

University of Nebraska at Kearney
August 26, 2019
Request for Proposals #20-02
Exclusive Pouring Rights – Multi Year Contract

Bids Due: ~~September 19, 2019, 2:00 P.M. Local Time~~
(Revised 9/5/2019) October 1, 2019, 2:00 P.M. Local Time

Contact: Scott Benson
Office of Procurement and Payment Services
2504 9th Ave
Kearney, Nebraska 68849-1240

Requests for reasonable accommodations needed in order to participate in the process described in this RFP may be directed to the Affirmative Action/Equal Opportunity Office, 1200 Warner Hall; Voice/TDD-(308) 865-8400.

TABLE OF CONTENTS

SECTION 1: COVER SHEETS AND SPECIFICATIONS	5
1.1 PROPOSAL COVER SHEET	5
1.2 INTRODUCTION	7
1.3 EXPECTATIONS	7
1.4 EVALUATION PROCESS	7
1.5 ABOUT THE UNIVERSITY	7
1.6 MISSION IMPERATIVES	8
1.7 UNK BEVERAGE RIGHTS HISTORY	9
1.8 PRODUCT VOLUME	10
1.9 VENDING LOCATIONS	10
1.10 FOUNTAIN EQUIPMENT, COOLER, ICEMAKERS LOCATIONS	10
1.11 PRODUCT PRICE LIST 2018-19	10
1.12 CURRENT AGREEMENT	10
1.13 BEVERAGE RIGHTS LICENSING AGREEMENT - PROPOSED	10
SECTION 2: CERTAIN SELECTION CRITERIA	11
2.1 RESPONSIVENESS OF PROPOSAL	11
2.2 REQUIRED RESPONSE QUESTIONS	11
2.2.1 <i>Overview of Bidder</i>	11
2.2.2 <i>Financial Statements</i>	12
2.2.3 <i>Litigation</i>	12
2.2.4 <i>Company Status</i>	12
2.2.5 <i>Relationship with The University of Nebraska</i>	12
2.2.6 <i>Description of the Bidder's Personnel and Management Team</i>	12
2.2.7 <i>Background Checks</i>	13
2.2.8 <i>Equal Opportunity</i>	13
2.2.9 <i>References</i>	13
2.2.10 <i>Transition Planning</i>	13
2.2.11 <i>Beverage Listing</i>	14
2.2.12 <i>Additional Marketing Considerations</i>	14
2.2.13 <i>Student Programming Plan</i>	14
2.2.14 <i>Vending Machine Placement</i>	14
2.2.15 <i>Fountain Placement Recommendations</i>	14
2.2.16 <i>Proposed Price List</i>	15
2.2.17 <i>Financial Incentives</i>	15
2.2.18 <i>Commission Rate Schedule</i>	15
2.2.19 <i>Agreement Review</i>	15
2.2.20 <i>Quarterly Reporting</i>	16
2.2.21 <i>Additional Opportunities/Requests for Consideration</i>	16
2.3 IMPLEMENTATION/DELIVERY TIME LINE	16
2.4 BID BOND	16
2.5 PERFORMANCE BOND	17
SECTION 3: COMPONENTS OF THE PROCESS	18
3.1 REQUIREMENTS - RESPONDING TO SPECIFICATIONS	18
3.2 COMMUNICATIONS	18
3.3 CRITICAL DATES	18

3.3.1 Due Dates	18
3.3.2 Bid Withdrawal	18
3.4 BASIS OF SELECTION	18
3.4.1 Award of Contract	18
3.4.2 Evaluation	19
3.4.3 Confidentiality	19
3.4.4 Request for Additional Information	19
3.4.5 Sample Evaluation	19
3.5 NEGOTIATION	19
3.6 NOTIFICATION OF AWARD	19
3.7 RESERVATION OF RIGHTS: REJECTION OF PROPOSALS; NON-RESPONSIVE PROPOSALS	20
3.7.1 UNK Rights	20
3.7.2 Rejection	20
3.8 PUBLIC INFORMATION	20
SECTION 4: PROPOSAL SUBMITTAL REQUIREMENTS	21
4.1 SUBMITTALS AND BID OPENING	21
4.2 SUBMITTING OF PROPOSAL	21
4.2.1 Mail	21
4.2.2 In Person	21
4.3 INSPECTION OF PREMISES	21
4.4 BIDDER QUESTIONS, CLARIFICATIONS, AND ADDENDA INTERPRETATION	21
4.4.1 Project Requirements	21
4.4.2 Bid Interpretation	22
4.4.3 Notification of Addenda	22
4.4.4 Contact Information	22
4.5 COST OF PREPARATION	22
4.6 BIDDER QUALIFICATION	22
4.7 EXCEPTIONS	23
SECTION 5: TERMS AND CONDITIONS	24
5.1 GENERAL	24
5.2 TERMINATION FOR CAUSE	24
5.3 CONTRACT ASSIGNMENT	24
5.4 CONTRACT PAYMENTS	24
5.5 INDEMNITY, GENERAL AND PATENT	24
5.6 GOVERNING LAW; VENUE	25
5.7 FORCE MAJEURE	25
5.8 COMPLIANCE WITH LAWS AND REGULATIONS; GRAMM LEACH BLILEY; UNIVERSITY OF NEBRASKA POLICIES	25
5.9 SEXUAL HARASSMENT	26
5.10 INVESTIGATION AND RESOLUTION OF DISCRIMINATION AND HARASSMENT COMPLAINTS	26
5.11 DRUG FREE WORKPLACE	26
5.12 WEAPONS POLICY	26
5.13 AFFIRMATIVE ACTION/EQUAL OPPORTUNITY	27
5.14 PROPRIETARY INFORMATION; CONFIDENTIAL EMPLOYEE INFORMATION; HIPAA; FERPA	27
5.15 SUBCONTRACTORS	27
5.16 LEGISLATIVE FUNDING OUT CLAUSE	27
5.17 PARKING	28
5.18 BUILDING RULES AND REGULATIONS; TOBACCO USE:	28

5.19 USE OF PREMISES.....	28
5.20 HAZARDOUS WASTE GENERATED BY CONTRACTORS	28
5.21 DELIVERY; F.O.B.; SHIPPING.....	29
5.22 QUANTITY.....	29
5.23 INSPECTION.....	29
5.24 DEFECTIVE GOODS OR WORK.....	29
5.25 LIENS	29
5.26 FEDERAL, STATE AND LOCAL SALES TAXES; FEDERAL EXCISE TAXES.....	30
5.27 AMBIGUITIES.....	30
5.28 RECYCLING POLICY	30
5.29 CONTRACTOR IDENTIFICATION.....	30
5.30 FEDERAL IMMIGRATION VERIFICATION – E-VERIFIED.....	30
5.31 FEDERAL PROCUREMENT	30
5.32 LEGAL RELATIONSHIP	31
5.33 USE OF UNIVERSITY NAMES AND LOGOS.....	31
5.34 IMPROPER BUSINESS RELATIONSHIPS AND CONFLICT OF INTEREST PROHIBITED	31
5.35 ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY	31
5.36 EQUAL OPPORTUNITY CLAUSE CERTIFICATION OF NON-SEGREGATED FACILITIES, EXECUTIVE ORDER 11246	31
SECTION 6: PROPOSAL SCHEDULE	32
SECTION 7: LIST OF EXHIBITS	33
SECTION 8: LIST OF APPENDICES.....	34

SECTION 1: Cover Sheets and Specifications

1.1 Proposal Cover Sheet

Each proposal to this RFP shall be accompanied by a cover sheet on the form which immediately follows this page. This cover sheet demonstrates that the Bidder agrees to be bound by, and that its proposal is subject to, the terms of this RFP and any addenda that may supplement or amend this RFP.

PROPOSAL COVER SHEET
UNIVERSITY OF NEBRASKA AT KEARNEY
Office of Payment and Procurement Services
2504 9th Ave
Kearney, Nebraska 68849-1240

PROPOSAL IN RESPONSE TO RFP #20-02

The undersigned authorized officer of the Bidder firm represents that the Bidder has carefully examined the specifications and conditions contained in the RFP. The Bidder fully understands the type and quality of the product(s) and/or service(s) sought by the University of Nebraska at Kearney and hereby proposes to supply such at the prices stated and in accordance with the Proposal accompanying this cover sheet.

The Bidder acknowledges its receipt of addenda numbered ____ through ____ and further agrees that the provisions of such addenda, as well as those of the RFP, are fully incorporated into Bidder's Proposal, unless otherwise clearly stated to the contrary in the Proposal. Proposals containing exceptions to RFP provisions may not be favorably received.

The Bidder represents and warrants that the proposal submitted is not the result of collusion with other eligible Bidders, with any employee of the State or University, and no effort has been made to preclude the University of Nebraska from obtaining the most advantageous response possible to this RFP.

Except where a written signature is required, please type or clearly print the following:

BIDDER FIRM: _____

By: _____ Date: _____
Authorized Signature

Signing Officer's Name and Title: _____

Correspondence to the Bidder with respect to this RFP may be directed to:

Name: _____ Phone # _____

Title: _____ Fax # _____

Address: _____

Mobile # _____ Email: _____

1.2 Introduction

The University of Nebraska at Kearney is soliciting proposals for an exclusive beverage rights license agreement for the period of January 1, 2020 through December 31, 2029.

The University of Nebraska at Kearney (“UNK” or “University”) invites proposals from qualified Bidders to provide the goods and/or services described below. If the bid process is successful, UNK will enter into contract negotiations with the successful Bidder for the services specified in the RFP.

A list of definitions used in the RFP document shall have the respective meaning as stated in APPENDIX “A” – Definitions.

1.3 Expectations

Following completion of the process described in this RFP, it is UNK’s intent to enter into a License Agreement (along with such other agreements as may be necessary to evidence the award of the contract hereunder, referred to collectively as the “Agreement”) with the successful bidder which: 1) maximizes UNK’s resulting revenues and other benefits; 2) controls costs for UNK and its faculty, staff, students, fans and visitors, and 3) provides exceptional service and support to UNK and its numerous constituencies, all attained while operating in an environmentally sustainable manner.

1.4 Evaluation Process

Proposals will be evaluated and a contract awarded in compliance with the University of Nebraska Purchasing Policy. Evaluation/Selection of the successful Bidder will be accomplished by a committee comprised of University of Nebraska at Kearney employees and/or students. The award of a contract shall be made to the most responsive Bidder while taking into consideration the best interests of the University.

1.5 About the University

The University of Nebraska at Kearney is one of four campuses of the University of Nebraska system. The University is an affordable, student-centered regional hub of intellectual, cultural and artistic excellence that has been a prominent part of Nebraska’s higher education landscape for more than a century. The University offers access to all the opportunities and choices of a major public university. The University is committed to providing an outstanding education in a small and personal setting. It is a university that quickly transforms nearly 6,327 students from across the globe into a close-knit, supportive community of friends. Approximately two-thirds of the students receive some form of financial aid.

The University is a public, residential, mid-sized, comprehensive university with a special emphasis on undergraduate education located in Kearney, Nebraska—a small, safe and vibrant town that is a regional hub of culture and commerce. Students not only enjoy an intensely personalized academic experience but also participate in an extensive array of extracurricular activities that includes more than 150 student organizations, a nationally-respected music and performing arts program and a highly successful intercollegiate athletics program.

The University has the capacity for approximately 2,150 students in five traditional residence halls, two Greek complexes and three apartment-style complexes. Current enrollment is 4,212 full-time students and 2,115 part-time students. Of currently enrolled students, a total of 464 international students attend classes at the University with 52 countries being represented.

The University has one main campus area and several outlying areas of both developed and undeveloped land. Nearly all UNK educational, student service, administrative programs and facilities are situated on this land parcel, which is bounded on the east by 9th Avenue, on the south by U.S. Highway 30, and on the north by University Drive. The campus is bisected into eastern and western halves by an NPPD right-of-way, a Spillway/Trail Race and its watercourse and a hike/bike trail.

Directly south of the west part of main campus, across U.S. Highway 30, is a 107-acre plot of land recognized as University Village. This large tract of land south and west of the main campus will afford many opportunities to expand and enhance UNK programs. The initial phase of necessary infrastructure has been completed with the construction of Village Flats, a non-traditional housing option, and the anticipated completion of the Early Childhood Education Center in the fall of 2019. Other undeveloped segments of the land will be allocated to a possible conference center, athletic facilities and multiple housing and retail options. This project, which will address many long-standing and future needs, is considered a great milestone for the University.

1.6 Mission Imperatives

UNK is an exemplary public university that serves Nebraska by:

- meeting citizens' educational needs;
- adhering to policies of accrediting and governing agencies;
- being accountable to stakeholders for the quality of its work and for good stewardship of its resources;
- engaging in research, service, and outreach activities that apply university expertise to public needs;
- renewing curriculum, pedagogy, and activities with advice from internal and external constituencies;
- recruiting, challenging, nurturing, and retaining a diverse student body;
- recruiting and mentoring qualified diverse faculty and staff; and,
- building bridges to the community and state through athletic, cultural, and educational events.

UNK is an exemplary residential university that provides:

- a holistic approach to student development manifested in a progressive academic curriculum and a wide array of personal growth opportunities outside the classroom;
- residence halls and academic buildings that are well suited to student success and achievement;
- modern, well maintained and secure living and dining accommodations, sports and recreational facilities, and campus grounds;

- programs and services designed to involve those who live on or off campus in campus life; and,
- deliberate interaction with the surrounding community, capitalizing on location advantages to enhance learning opportunities for students.

UNK provides quality undergraduate education by means of:

- a curriculum that provides solid grounding for students in the liberal arts and sciences while also enabling them to specialize and prepare for careers;
- high quality academic programs that attract top students and draw faculty from centers of scholarship nationwide and worldwide;
- a well-qualified faculty/staff/student community whose diversity is itself an educational resource;
- student services that foster academic success, involvement in campus life, and progress toward graduation;
- a culture that supports opportunities for international experiences and studies;
- a commitment to learning with plentiful opportunities for students to engage in research with professors;
- a modern instructional and information technology infrastructure;
- expanding affordable access through quality online courses and degree programs; and,
- processes to assess student learning and to adjust programs in light of that appraisal.

UNK provides quality graduate programs that:

- build on areas of undergraduate strength;
- respond to public need and demand and serve the people of Nebraska and beyond;
- familiarize students with trends and developments in their disciplines;
- mentor students to contribute to their disciplines and apply knowledge to issues in society; and,
- help students develop research skills.

UNK values and supports faculty research and creative activity that:

- advances academic disciplines;
- addresses public needs;
- enhances teaching and professional development; and,
- involves mentoring and collaboration with students.

1.7 UNK Beverage Rights History

On January 1, 2010, UNK granted Bottling Group, LLC, certain rights similar to those under consideration in this RFP. The term of the current agreement ends on December 31, 2019. UNK seeks to enter into a new contract granting similar beverage rights for no less than five years on terms that it expects will exceed the value of the present beverage arrangement.

Consideration paid for the grant of rights effective January 1, 2010 was a combination of fixed annual licensing fees and commissions on product sales. UNK directly received \$85,000

annually, 20-40% of beverage vending sales, \$5,000 for scholarship support, \$5,000 to support special events, \$5,000 to support campus and student involvement, \$2,000 in beverages, 600 cases of product or retail value of \$8,000, and \$5,000 in the first year (\$1,000 per year for the other 9 years) for the purchase of recycling canisters and liners.

1.8 Product Volume

The beverage sales data for the past three years on the UNK campus are listed in APPENDIX “B” – Product Volume. This data includes for both vending and non-vending sales.

1.9 Vending Locations

Vending machines are located in almost every building on the UNK campus. Exact locations can be found in APPENDIX “C” – Vending Locations.

1.10 Fountain Equipment, Cooler, Icemakers Locations

Non-vending equipment is mainly located in third-party-run operations including dining services, catering services and concessions with a minimal number being located throughout other areas of campus. APPENDIX “D” – Fountain Equipment, Cooler, Icemakers Locations provides location details.

1.11 Product Price List 2018-19

Prices of non-vended and vended items for the 2018-2019 Academic Year are listed in APPENDIX “E” – Product Price List 2018-19.

1.12 Current Agreement

The University is currently contracted with Bottling Group, LLC. This current agreement, as described above, is provided in APPENDIX “F” – Current Agreement.

1.13 Beverage Rights Licensing Agreement - Proposed

In anticipation of contract negotiations with the successful bidder, a proposed agreement for the beverage rights has been provided in APPENDIX “G” – Beverage Rights Licensing Agreement – Proposed.

SECTION 2: Certain Selection Criteria

An Evaluation Committee will evaluate the proposals and make a recommendation, as described in Section 3 of this RFP. The following criteria are among the critical factors to be considered in the course of the evaluation. While the University acknowledges the need of the Bidder to explain their abilities to answer and fulfill the following requests, it is suggested that the Bidder keep individual responses to a minimum to allow an efficient and timely evaluation of all bids.

2.1 Responsiveness of Proposal

The successful Bidder must present a clear, coherent, effective and communicative proposal. The proposal will be evaluated based upon its ability to address UNK's specific needs, expectations, and requirements. Clarity and detail in response to each specification, so as to facilitate effective evaluation of the proposal, will be received favorably.

In addition to the above-mentioned criteria and the specifications and required questions discussed below, UNK may consider any additional information and documentation submitted by a Bidder if UNK deems such information to be relevant and in the best interests of providing superior value to UNK.

2.2 Required Response Questions

Each Bidder shall submit a complete response or indicate its consent to each requirement described below. Bidder should reference the item number and repeat the questions in its response. In cases where a question does not apply or if unable to respond, Bidder should refer to the item number, repeat the question and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Bidder will explain the reason when responding N/A or N/R.

2.2.1 Overview of Bidder

Company Vita

- Legal name, e.g. "ABC Group, Inc."
- Business address for office providing service under the Agreement
- Number of years in business
- State of incorporation
- Legal status to conduct business in Nebraska
- Number of employees
- Name of parent corporation, if any
- List all subsidiary businesses
- Volume of sales of all subsidiary businesses
- Number and listing of operations managed in higher education

2.2.2 Financial Statements

The Bidder will provide a copy of its audited financial statements for the three (3) most recent fiscal years. Demonstrated financial ability and stability to ensure performance under any agreement awarded is of extreme importance to the evaluation of the proposals. Without stating specific reasons, the University may reject or refuse to further evaluate any proposal based on the exercise of its judgment in its sole discretion that the financial position presented in a proposal lacks the qualities that UNK deems necessary to the success of the project. Entities unable to meet the requirements set forth in this paragraph may provide other information or guaranties, which in the discretion of UNK, meet its concerns regarding financial stability.

Is Bidder currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Bidder shall specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.

2.2.3 Litigation

Identify any litigation or claims brought against your company, or any parent, affiliate or subsidiary, within the last seven years, which might reflect adversely on your company's professional image or ability in relation to providing the goods or services sought under this RFP.

2.2.4 Company Status

Is your company, or any parent, affiliate or subsidiary, currently for sale or involved in any transaction to expand or to become acquired by or merged with another organization? If so, please explain. Has your company been involved in any reorganization, acquisition or merger within the last two years? If so, please explain.

2.2.5 Relationship with The University of Nebraska

Does Bidder, or any parent, affiliate or subsidiary, to the best of its knowledge, have any relationship with a member of the Board of Regents of the University of Nebraska, an employee of the University of Nebraska or other representative of the University which may, or may be perceived, to be a potential conflict of interest for either the Bidder or the University? If so, please explain in detail.

2.2.6 Description of the Bidder's Personnel and Management Team

Provide summary resumes for Bidder's key personnel with respect to the University Beverage Rights Licensing Agreement, including employment history and applicable experience with similar accounts.

2.2.7 Background Checks

Confirm the Bidder will conduct criminal background investigations at Bidder's expense, of all Bidder employees employed, or to be employed with access to UNK campus facilities. Such background checks shall be made to the same degree of thoroughness as those background checks UNK conducts for newly hired staff at UNK. UNK will be informed of any employee (or job candidate Bidder intends to employ) whose background check indicates a history of behavior that might adversely impact his or her work performance or the safety of persons or property at UNK. Any action taken with respect to such employee or potential employee shall be mutually agreed upon by the parties, provided however, should UNK in its sole discretion determine that the employee's past behaviors present an unacceptable risk and if otherwise permitted by law, the employee shall be terminated, or in the case of a job candidate, not be offered employment.

2.2.8 Equal Opportunity

Bidder shall complete EXHIBIT "I" – Equal Opportunity.

2.2.9 References

Provide a list of not less than three (3) colleges and universities for which Bidder is currently operating and managing a campus beverage program. For each college or university identified, provide the names and telephone numbers of the campus contract administrator (or similar officer in charge of the dining service contract) and the Chief Business Officer. The list must also identify the length of the business relationship, the scope of services provided by Bidder, and if permitted, the gross annual sales for the most recent fiscal year. (Complete EXHIBIT "II" – References)

Bidder shall list all of its college and university accounts that were canceled or not renewed during the past five years, including the names and telephone numbers of the contract administrator/liaison officer and Chief Business Officer of each institution listed.

2.2.10 Transition Planning

Submit Bidder's implementation/transition plan with key dates and milestones including the ability to begin on the January 1, 2020 start date.

Specify implementation tasks for the Bidder and UNK; include a timeline for task completion and final implementation.

2.2.11 Beverage Listing

Provide a complete list of all beverages, including sizes and packaging that bidder is able to offer to the public generally, whether such beverages are part of bidder's own business operations or are available as a result of affiliations with other manufacturers and distributors. Bidder shall use the provided spreadsheet format in EXHIBIT "III" – Beverage Listing.

2.2.12 Additional Marketing Considerations

A comprehensive, fact-based marketing plan is critical to the success of a university beverage program. The University requests to have co-branded marketing visible on machines and other materials as deemed possible. This marketing and its associated plans should be updated at a minimum of every three years. Any additional marketing considerations Bidder believes are significant to UNK's beverage program shall be provided in a single attachment, not to exceed 20 pages.

2.2.13 Student Programming Plan

Please detail Bidder's proposed support of student programs in either product or direct financial support of the programs or activities.

2.2.14 Vending Machine Placement

Discuss in detail your recommendations with respect to vending machine placement to most effectively promote beverage sales and service. APPENDIX "C" – Vending Locations provides the current beverage vending machine locations and sales data is included in APPENDIX "B" – Product Volume.

2.2.15 Fountain Placement Recommendations

Provide a detailed recommendation with respect to beverage fountain placement, such that UNK retail customers will be most effectively served. APPENDIX "D" – Fountain Equipment, Cooler, Icemakers Locations provides the current location of fountain dispensing equipment, coolers and icemakers and APPENDIX "B" – Product Volume includes the volume of fountain products dispensed at these locations.

2.2.16 Proposed Price List

Provide Bidder's proposed price list for all beverages (including, without limitation, fountain mix products include CO2) proposed to be sold, distributed or otherwise offered by Bidder for 1) an option for the first three (3) years of the Agreement and 2) and option for the first five (5) years of the Agreement. The three (3) or five (5) year option will be chosen by the University upon Bidder review and selection. Provide Bidder's price list for the balance of the Agreement expressed in terms 'not to exceed' an accepted index (e.g. the food and beverage component of the U.S. Government Consumer Price Index (CPI)) for the Kearney area. UNK's current beverage price list is provided in APPENDIX "E" – Product Price List.

2.2.17 Financial Incentives

Provide Bidder's overall financial offerings for the Agreement: UNK desires a fair and balanced compensation agreement that supports both the Bidder and the University in meeting their respective financial objectives.

2.2.18 Commission Rate Schedule

Provide your proposed commission rate schedule.

2.2.19 Agreement Review

For a number of reasons, including expeditious closing of final agreement, proposals indicating that the bidder is willing to accept the contract form substantially as presented in APPENDIX "G" – Beverage Rights Licensing Agreement – Proposed are more likely to be received with favor. The bidder is required to provide what, if any, changes it suggests be made to the contract template language. Additional documentation or amendments to the form may be necessary to reflect bid options. Bidder need not provide contract language related to bid alternates, as those are yet to be awarded or negotiated. UNK reserves the right to conduct discussions and negotiations with any or all respondents to this RFP, for the purpose of clarifying any response to this RFP, or for the purpose of clarifying or modifying any element of the RFP. If you have no modification to the provided agreement, indicate as such.

2.2.20 Quarterly Reporting

Bidder will provide an example of the requested quarterly electronic reports of all sales and commission by machine/location. Reports must include, at a minimum, the following:

- *Product codes for individual categories;
- *Building and location of machines;
- *Machine number;
- *Gross sales; net sales, and sales tax for each machine in the aggregate and by location for each period;
- *Total commission for each machine by location for each period, if applicable;
- *Year-to-date commission for each machine by location for each period, if applicable;

The following are optional on the requested report:

- *Selling prices of products;
- *Date machine installed/removed;
- *Refunds and test for each item category;
- *Required beginning and ending non-reset cash meter readings;
- *Actual cash and non-cash transaction amount collected;
- *Amount over and short in the aggregate and by machine.

2.2.21 Additional Opportunities/Requests for Consideration

Describe in detail any other rights, requests, programmatic opportunities, or vendor-led initiatives not otherwise described in the RFP that the bidder would submit for consideration.

2.3 Implementation/Delivery Time Line

The successful Bidder's exclusive beverage rights and operations will commence on a date no later than January 1, 2020.

2.4 Bid Bond

The Proposal must be accompanied by a certified check payable to UNK, a money order payable to UNK or a bid bond executed by the Bidder as principal and a surety company approved by UNK in the amount of 5% of the bid. Should the Bidder fail or refuse to execute and deliver a contract after having been selected as the successful Bidder, then the amount secured by the bid bond, money order or check shall be forfeited to UNK. Such checks, money orders or bid bonds will be returned promptly upon execution of a contract, or if no award has been made, within one hundred twenty (120) days after the date of the opening of the bids.

2.5 Performance Bond

Upon award of the contract, the selected vendor will be required to provide an annual \$500,000 (five-hundred thousand dollars) performance bond for each year the contract is in effect. Bonding requirements commencing after the first year of operation may be reviewed by the University at its sole discretion.

