The applicable threshold amounts vary based on the payment period and will be established and communicated pursuant to Pepsi's policies and procedures related to its Full-Service Vending business, as may be revised by Pepsi from time to time.
2. **Change to Commission Rate.** Old Dominion University agrees that Pepsi shall have the right to request a change to a Commission Rate and/or its formula/method for calculating Commissions as may be required by applicable laws or as reasonably necessary to respond to legislative acts in order that the Commission Rate remains cost neutral. Change must be mutually agreed upon in writing.
3. **Vend Prices.** Minimum Vend Prices are specified above. Pepsi will establish the vend price of all products sold through its vending machines during the Term, but shall keep such pricing consistent with the vend pricing for similar products sold in similar accounts within the surrounding region of Old Dominion University. All Mech rates will increase by \$0.25 in Contract year 3, year 6 and year 9 of the Contract.

H. Free Product

Pepsi will provide free annual Product donations of up to a total of 900 cases of 12oz cans or 16.9oz Aquafina per Year across the Facilities upon request of the University, provided however, that the University will administer all requests through a central contact so that the University may prioritize the requests. Old Dominion University acknowledges and agrees that donated Product requests not used/made in any Year shall not be carried over to the subsequent Year. Free product will be made available in the following size containers: 12 oz. aluminum cans or 16.9 oz. Aquafina water.

I. SPONSORSHIP FEE IN THE EVENT OF TERMINATION.

- A. If the Term of this contract is terminated early for any reason, The Customer and its Facilities will surrender to Contractor all Equipment provided by Contractor and will forfeit funding not paid as of the date of the termination. In addition, without prejudice to any other right or remedy available to Contractor, Contractor will have the right to immediately seek reimbursement from the Customer and the Facilities for the following: An amount reflecting reimbursement for all funding previously advanced by Contractor but not earned by Customer pursuant to the terms of this Agreement. With regard to Annual Funds, if any, the amount of such reimbursement will be the result of multiplying the total amount of Annual funds paid to the Customer in the Year in which the Contract is terminated by a fraction, the numerator of which

is the number of months remaining in the Year in which the Contract is terminated at the time such termination occurs the denominator is 12(twelve).