The performance bond required must be acquired upon contract award at the vendor's expense. The purpose of this bond is to protect the University of Nebraska in the event of default on one or more of the contract terms by the Contractor chosen. The bond is in an amount sufficient to reimburse the University of Nebraska for the full amount of its anticipated business risk under the contract and includes provision for both the time and expense which would be incurred by the University in obtaining an alternate vendor in the event of contractual default. The amount of the bond does not include punitive damages. The bond also does not prevent the exercise by the University of any other remedies available to the University, in whole or in part, under current Federal and State Statutes, in the event of contractual default.

SECTION 3: Components of the Process

3.1 Requirements - Responding to Specifications

Each Bidder responding to this RFP is expected to submit a well-organized, easy-to-read, written proposal, which clearly and coherently provides the information outlined in Section 2: Certain Selection Criteria. Answers and responses to the information required by Section 2 must be numbered to directly coordinate with the number of the inquiry as it appears in Section 2.

3.2 Communications

All questions concerning this RFP shall be in writing, and faxed or e-mailed by the Bidder and addressed to:

Scott Benson
Office of Procurement and Payment Services
2504 9th Ave
University of Nebraska at Kearney
Kearney, Nebraska 68849-1240

Fax: (308) 865-8668
E-mail: bensonsa1@unk.edu

For additional information concerning Bidder questions, clarifications and addenda, see Section 4: Proposal Submittal Requirements, item 4.

3.3 Critical Dates

3.3.1 Due Dates

Proposals are due upon the date and time set forth on the cover to this RFP.

3.3.2 Bid Withdrawal

Any bid may be withdrawn prior to the scheduled time for the opening of bids. Unless otherwise stated in this RFP, no Proposal may be rescinded within one hundred twenty (120) days following the scheduled opening of proposals without the approval of the Director of Procurement and Payment Services.

3.4 Basis of Selection

3.4.1 Award of Contract

The award of a contract, if any, shall be made to the most responsible Bidder. The University reserves the right in all circumstances to analyze bids in detail and to award contracts which in the exercise of reasonable discretion, the University believes to be in its best interest. While pricing is often an important criterion, it may or may not be determinative. UNK shall establish evaluation criteria and their components before proposals are opened. UNK may waive any informality or irregularity or other requirement, which it deems does not materially affect the integrity or effectiveness of

the competitive bidding process. Factors that may be considered include, but are not limited to, clarity and responsiveness, conformity with RFP specifications, cost effectiveness, design, delivery, installation, the ability to work within the allotted timeframe, the specific needs of the UNK community, Bidder's reputation and/or past performance, quality of goods and/or services offered to UNK, technical performance, installation, and ability to expand with UNK's needs. Please note if ALL Bidders fail to meet a specification UNK reserves the right to delete that specification.

3.4.2 Evaluation

Proposals will be evaluated, and the contract, if any, awarded and performed in compliance with all relevant University of Nebraska policies.

3.4.3 Confidentiality

The deliberations of the evaluation committee are confidential, and no representative of a Bidder should directly or indirectly contact any member of the evaluation committee, or any faculty or staff member concerning this RFP, unless permission is explicitly otherwise given to the Bidder by the Office of Procurement and Payment Services, for the purposes of providing additional information or facilitating the evaluation. Any attempt by a Bidder to contact a member of the evaluation committee or any other faculty or staff member about this RFP can lead to disqualification.

3.4.4 Request for Additional Information

UNK reserves the right to request additional information from a Bidder after the bid opening in any format which UNK deems necessary to evaluate the proposals, including formal Q & A or meetings and presentations. The evaluation may include subjective assessment of the proposal materials, including factors not listed specifically in this RFP.

3.4.5 Sample Evaluation

Bidders may be required to submit samples of any item or product offered in response to this RFP. Each sample must be clearly identified by the name of the Bidder, name of the manufacturer, or other information, if requested, relevant to the evaluation of the sample.

3.5 Negotiation

UNK reserves the right to conduct discussions and negotiations with any or all respondents to this RFP, concerning any element of or response to this RFP, for the purpose of clarification and modification. Discussion and negotiation may include, but is not limited to, the scope of work, design, schedule, and price.

3.6 Notification of Award

Upon completion of the evaluation process, the Bidders will be notified in writing, or by e-mail, of the identity of the successful Bidder. If for any reason, UNK and the successful Bidder fail to finalize a contract within two weeks, UNK reserves the right to attempt to enter into a contract with the next most responsive Bidder, based on evaluation results.

3.7 Reservation of Rights: Rejection of Proposals; Non-Responsive Proposals

3.7.1 UNK Rights

UNK reserves the right to reject any and all proposals received and discontinue the evaluation and selection process at any time. UNK also reserves the right to resolicit proposals in response to this RFP or any amendment of this RFP if all proposals are rejected, but the proposed purchase is not abandoned. If no responsive bids are received by UNK, UNK reserves the right to negotiate with any firm in order to substantially fulfill the RFP under such terms and conditions as UNK deems best serve its needs.

3.7.2 Rejection

The University may reject the bid of any Bidder who has (a) failed to perform a previous contract with the University; (b) failed to provide any required bid security; or (3) submitted a bid which is in any way incomplete, irregular or not responsive to specifications.

3.8 Public Information

Bidders' names are public information at the time proposals are opened until the scheduled bid closing time. Until the successful Bidder is determined and announced, UNK will treat all other elements of the proposals as confidential information, not subject to public disclosure. However, once the successful Bidder is announced, then the proposals will be treated as public information, except any information that the Bidder has submitted and UNK has deemed as indeed proprietary or otherwise confidential as requested by the Bidder.

Bidder shall be chiefly responsible for providing the defense for any challenge to a decision to withhold information contained in a Proposal, based upon Bidder's identification of the information as not subject to public disclosure.

SECTION 4: PROPOSAL SUBMITTAL REQUIREMENTS

4.1 Submittals and Bid Opening

One (1) original and seven (7) copies, marked accordingly, and one Flashdrive of any proposal in response to this RFP must be received by UNK in the Office of Procurement and Payment Services, 2504 9th Ave, University of Nebraska at Kearney, Kearney, Nebraska 68849-1240 no later than the date and time set forth on the cover of this RFP. At that time, the proposals will be opened publicly. No proposals received after the opening time will be considered. All proposals submitted, along with any exhibits, addenda or modifications, shall be the property of UNK.

4.2 Submitting of Proposal

4.2.1 Mail

Each Bidder is responsible for making sure their proposal is properly addressed/identified. In order to assure proper processing and receipt, your bid submittal should be returned in a sealed envelope (or parcel) and delivered to/addressed as follows: University of Nebraska at Kearney, Office of Procurement and Payment Services, 2504 9th Ave, Kearney, NE 68849-1240 along with the applicable “RFP Number” and “Title of Bid” to which you are responding.

4.2.2 In Person

If you are delivering your proposal in person, it should be sealed, submitted and labeled in the above manner, and given to an authorized member of the Procurement and Payment Services staff. This provides immediate bid identification.

4.3 Inspection of Premises

Bidders are invited to inspect the project sites completely prior to submitting a proposal in order to determine all requirements associated with the contract. Failure to inspect adequately shall not relieve the Bidder from the necessity of furnishing and installing, without additional cost to the University, any materials and equipment or performing any labor that may be required to carry out the intent of the contract.

4.4 Bidder Questions, Clarifications, and Addenda Interpretation

4.4.1 Project Requirements

It is the responsibility of each Bidder to become familiar with the project requirements. Lack of knowledge concerning the project requirements will not relieve Bidders of the conditions required as responsive to this RFP.

4.4.2 Bid Interpretation

Except in the course of preliminary conference open to all interested parties, should one be held, no interpretation related to the requirements of this RFP will be made verbally to any Bidder by UNK. Any request for bid interpretation shall be put in writing and faxed or e-mailed by the Bidder and addressed to:

Scott Benson
Office of Procurement and Payment Services
University of Nebraska at Kearney
Kearney, Nebraska 68849-1240

FAX (308) 865-8668
E-mail: bensonsa1@unk.edu

4.4.3 Notification of Addenda

In order to be given consideration, any requests for interpretation must be received no later than September 6, 2019. Any and all interpretations and any supplemental instructions provided by UNK shall be in the form of a written addenda to the Request for Proposal, which if issued, will be mailed, e-mailed or faxed to all known interested parties or Bidders, or such other form of communication as UNK deems reasonably likely to reach interested parties; provided however, that Bidders who were notified of this RFP by accessing the UNK Office of Business Services website are responsible to check the website from time-to-time in order to inform themselves of any addenda to the RFP. The Bidder, not UNK, is responsible to secure notification and delivery of any addenda. Failure of any Bidder to receive any addenda or other information released by UNK after the initial distribution of this RFP shall not relieve the Bidder from the obligations specified in addenda or other releases. All addenda shall be incorporated in the RFP to the same effect as if they were set out in the initial RFP release. The last day Bidders will receive addendums will be September 11, 2019.

4.4.4 Contact Information

The Bidders are solely responsible for providing their correct mailing addresses, email addresses, and fax numbers for any response to inquiries. UNK is not responsible for lost or undeliverable responses.

4.5 Cost of Preparation

UNK will not be responsible for any costs incurred in preparation of the Bidder's proposal.

4.6 Bidder Qualification

UNK may make any investigations deemed necessary or request any documentation to evaluate the ability of the Bidder to perform the specifications of this RFP. The Bidder shall furnish UNK with pertinent information and data upon request. UNK reserves the right in its sole discretion to reject any bid based on the facts resulting from an investigation which indicate that a Bidder: (a) is not properly qualified to carry out the obligations of any contract

awarded; or (b) presents a public image not in keeping with the professional standards and reputation which UNK expects. Conditional bids will not be accepted.

4.7 Exceptions

Any exceptions with respect to any requirement of this RFP must be specified in writing as part of the submitted proposal. Specific reference must be made to the paragraph numbers and other identifying criteria with respect to any exceptions proposed by the Bidder. Generally, UNK will not look favorably upon the request for any exceptions. However, UNK recognizes that in certain instances, an exception may be appropriate, and therefore, will consider and reserves the right to grant exceptions when UNK deems such exceptions promote its best interests. Conditional bids will not be considered. Unless the exceptions are stated with the proposal at the time of its submission, no further consideration of the exceptions exist and the Bidder will be held responsible for compliance to the detail of all specifications, terms and conditions in this RFP.

SECTION 5: TERMS AND CONDITIONS

The information contained in this section is a partial listing of standard terms commonly appearing in contracts awarded by UNK. All proposals are subject to these terms, unless otherwise explicitly stated.

5.1 General

The specifications, terms and conditions set forth in this RFP and any related award document shall be incorporated by reference, without Bidder exception, into any resulting contract between the University and the successful Bidder. Any additional or different terms proposed by the successful Bidder are not accepted, unless the same are expressly accepted in writing by UNK. The contract may not be changed in any way except by an instrument in writing signed by both parties. The contract cancels and supersedes any prior understandings or agreements between the parties with respect to the subject matter hereof. Failure of any party to enforce its right under the contract shall not constitute a waiver of such rights or of any other rights under the contract.

5.2 Termination for Cause

UNK may terminate the contract at any time if the successful Bidder fails to carry out its terms or fails to make substantial progress toward the fulfillment of those terms. In such an event, UNK shall provide the successful Bidder with a thirty (30) day written notice of the terms in breach. If after such notice, the successful Bidder fails to remedy the breach within those 30 days, UNK may immediately cancel the contract.

5.3 Contract Assignment

Contracts granted pursuant to this RFP shall not be transferred or assigned without prior written consent of UNK.

5.4 Contract Payments

The Nebraska State Treasurer has directed that individual vendor payments of \$25,000 or more be processed via ACH (direct deposit to vendor's bank). Any Bidder who is not currently set up to receive payments from the State of Nebraska and/or the University of Nebraska via ACH, must complete the State of Nebraska ACH Enrollment Form and forward the form to the Nebraska Department of Administrative Services so that the University can complete payment of invoices generated from the award of this contract. The form can be found at <http://www.treasurer.state.ne.us/documents/tm/pubachform.pdf>.

5.5 Indemnity, General and Patent

The successful Bidder shall indemnify and save harmless UNK and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of UNK or its agents.

With respect to anything provided to UNK by the Bidder pursuant to this RFP, the Bidder shall indemnify the University and its respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and use of such by UNK.

5.6 Governing Law; Venue

The laws of the State of Nebraska shall govern any contract awarded to the successful Bidder. Any dispute arising under any contract awarded, which is not settled by agreement of the parties, shall be resolved in forums (except for applicable federal appellate courts) located in the State of Nebraska.

5.7 Force Majeure

Neither party to the contract shall be liable to the other for damages for any delay in performance arising out of causes beyond its reasonable control and without its fault or negligence, including without limitation: (1) fire, flood or water damage, elements of nature or other acts of God, including any of the foregoing that are harmful to electronic circuitry; (2) outbreak or escalation of hostilities, war, riots, or civil disorders in any country; (3) act or omission of the other party or any governmental authority, (4) labor disputes (whether or not the employees' demands are reasonable or within the party's power to satisfy), (5) non-performance by a third party (including any voice or data telecommunications common carrier), (6) failures or fluctuations in telephone, computer or other telecommunications equipment or lines or other equipment, (7) the real, potential, or credible threat of terrorist activity, or (8) a health emergency (e.g. serious outbreak of contagious disease such as an influenza pandemic) which in the judgment of UNK poses a serious threat to the public health. In the case of any such excusable delay, the non-performing party will be excused from performance of any affected obligation only for so long as the cause of the excusable delay prevails and such party continues to use commercially reasonable efforts to re-commence performance of its obligations as soon as possible; provided however, that the parties may mutually agree that such excusable delay is cause to cancel the contract in its entirety, in which case neither party shall be liable to the other for any further performance in relation to obligations arising after cancellation.

5.8 Compliance with Laws and Regulations; Gramm Leach Bliley; University of Nebraska Policies

This contract must comply with all applicable federal, state and local laws, specifically including all laws and regulations related to the protection and security of any personal information gathered by the successful Bidder, such as the Gramm Leach Bliley Act implemented at the University of Nebraska by Presidential Executive Memorandum No. 26 which requires specific vendor contract provisions; and all other applicable policies of the University of Nebraska. Bidder agrees to indemnify UNK against any loss, cost, liability, or damage by reason of Bidder's violation of any applicable law or regulation. Any successful Bidder must be qualified to conduct the business necessary to the performance of the contract in the State of Nebraska throughout the duration of the contract term or any renewal thereof.

The successful Bidder shall obtain, at its own cost and expense, all necessary licenses, professional certifications and permits and shall assume the responsibility for and pay all applicable fees and all other taxes, which are now or may be imposed in the future by any governmental authority arising out of the conduct of Bidder's business.

5.9 Sexual Harassment

State and federal law, as well as the policies of the Board of Regents of the University of Nebraska, prohibit sexual harassment of members of the UNK community. Sexual harassment includes any unwelcome sexual advance, any request for sexual favors, and other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive environment. UNK contractors, subcontractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of UNK employees, students and other members of the UNK community. The employer of any person who UNK, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of any contract awarded hereunder to cause such person to be removed from the project site and from UNK premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

5.10 Investigation and Resolution of Discrimination and Harassment Complaints

State and federal law, as well as the policies of the Board of Regents of the University of Nebraska, prohibit discrimination or harassment against members of the UNK community on the basis of race, color, national origin, sex, age, disability and any other protected status. In the event the University determines that an employee, agent or other person affiliated with the Contractor has engaged in discrimination or harassment, the Contractor will take prompt and effective action, in accordance with the University's direction, to prevent recurrence of the discrimination or harassment and to correct its effects, which may include, removal of the employee, agent or other person affiliated with the Contractor from the University campus. Contractor's failure to comply with the University's directive or any other part of the provision will be deemed a material breach of the Agreement, and the University may initiate the termination process in the Agreement.

5.11 Drug Free Workplace

The successful Bidder agrees that in the performance of this contract, neither the Bidder nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity covered by the contract. UNK reserves the right to request a copy of the Bidder's Drug Free Workplace Policy. The Bidder further agrees to insert a provision similar to this statement in all subcontracts or services required in response to this RFP.

5.12 Weapons Policy

Possession of firearms, explosives, weapons, dangerous chemicals or fireworks is prohibited on property controlled by the University of Nebraska, in University vehicles and at events sponsored by the University. This policy applies to all members of the general public, students and University employees, except University employees who are specifically authorized to as

part of their job responsibilities. Any person violating this policy is subject to University discipline up to expulsion/termination and/or may be charged with the appropriate criminal offense.

5.13 Affirmative Action/Equal Opportunity

The University of Nebraska at Kearney is responsive to University issues which support a diverse work and academic environment. It is the policy of the University of Nebraska at Kearney not to discriminate based upon age, race, ethnicity, color, national origin, pregnancy, disability, sex, sexual orientation, gender identity, genetic information, veteran's status, marital status, religion or political affiliation. This policy is applicable to all University administered programs including educational programs, financial aid, admission policies and employment policies. UNK is an Affirmative Action Equal Opportunity employer. Veterans and persons with disabilities are encouraged to apply.

The University affirms a policy of equal educational and employment opportunities, affirmative action in employment and nondiscrimination in providing services to the public. University employees, students and others associated with the University who have not received the benefits of these policies, are encouraged to contact the Human Resources Director/ADA Coordinator.

5.14 Proprietary Information; Confidential Employee Information; HIPAA; FERPA

It is to be expected that the parties to the contract may find it necessary to reveal certain proprietary information to each other. The contract may, when proprietary information is exchanged, include certain provisions to mutually protect against the use and disclosure of the proprietary information of each party. In the unusual circumstance that the contract should result in the sharing of employee information protected by the law or University of Nebraska policy, information protected by the Health Insurance Portability and Accountability Act, information protected by the Family Educational Rights and Privacy Act of 1974, or any other information deemed confidential and protected by the law, the parties to the contract agree to maintain the confidentiality of such information to the extent and manner required by the law and University policy.

5.15 Subcontractors

The successful Bidder shall not subcontract all or substantially all of any facet of the Proposal without the prior written approval of UNK. The successful Bidder shall be fully responsible for the acts and omissions of its subcontractors and of the persons directly or indirectly employed by them. Every subcontractor shall be bound by the terms of any contract awarded under this RFP; provided however, that no contractual relationship shall exist between any subcontractor and UNK, unless it is evidenced in a separate contract independent of the contract with the successful Bidder.

5.16 Legislative Funding Out Clause

Notwithstanding any provision in the contract to the contrary, if the legislative body appropriating funds does not allocate sufficient funds to allow UNK to make any periodic

payment agreed to in the contract for any future fiscal period, UNK will not be obligated to pay the contract balance remaining at the time of the governmental funding short-fall.

5.17 Parking

The successful Bidder and/or its employees and agents will be solely responsible for permits or any fines resulting from parking violations occurring on UNK property. Successful Bidder and any temporary employees are responsible for contacting UNK Police Department at the Facilities Building, Kearney, Nebraska, at (308) 865-8367 to obtain information regarding parking and to obtain permits.

5.18 Building Rules and Regulations; Tobacco Use

Employees of the successful Bidder and any subcontractors shall comply with all UNK rules and regulations pertaining to conduct in UNK's facilities. UNK reserves the right to request the removal or replacement of any Bidder or subcontractor employee who fails to comply with such rules and regulations.

The use of all forms of tobacco products is prohibited on University of Nebraska at Kearney property with the exception of parking lots. The prohibition extends to vehicles and venues owned, operated, leased, occupied or controlled by the University. "Tobacco products" includes all forms of tobacco, inclusive of but not limited to, cigarettes, cigars, pipes, water pipes (hookah), electronic cigarettes and similar devices and smokeless tobacco products. Enforcement of the policy relies on the respect and cooperation of all members of the University community.

5.19 Use of Premises

To the extent that any contract awarded requires the successful Bidder or its employees or agents to be present on or within UNK's properties, then the Bidder shall limit its presence and activities to such areas as are reasonably necessary in order to perform under the contract. The successful Bidder shall take such precautions as are required to avoid damage to buildings, facilities, utilities, ground resources, trees and landscape amenities and other properties adjacent to the Bidder's activities within the scope of the contract and agrees to be responsible and/or carry out any repairs for which it is liable, as a result of its performance under the contracts.

5.20 Hazardous Waste Generated by Contractors

Any hazardous waste that is generated from the performance of any contract awarded shall be properly disposed of by the successful Bidder in a timely fashion and in accordance with applicable hazardous waste laws and regulations. The cost for hazardous waste management and disposal is successful Bidder's responsibility. Should UNK deem it prudent to dispose of any hazardous waste left on its property, as a result of the successful Bidder's failure to meet its responsibilities, all costs associated with such disposal shall be deducted from any amount yet to be paid to the Bidder and/or billed to the Bidder. University Environmental Health Services is to be notified of all hazardous waste issues.

5.21 Delivery; F.O.B.; Shipping

The successful Bidder shall bear all costs of transportation, packing, crating, delivery, installation, storage and service under warranty for any goods or related services, delivered pursuant to the contract. The successful Bidder shall be responsible for and make delivery, including costs of delivery, cartage, temporary storage, off-loading costs and insurance, F.O.B. destination: University of Nebraska at Kearney, Kearney, Nebraska, unless otherwise specified, all shipments will utilize the best commercial practice to insure safe arrival at the UNK delivery point.

5.22 Quantity

With respect to quantity of any good purchased under the contract, UNK need not accept any variation in quantity except as specified in the contract. Over-shipments may be returned to the Bidder at its expense, which shall include a reasonable cost for UNK handling, or be retained by UNK at no increase in price.

5.23 Inspection

UNK may, at any time in the course of the contract, inspect, test and approve materials and supplies being used in the performance of the contract, including at the point of manufacture. If inspection and tests are made on contractor's premises, contractor, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the testing/inspection personnel. Except as otherwise agreed in writing, all goods, equipment and supplies furnished under the contract shall be subject to final inspection and acceptance by UNK at the delivery destination.

5.24 Defective Goods or Work

UNK, notwithstanding any prior acceptance, at its option, may reject or require prompt correction (in place or elsewhere) of any goods, equipment, supplies or other work, which are defective in material or workmanship or otherwise fail to meet the requirements of the contract. All supplies furnished under the contract shall be subject to inspection at F.O.B. destination, and successful Bidder shall be given notice of any defects, other than latent defects, within a reasonable time after receipt of the goods, equipment and supplies, along with all records of delivery. UNK may, in addition to any rights it may have by law, prepare for shipment and ship the defective goods, equipment and supplies to the successful Bidder, require the successful Bidder to remove them, or direct a correction in place. The expense of any such remedy shall be borne by the successful Bidder, including any excess cost.

5.25 Liens

Successful Bidder warrants that it has title to any goods delivered under the contract and shall deliver same free of all liens, claims and encumbrances.

5.26 Federal, State and Local Sales Taxes; Federal Excise Taxes

Purchases made by the University of Nebraska are exempt from the payment of state sales and use taxes and federal excise taxes. Certification of these exemptions will be provided to the successful Bidder upon request.

5.27 Ambiguities

Should the successful Bidder perceive an ambiguity in the contract, the successful Bidder shall request an interpretation from UNK before proceeding. If a successful Bidder fails to make such a request, failure to perform with respect to the alleged ambiguity shall not be excused.

5.28 Recycling Policy

When purchasing products, materials or supplies for use, the University, when making such purchases shall actively pursue the purchase of products, materials or supplies which are manufactured or produced with at least 10% post-consumer recycled materials. This policy shall not operate when it would result in the purchase of products, materials or supplies that are of inadequate quality, not readily available or substantially higher in cost. It is the intent of the University to continually increase the percentage produced from post-consumer recycled material, and, to increase each year the types and variety of products, materials or supplies purchased with post-consumer recycled material.

5.29 Contractor Identification

All Contractor's employees while on campus shall be identifiable as Contractor's employees. This requirement can be met by an employee uniform or clothing identifying the Contractor name or an identification card issued by the Contractor. The Contractor's employee must be prepared to show identification while working on the UNK campus. The Contractor employee uniforms to be provided by the Contractor at Contractor's expense must easily and appropriately identify the Contractor and employees by name. Individuals who are not able to produce this identification may be requested to leave University property. Contractor's employees may be required, at Contractor's expense, to be issued UNK ID Cards designating the Contractor's employee as a contracted vendor of the University.

5.30 Federal Immigration Verification – E-Verified

The successful Bidder, on behalf of itself and any subcontractor to the Contract, agrees that it shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

5.31 Federal Procurement

No contract shall be awarded to any Contractor/Bidder listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension," (the "Debarment List"). For contracts which in the aggregate exceed \$25,000, Contractor/Bidder specifically warrants and represents that it is not included on the Debarment List. Contractor/Bidder further agrees that should it be included on the Debarment List at the

time the contract/proposal is awarded, or at any time during which it performs its contractual obligations pursuant to the contract, such listing shall be considered a material breach of the contract between the University and the Contractor.

5.32 Legal Relationship

The contractor shall under no circumstances be considered as an agent or employee of the University and shall have no right or authority to, in any manner, obligate the University to any person or company except as authorized in writing by the University.

5.33 Use of University Names and Logos

The contractor shall not use any University name, sign, logo, symbol, etc. for any purpose, without the prior written approval of the University. Use of University brands generally requires licensing.

5.34 Improper Business Relationships and Conflict of Interest Prohibited

In connection with this RFP, each Bidder shall ensure that no improper, unethical or illegal relationships or conflict of interest exists between or among the Bidders, the University and any staff, faculty and any other party to this RFP. The University reserves the right to determine the materiality of such relationships, when discovered or disclosed, whether intended or not, and to decide whether or not Bidder disqualification and/or cancellation of award shall result. Such disqualification and/or cancellation shall be at no fault or liability whatsoever to the University.

5.35 Electronic and Information Technology Accessibility

All electronic and information technology procurements, agreements, and contracts shall comply with Section 508 of the Rehabilitation Act of 1998 as amended (<https://www.fcc.gov/general/section-508-rehabilitation-act>), and the Nebraska Accessibility Policy (<https://nitc.nebraska.gov/standards/2-101.pdf>).

5.36 Equal Opportunity Clause Certification of Non-Segregated Facilities, Executive Order 11246

This form is attached and shall be executed by the successful Bidder upon notice of award.

SECTION 6: PROPOSAL SCHEDULE

Issue Date of RFP	August 26, 2019
Deadline for Questions	September 6, 2019
Issue Date of Addendums	September 11, 2019
Deadline for Receipt of Proposals	September 19, 2019
Deadline for Receipt of Proposals (Revised)	October 1, 2019
New Agreement Effective Date	January 1, 2020

SECTION 7: LIST OF EXHIBITS

Exhibit I: Equal Opportunity

Exhibit II: References

Exhibit III: Beverage Listing

SECTION 8: LIST OF APPENDICES

Appendix A: Definitions

Appendix B: Product Volume

Appendix C: Vending Locations

Appendix D: Fountain Equipment, Cooler, Icemakers Locations

Appendix E: Product Price List

Appendix F: Current Agreement

Appendix G: Beverage Rights Licensing Agreement – Proposed

University of Nebraska at Kearney
Bid #20-02
August 26, 2019
EXHIBIT I – Equal Opportunity

UNIVERSITY OF NEBRASKA
 EQUAL OPPORTUNITY CLAUSE AND CERTIFICATION OF
 NON-SEGREGATED FACILITIES

Unless otherwise exempted by rules, regulations or orders issued under Executive Order 11246, during the performance of each order received from the Buyer:

“(1) The Contractor will not discriminate against any employee or applicant of employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

“(2) The contractor will, in all solicitations or advertisement of employees placed by or on behalf o the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

“(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers’ representative of the contractor’s commitments under Section 202 of Executive Order No. 11246 of Sept. 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

“(4) The contractor will comply with all provision of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

“(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

“(6) In the event of the contractor’s noncompliance with the nondiscrimination clauses of this contractor with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of Sept. 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

“(7) The Contractor will include the provisions of Paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 24 of Executive Order No. 1 1246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

Seller certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and the he does not and will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained.

Seller agrees that a breach of this certification is a violation of the Equal Opportunity clause in this certification. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants, and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, or color or national origin, because of habit, local custom or otherwise.

During the performance of furnishing goods or services as stipulated in any purchase order, contract, or agreement whether written or verbal, the contractor agrees that the concern presented will comply with the provision of 41 CFR 60-741.4 relating to employment of the Handicapped and 41 CFR 50-250.3 relating to employment of Disabled Veterans and Vietnam Era Veterans.

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Moreover, if annual sales to the University of Nebraska exceeds \$50,000, I certify that our firm has on file an Affirmative Action Compliance Program,” dated _____, or that our firm is exempt for the following reason: _____

During the performances of furnishing goods or services as stipulated in any purchase order, contract, or agreement whether written or verbal, the undersigned certifies that the concern represented will comply with the provisions of Executive Order 11246 as amended, and all rules, regulations and relevant orders of the Secretary of Labor, and will incorporate by reference in each contract and in each order which is within the scope of the regulations the clause relating to Equal Opportunity contained in 41 CFR 60-1.4, and the clauses relating to Employment of the Handicapped contained in 41 CFR 60-741.4, and Employment of Disabled and Vietnam Era Veterans, 41 CFR 50-250.3. The concern further agrees to comply with all existing federal, state and city legislation Prohibiting discrimination in all phases of its performances and certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

Firm	Address	City	State	Zip
Signature of Authorized Representative	Title	Date		

Federal I.D. # _____

Please Return to: University of Nebraska at Kearney, Procurement and Payment Services, 2504 9th Ave, Kearney, NE 68849-1240

University of Nebraska at Kearney
Bid #20-02
August 26, 2019
EXHIBIT II – References

*College and University accounts of similar size, scope and nature.

1. Campus Contract Administrator Name and Address: _____ **Contact Name:** _____

_____ Title _____
_____ Tele# _____
_____ E-Mail _____

Chief Business Officer Name and Address: _____ **Contact Name:** _____

_____ Title _____
_____ Tele# _____
_____ Fax# _____

Contract Description:

Contract Term _____ Yrs _____ Mos _____ Annual Gross Sales _____

2. Campus Contract Administrator Name and Address: _____ **Contact Name:** _____

_____ Title _____
_____ Tele# _____
_____ E-Mail _____

Chief Business Officer Name and Address: _____ **Contact Name:** _____

_____ Title _____
_____ Tele# _____
_____ Fax# _____

Contract Description:

Contract Term _____ Yrs _____ Mos _____ Annual Gross Sales _____

3. Campus Contract Administrator Name and Address: Contact Name:

_____	_____
_____	Title _____
_____	Tele# _____
_____	E-Mail _____

Chief Business Officer Name and Address: Contact Name:

_____	_____
_____	Title _____
_____	Tele# _____
_____	Fax# _____

Contract Description:

Contract Term _____ Yrs _____ Mos _____ Annual Gross Sales _____

University of Nebraska at Kearney
Bid #20-02
August 26, 2019
APPENDIX A - Definitions

“Academic Year” begins with the start of fall and ends the following summer.

“Proposal” means Bidder’s written proposal documents submitted to the University pursuant to its Request For Proposals #20-02.

“RFP” means University of Nebraska at Kearney Request for Proposals #20-02.

“UNK,” “University” means University of Nebraska at Kearney.

University of Nebraska at Kearney
Bid #20-02
August 26, 2019
APPENDIX B – Product Volume

Vending Sales by Brand (July 1 – June 30)

Brand	2016-2017	2017-2018	2018-2019
AMP Total	54	32	32
Aquafina Base Total	182	157	156
Crush Total	14	12	17
Frappuccino Total	346	319	307
Gatorade Propel Total	7	43	65
Gatorade Total	112	97	123
Gatorade Zero Total			4
LifeWTR Total			4
Lipton Iced Tea Total	64	51	59
Lipton Pure Leaf Total	5	25	41
Mt Dew AMP Total			3
Mt Dew Code Red Total	57	56	68
Mt Dew Dewmocracy Total			1
Mt Dew Ice Total		6	17
Mt Dew Kickstart Total	299	325	386
Mt Dew Live Wire Total	4	4	1
Mt Dew Spiked Total		-1	
Mt Dew Total	317	246	258
Mug Total	12	14	18
Muscle Milk Total			4
Ocean Spray Total	155	171	172
Pepsi Dt Total	119	88	103
Pepsi Total	134	109	121
Pepsi Wild Cherry Total	97	68	78
Pepsi Zero Sugar Total			2
Rockstar Total	96	100	124
Sierra Mist LL RS Total	13	4	0
Sierra Mist Total			-1
Starbucks DS Energy Total	257	293	294
Starbucks TS Energy Total			1
	2344	2220	2458

Fountain Sales by Package (July 1 – June 30)

Package	2016-2017	2017-2018	2018-2019
BIB 1G		61	51
BIB 3G	648	672	795
BIB 5G	2770	2815	3485
	3418	3548	4331

Fountain Sales by Customer (July 1 – June 30)

Location	2016-2017	2017-2018	2018-2019
CHARTWELLS@UNK @ FOOD COURT			352
CHARTWELLS@UNK VENDOR	3138	3403	2148
RUNZA@UNK HEALTH & SPORTS	280	145	360
SDX@UNK @ MARKET 27 TH STREET			334
SDX@UNK LOUIE'S DINER			8
UNK CHICK FIL A CHARTWELLS			1129
	3418	3548	4331

Retail/B&C Sales (Non-Vending) by Package (July 1 – June 30)

Package	2016-2017	2017-2018	2018-2019
1 Liter 12L	64	153	116
1 Liter 6P		4	
1.23oz 24L		21	
1.25 Liter 12L		28	
1.41oz 18L		4	
1.41oz 24L		2	
1.48oz 20L		32	
11oz 12L	42	93	18
12oz 4P		17	3
12oz 6P			9
12oz 8P	18	71	36
13.7oz 12L	360	511	159
14oz 12L	114	291	62
15.2oz 12L	216	357	197
15.8oz 12L	6	1	
16.9oz 12P	7		
16.9oz 24P	149	370	160
16.9oz 6P			1
18.5oz 12L	165	401	201
18.5oz 6P	5		
2 Liter 8L	3		1
2.0oz 12L		6	
2.11oz 12L		10	
2.1oz 12L	30	51	7
2.8oz 12L	88	150	112
20oz 12L	5	20	31
20oz 24L	2672	3944	1625
28oz 15L			35
32oz 12L	2		2
64oz 8L			1
700ml 12L	45	160	113
750ml 12L	3		
Can 12oz 12L	144	103	18
Can 12oz 12P FM	133	169	179
Can 15oz 12L	141	242	95
Can 16oz 12L	185	341	147
Can 16oz 24L	20	109	92
Can 6.5oz 12L		24	
Can 7.5oz 6P			4
Can 7.5oz 8P		2	
	4617	7687	3424

University of Nebraska at Kearney
Bid #20-02
August 26, 2019
APPENDIX C – Vending Locations

Type	Sub-Type	Make/Model	Location	Asset #
Vendor	VEN 72 MED HVV	DN720P-E2	mens hall north	11608869
Vendor	VEN 72 MED Magnum	VN511	otto olsen bldg	c467889
Vendor	VEN 72 MED Magnum	V Max 720 Expanded Upgrade	Bruner Lower Level	7867306
Vendor	VEN 72 MED Magnum	V Max 720 Expanded Upgrade	Thomas Hall Main Entrance CSD	7860337
Vendor	VEN 72 MED Magnum	V Max 720 Expanded Upgrade	Men's Hall Stairwell	5986564
Vendor	VEN 72 MED Magnum	V Max 720 Expanded Upgrade	2nd fl education building	5655127
Vendor	VEN 72 MED Magnum	VN511	com bld. 2nd flr east	7878399
Vendor	VEN 72 MED Magnum	V Max 720	randall hall downstairs lounge	7859755
Vendor	VEN 72 MED Magnum	V Max 720	Mantor Hall Lounge	7860336
Vendor	VEN 72 SM HVV	DN504P H V V	Antelope 2nd floor	11608822
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 HEALTHY GFV	Cushing men?s locker room	11478388
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	warner hall	11555772
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	CTW 1 LAUNDRY	11555878
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	CTE LAUNDRY ROOM	11555879
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	CTE LAUNDRY 2	11555895
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	CTW LAUNDRY	11555867
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	field house Cushing	11555858
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	Otto Olsen 1	11555857
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	library lobby in side door	11555856
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	fine arts building	11537230
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	Cushing field house 2	11537233
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	library lounge north wall	11537231
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 HEALTHY GFV	warner hall	10966319
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	Copeland hall first floor	11173921
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	west of chikfala	10767669
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	Village Flats Glass Front	10963763
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BevMax 2 GFV	Thomas Hall Main Entrance	2340365
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 3 GFV	Residence North Lounge	7969496
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BevMax 2 GFV	MEMORIAL AFFAIRS BUILDING #2	8021720
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	1st flr. health &science	2564615
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	2nd floor education building	11555868
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BevMax 2 GFV	2ND FL COE	8021672
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	memorial Affairs building	11611595
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	Otto Olsen 2	11537232
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	Mantor Hall 1st floor lounge	10767672
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 3 GFV	nester hall walkway glass	7968802
Vendor	VEN Glass Front 72 LG Robotic	DN5800 BEVMAX 4 GFV	MSAB 180	11555889
Vendor	VEN Glass Front 72 SM	DN3800 BEVMAX 4 GFV	2nd flr. health &Science	10259809

University of Nebraska at Kearney
Bid #20-02
August 26, 2019

APPENDIX D - Fountain Equipment, Cooler, Icemakers Locations

Type	Sub-Type	Make/Model	Location	Asset #
Cooler	COO 1DR 12CF	CFXM12HC 1 DOOR SWING	Foster downstairs2	11406779
Cooler	COO 1DR 12CF	GDM12 1 Door Swing NS	west side jitters	60764
Cooler	COO 1DR 26CF	CFX26 1 DOOR SWING	Foster downstairs	11537021
Cooler	COO 1DR 26CF	GDM26 1 Door Swing	Foster field upstairs	10373669
Cooler	COO 1DR 26CF	GDM26 1 Door Swing w/Rev Cond	Foster Fields	8037536
Cooler	COO 1DR 26CF	CFX26 1 DOOR SWING HEALTHY	on north wall on west side	10867591
Cooler	COO 1DR 26CF	CFX26 1 DOOR SWING HEALTHY	in residence hall south cafeteri	10867588
Cooler	COO 1DR 26CF	GDM23 1 Door Swing NS	JITTERS WEST	875182UNK
Cooler	COO 1DR 26CF	CFX26 1 DOOR SWING HEALTHY	Rustic market south wall	10867604
Cooler	COO 2DR SL 33CF	GDM33 2 Door Slide w/Rev Cond	Perimeter	10017835
Cooler	COO 3DR SL	GDM69 3 Door Slide w/Rev Cond	Bookstore	2418477
Cooler	COO 3DR SL	GDM69 3 Door Slide w/Rev Cond	in new c store	11037247
Cooler	COO Countertop 1DR 2.5CF	CT100 Counter Top Cooler	checkout	7857292
Cooler	COO Countertop 1DR 2.5CF	CT100 Counter Top Cooler	LOPER EXPRESS EAST WALL COUNTER	7946540
Cooler	COO Countertop 1DR 4CF	G4 1 DOOR COUNTERTOP	boost market	11319571
Cooler	COO Countertop 1DR 6/7CF	GDM7 1 Door Swing	Outake	10050682
Cooler	COO Countertop 1DR 6/7CF	GDM7 1 Door Swing	COUNTER	7976117
Cooler	COO Countertop 1DR 6/7CF	GDM7 1 Door Swing	dining hall 2	8026770
Cooler	COO Countertop 1DR 6/7CF	GDM7 1 Door Swing	LOPER EXPRESS COFFEE COUNTERTOP	8035374
Cooler	COO Countertop 1DR 6/7CF	DC7 CT 1 Door Swing	WEST CENTER BUILDING 1RST LEVEL	5605573
Postmix	POS Combo 200lb 10Vlv	IDC215 10VLV C4.0 CAF CCARB	URS cafeteria	62A1130JD003
Postmix	POS Combo 200lb 8Vlv	ED200 8VLV C4.0 SLVR W/ SS	subway north	62D0522ED610R1
Postmix	POS Combo 200lb 8Vlv	ED200 8VLV C4.5 Slvr	subway - south machine	62D0522ED589R1
Postmix	POS Combo 250lb 10Vlv Pep Shot	IDC 255 SHOT 10VLV L4.0 SLVR CC	cafeteria west	11142727
Postmix	POS Combo 250lb 10Vlv Pep Shot	IDC 255 SHOT 10VLV L4.0 SLVR CC	cafeteria east	11142725
Postmix	POS Countertop 1Vlv	TEA URN 4 FLVR ELECTRIC DISPENSER	in subway on south end	10767705
Postmix	POS Countertop 1Vlv	TEA URN 4 FLVR ELECTRIC DISPENSER	Student Union	10964225
Postmix	POS Countertop Juice 4Vlv	QUEST ELITE CURVE 4VLV PB JUICE	south counter	11555100
Postmix	POS Countertop Juice 4Vlv	QUEST ELITE CURVE 4VLV PB JUICE	midway counter	11555101
Postmix	POS Countertop Juice 4Vlv	QUEST ELITE CURVE 4VLV PB JUICE	north counter	11405353
Postmix	POS Countertop Juice 4Vlv	QUEST ELITE CURVE 4VLV PB JUICE	eastcounter	11555105
Postmix	POS DI 2323 8Vlv >80lb	DI2323IC 8Vlv C4.0 Slvr 80Lb CCarb	Chick-Fil-A Fountain 1	11227943
Postmix	POS DI 2323 8Vlv >80lb	DI2323IC 8Vlv C4.0 Slvr 80Lb CCarb	Chick-Fil-A Fountain 2	11227944
Postmix	POS DI 3023 10Vlv >130lb	CB3023H 10Vlv C4.0 CAF 130LB CCarb	West Concession	11174197
Postmix	URN 2Vlv	TEA URN 2VLV SCALLOPED LIPTON	residence hall south	10207266

University of Nebraska at Kearney
Bid #20-02
August 26, 2019
APPENDIX E – Product Price List

UNK/Sodexo Price List (Non-Vending) (July 1, 2019)

Bottle and Can (non-vend)				
Brand	Package	Price/cs		
Aquafina	16.9oz 24P	\$12.40		
Aquafina	20oz 24L	\$22.02	Fountain	Price/gal
Aquafina	12oz 8P	\$9.49	5gal BIB	\$15.86
Gatorade	20oz 24L	\$30.84	3gal BIB	\$16.92
Dole Juice	15.2oz 12L	\$18.58	3gal BIB Lipton Tea	\$18.60
Frappuccino	13.7oz 12L	\$29.61	3gal BIB Gatorade	\$16.72
Gatorade Zero	20oz 24L	\$30.84	3gal BIB Brisk	\$16.40
Gatorade G2	20oz 24L	\$30.84	1gal BIB Flavorworks	\$22.65
Gatorade G2	12oz 6P	\$20.76		
Gatorade Propel	20oz 24L	\$35.94		
LifeWTR	1 Liter 12L	\$17.93		
LifeWTR	20oz 24L	\$24.00		
LifeWTR	700ml 12L	\$14.77		
Lipton Pure Leaf	18.5oz 12L	\$24.35		
Lipton Brisk	1 Liter 12L	\$14.44		
Lipton Iced Tea	20oz 24L	\$25.74		
Mt Dew AMP	Can 16oz 12L	\$19.00		
20oz Bottled CSD	20oz 24L	\$25.74		
Mt Dew Kickstart	Can 16oz 12L	\$15.43		
Mt Dew Kickstart	Can 12oz 12L	\$13.90		
Muscle Milk Pro	14oz 12L	\$39.76		
Muscle Milk	14oz 12L	\$34.49		
Ocean Spray Juice	15.2oz 12L	\$18.58		
Rockstar Energy	Can 16oz 24L	\$34.00		
SoBe Life Water	20oz 12L	\$19.55		
Starbucks Cold Brew	11oz 12L	\$28.48		
Starbucks DS Energy	Can 15oz 12L	\$30.53		
Starbucks IceCoffee	11oz 12L	\$28.48		
Starbucks Iced Espresso	14oz 12L	\$29.57		
Starbucks TS Energy	Can 15oz 12L	\$30.53		
12oz Cans	Can 12oz 12P FM	\$13.74		

UNK Price List (Vending) (July 1, 2019)

Product Name	Vend Price
AQUAFINA WATER 20OZPLFSV(24)	\$1.50
BUBLY SPK WTR LIME 20Z PET FSV(24)	\$1.50
DOLE 100% APPLE 15.2OZPLFSV	\$1.75
DOLE 100% ORG JC 15.2OZPLFSV	\$1.75
DT MT DEW 20OZPLFSV(24)	\$1.50
DT PEPSI WLD CHY (2018)20ZPLFSV(24)	\$1.50
DT PEPSI(2018) 20 FL OZ PET FSV(24)	\$1.50
FRAPP COFFEE 13.7FLOZGLFSV(12)	\$2.00
FRAPP MOCHA 13.7FLOZGLFSV(12)	\$2.00
FRAPP VANILLA 13.7FLOZGLFSV(12)	\$2.00
GADE FRUIT PUNCH 20OZWMPLFSV(24)	\$1.50
GADE LEMON LIME 20OZWMPLFSV(24)	\$1.50
GADE ORANGE 20OZWMPLFSV(24)	\$1.50
GAT G ZERO SGR LL 20Z WM PT FSV(24)	\$1.50
GATOR CBR 20Z/24	\$1.50
Gatorade G-Zero Sugar Glacier Freez	\$1.50
GT G ZR SGR GLC CHRY 20Z PT FSV(24)	\$1.50
LIFEWTR 20Z PET BOT FSV (24)	\$1.50
LIPTN PLF ICETEA SWT 18.5ZPLFSV(12)	\$1.50
LIPTON PRLF IT PEACH 18.5ZPLFSV(12)	\$1.50
LIPTONICEDTEAPEACH 20FLOZPETFSV(24)	\$1.50
LPT GRN TEA CTRS 20OZPLFSV(24)	\$1.50
LPTN ICE TEA UNSWTND 18.5ZPLFSV(12)	\$1.50
MD AMP 16FLOZ CN FSV(12)	\$2.00
MD AMP CHERRY BLST 16Z CAN FSV (12)	\$2.00
MD AMP GF CHRGBRYBLT 16ZRSCNFSV(12)	\$2.00
MD AMP GF CHRGCRRBRST 16ZRCNFSV(12)	\$2.00
MD AMP GF CHRGTRPSTRK 16ZRCNFSV(12)	\$2.00
MMILKVANCRM 14 FLOZ PL SGL FSV(12)	\$3.00
MMLK CHOCOLATE 14FOZ PL SGL FSV(12)	\$3.00
MT DEW 20OZPLFSV(24)	\$1.50
MT DEW CDE RD 20OZPLFSV(24)	\$1.50
MT DEW KCKSTRT FRTPN 16ZCNSGFSV(12)	\$1.50
MT DEW LIVE WIRE 20OZPLFSV(24)	\$1.50
MT DW ICE LMN LME 20Z PL BT FSV(24)	\$1.50
MT DW KCKSTRT MNG LME 16ZCNFSV(24)	\$1.50
MT DW KS BLKCHRY 12Z SLK CN FSV(18)	\$1.50
MT DW KS RCHRGBBPOM12ZSLKCNFSV(12)	\$1.50
MT DW KSHB PNORMNG 12ZSLKCN FSV(12)	\$1.50
MTDWKCKSTRTORGCIT 16ZCNSGL(12) FSV	\$1.50
MTN DEW KS BLK CHRY 16ZCN FSV(12)	\$1.50
MTN DEW KS MDNGHTGRP16ZCNSGLFSV(12)	\$1.50
MTN DEW VOLT 20OZ PET SGL FSV(24)	\$1.50
OCN SPRAY CRANGRA 15.2OZPLFSV	\$1.75

PEPSI 20OZPLFSV(24)	\$1.50
PEPSI WILD CHY 20OZPLFSV(24)	\$1.50
PEPSI ZERO SUGAR 20OZPLFSV(24)	\$1.50
PROPEL WTRMLN 20OZ PL SCAP FSV (24)	\$1.50
PROPELFITATRGRP 20OZWMPLFSV(24)	\$1.50
PROPELFITWTRBRY 20OZWMPLFSV(24)	\$1.50
PROPELFITWTRKSBY 20OZWMPLFSV(24)	\$1.50
RKSTR SF ENERGY 16OZ CN SGL FSV(24)	\$2.00
ROCKSTAR ENERGY 16Z CAN SGL FSV(24)	\$2.00
ROCKSTAR PRZR PNCH 16ZCNSGL FSV(24)	\$2.00
ROCKSTAR PRZR SLVR 16ZCNSGL FSV(24)	\$2.00
ROCKSTAR PUNCHED 16OZCANFSVSLG(24)	\$2.00
ROCKSTAR PURZERWTRMLN 16ZCNFSV(24)	\$2.00
SB DS ENGY VAN 15FLOZ CNSNGLFSV(12)	\$2.00
SB TS ENERGY MOCHA 15OZ CN FSV(12)	\$2.00
SB TS ENRGY CARAMEL 15OZ CN FSV(12)	\$2.00
SB TS ENRGY VANILLA 15OZ CN FSV(12)	\$2.00
SBDSENGYCOFFEE 15FLOZCNSGLFSV(12)	\$2.00
SBDSENGYMOCHA 15OZCNFSV(12)	\$2.00

Beverage Rights Licensing Agreement

This Agreement is made and entered into effective the 1st day of January, 2010, by and between the Bottling Group, LLC, a Delaware limited liability company (the "**Contractor**") and the Board of Regents of the University of Nebraska on behalf of the University of Nebraska at Kearney (the "**University**").

In consideration of the mutual promises contained in this Agreement, the parties agree to the following terms and conditions:

1. DEFINITIONS

All capitalized terms in this Agreement, not otherwise defined, have the following meanings:

"Academic Term" is a division of an academic year, e.g. a semester or summer session, during which UNK holds classes.

"Academic Year" begins with the start of the Fall Academic Term and ends upon completion of the last summer session the following summer.

"Always Stocked" is defined, as at least one item of each selection available at all times.

"Approved Beverages" means the Approved Vending Beverages and the Designated Non-Vending Beverages marketed under trademarks or brand names owned or controlled or licensed for use to the Contractor.

"Approved Vending Beverages" means the Beverages the Contractor will provide and dispense in the Approved Vending Machines pursuant to Section 2. Approved Vending Beverages may include Beverages provided by Contractor through a Supplier (e.g. Izze or Naked Juice). The Approved Vending Beverages as of the effective date of this Agreement are listed in Exhibit "1" - Approved Vending Beverages. Condiments, if any, shall be packaged as part of and are included in the definition of Approved Vending Beverage. No separate condiment stands are provided for or permitted under this Agreement.

"Approved Vending Location" means a location on the UNK campus that UNK has approved for installation and operation of an Approved Vending Machine.

"Approved Vending Machine" or simply **"Machine"** means a beverage vending machine which 1) is supplied by the Contractor, 2) has been approved by UNK for installation and operation in an Approved Vending Location, and 3) meets the minimum specifications set forth in Section 2.2.

“Approved Vending Prices” means the vend prices of Approved Vending Beverages as described in Section 2.5.8.

“Beverages” means all non-alcoholic beverages (including carbonated and non-carbonated and isotonic beverages), including the bases from which such non-alcoholic beverages may be prepared except: 1) tap water and water contained in water-cooler sized bottles; 2) hot drinks, including by way of example, but not limitation the following beverages that are a) intended to be served hot and b) not dispensed in bottles or cans: coffee, tea, hot chocolate, cider, mocha, cappuccino, espresso, and chais; 3) non-alcoholic beer and wine beverages; 4) fresh squeezed fruit (including lemonade) or vegetable juice; 5) fruit (including lemonade) or vegetable juice derived from frozen concentrate; 6) milk, either soy or dairy; 7) milk or soy-based dietary supplement drinks (e.g., Slim Fast); 8) fresh brewed iced tea; and 9) fresh fruit or vegetable shakes or smoothies.

“Commission” means a percentage of the actual cash (“cash in bag” or “CIB”) collected by Contractor from the Approved Vending Machines placed at the Approved Vending Locations; provided however, that documented or reasonable estimates of coin and currency lost to theft shall be included in CIB for the purposes of Commission calculations. Commissions shall be calculated by multiplying the applicable Commission Rate (see Section 8.2) by the corresponding CIB collected for that Approved Beverage. The parties acknowledge and agree that this percentage is not based on the provision of any services to be provided by the University. Commissions earned by the University under this Agreement are compensation for allowing Contractor access to the UNK and its community and are not compensation for any services rendered.

“Competitive Beverages” means all Beverages other than Approved Beverages and any products whether or not Beverages, marketed under Beverage trademarks that are not Contractor’s Beverage trademarks. More specifically, but not by way of limitation, “Competitive Beverages” shall include Beverages distributed by and affiliated with the Coca-Cola Company (including but not limited to all Coca-Cola/Coke branded Beverages, Sprite, Vault, Dasani, Powerade, Minute Maid products, Nestea, Fanta, Vitaminwater, Odwalla, Full Throttle, Caribou Coffee, and V-8 Splash); those distributed by and affiliated with the Dr. Pepper/Snapple Group (including but not limited to all Dr. Pepper Beverages, Seven-Up products, Sunkist, Squirt, Deja Blue, Arizona Tea and Snapple products); and Monster products and Red Bull products.

“Designated Non-Vending Beverages” means the Approved Beverages Contractor shall make available for sale or dispensing on the University campus. Designated Non-Vending Beverages may include Beverages provided by Contractor though a Supplier.

“Fountain Equipment” means all fountain equipment, including juice dispensers, and ice dispensing equipment reasonably necessary to enable UNK and third parties to dispense high-quality Designated Non-Vending Beverages.

“Loper Dollars” means the declining balance program-administered by UNK, offered only to eligible UNK students and employees holding valid UNK ID cards. Loper Dollars are not affiliated with any financial institution.

“Loper Dollars Stored Value Account” or **“Loper Dollars Account”** is a stored value account administered by UNK, which is opened at the option of any eligible UNK student or employee by making a deposit at designated locations on campus. The Loper Dollars Account may be used for purchases at locations participating in the Loper Dollars program.

“Lopers” is the nickname for the University of Nebraska at Kearney school mascot, i.e., the Antelopes.

“Period Vending Commission” means Commissions paid periodically (every four or five weeks) as described in Section 8.2.

“NCAA” means the National Collegiate Athletic Association or a successor organization with jurisdiction over UNK’s Intercollegiate Athletic Program.

“Non-Vending Beverage Cost to University” means the prices at which UNK, as well as its dining services, concessions, auxiliary operations and contracting retail outlets, will purchase Designated Non-Vending Beverages pursuant to Section 3.2. The Non-Vending Beverage Cost to UNK, as of the effective date of this Agreement, is listed in EXHIBIT “3.”

“RFP” means University of Nebraska at Kearney Request for Proposals #10-01.

“Supplier” means an entity other than Contractor that produces or supplies an Approved Vending Beverage or a Designated Non-Vending Beverage to UNK on behalf of Contractor.

“Teams” shall mean all men’s and women’s intercollegiate athletic competition teams at UNK. Contractor will have exclusive marketing, advertising, and promotional rights in the beverage category regarding the University of Nebraska at Kearney, the Teams, and all UNK Marks owned or controlled by the University.

“Term” shall refer to that period of time during which the Agreement is executory, commencing on January 1, 2010, and ending on December, 31, 2019, unless earlier terminated in accordance with the provisions of this Agreement or otherwise in accordance with the law.

“UNK” means the University of Nebraska campus known as the University of Nebraska at Kearney.

“UNK ID Card” is the official identification card issued to eligible UNK students, staff, and faculty.

“University’s Beverage Program” means the totality of the rights, obligations, and mode of vending and serving Beverages at UNK, as described in the RFP, Contractor’s response to the RFP, and this Agreement.

“UNK Marks” shall mean only those trademarks, trade names, service marks and trade dress owned by the Board of Regents of the University of Nebraska and associated solely with UNK, which may be updated by the University from time to time by written notice to the Contractor.

“Year” means the period commencing January 1 of a calendar year and ending December 31 of the same calendar year.

2. GRANT OF EXCLUSIVE BEVERAGE VENDING RIGHTS

2.1 Grant to Distribute Product and Install Machines.

2.1.1 Subject to the terms and conditions of this Agreement, and subject to the exceptions in Section 7, the University agrees that all Beverages sold, distributed, or offered for sampling (that is, distributed at no cost) at all locations at UNK where Beverages are sold, distributed or offered for sampling will be Approved Vending Beverages. The University hereby grants the Contractor, and the Contractor hereby accepts an exclusive license to install and operate Approved Vending Machines at UNK to sell Approved Vending Beverages. Throughout the Term, the University shall not grant any third party the right or license to install or operate any piece of equipment at UNK to sell any Beverage.

2.1.2 Unless explicitly provided to the contrary herein, Contractor shall be responsible for the delivery, and the related cost of such delivery, of all Approved Vending Machines and all Approved Beverages. The Contractor, at its sole expense, shall fill, maintain, and service all Approved Vending Machines. The Contractor shall use all reasonable efforts to ensure that each Approved Vending Machine is kept Fully Stocked with Approved Vending Beverages. The University shall permit the Contractor, its employees, agents and representatives to enter an Approved Vending Location during such times (and at no other times) as the University and the Contractor shall mutually agree to install and service Approved Vending Machines and stock Approved Vending Beverages.

2.2 Approved Vending Machines; Energy Star; Approved Vending Locations.

2.3.1 On the effective date of this Agreement, unless specifically provided herein to the contrary, the Contractor shall supply, install, service and operate solely at its cost all Approved Vending Machines, including items related or incorporated into the Machines, such as labels, front facings, dollar bill validators, bill changers, and such other industry standard equipment, all of which shall remain the property of Contractor, for the purposes of selling Approved Vending Beverages at Approved Vending Locations, as those locations are set forth on Exhibit “5”, attached hereto and incorporated herein. In the

absence of the University's prior express written consent, no alteration shall be made to the designated Approved Vending Locations. Contractor agrees that it will not, in UNK's sole judgment, place an Approved Vending Machine so as to interfere with or hinder the retail sales of other food and beverage products to which Contractor is granted no rights under this Agreement. Upon the University's reasonable request, the Contractor shall promptly remove an Approved Vending Machine from an Approved Vending Location or add an additional Machine upon a showing that such a Machine would serve the needs and conveniences of UNK's Approved Vending Beverage customers, regardless of profit considerations. The parties agree to enter into good faith discussions from time-to-time throughout the Term, in order to upgrade and modernize Machines, alter Approved Vending Locations or otherwise meet their mutual needs with respect to the sale of Approved Vending Beverages.

- 2.3.2 All Contractor provided Approved Vending Machines and any equipment (e.g. electronic coin and currency changers) related or incorporated into the Machines shall be new (or refurbished to "new" condition) and state-of-the-art. The Machines must have the capacity to dispense and support all Approved Vending Beverages, regardless of container sizes and styles. The Approved Vending Machines shall from time-to-time and with regularity be improved and upgraded in order to maintain a very high standard Machine. All Approved Vending Machines, serving chilled Approved Vending Beverages, including those that shall be replaced from time-to-time as a consequence of obsolescence or natural wear and tear, shall qualify for and be awarded the "Energy Star" designation. Further, Contractor shall participate in energy conservation efforts as are reasonably required by the University or as required by government regulation or other applicable law. Contractor shall clean the cooling coils or similar mechanical cooling element, if any, of each Approved Vending Machine at least once per Year. Contractor shall turn off or disconnect illuminated signs in Approved Vending Machines, which are not essential to product identification or equipment operation.
- 2.3.3 At all times during the Term, all Approved Vending Machines and associated equipment shall meet all applicable local, state and federal safety codes and other requirements for food and/or beverage vending equipment and the sale of vended products.
- 2.3.4 From time-to-time during the Term, Contractor shall present to the University graphic design art to appear on the exterior of the Approved Vending Machines or for other purposes. All costs of such design shall be borne by the Contractor. Only for purposes to ensure that the design is keeping the image and reputation that the University strives to maintain, UNK shall have the right to approve or disapprove any proposed vending machine art or design; provided however, that approval shall not be unreasonably withheld or delayed. In addition, Contractor agrees to provide no less than ten (10) different co-branded Machine fronts, highlighting aspects of UNK life.
- 2.3.5 In the event that the University agrees to either 1) transfer its right of present possession of, or 2) destroy a building in which the Contractor then operates an Approved Vending

Machine, the University shall notify the Contractor of such agreement to sell or decision to destroy, and the University shall have the right to terminate the Contractor's right to install and operate Approved Vending Machines in such building. Upon such termination of the Contractor's right, the Contractor, at its sole expense, shall promptly remove the Approved Vending Machine. If reasonably required, Approved Vending Machines will be removed or relocated at Contractor's expense in order to accommodate renovation of existing facilities and the construction of new facilities.

- 2.3.6 All Machines and related equipment located in any Approved Vending Location shall reflect industry standard sizes, paneling, lighting, colors, style, and such other elements as may provide for a uniform and attractive appearance among the Approved Vending Locations. The foregoing matters of Machine and Approved Vending Location styles and appearance are all subject to UNK's prior review and approval, which shall not be unreasonably withheld. Without the University's prior consent, the Contractor shall not use space in the Approved Vending Locations, or any other UNK location, in any manner or for any purpose except for the use expressly permitted by the terms and conditions of this Agreement. No changes or modifications by Contractor to the Approved Vending Locations shall be made, including alterations to the electrical, plumbing, or structural components of the Approved Vending Locations, without the University's prior written consent. Any such changes or modifications shall be made solely at Contractor's expense. Contractor is responsible for the cost of cleaning or repairing any damage to UNK floors and walls, reasonable wear and tear excepted, as a result of Approved Vending Machine moves, installation activities or regular servicing. The Contractor shall use non-marring jacks and other related equipment necessary to avoid such damage. At the termination or expiration of this Agreement, Contractor shall return possession of each Approved Vending Location to the University in the same condition as on the effective date of this Agreement, reasonable wear and tear, and loss due to casualty or condemnation, excepted. The Contractor acknowledges that the University has granted it a reasonable opportunity to review and inspect each Approved Vending Location and to conduct such tests and investigations as are reasonably necessary to satisfy Contractor's ability to perform hereunder. The University disclaims all warranties, express or implied, of the condition or suitability of the Approved Vending Locations for the Contractor's particular purpose.
- 2.3.7 Contractor shall provide an identification numbering system for all Approved Vending Machines with each Machine's ID number clearly displayed on a decal or label, easily recognizable on the outside front of the Machine. This ID number shall be used to report service issues, refunds, commissions, reporting and tracking. Within thirty (30) days of the effective date of this Agreement and annually thereafter, the Contractor shall provide to UNK a list of all Approved Beverage Machines installed at UNK, listed by the ID number described above in this paragraph, the equipment serial number, the manufacturer, the meter reading, date installed and Approved Vending Location.

2.4 Responsibilities to Service and Operate Approved Vending Machines.

- 2.4.1 Contractor shall bear the cost of connecting Approved Vending Machines to electrical sources at the Approved Vending Location. The University shall provide electrical service at no cost to Contractor for the Approved Vending Machines; provided however, the University makes no representation or warranty concerning the quality or continuity of such service; nor does the University assume or accept any liability whatsoever with respect to an electrical interruption's impact on vending sales or maintenance of inventory.
- 2.4.2 Contractor is responsible for performing, at its own expense, all maintenance, repair, replacement of parts, and such service necessary to maintain the Approved Vending Machines, including any meters and special attachments, in reliable working condition. Contractor shall secure a reasonable level of replacement equipment and/or components in order to minimize to the greatest extent reasonably possible, the out of service time of a machine. Contractor shall maintain a log of all service calls received and the disposition of each. This log shall be available to the University for periodic review.
- 2.4.3 A program of preventive maintenance and regular replacement of worn, damaged or malfunctioning Approved Vending Machine equipment shall be instituted and carried out by Contractor, in accordance with Exhibit "8" - Preventative Maintenance Program, attached and incorporated herein by this reference. Contractor's Preventive Maintenance Program shall specifically focus on frequent and continual equipment replacement in high volume locations where obsolescence and wear negatively impact vending sales. Contractor's regular maintenance shall be planned and scheduled so as to maximize vending sales and avoid contributing to pedestrian and traffic congestion.
- 2.4.4 Contractor shall maintain the Approved Vending Machines in a clean, safe, and sanitary condition at all times, regularly and frequently removing any vending related debris from the areas immediately adjacent to the Machines. The external cabinet of all Approved Vending Machines, including cabinet top, shall be kept free from dust and other contaminants. Screens, compressor zones and condensers shall be inspected regularly for dust, seepage and other residue and shall be kept clean. Contractor will maintain the Approved Vending Machines, material handling equipment, and service vehicles in a clean, attractive, and sanitary condition to the satisfaction of the University.
- 2.4.5 Contractor shall apply its best efforts to respond within four (4) hours of any request for repair or service during its regular business hours (Monday to Friday-8:00 a.m. to 5:00 p.m., excluding holidays). Contractor shall provide UNK with the name, phone numbers and other useful contact information, of a Contractor employee designated and authorized to act on behalf of the Contractor with respect to service requests outside of regular business hours and emergencies at any time. Inoperable or malfunctioning Approved Vending Machines shall be fully operational within three (3) days of Contractor's receipt of UNK's notice of repair or service needs.

- 2.4.6 UNK will provide reasonable routine pest control services in and about the Approved Vending Locations. Upon reasonable request by the University and in no case shall such request be provided less than four (4) business days prior to the treatment, the Contractor shall disconnect and move vending Machines for cleaning and pest control purposes. Such requests shall not be required should UNK and the Contractor establish a regular, periodic scheduled pest control service program.
- 2.4.7 Except as otherwise provided in this Agreement, the University shall have no duty to care for the Approved Vending Machines and no obligation or responsibility to protect, maintain, repair, or otherwise care for any Approved Vending Machine, provided, however, the University shall use reasonable care to reduce the risk of loss (including from theft and vandalism) to the Approved Vending Machines while such equipment is in Approved Vending Locations. The Contractor hereby releases the University from all claims, liabilities or expenses arising out of the installation or operation of an Approved Vending Machine in an Approved Vending Location, provided such claims, liabilities or expenses are not caused by University's gross negligence or willful misconduct.
- 2.4.8 UNK will provide the same security oversight to the Approved Vending Locations and Machines, as it provides other spaces generally at UNK. Notwithstanding anything to the contrary herein, Contractor, however, assumes all risks of loss or damage due to vandalism or theft. Any such damage or loss shall be immediately reported by the Contractor to UNK Police and Parking Services at (308) 865-8517, with such details as may reasonably be requested by the police. In addition, the parties agree that the Contractor shall not be obligated to pay UNK any Commissions pursuant to this Agreement on documented revenue losses resulting from Beverage vandalism or Beverage theft.
- 2.4.9 Refunds to customers who encounter an unsatisfactory vending experience will be processed at refund locations designated and labeled or otherwise clearly identified on each Machine. As of the effective date of this Agreement, the UNK Finance Office, the Office of Residential and Greek Life, and the Calvin T. Ryan Library shall serve as refund locations. If needed, additional refund locations may be added with the prior approval of the UNK. Contractor may, with the approval of UNK, settle refunds with product vouchers accepted by any Approved Vending Machine, in lieu of cash.

2.5 Approval of Vending Beverages; Prices.

- 2.5.1 The Approved Vending Beverages, listed on Exhibit "1" including size and package type, at the prices set forth below in this Section 2.5, shall be offered at UNK as of the effective date of this Agreement. The University shall have the right to approve the Beverage offerings for each Approved Vending Machine. Throughout the Term, but no less frequently than once each calendar quarter, Contractor shall have the right to propose to the University in writing, additional, specific Beverages for vending sales, including package size and type. All Approved Vending Beverages brands and flavors shall enjoy

national and local acceptance provided that Contractor's proposals shall provide for a cycle of products to be offered throughout the Year, taking into consideration and including offerings to address the need for Beverage rotation prompted by warm/cool season changes, dietary needs, healthy choices, and customer taste. If the proposal is accepted by University, Exhibit "1" shall be amended to reflect the accepted proposal, effective upon University's approval and enforceable throughout the balance of the Term or until similarly amended. In the event that an Approved Beverage is no longer available to the Contractor, it shall be removed from Exhibit "1." In no instance shall the Contractor place any Beverage in the Approved Vending Machines that may be regarded by the administration of the University as being unfit for campus consumption. University will not unreasonably withhold its approval of a request by Contractor to add or remove a Beverage from the list of Approved Vending Beverages.

- 2.5.2 Approved Vending Beverages containing healthy alternative characteristics shall be promoted as "healthier for you" whenever economically feasible over similar products. Such beverages shall be available in all Approved Vending Locations and are described on Exhibit "2," attached hereto and incorporated herein by this reference. For purposes of interpretation of this Agreement, "healthier for you" Beverages shall be considered to be and included in the definition of "Approved Vending Beverages," and all provisions applicable to Approved Vending Beverages are also applicable to those Beverages listed on Exhibit "2" or any amendment thereto.
- 2.5.3 While the Approved Vending Machines must operate throughout the Term, reduced Approved Vending Beverage selections may be offered, with the mutual consent of the parties, during summer sessions and breaks from regular classroom attendance (e.g. holiday and spring breaks).
- 2.5.4 When requested, samples of items offered must be furnished free of all expenses within three days, and will be returned at the Contractor's expense if requested.
- 2.5.5 The Approved Vending Beverages sold shall be new, fresh, of the best quality, and guaranteed free of defects in material and workmanship, for a minimum period as provided by the manufacturer at time of sale. The Approved Vending Beverages shall meet the quality standards set out in Contractor's response to the RFP and be offered at prices competitive with those for similar products sold in the area surrounding UNK.
- 2.5.6 Contractor will provide nutrient analyses, ingredient and shelf-life coding on all Approved Vending Beverages with labeling in compliance with all applicable federal and local law, including but not limited to those packaging, labeling, quality standard regulations and rulings promulgated by the United States Department of Agriculture, the Food and Drug Administration, and the Federal Trade Commission.
- 2.5.7 Contractor shall be responsible for all loss associated with out-dated product without penalty or liability of any sort placed upon the University for such loss.

2.5.8 Identical (i.e. flavor, brand, packaging) Approved Vending Beverages shall be offered at the same Approved Vending Price in all Approved Vending Machines. Any change in Approved Vending Price for one serving or bottle shall be made at the same time for all servings or bottles of that particular Beverage. Approved Vending Prices for Year 2010 are:

Product	Price
12 oz carbonated soft drinks	\$.75
20 oz carbonated soft drinks	\$1.25
Ocean Spray/Dole, Aquafina Tropicana Juice Drinks, Ocean Spray, Dole 100% Juices, Aquafina Water,	
20 oz Gatorade, G2 and Propel	\$1.50
20 oz SoBe Product	\$2.00

In Year 2011, Contractor may increase the Approved Vending Price of any Approved Vending Beverage by \$.25. No other adjustments in Approved Vending Prices shall be allowed hereunder, unless explicitly approved by UNK, following a notice of Contractor's request to increase prices, which must be received by UNK no less than thirty (30) days prior to the start of any Academic Year. All prices shall include any applicable sales taxes.

Each remaining Year in the Term, beginning with Year 2012, and in the event of a substantial and unforeseeable increase (as supported by appropriate documentation) in a major component of Contractor's cost of goods, manufacture or delivery, the parties will engage in good faith negotiations and discussions with respect to any increase in Approved Vending Price that may be requested by Contractor.

2.6 Beverage Delivery.

2.6.1 The Contractor, at its sole expense, shall fill, maintain, and service all Approved Vending Machines, which shall be Always Stocked with Approved Vending Beverages, unless otherwise agreed to by UNK. The Contractor, its employees, agents and representatives may enter an Approved Vending Location during such reasonable times (and at no other times) as UNK and the Contractor shall mutually agree in order to service and stock the Approved Vending Machines.

2.6.2 Contractor shall make standard deliveries of Approved Vending Beverages on Monday, Wednesday, and Friday, at reasonable times to be mutually agreed upon by the parties. Contractor shall notify UNK of the Contractor's designated employees and their telephone numbers for the purposes of communicating with Contractor about Beverage delivery needs. Certain Machines may require Beverage delivery on Saturdays and/or Sundays, which Contractor shall provide upon the reasonable request of UNK. Should the

provisions in this paragraph fail to maintain the Machines Always Stocked, the parties shall promptly engage in good faith discussions for the purposes of altering the delivery schedule to achieve the Always Stocked standard. In any case, Contractor shall review the standard delivery schedule no less frequently than once a calendar quarter or as reasonably requested by UNK.

- 2.6.3 Contractor will make Approved Vending Beverage emergency deliveries, as needed. Contractor will provide UNK with Contractor phone numbers or other contact information to be used in order to notify Contractor when an emergency delivery is needed.
- 2.6.4 With each Approved Vending Beverage delivery, Contractor shall remove from UNK's property any refuse caused by the stocking and maintenance of the Machines; no such refuse shall be left in UNK dumpsters, waste containers, or recycling receptacles.
- 2.6.5 When classes are in session, all Approved Vending Machines shall be checked for stock no less than once a week to insure Machines are Always Stocked and in satisfactory operating condition. When classes are not in session, Approved Vending Machines in occupied buildings shall be inspected regularly as necessary to meet customer demand.
- 2.6.6 Contractor shall take such action as is commercially reasonable to stock and maintain Machines in order to meet the Approved Vending Beverage needs of attendees at special events, conferences and workshops held at UNK, provided that UNK shall provide Contractor with reasonable notice prior to such special events.
- 2.7 Vending Purchases: Currency, Loper Dollars, Card Readers.
 - 2.7.1 All Approved Vending Machines shall accept payment in the form of currency or coin and shall include a coin return. All Approved Vending Machines shall be equipped with cash accountability meters. Contractor shall provide all of its Approved Vending Machines, such that they are compatible to receive installation of the CBORD MDB D500 card reader which facilitates purchases with Loper Dollars. UNK shall have the authority to select those Machines, in consultation with Contractor, which are to be equipped with card readers. Whereas UNK shall be responsible for the cost associated with the purchase, repair and replacement of such card readers, Contractor shall install the card readers on its Machines at no cost to UNK. At all times, the card readers described in this paragraph shall be the property of UNK. Should Contractor for any reason remove a Machine from UNK, then Contractor shall separate and disengage such card readers with care and, at UNK's discretion and direction, either reinstall the reader on the replacement Machine, return the reader to UNK, or otherwise dispose of the reader. UNK will keep the Contractor fully advised of any changes in the use of the Loper Dollars program, which may affect Contractor's performance under this Agreement, and more specifically under this section. Should UNK alter its Loper Dollar Program in such a way as to require significant changes in the card readers and/or Machines, the parties shall

engage in good faith discussions and negotiations with the intent to implement any upgraded Loper Dollar Program in a reasonable manner. The University shall provide data ports for purposes of this paragraph at no cost to the Contractor.

- 2.7.2 Contractor agrees to accept in "as-is" condition those University-owned card readers and associated hardware installed on beverage vending machines at UNK prior to the effective date of this Agreement. Such pre-existing card readers will be installed by the Contractor on the Approved Vending Machines at the locations and in the quantities noted below:

Calvin T Ryan Library (1)
Cushing Coliseum (1)
Founders Hall (1)
College of Education (1)
Mantor (2)
Copeland Hall (2)

- 2.7.3 For Approved Vending Beverage purchases made using the Loper Dollars Program, the Contractor shall pay UNK an administrative fee equal to 2.5% of the gross Loper Dollar sales. (Annually Contractor and UNK shall review the administrative fee in good faith and discuss any concerns that may prompt an amendment to the fee.) For Approved Vending Machines connected and utilizing CBORD MDB D500 card readers, UNK will provide Contractor with a monthly report of Loper Dollar gross beverage revenue and a calculation of the administrative fee, for the period beginning on the 16th day of the month and ending on the 15th day of the following month. The report will be provided to Contractor within thirty (30) days of the closing of the monthly reporting period, along with a check for the reported gross sales, less the administrative fee.
- 2.7.4 Upon reasonable request by Contractor, the University will make available such financial records pertaining to Loper Dollars sales, as may be reasonable for internal and/or external audits. UNK shall maintain a record of Loper Dollars Stored Value Account transactions for a minimum of five (5) years from the date of the transaction, which obligation shall survive the termination or expiration of this Agreement.
- 2.7.5 While as of the effective date of this Agreement, there are no plans to use the MEI Series 2000 card readers at UNK, during the Term should UNK determine that such a card reader system meets UNK needs, then Contractor agrees to provide MEI Series 2000 card readers or their upgraded equivalent at Contractor's cost. Such Series 2000 card readers would remain the property of Contractor, who would be responsible for all cost of installation, repair and maintenance of MEI Series 2000 card readers. Should such MEI Series 2000 card readers or their upgraded equivalent be installed, the parties agree to engage in such good faith discussion and negotiation as may be required in order to address matters not otherwise provided for herein with respect to debit and credit card

purchases facilitated by card readers and other related matters, such as the Payment Card Data Security Standard.

2.8 Future Beverages. Contractor will use its best efforts to offer and provide as Approved Vending Beverages, any of Contractor's newly marketed Beverages, within ninety (90) days after such Beverages are offered for sale generally to the public in the Kearney-Grand Island-Hastings area, on terms comparable to those offered other similarly situated universities offering the new product.

2.9 Vending Sales Reports.

2.9.1 Contractor will provide Monthly Vending Commission reports in a format reasonably prescribed or agreed to by UNK, setting forth the following:

- Product codes for individual categories;
- Building and location of machines;
- Approved Vending Machine number;
- Beverage sales prices;
- Date of Approved Vending Machine installation/removal;
- Gross sales, sales taxes, and sales net of sales taxes, refunds in the aggregate and for each Approved Vending Machine by location for each reporting period;
- Monthly Commission and Year-to-Date Commission for each Approved Vending Machine by location for each month of the fiscal year;
- Required beginning and ending non-reset cash meter readings;
- Actual cash collected;
- Amount over and short in aggregate and by Approved Vending Machine.

2.9.2 In addition, Year-to-Date ("YTD") reports shall be provided to UNK, using a July 1 through June 30 fiscal year period. YTD reports shall contain the information listed above, aggregated for the fiscal year and be provided to UNK within forty-five (45) days of the end of each calendar quarter during the Term. Contractor's reports shall reflect and incorporate generally accepted accounting principles for colleges and universities and any applicable standards or rules promulgated by the Department of Administrative Services of the State of Nebraska.

2.9.3 In conjunction with the submission of the YTD quarterly reports, Contractor shall meet with UNK to discuss vending performance, sales, commissions and trends, at which time Contractor shall make recommendations, when indicated, concerning the addition, removal or other change in or to any Approved Vending Location, changes designed to improve sales, the delivery of fresh products, and the avoidance of waste.

2.10 Vending Expenses and Taxes.

The Contractor shall pay, when due, all costs and expenses associated with all Approved Vending Machine installation, including equipment positioning and connection to building plumbing or electrical sources. The University, at its expense, shall provide all electrical service and wiring for Approved Vending Locations up to the electrical sockets. The University shall provide the Ethernet network connectivity for any Approved Vending Machines, equipped with UNK's card readers that process non-cash vending transactions.

The Contractor shall: 1) pay, when due, all taxes, assessments, license fees, permits (including parking), or other obligations, which are now or may be imposed in the future by any governmental authority arising out of the conduct of Contractor's business (including, without limitation, the ownership and operation of the Approved Vending Machines or the selling of Approved Vending Beverages at the Approved Vending Locations); 2) charge, collect, and pay all applicable sales, use, and/or excise taxes that may be imposed upon Approved Beverages of Approved Vending Machines; and 3) in Contractor's own name (as appropriate) remit to and file with the proper governmental authorities all the foregoing taxes, assessments, fees, and necessary returns and comply with all regulations and rules promulgated by such governmental authorities. Upon the University's reasonable request, Contractor shall deliver to the University proof of the payment of all taxes.

3. GRANT OF EXCLUSIVE BEVERAGE POURING AND RETAIL RIGHTS

- 3.1 Ensuring Fountain and Retail Quantities Needed. The Designated Non-Vending Beverages shall be provided to UNK and UNK shall have the right to offer to sell or dispense, either in fountains, bottles, or cans, in buildings and athletic facilities on the UNK Campus, such Designated Non-Vending Beverages. Contractor shall use its best efforts to provide UNK with Designated Non-Vending Beverages adequate to meet its requirements, at the times and locations, and in the quantities and types requested by UNK and those food service businesses obligated by UNK policy and contracts to serve Contractor's Beverages. Should Designated Non-Vending Beverages be provided by Suppliers, Contractor shall: 1) cause any such Supplier to agree to provide its Designated Non-Vending Beverages in quantities adequate to meet all UNK's requirements for such Supplier Beverages, and 2) ensure the Supplier's prompt performance of all delegated Contractor obligations under this Agreement.
- 3.2 Grant of Exclusive Rights; Initial Non-Vending Beverage Cost to University; Price Adjustment.
- 3.2.1 Except as explicitly provided for to the contrary, University grants Contractor the exclusive right to make Beverages available for sale and distribution at UNK, including all fountain sales, bottle and can sales in all locations where Beverages are sold or distributed at UNK. UNK, its dining services, concessions or other retailing outlets shall serve or dispense, at a minimum, in fountains, bottles and cans, Contractor's Designated

Non-Vending Beverage products in all UNK facilities. In no circumstance shall Competitive Beverages be permitted in or on the UNK Campus, except as otherwise permitted in this Agreement. Contractor will have exclusive rights in the Beverage category regarding pouring and retail rights at UNK, Teams' sponsorships, and licenses to the UNK Marks.

- 3.2.2 Throughout the Term, the Contractor shall offer to sell to UNK, its dining services, concession and other retailing outlets, and UNK agrees to purchase from Contractor, at prices not to exceed the Non-Vending Beverage Cost to University, as adjusted from time-to-time and as provided herein, on terms of net forty-five (45) days: 1) all the UNK requirements of bottles and cans of Designated Non-Vending Beverages; and 2) all the UNK requirements of fountain dispensed Designated Non-Vending Beverages. (Note definition of Designated Non-Vending Beverages includes Supplier provided Beverages.) Contractor shall require and cause Supplier to offer through the Contractor or to sell directly to the UNK, its dining services, concessions and other retailing outlets located at UNK, all UNK requests for Supplier Beverages at the applicable Non-Vending Beverage Cost to University.
- 3.2.3 Designated Non-Vending Beverages will be sold by Contractor to UNK at the Non-Vending Beverage Cost to University set forth on Exhibit "3" attached and incorporated herein by this reference. The Non-Vending Beverage Cost to University on Exhibit "3" shall be effective on January 1, 2010, and continue in effect through December 31, 2010. On January 1 of each Year thereafter, the Contractor may increase the Non-Vending Beverage Cost to the University of the bottles and cans it offers and sells to UNK, its dining services, concessions and other retailing outlets; provided however the annual price increase shall not exceed, on a percentage basis and in the aggregate, the Non-Alcoholic Beverage Material Component of the U.S. Governmental Consumer Price Index (CPI) for the Midwest area. In the event of a substantial and unforeseeable increase (as supported by appropriate documentation) in a major component of Contractor's cost of goods, manufacture or delivery, Contractor may increase prices by an additional percentage, not to exceed a total increase of six percent (6%). Contractor shall deliver to the UNK notice of the amount of any increase permitted under this section by November 1 prior to the Year to which the increase applies.
- 3.2.4 Designated Non-Vending Beverages sold by Contractor pursuant to this Agreement to persons and entities other than UNK will be sold at Pepsi's national account fountain pricing set forth on Exhibit "4," attached and incorporated herein by this reference. On January 1, 2011, and on January 1 of each Year thereafter, prices for fountain-dispensed post-mix Designated Non-Vending Beverages will be increased in accordance with increases to Pepsi-Cola Company's National Account Postmix Price List. Contractor agrees to notify UNK of pricing adjustments no later than December 1 prior to the Year in which the adjustments are to take effect.

- 3.2.5 Contractor price/cost increases permitted by this section are contingent upon the timely UNK notification (i.e. November 1 for Non-Vending Beverage Cost to University or December 1 for Pepsi's national account fountain pricing).
- 3.3 Beverage Warranty. The Contractor warrants and covenants that all Beverages distributed by Contractor pursuant to this Agreement will be unadulterated and in compliance with all applicable federal, state and local food, safety, and health laws, rules and regulations.
- 3.4 Coolers: Fountain Equipment.
- 3.4.1 The Contractor shall provide and deliver to UNK at no cost or expense to UNK, all menu boards for retail sales and coolers reasonably necessary to merchandise and sell Designated Non-Vending Beverages ("Cooler(s)"). Contractor warrants that each Cooler shall be new or like new at the time the Cooler is placed in service at UNK. Contractor represents that to the best of its knowledge, after due examination, each Cooler is free from defects in workmanship or design. The University shall have no duty to insure such Coolers. The Coolers shall be used solely for the purposes of displaying, serving, and selling the Designated Non-Vending Beverages.
- 3.4.2 As of the effective date of this Agreement, Contractor shall provide and install at no cost to University all Fountain Equipment. The Fountain Equipment shall be new equipment, or refurbished to be as good as new equipment. Any such equipment provided by Contractor under this Agreement will at all times remain the property of Contractor. The Fountain Equipment shall not be required to meet "Energy Star" standards until such time that as "Energy Star" standards are available for Fountain Equipment.
- 3.4.3 Contractor shall respond 24-hours, seven (7) days a week for service and repair of Fountain Equipment and Coolers located in residence hall dining facilities. Similarly, with respect to Fountain Equipment and Coolers located in UNK athletic facilities, Contractor agrees that it shall respond 24-hours, seven (7) days a week for service and repair of such Fountain Equipment and Coolers for the day before, the day of, and the day after any event scheduled at the relevant athletic venue. Contractor shall make best efforts to commence service and repair within four (4) hours after notification of malfunctions by UNK. All other Fountain Equipment and Cooler service and repair shall commence on the day UNK notifies Contractor of the malfunction, if the notification is delivered prior to 12:00 p.m. (noon); or if notification of malfunction is delivered on or after 12:00 p.m., then no later than noon of the subsequent day. Contractor shall maintain the Fountain Equipment and Coolers so as to assure that it dispenses appropriate product, including but not limited to proper syrup/liquid mix, temperature, no overspray and no spillage.

3.4.4 Contractor agrees to provide to UNK a maintenance log of all Fountain Equipment and Coolers at such regular intervals in a format with such information as may be reasonably requested by the UNK.

4. **CONTRACTOR'S PERSONNEL AND UNIVERSITY BEVERAGE PROGRAM REPRESENTATIVE**

4.1 From time-to-time Contractor shall designate, subject to UNK's right to interview and approve such designation, a University Beverage Representative with authority to independently and effectively resolve issues and problems related to the University's Beverage Program. As of the effective date of this Agreement, Ken Otto, Contractor's Business Development Representative is designated as the University Beverage Representative. Contractor and UNK will annually, as part of a broader University's Beverage Program review, evaluate the performance of the Contractor's University Beverage Program Representative.

4.2 Contractor will conduct criminal background investigations at Contractor's expense of all Contractor employees assigned to serve the University's Beverage Program. Such background checks shall be made to the same degree of thoroughness, as those background checks UNK conducts for newly hired staff at UNK. UNK will be informed of any Contractor employee (or job candidate Contractor intends to employ) whose background check indicates a history of behavior that might adversely impact his or her work performance or the safety of persons or property at the University. Any action taken with respect to such employee or potential employee shall be mutually agreed upon by the parties, provided however, should the University in its sole discretion determine that the employee's past behaviors present an unacceptable risk and if otherwise permitted by law, the employee shall be terminated, or in the case of a job candidate, not be offered employment.

4.3 Contractor, on behalf of itself and any subcontractor to this Agreement, shall use an electronic verification system to determine the work eligibility status of new employees physically performing services with the State of Nebraska, as required by Neb. Rev. Stat. §§4-108 to 4-114, as in effect on the effective date of this Agreement, or as such law may be amended from time-to-time. Compliance with these Nebraska statutes shall be considered material to this Agreement.

4.4 All Contractor's employees while on campus (e.g. drivers, and service and repair personnel) shall be identifiable as Contractor's employees by wearing Contractor logo-identifiable uniforms with visible photo ID badges, issued by Contractor, attached to the uniform. The Contractor's employees must be prepared to show identification while working on the UNK campus. The Contractor employee uniforms are to be provided by the Contractor at Contractor's expense, must easily and appropriately identify the Contractor and employees by name. Contractor's employees may be required, at

Contractor's expense, to be issued UNK ID Cards designating the Contractor's employee as a contracted vendor of the UNK.

- 4.5 No later than July 15 of each Year, representatives from each party, including Contractor's University Beverage Representative, shall meet to complete a detailed review of the University's Beverage Program, this Agreement and Contractor's performance. Benchmark measurements for performance and performance comparison analyses based upon such benchmarks shall be established and reviewed over the Term as part of the annual review meeting. The Contractor shall submit to UNK, Contractor's report of strategies and planning goals for the ensuing Academic Year.

5. **LICENSE TO USE UNK MARKS; MARKETING PLANS**

- 5.1 Grant to Use UNK Marks. On the terms and conditions set forth in this Agreement, the University grants the Contractor a royalty free, non-exclusive, non-assignable, non-sublicensable license to use, reproduce, and otherwise exploit throughout the United States, the UNK Marks, subject to the exceptions in Section 7, for all Contractor's on-campus and off-campus marketing, advertising and promotional activities under this Agreement. This license includes the right to use the UNK Marks in or on all Contractor's marketing, advertising, promotional and packaging materials and activities under this Agreement, including point-of-sale materials, cups, vessels, cans, bottles, commemorative cans or bottles, can/bottle wraps and all other forms of packaging, broadcast, print, electronic and other forms of media, vending fronts and truck backs and sides, all of which shall be subject to the UNK's right of review and approval.

The Contractor shall not alter, modify, dilute, or otherwise misuse or bring disrepute to a UNK Mark. Throughout the Term and subject to the exceptions noted in Section 7, University shall not grant any person or entity a license to use the UNK Marks to market, advertise, promote or sell any Competitive Beverage. This license shall terminate upon the termination of this Agreement. Upon the termination of this license, the Contractor shall cease using the UNK Marks in any capacity. In no event shall the Contractor claim or assert any ownership interest in the UNK Marks.

- 5.2 Additional Uses. Contractor shall have the right to use UNK Marks, subject to the limitations and prior written approvals required in this Section 5 and the exceptions noted in Section 7, in promotions with Contractor's customers in all channels of trade, including without limitation grocery and retail stores, drug retailers, quick serve and all other types of restaurants, mass merchandisers, institutional and "at-work" food service operations, convenience stores ("oil and gas" retailers), video and music retailers, movie theaters and indoor entertainment venues, theme parks and outdoor attractions and sports venues, provided that such usage is limited to Contractor's Beverage packaging and advertising or promotional materials related to the marketing of Approved Beverages.

- 5.3 Official Beverage Designation. In addition to the rights granted in 5.1 and 5.2 and subject to the exceptions noted in Section 7, Contractor shall have the right, without further payment of any royalty, in any of Contractor's marketing, advertising or promotional activities or materials to refer to any Approved Beverage as an "Official Beverage" of UNK or the Teams, and to refer to Contractor as a "sponsor" of UNK or the Teams.
- 5.4 Rights Not Granted. In the event that Contractor desires to use UNK Marks on merchandise (including without limitation prizes or other items given or sold at reduced prices as fulfillment of promotional offers) other than Approved Beverage packaging and advertising or promotional materials related to the marketing of Approved Beverages, Contractor either shall obtain the merchandise from a manufacturer licensed by the University, or shall obtain a separate license from the University for which Contractor shall pay a mutually agreed upon royalty.
- 5.5 UBI. Contractor will not use the UNK Marks in any manner that would result in payments to the University by Contractor being taxed as unrelated business taxable income under the Internal Revenue Code. Contractor acknowledges and agrees that the University does not endorse, advertise, or market Contractor or any of Contractor's products. Contractor agrees that 1) it will make no representation that the University or UNK endorses, advertises, or markets Contractor or any of its respective products; 2) it will take no action (and will not allow any action to be taken) that will constitute or could reasonably be interpreted as an endorsement or advertisement by the University of Contractor or any of its respective products. Contractor will fully cooperate with the University to avoid taking any action that would result in the Internal Revenue Service treating all or part of any licensing revenues attributed to this Agreement, as unrelated business taxable income.
- 5.6 Review of Marketing Materials. Annually, prior to any marketing distribution or promotional launch, and no less than thirty (30) days before the beginning of each Academic Year, Contractor shall submit to UNK for approval Contractor's marketing plans for the ensuing Academic Year, including: 1) any marketing or promotional activity that will utilize UNK Marks; and 2) any items created by Contractor that incorporate any of the UNK Marks. Such submitted marketing plans shall include a marketing plan response for each Academic Term. In addition the plans shall include:
- (a) A descriptive list of activities;
 - (b) Beverages to be promoted;
 - (c) Date of the proposed activities;
 - (d) An explanation of how the plans address monthly sales data and the needs of the UNK community;
 - (e) No less than two programs aimed to increase vending sales; and
 - (f) On-campus and off-campus retail programs.

- 5.7 UNK will use its best efforts to respond within ten (10) business days of receipt of any marketing approval request. UNK will not unreasonably withhold its approval of such submissions by Contractor under this Agreement. Upon approval, implementation of any marketing plan shall be the responsibility and at the expense of Contractor. Contractor acknowledges that withholding approval will not be considered unreasonable if:
- (a) University determines that UNK Marks have been used incorrectly in a technical sense (such as improper color or trademark nonconformity);
 - (b) University determines that Contractor's proposed promotional activity or use of UNK Marks will adversely reflect upon University's professional image;
 - (c) University determines the activity is likely to result in unfavorable tax consequences, i.e. unrelated business income tax; or
 - (d) University determines that the use of the UNK Mark, or the marketing and promotional activity infringes upon rights granted to another party whose principal business is unrelated to the manufacture or distribution of Beverages.

6. SPONSORSHIP RECOGNITION

- 6.1 Grant of Rights. University grants Contractor the exclusive sponsorship rights in the Beverage category in connection with the UNK campus and the Teams, subject to the exceptions listed in Section 7. Such rights to sponsorship recognition will include, but not be limited to, the following:

- Four (4)--5'6" x 5'6" backlighted panels on the scoreboards located above the four entrances, basketball floor level in UNK's Health and Sports Center.
- Two (2)--2' x 6' backlighted panels on the message centers located on the second level above the southeast and northwest entrances in Health and Sports Center.
- UNK shall with reasonable frequency make announcements at its various regular home sporting events held on the UNK campus, thanking Contractor for its support, and further to the effect that Contractor is the "Official Soft Drink of the University of Nebraska at Kearney," the "Official Soft Drink of Loper Athletics", a "Proud Sponsor of Loper Athletics" or such other similar announcement so long as such announcement does not comprise advertising as prohibited by the income tax considerations discussed in greater detail below.
- Contractor shall be provided by UNK opportunities throughout the Year in reasonable numbers to be agreed upon by the parties, for purposes of offering Approved Beverage samples to persons attending events at UNK, following the explicit approval by UNK.

In partial consideration of the rights granted in this section, as well as those granted in the balance of this Agreement, annually Contractor shall provide one (1) Gatorade Sideline

Cooler Kit. See Exhibit "6" – Gatorade Sideline Cooler Kit. In addition to the product included in the Gatorade Sideline Cooler Kit, Contractor will provide an additional 200 Gatorade squeeze bottles annually.

- 6.2 Tickets. UNK shall provide to Contractor four (4) season tickets for any intercollegiate sports program at UNK which offers season tickets to the public. Contractor receives an economic benefit for such tickets and passes, the fair market value of which shall reduce, for purposes of computing federal income tax, any charitable deduction Contractor chooses to report in relation to the payments described in this section.
- 6.3 UBI. All such sponsorship recognition, including without limitation game sponsorships, presenting sponsorships, naming rights or sponsorship promotional acknowledgment opportunities relating to signage, shall be structured to conform to the rules applicable to a "qualified sponsorship payment" under IRC §513(I) and Treas. Reg. §1.513-4. Unless otherwise permitted by IRC §513(I) and Treas. Reg. §1.513-4, all sponsorships shall be made under arrangements where there is no provision or expectation that the Contractor will receive any substantial return benefit other than the use or acknowledgment of the name and logo (or product lines) of the Contractor's trade or business. Such use or acknowledgment may include: 1) exclusive sponsorship arrangements; 2) logos and slogans that do not contain qualitative or comparative descriptions of the Contractor's products or services; 3) a list of the Contractor's locations, telephone numbers, or internet address; 4) value-neutral descriptions, including displays or visual depictions of the Contractor's product-line or services; or 4) the Contractor's brand or trade names and product or service listings, but shall not include any "advertising" [as defined in Treas. Reg. 1.513-4(c)(v)], including any message containing qualitative or comparative language, price information or other indications of savings or value, endorsement, or other inducement to purchase, sell, or use the Contractor's products or services. In the event any payment or portion thereof made to University pursuant to this Agreement is deemed to constitute taxable income to the University, the parties shall in good faith renegotiate such portion or portions of this Agreement which result in such taxable income.
- 6.4 Approval of Sponsorship Recognition Materials. Prior to distribution and/or installation of sponsorship recognition materials, Contractor shall submit to UNK for approval any proposed sponsorship signage or other sponsorship recognition materials. UNK will use best efforts to respond within ten (10) business days of receipt of any approval request. UNK will not unreasonably withhold its approval of such submissions by Contractor under this Agreement. Contractor acknowledges that withholding approval will not be considered unreasonable if: (1) UNK determines that Contractor's proposed materials adversely reflect upon UNK's professional image; (2) University determines the activity is likely to result in unfavorable tax consequences, i.e. unrelated business income tax; or (3) University determines that the proposed materials infringe upon rights granted to another party whose principal business is unrelated to the manufacture or distribution of Beverages.

- 6.5 Post-Season and Other Tournaments. Due to reasons beyond UNK's control, display of sponsorship recognition materials may not be allowed in the case of certain exhibition, pre-season, conference, regional, National Collegiate Athletic Association ("NCAA") or other tournaments/games, whether those events take place in facilities located on UNK property or in facilities located in off-campus venues. In such instances, UNK may have no authority regarding sponsors appearing in tournament venues, and therefore, certain of Contractor's recognition materials may be removed or covered during the period of said tournaments/games; sponsorship announcements may not be made; and exclusive sponsorship grants may be voided, in order to meet the requirements of the sports event organizer. Contractor shall not be relieved or released from any obligation stated in this Agreement should such an occurrence take place during the Term. Any such removal, cover, or subsequent reinstallment of Contractor's sponsorship materials shall be accomplished without cost to Contractor.
- 6.6 Pepsi Marks. Subject to the reasonable review and approval of Contractor, Contractor hereby grants to UNK a non-exclusive license to use, and authorizes UNK to sublicense others to use and subcontract with others to manufacture products incorporating or bearing Pepsi-Cola trademarks, trade names, logos, slogans, trade dress and other intellectual property of indicia, solely for the purposes of performing UNK's obligations hereunder, including distributing, announcing and installing the sponsorship recognition elements described in this Agreement. UNK shall not be obligated to pay or to cause any sublicensee to pay any royalty or other fee to Contractor with respect to any such use.

7. **EXCLUSIVE RIGHTS; EXCEPTIONS**

7.1 Exclusive Rights.

- 7.1.1 Contractor will have the exclusive right to be the "Official Soft Drink of the University of Nebraska at Kearney", the "Official Soft Drink of Loper Athletics", and the nonexclusive right to be a "Proud Sponsor of UNK [or Loper] Athletics".
- 7.1.2 Subject to the terms and conditions of this Agreement, the parties acknowledge and agree that UNK shall have the right to accept funds (not Beverage product) donations from persons associated with or owning interests in Competitive Beverages.
- 7.1.3 UNK will not grant, nor allow anyone on UNK's behalf to grant, any of the following rights or benefits to an entity other than Contractor:
- (a) the right to be recognized as, or to use in any manner the phrase, "Official Soft Drink of the University of Nebraska at Kearney", the "Official Soft Drink of Loper Athletics", or any comparable phrase, or in any manner recognize a Competitive Beverage in association with UNK or the Teams;

(b) the right to display any Competitive Beverage's trademarks, slogans, logos, or similar indicia or marks of identification, or any Competitive Beverage's products or services, within or on any UNK facility, including athletic facilities while such facilities are being used as a competition venue by UNK's Department of Intercollegiate Athletics, or any parking areas for these facilities. Except as specifically stated herein to the contrary, UNK shall not allow any Competitive Beverage's manufacturer or distributor to display any sign or electronic message, broadcast any audio message, or install or operate any point of presence including any kiosk or information booth at any UNK Campus facility when such facility is serving as a venue for an event or activity sponsored by UNK.

(c) the right to display such Competitive Beverage's emblems, trade names, trademarks, service marks, designs, logos, characters, identifications, symbols and other proprietary identifying designs, products or services on any materials of any nature licensed, sold or distributed at UNK;

(d) any license to allow a Competitive Beverage to use any of UNK's Marks; provided, however, that it shall not be a violation of this Agreement for UNK to comply with bylaws, rules or regulations of the NCAA even if such bylaws, rules or regulations may require that UNK Marks be used in connection with a Competitive Beverage's commercial activities under certain circumstances. For example, it shall not be a violation of this Agreement to permit UNK Marks to be used by the Rocky Mountain Athletic Conference ("RMAC") or its member institutions in connection with a Competitive Beverage's commercial activities, provided that such use is solely in conjunction with games and events comprising pre-regular season play or post-regular season play, such as bowl games, conference or NCAA play-offs. Further, it shall not be a breach of this Agreement should the RMAC Conference affiliate or associate itself with a Competitive Beverage and such affiliation or association involves a promotional design that uses logos or marks from all of the schools in the RMAC or its successor conference;

(E) the right to sell, distribute, serve or otherwise make available or advertise, market, promote or endorse Competitive Products at or in connection with UNK's campus or the Teams.

7.2 Exceptions.

7.2.1 University, on behalf of its UNK campus, is a party to the following contracts which involve food or Beverage service at UNK, referred to as "Pre-existing Contracts":

Contract Party	Contract Date
Chartwells	July 1, 2004 to June 30, 2011
Runza	July 1, 2005 to June 30, 2012
VVS	July 1, 2007 to June 30, 2012

Such Pre-existing Contracts are public records available to Contractor upon request, the terms of which are incorporated herein by this reference. No provision of the Pre-existing Contracts nor UNK's performance of its obligations under the terms of the Pre-existing Contracts shall be cause or reason to claim or allege UNK to be in breach of this Agreement. Notwithstanding any provision herein to the contrary, no rights or other benefits are granted to Contractor in this Agreement which interfere or may interfere with UNK's performance of its obligations under the Pre-existing Contracts. In addition, UNK reserves the right to renew, restate, extend, or amend the Pre-existing Contracts and award rights to parties other than those listed above; provided that, the rights granted to the Contract Party are substantially similar to those contained in the Pre-existing Contracts as they exist on the effective date of this Agreement. To the extent that Beverages are served by the Contract Parties listed above pursuant to the Pre-existing Contracts, Contractor agrees to provide Approved Beverages to the Contract Parties in support of UNK's operations and the Pre-existing Contracts for concessions and food services. Should, during the Term, any Pre-existing Contract terminate or expire, no extension, renewal, renegotiated contract, or new award of the Pre-existing Contract rights shall be granted, unless such extension, renewal, renegotiated contract, or new award provides for exclusive service of Approved Beverages during the Term, or any extension or renewal of this Agreement or "re-award" of new pouring rights to the Contractor.

- 7.2.3 UNK may infrequently invite or allow events, performances, or exhibitions to campus that are parts of a national, regional or statewide tour, and such tour may be sponsored in whole or in part by a Competitive Beverage. In such cases, it will not be a violation of this Agreement for the event, performance or exhibition to acknowledge the sponsorship of a Competitive Beverage; provided that the acknowledgment is of a temporary nature, visible solely within the venue for such event, performance or exhibition, and makes clear that the Competitive Beverage is a sponsor of the event, performance or exhibition and not a sponsor of UNK or the Teams. UNK will take reasonable steps to clarify the absence of any relationship between the Competitive Beverage and UNK or the Teams. UNK shall provide Contractor with no less than thirty (30) days prior written notice, or if impracticable, as much notice as practicable, of such an event, performance or exhibition on campus.
- 7.2.4 Nothing contained herein will prevent on-campus consumption by students, faculty, staff or their guests, or the general public, of Competitive Beverages purchased outside of UNK for individual use and not for resale.
- 7.2.5 It shall not be a violation of this Agreement for UNK or its employees to engage in academic research involving a Competitive Beverage so long as the research does not involve the sale or distribution of a Competitive Beverage on the UNK Campus.
- 7.2.6 It shall not be a violation of this Agreement for a Competitive Beverage to be served as part of medically-related patient care at student health centers on campus.

- 7.2.7 It shall not be a violation of this Agreement for UNK or any Team to comply with bylaws, rules or regulations, terms, conditions, agreements, or contracts of any events sponsored by a third party provided that UNK is not the originator of any such events and acts solely as the host venue at which the third party events will take place.
- 7.2.8 It shall not be a violation of this Agreement for a visiting team to use a Competitive Beverage or Sports Drink, its container, cups, towels or other items in its team bench area or as its sponsor.
- 7.2.9 It shall not be a violation of this Agreement for student organizations, student groups, academic associations, and third-party golf tournaments to obtain sponsorship from Competitive Beverage companies so long as such Competitive Beverages are not distributed, sold or offered on-campus. UNK will take reasonable steps to prevent said organizations from selling or otherwise dispensing Competitive Beverages on-campus. Furthermore, UNK shall take reasonable steps to address and seek to stop such organizations from creating the impression that UNK or the Teams endorse or have a relationship with a Competitive Beverage. However, individuals may consume Competitive Beverages as provided in Section 7.2.4 or as provided in Section 7.2.10.
- 7.2.10 It shall not be a violation of this Agreement for UNK to provide Competitive Beverages to visitors, dignitaries and performers invited by UNK when such products are specifically itemized and contractually required by the visitor, dignitary or performer.
- 7.2.11 It shall not be a violation of this Agreement for UNK to open additional convenience stores on campus as long as those stores abide by the terms and conditions of this Agreement.
- 7.2.12 UNK represents, and Contractor acknowledges, that UNK currently sells on-campus Starbucks freshly brewed coffees and teas, and that such products will be served in cups bearing Starbucks trademarks. It shall not be a violation of this Agreement for UNK to serve Starbucks freshly brewed coffees or teas in trademarked cups or of any other entity chosen to supply/serve freshly brewed coffees or teas on-campus in their stead. Furthermore, it shall not be a violation of this Agreement for UNK to sell Competitive Beverages related to such brewing company's products, so long as such Competitive Beverages are limited to freshly brewed coffees and teas, and do not include carbonated beverages, waters and juices.

8. **FINANCIAL CONSIDERATION; RECYCLING SUPPORT**

- 8.1 Annual Fixed Fee. On or before each and every January 1 of the Term, Contractor shall pay to University the sum of Eighty-Five Thousand Dollars (\$85,000).
- 8.2 Period Vending Commissions. In addition to the amount owed pursuant to Section 8.1 above, Contractor shall pay to University a Commission at the following rates:

Product	Commission Rate
12 oz carbonated soft drinks	20%
20 oz carbonated soft drinks	40%
20 oz Tropicana juice drinks	40%
Ocean Spray, Dole 100% Juices	20%
Aquafina Water, Aquafina Splash	40%
Gatorade, G2, Propel	20%
SoBe products, SoBe Life Water, Frappuccino, 15-16 oz Energy Drinks	20%

Commissions shall be remitted by Contractor to UNK within thirty (30) days following each "Four-Week Period." A "Four-Week Period" shall be defined as any of the thirteen four-week periods occurring within a Year, starting on the first Sunday of Year 2010 and counting forward by four-week intervals. Occasional five-week periods may be substituted for four-week periods, if an even division into thirteen four-week periods is not possible. Contractor shall provide UNK with documentation, accompanying the payments, explaining the calculation of all Commissions. Upon reasonable request by UNK, Contractor will make available such financial records pertaining to Commissions, as may be reasonable for internal and/or external audits to confirm the accuracy of the Commission calculation and payments.

8.3 In addition, Contractor shall annually pay to or provide UNK with the following:

- Contractor shall pay UNK \$5,000 for Academic Scholarship Support.
- Contractor shall provide Beverage products, funds, or other in-kind contributions, in the amount of no less than \$2,500 to be applied toward Contractor sponsored special event communications.
- Contractor shall underwrite campus initiatives valued at no less than \$2,500 (contests, give-a-says) to support student life via the University's Beverage Program.
- Contractor shall provide Beverage products, funds, or other in-kind contributions, in the amount of no less than \$5,000 to be dedicated to campus and student involvement in initiatives promoting environmental sustainability, wellness, alcohol and drug abuse awareness, speakers of interest to the campus, and such similar activities as may be agreed upon by the parties.

● Contractor shall donate to UNK a retail value of \$2,000 in any Contractor Beverages upon the reasonable request of UNK. In addition Contractor shall donate to UNK the greater of 600 cases or retail value of \$8,000 of Contractor Beverages approximately divided among Beverage types as follows:

40%	Carbonated Soft Drinks 12 oz 24ct
10%	Carbonated Soft Drinks 20 oz
40%	Aquafina 16.9 oz 24 pk water
10%	Gatorade

The retail dollar value of Beverage donation support shall be adjusted annually at the same rate as any annual vend price increase.

● Contractor shall underwrite the cost of and donate to UNK one local UNK partner radio station remote broadcast of an event to be reasonably designated by UNK (e.g. Blue and Gold–New Student Days), subject to the availability and ability of the radio partner to engage in the broadcast event. If Contractor can not reasonably provide and donate the annual remote broadcast, the parties shall mutually agree upon a similar activity of approximately equivalent value, promoting UNK within the community and area surrounding Kearney.

Except as specifically provided for to the contrary in this Agreement, any in-kind product, merchandise or service not utilized in any Year cannot be carried over to a subsequent Year and may not be redeemed for cash value.

- 8.4 Contractor shall provide \$5,000 to UNK in the first Year and \$1,000 annually thereafter for the balance of the Term for UNK’s purchase from Contractor of recycling canisters and canister liners. In addition to recycling containers, such funds may be applied to communications, activities and other efforts to support the well-being of the environment and sustainability at UNK. Exhibit “7” – Recycling Product Price List, attached and incorporated herein, sets forth Contractor’s purchase prices for recycling products available to UNK from Contractor. Should UNK fail to purchase from Contractor recycling products equal to or in excess of the amounts provided in this paragraph, Contractor shall deliver to UNK a check for the balance owed within thirty (30) days of any Year’s end. (UNK shall be responsible to collect recycled materials from the receptacles and deliver them to commercial recyclers. Any proceeds collected from the recyclable material shall be the property of UNK.)

- 8.5 Payments. The amounts owed pursuant to this section shall be considered paid in full upon delivery of good funds to:

University of Nebraska at Kearney
Office of Business Services
119 Founders Hall
2504 9th Avenue
Kearney, Nebraska 68849

9. TERMINATION AND SUSPENSION

9.1 Termination By University.

- 9.1.1 Without limiting its rights under Section 10.1, the University shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the Contractor upon the occurrence of one or more of the following events:

- (a) the Contractor fails to perform one or more of its material obligations under this Agreement after the University has provided notification of such failure(s) and granted thirty (30) days to cure the breach; provided, if such breach or default is of a type which may not be reasonably cured within such 30 day period, then such 30 day period shall be extended for such additional periods as may be reasonably necessary, as long as the Contractor has commenced the cure within such initial 30 day period and diligently pursues such cure to completion.
- (b) the Contractor is unable to pay its liabilities when due, shall make an assignment for the benefit of creditors or shall file a voluntary petition in bankruptcy or be adjudicated bankrupt or insolvent, or if a receiver is appointed for the Contractor's business or property, or if a trustee in bankruptcy or insolvency shall be appointed under the laws of the United States of America or any state.

- 9.1.2 Upon the effective date of such termination by University, University shall avail itself of such remedies as are available under the law, including but not limited to the following:

- (a) University shall have the right to immediately remove all of Contractor's signage;
- (b) Contractor's exclusive rights under this Agreement, and as specifically set forth in Section 7, shall cease;
- (c) Contractor's right to use UNK Marks will terminate;
- (d) Contractor shall remove at its expense all of its Approved Vending Machines and Fountain Equipment and Coolers;

- (e) Contractor shall have no obligation to pay any amounts under Section 8 earned by the University after the effective date of termination; provided however, that any amounts earned prior to termination shall survive termination.

9.2 Termination by Contractor.

9.2.1 Without limiting its rights under Section 10.2, the Contractor will have the right to terminate this Agreement upon thirty (30) days prior written notice to the University upon the occurrence of one or more of the following events:

- (a) the University fails to perform one or more of its material obligations under this Agreement after the Contractor has provided notification of such failure(s) and granted thirty (30) days to cure the breach; provided, if such breach or default is of a type which may not be reasonably cured within such 30 day period, then such 30 day period shall be extended for such additional periods as may be reasonably necessary, as long as the University has commenced the cure within such initial 30 day period and diligently pursues such cure to completion.
- (b) if the University is unable to pay its liabilities when due, shall make an assignment for the benefit of creditors or shall file a voluntary petition in bankruptcy or be adjudicated bankrupt or insolvent, or if a receiver is appointed for the University's business or property, or if a trustee in bankruptcy or insolvency shall be appointed under the laws of the United States of America or any state.

9.2.2 If the Contractor elects to terminate this Agreement as provided for in Section 9.2, without prejudice to any other rights or remedies available to Contractor, University shall immediately reimburse to Contractor the unearned portions of the Annual Fixed Fee. The amount of such reimbursement shall be determined by multiplying the Annual Fixed Fee paid in the Year in which the Agreement is terminated by a fraction, the numerator of which is the number of months remaining in such year at the time of termination and the denominator of which is 12. Contractor shall pay any outstanding amounts earned through the effective date of termination. Contractor shall have no obligation to pay any amounts under Section 8 earned after the effective date of termination. Any amounts earned prior to termination shall survive termination.

Approved Vending Machines and any other Contractor equipment must be removed upon termination or expiration of this Agreement. Should Contractor fail to so remove the Machines and equipment, UNK may remove and store the Machines and equipment at Contractor's cost without liability for damage, lost revenue or any other claim associated with such removal and storage.

10. INDEMNIFICATION

- 10.1 Indemnification of the University. Contractor shall defend, hold harmless, and indemnify the University and each of its regents, officers, employees, and agents (each of which shall be referred to as a "University Indemnitee") from and against any and all claims, actions, judgments, losses, damages, liabilities, and expenses (including, but not limited to reasonable attorneys' fees) imposed upon, suffered, incurred by or asserted against a University Indemnitee arising from or relating to, directly or indirectly, Contractor's respective performance or breach of the terms of this Agreement and any transaction contemplated hereby, including, but not limited to, the respective acts or omissions of Contractor's officers, employees or agents; provided however, that the Contractor shall not be liable under such indemnity for any portion of such claims, actions, judgments, damages, liabilities, or expenses resulting from the University Indemnitee's negligent or intentional, acts or failure to act. The obligations under this section shall survive the termination of this Agreement.
- 10.2 Indemnification of the Contractor. The University shall defend, hold harmless, and indemnify the Contractor, and its directors, officers, employees, and agents (each of which shall be referred to as a "Contractor Indemnitee") from and against any and all claims, actions, judgments, losses, damages, liabilities, and expenses (including, but not limited to reasonable attorneys' fees) imposed upon, suffered, incurred by or asserted against a Contractor Indemnitee arising from or relating to, directly or indirectly, the University's performance or breach of the terms of this Agreement, any transaction contemplated hereby, or the operating of the campuses, including, but not limited to, the acts or omissions of the University's employees or agents; provided however, that University shall not be liable under such indemnity for any portion of such claims, actions, judgments, damages, liabilities, or expenses resulting from the Contractor Indemnitee's negligent or intentional, acts or failure to act. The obligations under this section shall survive the termination of this Agreement.

11. INSURANCE

Contractor shall procure and maintain such insurance, listed below, as shall protect the Contractor from claims for personal injury, bodily injury and/or property damage which may arise from its obligations under this Agreement.

Commercial General Liability with limits of liability no less than \$1,000,000 each occurrence bodily injury and property damage, with a \$2,000,000 annual general aggregate limit; \$1,000,000 personal and advertising injury; \$1,000,000 products and completed operations aggregate; \$250,000 fire damage legal liability; and \$10,000 per person medical payments. Commercial General Liability will include the following coverages: premises

operations, broad form property damage, completed operations, independent contractors and contractual, and products liability.

Automobile Liability providing coverage for owned, non-owned and hired vehicles with limits of liability no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

Worker's Compensation/Employer's Liability with limits of liability no less than:

Worker's Compensation - Amounts as required by Nebraska statute.

Employer's Liability - \$500,000 bodily injury by accident,
\$500,000 Disease - each employee, \$500,000
Disease - Aggregate

Umbrella/Excess Liability with limits of liability no less than \$10,000,000 each occurrence. The schedule of underlying insurance on this policy shall list both the commercial general liability policy and the automobile liability policy.

Property

Personal property - Replacement cost fire and extended coverage insurance, with vandalism, malicious mischief and sprinkler leakage endorsements, in an amount sufficient to cover full replacement costs of all Contractor's personal property, fixtures, stock, inventory, equipment and Contractor improvements.

Business income or interruption insurance in the amount of \$1,000,000 or thirty (30) days loss of income plus salaries, whichever is less.

The Board of Regents of the University of Nebraska, its affiliated organizations, officers and executives, administrators, employees and volunteers shall be named as additional insureds under the Commercial General Liability insurance policy, the Automobile Liability policy or any other policy required by this Agreement.

The insurance company or companies providing all such above listed insurance must be at least an A-, V rating size by Best's and authorized to do business in the State of Nebraska.

The certificate or certificates of insurance for the insurance coverages specified in this section shall be delivered to the Office of Business Services at the University of Nebraska at Kearney on or before the earlier of: thirty (30) days following execution of this Agreement; or seven (7) days prior to Contractor assuming operations under this Agreement. Each certificate shall state that the University will receive thirty (30) days written notice from the insurer in the event of any policy modification, cancellation or termination. The certificate or certificates for liability insurance shall indicate that the

liability insurance is written on an "occurrence" form. "Claims made" policy forms are not acceptable.

In case of failure to deliver adequate or appropriate insurance, as described in this section, the University shall have the right (a) to secure such policies of insurance or services as described above and hold the Contractor responsible for the cost of said policies or services, or (b) terminate this Agreement.

The University makes no representation that the limits or forms of coverage of insurance specified in the Agreement are adequate to cover Contractor's property or obligations under this Agreement.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 University Representations. The University represents, warrants, and covenants to the Contractor that:

- (a) It has full power and authority to enter into this Agreement and to grant and convey to the Contractor the rights set forth herein.
- (b) All necessary approvals for the execution, delivery, and performance of this Agreement have been obtained, and this Agreement has been duly executed and delivered by the University and constitutes the legal and binding obligation of the University enforceable in accordance with its terms.
- (c) Except as otherwise provided in this Agreement, the University has not entered into, and during the Term will not enter into 1) other agreements which would prevent it from complying with the provisions of this Agreement, or 2) any agreement granting beverage rights that are inconsistent with the rights granted by it to Contractor pursuant to this Agreement, including any agreements with licensing agents, concessionaires or third party food service operators, vending companies, and/or other entities which sell or distribute Beverages. Subject to the exceptions in Section 7, the University will require third parties (e.g., concessionaires, third-party food service operators, vending companies, licensing agents), to the extent the University has authority or control, to comply with the relevant provisions of this Agreement.
- (d) The University has the right to license the UNK Marks to Contractor.

12.2 Contractor Representations. The Contractor represents, warrants, and covenants to the University that:

- (a) It has the full power and authority to enter into and perform this Agreement.
- (b) It has obtained all necessary approvals for the execution, delivery and performance of this Agreement. It has duly executed and delivered this Agreement, which now constitutes its legal and binding obligation enforceable in accordance with its terms.
- (c) It has not entered into and during the Term will not enter into, any other agreements which would prevent it from fully complying with the provisions of this Agreement.
- (d) It will require compliance with the relevant provisions of this Agreement by any Supplier.

13. INCORPORATION OF RFP; STANDARD TERMS AND CONDITIONS

Unless this Agreement provides to the contrary, the RFP and Contractor's responses to the RFP, and specifically provisions those set forth in Sections 1 and 4 of the RFP, are incorporated herein by this reference, and are included as part of this Agreement, as if and to the same extent, they were written here in their entirety. Any references in the RFP's standard terms and conditions to the "successful bidder" or the "bidder" shall have the same meaning as the term "Contractor" in this Agreement, and any references to UNK in the standard terms and conditions shall include the "University" and "UNK," for purposes of this Agreement.

14. BOARD OF REGENTS APPROVAL

This Agreement, neither in whole nor in part, shall be enforceable absent the approval of the Board of Regents of the University of Nebraska.

15. MISCELLANEOUS

- 15.1 Assignment. Neither party may assign its rights under this Agreement to another, whether by contract or by operation of law, without the express written consent of the other party, which consent shall not be unreasonably withheld. Any attempt to so assign this Agreement shall be cause for immediate termination of the Agreement, notwithstanding any other provisions to the contrary. This Agreement is made for the exclusive benefit of the parties, and no benefit to any third party is intended.
- 15.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

- 15.3 Notice. Any notice provided for in this Agreement shall be in writing and shall be deemed to have been given, delivered, or served when delivered personally to the party who is to receive such notice or when mailed by U.S. registered or certified mail, postage prepaid, to such party at the following addresses:

To University:

Office of Business Services
119 Founders Hall
2504 9th Street
University of Nebraska at Kearney
Kearney, Nebraska 68849
Attn: Director of Business Services

To Contractor:

The Pepsi Bottling Group
101 W. 48th St. South
Wichita, KS 67217
Attn: Vice President/General Manager

With a copy to (which shall not constitute notice):
The Pepsi Bottling Group
One Pepsi Way
Somers, NY 10589
Attn: Legal Department

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

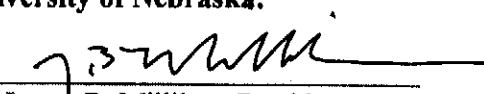
- 15.4 Modification; Waiver of Rights. This Agreement may be modified, amended, or waived only by a written agreement signed by an authorized representative of Contractor and the University of Nebraska at Kearney Chancellor or his/her designee. The course of dealing between the University and Contractor will not modify or amend this Agreement in any respect. Any delay by University or Contractor in the exercise of any of their respective rights and obligations under this Agreement will not be construed as a waiver of any such rights or obligations to be performed. A waiver of a breach of any provision of this Agreement will not: (a) operate or be construed as a waiver of any subsequent breach; (b) limit or restrict any right or remedy otherwise available to University or Contractor; or (c) operate or be construed as a waiver of compliance by University or Contractor as to any other provision of this Agreement.
- 15.5 Entire Agreement; Severability. This Agreement constitutes the entire Agreement between the parties with respect to all subject matter and supersedes all prior negotiations and understandings, whether verbal or written. Each provision of this Agreement is severable from all others. If any provision of this Agreement will be determined to be invalid or unenforceable by a court of competent jurisdiction, the provision will be deemed modified only to the extent necessary to render it valid and enforceable, and all remaining provisions of this Agreement will remain in full force and effect.
- 15.6 Independent Contractors. This Agreement does not constitute and will not be construed as constituting a partnership or joint venture, or an employee/employer

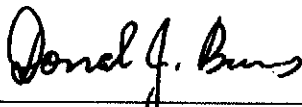
relationship or one of principal and agent, it being understood that Contractor and the University are and will remain independent parties.

15.7 Governing Law. This Agreement shall be controlled by the laws of the State of Nebraska and any dispute arising from it shall be resolved in a court or administrative body of competent jurisdiction in the State of Nebraska.

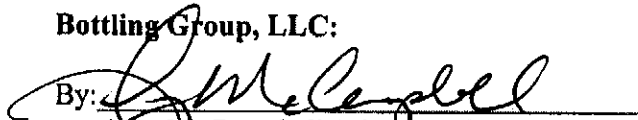
IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on this 11th day of December, 2009.

**The Board of Regents of the
University of Nebraska:**

By: 
James B. Milliken, President

Attest: 
Donal J. Burns, Corporation Secretary

Bottling Group, LLC:

By: 
Amy McCampbell, Director of Food Service

pourKunk.ckm 11/18/09

EXHIBIT 1
Approved Vending Beverage

Pepsi's Bottle & Can Portfolio



CARBONATED SOFT DRINKS

20 oz. PLASTIC BOTTLES - 24/c\$
PEPSI
Pepsi / Diet / Diet Max / Diet Caffeine Free / Wild Cherry / Diet Wild Cherry / Diet Lime[®] / Pepsi Throwback[®]

MOUNTAIN DEW
Mountain Dew / Diet / Code Red (Cherry) / Live Wire (Orange) / Voltage (Raspberry) / Game Fuel Citrus Cherry[®] / Game Fuel Wild Fruit[®]

FLAVORS
Crush Orange / Crush Grape / Crush Strawberry / Diet Crush Orange / Sierra Mist / Sierra Mist Free / Sierra Mist Ruby Splash / ~~Mountain Dew~~ / ~~Mountain Dew~~ / 20 oz. PLASTIC BOTTLES - 24/c\$
Aquafina

AQUAFINA FLAVOR SPLASH WATER
20 oz. PLASTIC BOTTLES - 24/c\$
Grape / Raspberry / Wild Berry / Lemon / Strawberry Kiwi

LEPIONIC TEA
20 oz. PLASTIC BOTTLES - 24/c\$
Brisk / Brisk Sweet / Green Tea With Citrus / Green Tea With Citrus Diet / Sparkling Green Tea w/Strawberry Kiwi / Diet Sparkling Green Tea w/Strawberry Kiwi / Sweetened With

LEPION BUBBLER: ICED TEA
16oz GLASS BOTTLE - 6PK 2/c\$
Peach / Sweetened No Lemon / Unsweetened No Lemon

LEPION SPARKLING TEA
16.9oz PLASTIC BOTTLE - 12PK 2/c\$
Sparkling Green Tea with Berry / Sparkling Green Tea with Strawberry Kiwi / Sparkling Green Tea with Berry / Diet Sparkling Green Tea with Strawberry Kiwi / Green Tea w/ ~~Melons~~ / ~~Melons~~

20 oz. PLASTIC BOTTLES - 24/c\$
Lemonade / Pink Lemonade / Strawberry Melon

DOLE 100% JUICE
15.2oz PLASTIC BOTTLE - 12/c\$
Apple / Orange / Ruby Red Grapefruit / Strawberry Kiwi

OCEAN SPRAY

15.2oz PLASTIC BOTTLE - 12/c\$
Cranberry Cocktail / CranCrape / Cranberry Pomgranate

GATORADE
20 oz. PLASTIC BOTTLES - 24/c\$
Cool Blue Raspberry / Fierce Grape / Fruit Punch / Lemon Lime / Orange / RipKide / Rush Grape

GATORADE G2
20 oz. PLASTIC BOTTLES - 24/c\$
Grape / Fruit Punch / Lemon Lime / Orange / Blueberry Pomgranate

CAITONADE BROPOL
20 oz. PLASTIC BOTTLES - 24/c\$
Berry / Blueberry Pomgranate / Grape / Kiwi Strawberry / Lemon / Peach Mango

STARBUCKS ERAPUCCINO
9.5oz GLASS BOTTLE - 24/c\$
Dark Chocolate Mocha / Caramel / Coffee / Mocha / Vanilla

STARBUCKS
6.5oz CAN - 4pk 6/c\$
Double Shot / Double Shot Light

15oz CAN - 12/c\$
Double Shot Energy

MUSCLE MILK
14oz PLASTIC BOTTLES 12/c\$
Bananas & Cream / Chocolate / Light Chocolate / Chocolate Malt / Vanilla & Cream / Light Vanilla & Cream / Strawberries & Cream

SOBE LIFE WATER - 0 CALORIE
20oz PLASTIC BOTTLE - 12/c\$
Black & Blue Berry / Fuji Apple Pear / Yumberry Pomgranate / Acai Fruit Punch / Mango Melon

20oz GLASS BOTTLE - 12/c\$
Energy (Citrus) / Green Tea / Liz Blizz (Tropical) / Lizard Fuel (Strawberry Banana) / Lizard Lava (Strawberry Daquiri) / Nirvana (Mango Melon) / Tsunami (Orange Cream) / Lean Blackberry Currant / Yumberry Pomgranate

SOBE LIFE WATER

20oz PLASTIC BOTTLE - 12/c\$
Passionfruit Citrus
Strawberry Kiwi
Agave Lemonade
Coji Melon
Yuzu Black Currant
Pomegranate Cherry
Orange Tangerine
Blackberry Grape

ENERGY DRINKS
2.5oz PLASTIC - 12/c\$
Rockstar Shot
Tropical Punch / Wildberry

15oz CAN - 24/c\$
Rockstar Roasted
Latte / Light Vanilla / Mocha

16oz CAN - 12/c\$
Mountain Dew Amp
Amp / Amp Sugar Free / Overdrive (Cherry) / Relaunch (Orange Citrus) / Elevate (Mixed Berry) / Traction (Grape) / Energy w/Black Tea / Energy w/Green Tea / Energy Lightning (Lemonade) / ~~Tradin' Paint~~

SOBE
No Fear / No Fear Sugar Free / No Fear Motherload / No Fear Bloodshot (Blood Orange Dragon Fruit)

16oz CAN - 24/c\$
Rockstar
Energy / Juiced Mango Orange / Juiced Guava / Juiced Pomgranate / Punched / Punched Citrus / Sugar free / Zero Carb

22oz PLASTIC BOTTLE - 12/c\$
Rockstar
Punched Guava / Punched Mango Orange

24oz CAN - 12/c\$
Rockstar
Energy / Punched / Sugar Free / Zero Carb

1 Liter PLASTIC BOTTLE - 12/c\$
Rockstar

UPDATED 06-09-2009

Confidential



Healthy Products List (ABA Compliant)



12oz Can & 20oz Plastic Bottles (24/cst) (H.S. only)

- Diet Pepsi
- Pepsi Max
- Diet CF Pepsi
- Diet Wild Cherry Pepsi
- Diet Mt Dew
- Diet Mt Dew Code Red
- Sierra Mist Free
- Sierra Mist Free Ruby Red
- Diet Dr Pepper
- Diet Dr Chry Vnl - 12oz Can only
- Diet Dr Pep Cherry
- CF Diet Dr Pepper
- Diet Brisk w/Lemon - 12oz Can only
- Diet Crush Orange

20oz Water (24/cst)

- Aquafina (Permitted in Elementary, Middle, and High Schools)
- Aquafina Flavor Splash Raspberry (H.S. only)
- Aquafina Flavor Splash Citrus Blend (H.S. only)
- Aquafina Flavor Splash Wild Berry (H.S. only)
- Aquafina Flavor Splash Grape (H.S. only)
- Aquafina Flavor Splash Lemon (H.S. only)
- Aquafina Flavor Splash Straw Kiwi (H.S. only)

20oz Propel Fitness Water (24/cst) (H.S. Only)

- Grape
- Kiwi Straw
- Berry
- Lemon
- Black Cherry (Mind)
- Peach Mango (Body)

20oz Lipton Tea Plastic Bottle (24/cst) (H.S. only)

- Diet Green Tea with Citrus
- Diet Sparkling Green Tea w/Straw Kiwi
- Any Diet Lipton Tea product is approved

20oz Sobe Life Water Zero Cal (12/cst) (H.S. Only)

- Black & Blue Berry
- Fuji Apple Pear
- Yumberry Pomegranate
- Acai Fruit Punch
- Mango Melon

12oz Gatorade Plastic Bottle (24/cst) (H.S. Only)

- Ice Punch
- Fruit Punch
- Lemon Lime



EXHIBIT 3
Non-Vending Beverage Cost



PEPSI-COLA BOTTLING MIDWEST MARKET UNIT

**University of Nebraska @ Kearney
Bottle and Can Pricing Sheet**

Pricing Effective January 1, 2010 - December 31, 2010

* Pricing subject to change at a rate consistent with the CPI Index for Food & Beverages in the Midwest

CARBONATED SOFT DRINKS EVERYDAY LOW PRICING

Packages	Units	On Invoice Cost	Unit Cost	Suggested Retail	Margin
6 Pack Cans CSD	12oz. 4/6 pk	\$8.50	\$ 0.35	\$ 0.75	53%
12 Pack Cans EDLP	12 oz. 2/12 pk	\$8.50	\$ 4.25	\$ 4.99	15%
2 Liter PET CSD	8L	\$ 10.40	\$ 1.30	\$ 1.89	31%
20 oz. PET Bottles CSD	20 oz. 24L	\$ 16.10	\$ 0.67	\$ 1.49	55%

Aquafina Everyday Low Pricing

Packages	Units	On Invoice Cost	Unit Cost	Suggested Retail	Margin
20 oz. Aquafina	20 oz. 24L	\$ 16.10	\$ 0.67	\$ 1.49	55%
1 Liter Aquafina Water	1 Ltr 1/12 L	\$ 15.75	\$ 1.31	\$ 1.99	34%

New Age Beverages Everyday Low Pricing

Packages	Units	On Invoice Cost	Unit Cost	Suggested Retail	Margin
Dole/Ocean Spray Juice	15 oz. 12L	\$ 11.50	\$ 0.96	\$ 1.89	49%
Mt. Dew Amp/SoBe Energy Singles	16 oz. 12L	\$ 17.50	\$ 1.46	\$ 2.49	41%
Rockstar 16oz Energy Singles	16 oz. 24L	\$ 34.00	\$ 1.42	\$ 2.49	43%
Tazo (12 total)	13.8oz 12L	\$ 13.20	\$ 1.10	\$ 1.89	42%
Lipton 6 Pack Glass (12 total)	16 oz. 2/6 pk	\$ 11.50	\$ 0.96	\$ 1.89	49%
Lipton Mainstream Tea Singles	20 oz. 24L	\$ 16.10	\$ 0.67	\$ 1.39	52%
Lipton 1.5 Liter 12 pack	1.5L 12 pk	\$ 15.25	\$ 1.27	\$ 2.29	45%
SoBe Glass Singles	20 oz. 12L	\$ 14.70	\$ 1.23	\$ 1.99	38%
SoBe Life Water	20 oz. 12L	\$ 14.70	\$ 1.23	\$ 1.79	32%
Starbucks Frapp Singles (small)	9.5 oz 24count	\$ 24.00	\$ 1.00	\$ 1.89	47%
Starbucks Frapp Singles (large)	13.7 oz 12L	\$ 19.70	\$ 1.64	\$ 2.29	28%
Starbucks Frapp Energy	15 oz 1/12L	\$ 19.70	\$ 1.64	\$ 2.29	28%
Gatorade Propel 20 oz Singles	20 1/24 L	\$ 24.00	\$ 1.00	\$ 1.49	33%
Gatorade 20 oz Singles	20 1/24 L	\$ 19.00	\$ 0.79	\$ 1.49	47%

PBG reserves the right to amend or change this offer at anytime.



PEPSI-COLA BOTTLING MIDWEST MARKET UNIT

University of Nebraska @ Kearney

National Fountain Pricing

Current National Pricing

Packages	Units	On Invoice Pricing	Cost Per Box
CO2	1	\$ 20.00	
Corporate CSD (Pepsi, Mug, Mist, Dew, Patio, Sol)	5 gallons	\$ 10.79	\$ 53.95
Non Corp (Dr. Pepper, Diet Dr. Pepper)	5 gallons	\$ 10.06	\$ 50.30
Season's Harvest (Cranberry)	3 gallons	\$ 23.30	\$ 69.90
Season's Harvest (Orange & Apple)	3 gallons	\$ 26.39	\$ 79.17
Juice Tyme 3/1 gallon boxes	3 gallons	\$ 24.00	\$ 72.00
Gatorade/G2	3 gallons	\$ 15.25	\$ 45.75
Lipton Iced Tea (LBIT)	1 unit	\$ 46.50	\$ 46.50

PBG reserves the right to amend or change this offer at anytime.

Exhibit 4 National Account Fountain Pricing



PEPSI-COLA BOTTLING MIDWEST MARKET UNIT

University of Nebraska @ Kearney

Bottle and Can Pricing Sheet

Pricing Effective January 1, 2010 - December 31, 2010

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CARBONATED SOFT DRINKS EVERYDAY LOW PRICING

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Aquafina Everyday Low Pricing

Packages	Units	On Invoice Cost	Unit Cost	Suggested Retail	Margin
20 oz. Aquafina	20 oz. 24L	\$ 16.10	\$ 0.67	\$ 1.49	55%
1 Liter Aquafina Water	1 Ltr 1/12 L	\$ 15.75	\$ 1.31	\$ 1.99	34%

New Age Beverages Everyday Low Pricing

Packages	Units	On Invoice Cost	Unit Cost	Suggested Retail	Margin
Dole/Ocean Spray Juice	15 oz. 12L	\$ 11.50	\$ 0.96	\$ 1.89	49%
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Starbucks Frapp Energy	15 oz 1/12L	\$ 19.70	\$ 1.64	\$ 2.29	28%
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Gatorade 20 oz Singles	20 1/24 L	\$ 19.00	\$ 0.79	\$ 1.49	47%

PBG reserves the right to amend or change this offer at anytime.



PEPSI-COLA BOTTLING MIDWEST MARKET UNIT

University of Nebraska @ Kearney

National Fountain Pricing

Current National Pricing

Packages	Units	On Invoice Pricing	Cost Per Box
CO2	1	\$ 20.00	
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Gatorade/G2	3 gallons	\$ 15.25	\$ 45.75
Lipton Iced Tea (LBIT)	1 unit	\$ 46.50	\$ 46.50

PBG reserves the right to amend or change this offer at anytime.

EXHIBIT 5 - APPROVED VENDING MACHINE LOCATIONS

UNIVERSITY OF NEBRASKA AT KEARNEY

Pepsi Vendor Guide - Updated 8/16/2009

Machine #	Location / Description	Asset #	Vend Price	VOLUME
Thomas Hall				
1	UNK - Thomas Hall 1st Floor Lobby Aquafina - Non-Carb	7903122	\$1.25	99
2	UNK - Thomas Hall 1st Floor Lobby Pepsi HVV - CSD	7860337	\$1.25	100
Bruner Hall				
4	UNK - Bruner Hall Lower Level Pepsi HVV - CSD	7867306	\$1.25	41
5	UNK - Bruner Hall 2nd Floor Pepsi HVV - CSD	7867192	\$1.25	80
6	UNK Bruner Hall 2nd Floor Aquafina Bottle - Non-Carb	5608072	\$1.25	21
Founders Hall				
8	UNK Founders Hall - 1st Floor Pepsi HVV - Set w/ Non-Carbs/Aquafina	7888556	\$1.25	31
10	UNK Founders Hall - 1st Floor Pepsi Bottle - CSD	5655121	\$1.25	82
Copeland Hall				
11	UNK Copeland Hall - 1st Floor Pepsi Bottle - CSD	5636814	\$1.25	184
13	UNK Copeland Hall - 3rd Floor Pepsi Bottle - CSD	5636796	\$1.25	26
69	UNK Copeland Hall - 1st Floor Aquafina GFV - Non-Carb	7858026	\$1.25	184
Student Affairs Building				
14	UNK Student Affairs - 1st Floor Aquafina Bottle - Non-Carbs/Aquafina	5615919	\$1.25	---
15	UNK Student Affairs - 1st Floor Pepsi HVV - CSD	7860321	\$1.25	54
Library				
17	UNK Library - First Floor Pepsi Bottle - CSD	5986566	\$1.25	391

Pepsi Vendor Guide - Updated 8/16/2009

Machine #	Location / Description	Asset #	Vend Price	VOLUME
Sports Complex				
18	UNK Sports Complex - Lower Level Pepsi HVV - CSD	7879764	\$1.25	28
19	UNK Sports Complex - Lower Level Pepsi HVV - Set w/ Non-Carbs/Aquafina	7888557	\$1.25	15
20	UNK Sports Complex - Lower Level Gatorade Bottle	5682335	\$1.50	18
21	UNK Sports Complex - 1st Floor Pepsi HVV - CSD	7860341	\$1.25	113
22	UNK Sports Complex - 1st Floor Aquafina GFV - Non-Carbs	7858028	\$1.25	85
23	UNK Sports Complex - 1st Floor Gatorade Bottle	56801807	\$1.50	-----
24	UNK Sports Complex - 1st Floor S.W. Gatorade Bottle	5681196	\$1.50	19
Fine Arts Building				
25	UNK Fine Arts - 1st Floor West Side Pepsi HVV - CSD	7871284	\$1.25	96
27	UNK Fine Arts - 1st Floor West Side Aquafina Bottle - Non-Carb/Aquafina	5608080	\$1.25	8
28	UNK Fine Arts - Lower Level East Side Pepsi Bottle - CSD	5608064	\$1.25	5
Otto Olsen Hall				
29	UNK Otto Olsen Hall - 1st Floor Pepsi Can - CSD	5608059	\$0.75	45
30	UNK Otto Olsen Hall - 1st Floor Aquafina GFV - Non-Carbs/Aquafina	7858002	\$1.25	99
31	UNK Otto Olsen Hall - 1st Floor Pepsi HVV - CSD	7854733	\$1.25	160
Randall Hall				
32	UNK Randall Hall - 1st Floor Gatorade Bottle	5682321	\$1.50	52
33	UNK Randall Hall - 1st Floor Pepsi HVV - CSD	7860336	\$1.25	54
34	UNK Randall Hall - 1st Floor Aquafina GFV - Non-Carbs/Aquafina	7858027	\$1.25	131

Pepsi Vendor Guide - Updated 8/16/2009

Machine #	Location / Description	Asset #	Vend Price	VOLUME
Mens Hall				
37	UNK Mens Hall - 1st Floor Center Pepsi HVV - CSD	7860339	\$1.25	25
38	UNK Mens Hall - 1st Floor Center Pepsi Can - 12oz CSD and 20oz Aqua/Non-Carbs	5608053	\$0.75	83
Centennial Towers East				
39	UNK Centennial Towers East - 1st Floor Pepsi Bottle - CSD	85965	\$1.25	86
40	UNK Centennial Towers East - 7th Floor Pepsi Bottle - CSD	5636822	\$1.25	24
41	UNK Centennial Towers East - 5th Floor Pepsi Bottle - CSD	5660781	\$1.25	13
42	UNK Centennial Towers East - 1st Floor Aquafina GFV - Non-Carbs/Aquafina	7858025	\$1.25	90
43	UNK Centennial Towers East - 1st Floor Pepsi HVV - CSD	7870854	\$1.25	33
Centennial Tower West				
44	UNK Centennial Towers West - 1st Floor Gatorade Bottle	5683162	\$1.50	26
45	UNK Centennial Tower West - 1st Floor Pepsi HVV - CSD/Non-Carbs/Aquafina	7859755	\$1.25	36
48	UNK Centennial Towers West - 1st Floor Pepsi Bottle - CSD	85964	\$1.25	80
Student Union				
49	UNK Student Union - 1st Floor Pepsi HVV - CSD	7867130	\$1.25	-----
50	UNK Student Union - 1st Floor Pepsi Can- CSD Requested Pick Up due to Volume	5608056	\$0.75	23
Conrad Hall				
54	UNK Conrad Hall - Lobby Pepsi Bottle - CSD	5788779	\$1.25	10
Martin Hall				
19	UNK Martin Hall - 1st Floor Pepsi HVV - CSD	7888557	\$1.25	

Pepsi Vendor Guide - Updated 8/16/2009

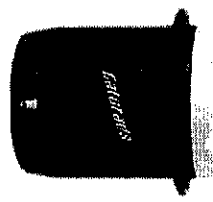
Machine #	Location / Description	Asset #	Vend Price	VOLUME
UNK URN				
57	UNK URN - 1st Floor East Side Aquafina GFV - Non Carbs	7969496	\$1.25	
58	UNK URN - 1st Floor East Side Pepsi HVV - CSD	7859722	\$1.25	36
College of Education				
60	UNK College of Education - 2nd Floor Pepsi Bottle - CSD	5655127	\$1.25	109
61	UNK College of Education - 2nd Floor Pepsi Can - CSD	85462	\$0.75	52
62	UNK College of Education - 2nd Floor Aquafina Bottle - Non-Carbs/Aquafina	5654953	\$1.25	56
UNK URS				
63	UNK URS - 1st Floor East Side Aquafina GFV - Non Carbs	7969495	\$1.25	32
64	UNK URS - 1st Floor East Side Pepsi Bottle - CSD	7860358	\$1.25	42
Facility Building				
66	UNK Facility Bldg - Garage on South of Building Pepsi Bottle - CSD	5620805	\$1.25	4
Weich Hall				
41	UNK Weich Hall - 1st Floor Pepsi Bottle - CSD	5660781	\$1.25	

Pepsi Vendor Guide - Updated 8/16/2009

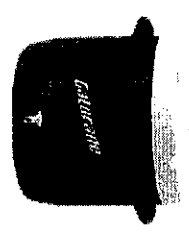
Machine #	Location / Description	Asset #	Vend Price	VOLUME
Main Offices				
68	UNK Main Offices - 1st Floor West Side Pepsi Bottle - CSD	5645751	\$1.25	60
70	UNK Main Offices - 4th Floor Pepsi Bottle - CSD	5653069	\$1.25	14
71	UNK Main Offices - 3rd Floor Pepsi Bottle - CSD	5633916	\$1.25	78
72	UNK Main Offices - 3rd Floor East Side Pepsi Can - CSD/Trop	5608017	\$0.75	13
73	UNK Main Office - 3rd Floor East Side Pepsi HVV - CSD	7860342	\$1.25	37
74	UNK Main Office - 2nd Floor East Side Aquafina Bottle - Non-Carb/Aquafina	5621157	\$1.25	19
75	UNK Main Office - 2nd Floor East Side Pepsi HVV - CSD	7860315	\$1.25	52
76	UNK Main Office - 2nd Floor Pepsi HVV - CSD	7870995	\$1.25	44
77	UNK Main Office - 2nd Floor Middle Pepsi HVV - CSD	5986564	\$1.25	36
78	UNK Main Office - 2nd Floor Middle Pepsi Bottle - Aquafina/Non-Carb	5608067	\$1.25	13
College Heights Apts				
79	UNK College Heights Apts Pepsi Bottle - CSD	7860395	\$1.25	39
Communications Building				
80	UNK Communications Building Pepsi HVV - CSD	7878399	\$1.25	46
Antelope Hall				
82	UNK Antelope Hall - Second Floor Pepsi HVV - CSD	7930472	\$1.25	39
83	UNK Antelope Hall - 3rd Floor Pepsi HVV - CSD	7930556	\$1.25	2
84	UNK Atelope Hall - 4th Floor Pepsi HVV - CSD	7930809	\$1.25	18
Nester Hall				
85	UNK Nester Hall Pepsi HVV - CSD		\$1.25	
86	UNK Nester Hall Aquafina GFV		\$1.25	

Is in you?

Kit A (Designed for Div. 1; Small to mid-major)



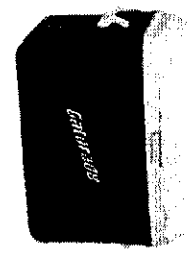
(6) 10 gallon coolers



(4) 7 gallon coolers



(2) 3 gallon coolers



(3) 48 quart ice chest



(8) Squeeze-bottle carriers



(15) Cases
6 gallon powder



(100)
32 ounce
squeeze bottles

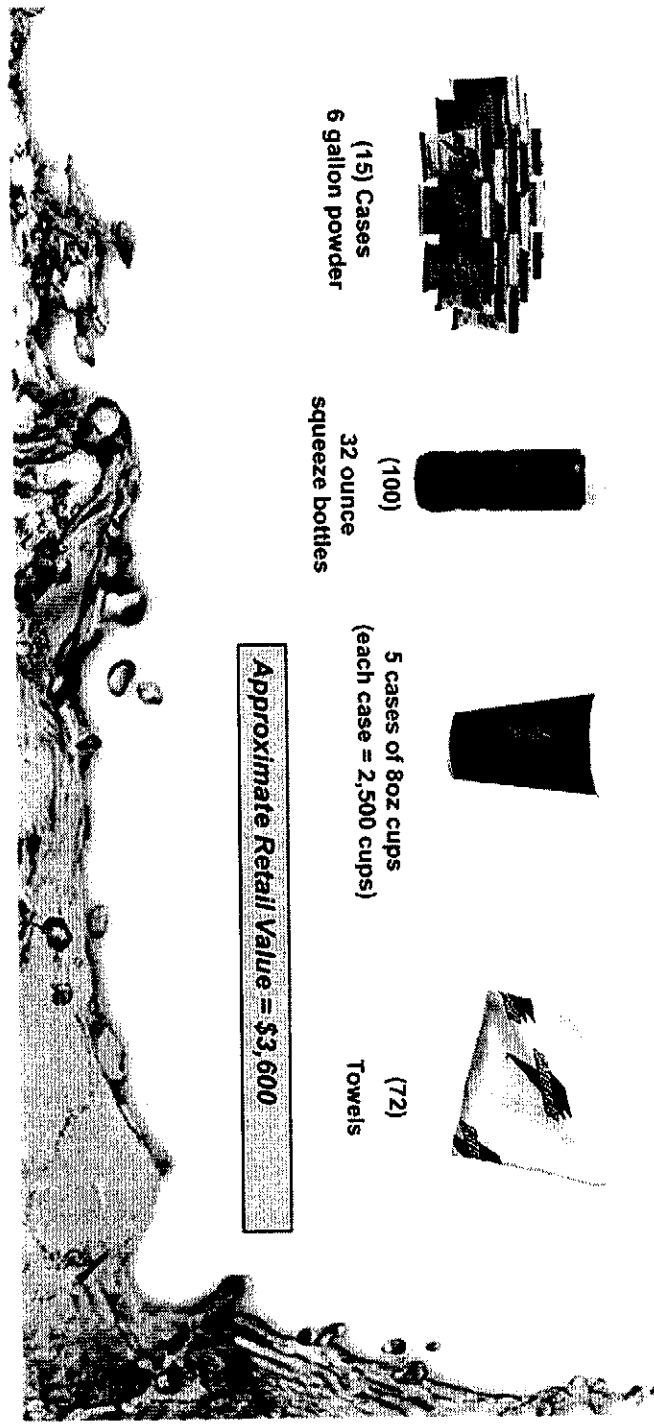


5 cases of 8oz cups
(each case = 2,500 cups)



(72)
Towels

Approximate Retail Value = \$3,600





THE BEST EQUIPMENT TO HELP PROMOTE RECYCLING

Corrugated Recycling Container™

Corrugated Recycling Container™ ships flat (5 per carton)...just fold into shape, insert liner bag and place in market for recycling.

Perfect for promotions and sponsored events.

[other sizes available]



PET Recycle Center™



RETURN-A-CAN Recycling

Idea for use at large venue locations such as stadiums, theme parks and theaters.

Constructed of durable high-impact plastic.



Take the environment lead with our customers. Black unit produced with **100% post-consumer plastic waste**. Optional weight base and the ability to secure to posts make it ideal for outdoor use. Weatherproof, custom graphics available.

ITEM	ITEM CODE	Dimensions	Carton/ Pack	Pricing
Corrugated Recycling Container™	PPG47510 [APS#107617]	24 W x 24"D x 30"High	5 per carton	\$15.05 each (\$75.25 per ctn)
PET Recycling Center™ (post-consumer plastic material)	PPG47100-08 [APS#88981]	20"Diameter x 57" High	1 per carton	\$54.50 each
PET Recycling Center™	PPG47000-08	20"Diameter x 57" High	1 per carton	\$67.50 each
PET Recycle Weight Base	MNO47900	N/A	1 per carton	\$15.00 each
Return-A-Can Recycling™	PPG23000-08	20"Diameter x 32"High	1 per carton	\$59.95 each

CALL (800) 325-2823 TO PLACE YOUR ORDER

Prices Effective: June 6, 2008 (subject to change with 30-day written notice)

800.325.2823 * 314.423.9777 * fax 314-423-040 * 2290 Ball Drive, St. Louis, MO 63146 * www.pfinnovation.com

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Preventative Maintenance Process

Prepare For Service Call

Right Frame of Mind
Call the Customer
Check Personal Appearance
Take Right Tools & Parts

Greet The Customer

Introduce Yourself
Use Good Body Language
Clarify Problem / Inform PM

Fix Emergency Problem

Use Technical Skills



Visi / Cooler PM

Appearance

Asset Tag & Serial #
Cleanliness, Clearance & Level
Lights / Merchandise

Doors Operation

Clean / Lube Rollers
Check Weight / Spring
Inspect & Clean Track
Inspect Gasket

Shelving

Stable / Proper Angle
Not Blocking Airflow
Secure Glass

Refrigeration

Electrical - Volts & Ground
Inspect Cord, Plug, & J-Box
Clean Condenser
Check Drain Pan & Hose
Check Fan Motors & Blades
Check Pressure Switches

Finishing Up

Clean Work Area
Wipe Shelves

Vendor PM

Appearance

Asset Tag & Serial #
Cleanliness, Clearance & Level
Select Buttons & Req. Stickers

Security / Door

Lock, Cover, Vandal Panel
Door Alignment
Lubricate Lock & Components

Electrical

Harness Connections & Plugs
Select Buttons & Switches
Flavor Strips & Lights

Mechanical

Manually Vend Motors
Date Code & Product Loading
Check Back Spacers & Shims
Clean & Lube Delivery Chute

Refrigeration

Same as Visi + Inspect Interior
Door Flap & Gasket

Currency System

Coin Chute, Acceptor, Sensors
Inspect Pay-out Tubes
Inspect & Clean DBV
6 Test Vends

Finishing Up

Clean Product Retrieval Area
Cleanup Work Area

Educate The Customer

Provide Brief Recap
Cover Basic Troubleshooting
Address Other Issues
Sign Work Order
Thank For Business

University of Nebraska at Kearney
Bid #20-02
August 26, 2019
APPENDIX G – Beverage Rights Licensing Agreement - Proposed

Beverage Rights Licensing Agreement

This Agreement is made and entered into effective the ___ day of _____, 2019, by and between _____, a _____ (the “**Contractor**”) and the Board of Regents of the University of Nebraska, public body corporate and governing body of the University of Nebraska, on behalf of the University of Nebraska at Kearney (the “**University**”).

In consideration of the mutual promises contained in this Agreement, the parties agree to the following terms and conditions:

1. DEFINITIONS

All capitalized terms in this Agreement, not otherwise defined, have the following meanings:

“**Academic Term**” is a division of an academic year, e.g. a semester or summer session, during which UNK holds classes.

“**Academic Year**” begins with the start of a fall Academic Term and ends upon completion of the last summer session the following summer.

“**Always Stocked**” is defined as at least one item of each selection available at all times.

“**Approved Beverages**” means the Approved Vending Beverages and the Designated Non-Vending Beverages marketed under trademarks or brand names owned or controlled or licensed for use to the Contractor.

“**Approved Vending Beverages**” means the Beverages the Contractor will provide and dispense in the Approved Vending Machines pursuant to **Section 2** and listed on **Exhibit A**.

“**Approved Vending Location**” means a location on the UNK campus that the University has approved for installation and operation of an Approved Vending Machine pursuant to **Section 2**. The Approved Vending Locations as of the Effective Date of this Agreement are listed in **Exhibit B**.

“**Approved Vending Machine**” or simply “**Machine**” means a beverage vending machine which:

- a) is supplied by the Contractor;
- b) has been approved by the University for installation and operation in an Approved Vending Location; and
- c) meets the minimum specifications set forth in **Section 2.2**.

“**Approved Vending Prices**” means the vend prices of Approved Vending Beverages. The Approved Vending Prices in effect as of the date of this Agreement are listed in **Exhibit C**.

“**Beverages**” means:

- a) All non-alcoholic beverages (including carbonated and non-carbonated and isotonic beverages) except:
 - 1) tap water and water contained in water-coolers;
 - 2) hot drinks, including but not limited to the following beverages that are:
 - i) intended to be served hot; and
 - ii) not dispensed in bottles or cans or through vending machines: coffee, tea, hot chocolate, cider, mocha, cappuccino, espresso, and chais;
 - 3) non-alcoholic beer and wine beverages;
 - 4) unbranded fresh milk including but not limited to soy milk, almond milk and dairy milk, as well as milk and soy-based dairy supplement drinks, but not products called “milk” that have sweeteners, flavorings, fruit juice, carbonation, protein, minerals, vitamins (other than A and D), whey, caseins, cultures, tea, coffee, and other added ingredients;
 - 5) unbranded fresh squeezed fruit (including lemonade) or vegetable juice;
 - 6) fruit (including lemonade) or vegetable juice derived from frozen concentrate;
 - 7) coffee made in multi-cup coffee makers on premises from roasted coffee beans for immediate consumption;
 - 9) fresh brewed iced tea; and
 - 10) fresh fruit or vegetable shakes or smoothies;
 - 11) carbonated and non-carbonated Sports Drinks, as defined below;
 - 12) dietary supplement drinks (including AdvoCare);
 - 13) beverages in containers brought to offices, classrooms, or living quarters for personal consumption and not for resale;
 - 14) beverages in containers brought to Cope Stadium suites or provided by a third-party provider as part of Loperville tailgating.
- b) All beverage bases from which the non-alcoholic beverages (excluding the excepted items) listed in a) can be prepared.

“Commission” means a percentage of sales net of sales taxes on Approved Vending Beverages through Contractor’s full service (i.e. Approved Vending Machine) program that the University is to receive under this Agreement. The parties acknowledge and agree that this percentage is not based on the provision of any services to be provided by the University. Commissions earned by the University under this Agreement are compensation for allowing Contractor access to UNK and its community and are not compensation for any services rendered.

“Company” means _____, a provider of beverage products to the Contractor.

“Company Beverages” means all Beverages (i) manufactured, distributed or marketed by Company; (ii) sold under trademarks or brand names owned or controlled by or licensed for use by Company; or (iii) manufactured, distributed and marketed by Contractor’s production cooperative, with the permission of Company (i.e. Dr. Pepper).

“Competitive Beverages” means all Beverages other than Approved Beverages and any products (e.g., candy bars, granola bars, snacks, and trinkets), marketed under Beverage trademarks that are not Contractor’s Beverage trademarks.

“CPI” means the Food and Beverage Component of the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics.

“Designated Non-Vending Beverages” means the Approved Beverages Contractor shall make available for sale or dispensing at UNK pursuant to **Section 3.1** of this Agreement. Designated Non-Vending Beverages may include Beverages provided by Contractor through a Supplier.

“Effective Date” means January 1, 2020.

“Full-Service Beverage Vending” means the Contractor will place vending machines at UNK, stock the Approved Vending Machines, and collect all proceeds from the sale of Company Beverages.

“Fountain Equipment” means all fountain equipment, including juice dispensers, and ice dispensing equipment reasonably necessary to enable UNK and third parties to dispense high-quality Designated Non-Vending Beverages.

“Lopers” is the nickname for the University of Nebraska at Kearney school mascot (i.e. the Antelopes).

“NCAA” means the National Collegiate Athletic Association or a successor organization with jurisdiction over UNK’s Intercollegiate Athletic Program.

“Non-Vending Beverage Cost to University” means the prices at which UNK, as well as its dining services, concessions, auxiliary operations and contracting retail outlets, will purchase Designated Non-Vending Beverages pursuant to **Section 3.2**. The Non-Vending Beverage Cost to UNK, as of the Effective Date of this Agreement, is listed in **Exhibit D**.

“Period Vending Commission” means Commissions paid periodically as described in **Section 9.2**.

“Proposal” means Contractor’s written proposal documents submitted to the University pursuant to its RFP #20-02.

“RFP” means UNK’s Request for Proposals #20-02.

“Sports Drink” means:

- a) A beverage which is:
 - 1) labelled or marketed as a “Sports Drink”;
 - 2) is intended to be consumed for fluid replacement; and
 - 3) contains electrolytes such as sodium, potassium, and/or magnesium.

- b) Sports Drinks shall not include any Beverage:
 - 1) flavored with or marketed as a “cola,”
 - 2) labeled or marketed as a “water” (e.g., “sports water” or “fitness water”); or
 - 3) labelled or marketed as an “energy drink.”

“Supplier” means an entity other than Contractor that produces or supplies an Approved Vending Beverage or a Designated Non-Vending Beverage to UNK on behalf of Contractor.

“Teams” shall mean all men’s and women’s intercollegiate athletic competition teams at UNK.

“Term” shall refer to that period of time during which the Agreement is in effect, commencing on January 1, 2020 (“Effective Date”), and ending on December, 31, 2029, unless earlier terminated in accordance with the provisions of this Agreement or otherwise in accordance with the law.

“UNK” means the University of Nebraska campus located in Kearney, Nebraska, and known as the University of Nebraska at Kearney.

“UNK ID Card” is the official identification card issued to eligible UNK students, staff, and faculty.

“University’s Beverage Program” means the totality of the rights, obligations, and mode of vending and serving Beverages at UNK, as described in the RFP, the Proposal, and this Agreement.

“**UNK Marks**” shall mean only those trade and service marks of the University described in **Exhibit G**, which may be updated by the University from time to time by providing written notice to the Contractor.

“**Year**” means the period commencing January 1 of a calendar year and ending December 31 of the same calendar year.

2. **GRANT OF EXCLUSIVE BEVERAGE VENDING RIGHTS**

2.1 Grant to Distribute Product and Install Machines.

2.1.1 Subject to the terms and conditions of this Agreement, and subject to the exceptions in **Section 8.2**, the University agrees that all Beverages sold, distributed, or offered for sampling (that is, distributed at no cost) at all locations at UNK where Beverages are sold, distributed or offered for sampling will be Approved Beverages. The University hereby grants the Contractor, and the Contractor hereby accepts an exclusive license to install and operate Approved Vending Machines at UNK to sell Approved Vending Beverages. Throughout the Term, the University shall not grant any third party the right or license to install or operate any piece of equipment at UNK to sell any Beverage.

2.1.2 In the event Contractor is unable or unwilling to perform the exclusive beverage responsibilities under this Agreement and, to the extent allowed by law, Contractor will secure these operations from an alternative reputable source with written prior approval from the University. Notwithstanding the provisions of **Section 10**, the University will not be responsible during the Term for conducting said beverage vending operations.

2.2 Approved Vending Machines; Energy Star; Approved Vending Locations.

2.3.1 All Contractor provided Approved Vending Machines and any equipment (e.g. electronic coin and currency changers) related or incorporated into the Machines shall be new (or refurbished to “new” condition) and state-of-the-art. The Machines must have the capacity to dispense and support all Approved Vending Beverages, regardless of container sizes and styles. The Approved Vending Machines shall from time-to-time and with regularity be improved and upgraded in order to maintain a high standard Machine. All Approved Vending Machines, serving chilled Approved Vending Beverages, including those that shall be replaced from time-to-time as a consequence of obsolescence or natural wear and tear, shall qualify for and be awarded the “Energy Star” designation, unless such requirement is explicitly waived by the University. Further, Contractor shall participate in energy conservation efforts as are reasonably required by the University or as required by government regulation or other applicable law. Contractor shall clean the cooling coils or similar mechanical cooling element, if any, of each Approved Vending Machine at least once per Year.

- 2.3.2 On the Effective Date of this Agreement, the Contractor shall supply, install, service and operate solely at its cost all Approved Vending Machines, including items related or incorporated into the Machines, such as labels, front facings, dollar bill validators, bill changers, and such other industry standard equipment, all of which shall remain the property of Contractor, for the purposes of selling Approved Vending Beverages at Approved Vending Locations, as those locations are set forth on **Exhibit B**, attached hereto and incorporated herein. In the absence of the University's prior express written consent, the Contractor shall not cease to operate at an Approved Vending Location. Contractor agrees that it will not, in the University's sole judgment, place an Approved Vending Machine so as to interfere with or hinder the retail sales of other food and beverage products to which Contractor is granted no rights under this Agreement. Upon the University's request, the Contractor shall promptly remove an Approved Vending Machine from an Approved Vending Location or add an additional Machine upon a showing that such a Machine would serve the needs and conveniences of the University's Approved Vending Beverage customers, regardless of profit considerations. Contractor also agrees to relocate Machines to new vending locations upon reasonable request from the University. The parties agree to enter into good faith discussions from time-to-time throughout the Term in order to upgrade and modernize Machines, alter Approved Vending Locations or otherwise meet their mutual needs with respect to the sale of Approved Vending Beverages.
- 2.3.3 At all times during the Term, all Approved Vending Machines and associated equipment shall meet all applicable local, state and federal safety codes and other requirements for food and/or beverage vending equipment and the sale of vended products.
- 2.3.4 From time-to-time during the Term and no less frequently than once every three (3) years, Contractor shall present to the University graphic design art to appear on the exterior of the Approved Vending Machines or for other purposes. All costs of such design shall be borne by the Contractor. Only for purposes to ensure that the design is keeping the image and reputation that the University strives to maintain, the University shall have the right to approve or disapprove any proposed vending machine art or design; provided however, that approval shall not be unreasonably withheld or delayed. In addition, Contractor agrees to provide no less than ten (10) different co-branded Machine fronts/branding for every three (3) year period, highlighting aspects of UNK life.

2.3.5 In the event that the University agrees to either:

- a) transfer its right of present possession of; or
- b) destroy a building in which the Contractor then operates an Approved Vending Machine, the University shall notify the Contractor of such agreement to sell or decision to destroy, and the University shall have the right to terminate the Contractor's right to install and operate Approved Vending Machines in such building.

Upon such termination of the Contractor's right, the Contractor, at its sole expense, shall promptly remove the Approved Vending Machine. If reasonably required, Approved Vending Machines will be removed or relocated at Contractor's expense in order to accommodate renovation of existing facilities and the construction of new facilities.

2.3.6 All Machines and related equipment located in any Approved Vending Location shall reflect industry standard sizes, paneling, lighting, colors, style, and such other elements as may provide for a uniform and attractive appearance among the Approved Vending Locations. The foregoing matters of Machine and Approved Vending Location styles and appearance are all subject to the University's prior review and approval, which shall not be unreasonably withheld. Without the University's prior consent, the Contractor shall not use space in the Approved Vending Locations, or any other UNK location, in any manner or for any purpose except for the use expressly permitted by the terms and conditions of this Agreement. No changes or modifications by Contractor to the Approved Vending Locations shall be made, including alterations to the electrical, plumbing, or structural components of the Approved Vending Locations, without the University's prior written consent. Any such changes or modifications shall be made solely at Contractor's expense. Contractor is responsible for the cost of cleaning or repairing any damage to UNK floors and walls, reasonable wear and tear excepted, as a result of Approved Vending Machine moves, installation activities or regular servicing. The Contractor shall use non-marring jacks and other related equipment necessary to avoid such damage. At the termination or expiration of this Agreement, Contractor shall return possession of each Approved Vending Location to the University in the same condition as on the Effective Date of this Agreement, reasonable wear and tear, and loss due to casualty or condemnation, excepted. The Contractor acknowledges that the University has granted it a reasonable opportunity to review and inspect each Approved Vending Location and to conduct such tests and investigations as are reasonably necessary to satisfy Contractor's ability to perform hereunder. The University disclaims all warranties, express or implied, of the condition or suitability of the Approved Vending Locations for the Contractor's particular purpose.

2.3.7 Contractor shall provide an identification numbering system for all Approved Vending Machines with each Machine's ID number clearly displayed on a decal or label, easily recognizable on the outside front of the Machine. This ID number shall be used to report service issues, refunds, commissions, reporting and tracking. Within thirty (30) days of the Effective Date of this Agreement and annually thereafter, the Contractor shall provide to

the University a list of all Approved Beverage Machines installed at UNK, listed by the ID number described above in this paragraph, the equipment serial number, the manufacturer, the meter reading, date installed and Approved Vending Location. This list shall be updated and provided to the University as necessary based on Approved Beverage Machine replacement, removal and relocation.

2.4 Responsibilities to Service and Operate Approved Vending Machines.

- 2.4.1 Unless explicitly provided to the contrary herein, Contractor shall be responsible for the delivery, and the related cost of such delivery, of all Approved Vending Machines and all Approved Beverages. The Contractor, at its sole expense, shall fill, maintain, and service all Approved Vending Machines. The Contractor shall use all reasonable efforts to ensure that each Approved Vending Machine is kept Fully Stocked with Approved Vending Beverages. The University shall permit the Contractor, its employees, agents and representatives to enter an Approved Vending Location during such times (and at no other times) as the University and the Contractor shall mutually agree to install and service Approved Vending Machines and stock Approved Vending Beverages.
- 2.4.2 Contractor is responsible for performing, at its own expense, all maintenance, repair, replacement of parts, and such service necessary to maintain the Approved Vending Machines, including any meters and special attachments, in reliable working condition. Contractor shall secure a reasonable level of replacement equipment and/or components in order to minimize to the greatest extent reasonably possible, the out of service time of a machine. Contractor shall maintain a log of all service calls received and the disposition of each. This log shall be available to the University for periodic review.
- 2.4.3 A program of preventive maintenance and regular replacement of worn, damaged or malfunctioning Approved Vending Machine equipment shall be instituted and carried out by Contractor, in accordance with **Exhibit F** "Preventative Maintenance Program," attached and incorporated herein by this reference. Contractor's Preventive Maintenance Program shall specifically focus on frequent and continual equipment replacement in high volume locations where obsolescence and wear negatively impact vending sales. Contractor's regular maintenance shall be planned and scheduled so as to maximize vending sales and avoid contributing to pedestrian and traffic congestion.
- 2.4.4 Contractor shall maintain the Approved Vending Machines in a clean, safe, and sanitary condition at all times, regularly and frequently removing any vending related debris from the areas immediately adjacent to the Machines. The external cabinet of all Approved Vending Machines, including cabinet top, shall be kept free from dust and other contaminants. Screens, compressor zones and condensers shall be inspected regularly for dust, seepage and other residue and shall be kept clean. Contractor will maintain the Approved Vending Machines, material handling equipment, and service vehicles in a clean, attractive, and sanitary condition to the satisfaction of the University.

- 2.4.5 Contractor shall apply its best efforts to respond within four (4) hours of any request for repair or service during its regular business hours (Monday to Friday, 8:00 a.m. to 5:00 p.m., excluding holidays). Contractor shall provide the University with the name, phone numbers and other useful contact information, of a Contractor employee designated and authorized to act on behalf of the Contractor with respect to service requests outside of regular business hours and emergencies at any time. Inoperable or malfunctioning Approved Vending Machines shall be fully operational within three (3) days of Contractor's receipt of the University's notice of repair or service needs.
- 2.4.6 The University will provide reasonable routine pest control services in and about the Approved Vending Locations. Upon reasonable request by the University and in no case shall such request be provided less than four (4) business days prior to the treatment, the Contractor shall disconnect and move vending Machines for cleaning and pest control purposes. Such requests shall not be required should the University and the Contractor establish a regular, periodic scheduled pest control service program.
- 2.4.7 Except as otherwise provided in this Agreement, the University shall have no duty to care for the Approved Vending Machines and no obligation or responsibility to protect, maintain, repair, or otherwise care for any Approved Vending Machine, provided, however, the University shall use reasonable care to reduce the risk of loss (including from theft and vandalism) to the Approved Vending Machines while such equipment is in Approved Vending Locations. The Contractor hereby releases the University from all claims, liabilities or expenses arising out of the installation or operation of an Approved Vending Machine in an Approved Vending Location provided such claims, liabilities or expenses are not caused by the University's gross negligence or willful misconduct.
- 2.4.8 The University will provide the same security oversight to the Approved Vending Locations and Machines, as it provides other spaces generally at UNK. Notwithstanding anything to the contrary herein, Contractor, however, assumes all risks of loss or damage due to vandalism or theft. Any such damage or loss shall be immediately reported by the Contractor to UNK Police and Parking Services at (308) 865-8517, with such details as may reasonably be requested by the police. In addition, the parties agree that the Contractor shall not be obligated to pay the University any Commissions pursuant to this Agreement on documented revenue losses resulting from Beverage vandalism or Beverage theft.
- 2.4.9 Refunds to customers who encounter an unsatisfactory vending experience will be processed at refund locations designated and labeled or otherwise clearly identified on each Machine. As of the Effective Date of this Agreement, the UNK Finance Office, the Office of Residence Life, the Calvin T. Ryan Library and the office of the Dean of the College of Business & Technology shall serve as refund locations. If needed, additional refund locations may be added with the prior approval of the University. Contractor may, with the approval of the University, settle refunds with product vouchers accepted by any Approved Vending Machine, in lieu of cash.

2.5 Approval of Vending Beverages; Prices.

- 2.5.1 The Approved Vending Beverages, listed in **Exhibit A** including size and package type, at the prices set forth below in **Exhibit C**, shall be offered at UNK as of the Effective Date of this Agreement. The University shall have the right to approve the Beverage offerings for each Approved Vending Machine. Throughout the Term, but no more frequently than once each calendar quarter, Contractor shall have the right to propose to the University in writing, additional, specific Beverages for vending sales, including package size and type. All Approved Vending Beverages brands and flavors shall enjoy national and local acceptance provided that Contractor's proposals shall provide for a cycle of products to be offered throughout the Year, taking into consideration and including offerings to address the need for Beverage rotation prompted by warm/cool season changes, dietary needs, healthy choices, and customer taste. If the proposal is accepted by the University, **Exhibit A** shall be amended to reflect the accepted proposal, effective upon the University's approval and enforceable throughout the balance of the Term or until similarly amended. In the event an Approved Beverage is no longer available to the Contractor, it shall be removed from **Exhibit A**. In no instance shall the Contractor place any Beverage in the Approved Vending Machines that may be regarded by the administration of the University as being unfit for campus consumption.
- 2.5.2 The vending prices listed on **Exhibit C** shall remain unchanged through December 31, 202_. Thereafter, for a practicable period following the first day of January, 202_ and each first day of January thereafter during the balance of the Term, and only during those periods, Contractor may increase such prices, provided that any such increases shall not exceed, on a percentage basis and in the aggregate, the cumulative change in the CPI since:
- a) January 1, 2020, for the initial price increase, if any; or
 - b) the date of the previous price increase for any subsequent price increases.
- 2.5.3 Approved Vending Beverages must contain healthy alternative options and shall be promoted as "healthier for you" whenever economically feasible over similar products. Such beverages shall be available in all Approved Vending Locations and are described on **Exhibit I** attached hereto and incorporated herein by this reference. For purposes of interpretation of this Agreement, "healthier for you" Beverages shall be considered to be and included in the definition of "Approved Vending Beverages," and all provisions applicable to Approved Vending Beverages are also applicable to those Beverages listed on **Exhibit I** or any amendment thereto.
- 2.5.4 When requested, samples of items offered must be furnished free of all expenses within three (3) calendar days and will be returned at the Contractor's expense, if requested.

- 2.5.5 The Approved Vending Beverages sold shall be new, fresh, of the best quality, and guaranteed free of defects in material and workmanship, for a minimum period as provided by the manufacturer at time of sale. The Approved Vending Beverages shall meet the quality standards set out in **Exhibit J**, incorporated herein, and be offered at prices competitive with those for similar products sold in the area surrounding UNK.
- 2.5.6 Contractor will provide nutrient analyses, ingredient and shelf-life coding on all Approved Vending Beverages with labeling in compliance with all applicable federal and local law, including but not limited to those packaging, labeling, quality standard regulations and rulings promulgated by the United States Department of Agriculture, the Food and Drug Administration, and the Federal Trade Commission.
- 2.5.7 Contractor shall be responsible for all loss associated with outdated product without penalty or liability of any sort placed upon the University for such loss.
- 2.5.8 Contractor will use its best efforts to offer and provide as Approved Vending Beverages any of Contractor's newly marketed Beverages within ninety (90) days after such Beverages are offered for sale generally to the public in the UNK area, on terms comparable to those offered at other similarly-situated universities offering the new product.
- 2.6 Beverage Delivery.
- 2.6.1 The Contractor, at its sole expense, shall fill, maintain, and service all Approved Vending Machines, which shall be Always Stocked with Approved Vending Beverages, unless otherwise agreed to by UNK. The Contractor, its employees, agents and representatives may enter an Approved Vending Location during locations' building hours (and at no other times) as the University and the Contractor shall mutually agree in order to service and stock the Approved Vending Machines.
- 2.6.2 Contractor shall make standard deliveries of Approved Vending Beverages on Monday, Wednesday, and Friday, at reasonable times to be mutually agreed upon by the parties. Contractor shall notify the University of the Contractor's designated employees and their telephone numbers for the purposes of communicating with Contractor about Beverage delivery needs. Certain Machines may require Beverage delivery on Saturdays and/or Sundays, which Contractor shall provide upon the reasonable request of the University. Should the provisions in this paragraph fail to maintain the Machines Always Stocked, the parties shall promptly engage in good faith discussions for the purposes of altering the delivery schedule to achieve the Always Stocked standard. In any case, Contractor shall review the standard delivery schedule no less frequently than once a calendar quarter or as reasonably requested by the University.
- 2.6.3 Contractor will make Approved Vending Beverage emergency deliveries, as needed. Contractor will provide the University with Contractor phone numbers or other contact information to be used in order to notify Contractor when an emergency delivery is needed.

- 2.6.4 With each Approved Vending Beverage delivery, Contractor shall remove from the University's property any refuse caused by the stocking and maintenance of the Machines, including but not limited to plastic bottle beverage carriers; no such refuse shall be left in University dumpsters, waste containers, or recycling receptacles.
- 2.6.5 When classes are in session, all Approved Vending Machines shall be checked for stock no less than once a week to ensure Machines are Always Stocked and in satisfactory operating condition. When classes are not in session, Approved Vending Machines in occupied buildings shall be inspected regularly as necessary to meet customer demand.
- 2.6.6 Contractor shall take such action as is commercially reasonable to stock and maintain Machines in order to meet the Approved Vending Beverage needs of attendees at special events, conferences and workshops held at UNK, provided that the University shall provide Contractor with reasonable notice prior to such special events.
- 2.7 Vending Purchases: Currency, Card Readers. All Approved Vending Machines shall accept payment in the form of debit/credit cards and currency or coin and shall include a coin return. All Approved Vending Machines shall be equipped with cash accountability meters.
- 2.9 Vending Sales Reports.
- 2.9.1 Contractor will provide Monthly Vending Commission reports in a format in accordance with the format set forth in **Exhibit E**, attached, setting forth the following:
- Product codes for individual categories;
 - Building and location of machines;
 - Approved Vending Machine number;
 - Beverage sales prices;
 - Date of Approved Vending Machine installation/removal;
 - Gross sales, sales taxes, and sales net of sales taxes, refunds in the aggregate and for each Approved Vending Machine by location for each reporting period;
 - Monthly Commission and Year-to-Date Commission for each Approved Vending Machine by location for each month of the fiscal year;
 - Required beginning and ending non-reset cash meter readings;
 - Actual cash and non-cash transaction amount collected; and
 - Amount over and short in aggregate and by Approved Vending Machine.
- 2.9.2 In addition, Year-to-Date ("YTD") reports shall be provided to the University, using a July 1 through June 30 fiscal year period. YTD reports shall contain the information listed above, aggregated for the fiscal year and be provided to the University within forty-five (45) days of the end of each calendar quarter during the Term. Contractor's reports shall reflect and incorporate generally accepted accounting principles for colleges and universities and any

applicable standards or rules promulgated by the Department of Administrative Services of the State of Nebraska.

2.9.3 In conjunction with the submission of the YTD quarterly reports, Contractor shall meet with the University to discuss vending performance, sales, commissions and trends, at which time Contractor shall make recommendations, when indicated, concerning the addition, removal or other change in or to any Approved Vending Location, changes designed to improve sales, the delivery of fresh products, and the avoidance of waste.

2.10 Vending Expenses and Taxes.

2.10.1 The Contractor shall pay, when due, all costs and expenses associated with all Approved Vending Machine installation, including equipment positioning and connection to building plumbing or electrical sources. The University, at its expense, shall provide all electrical service and wiring for Approved Vending Locations up to the electrical sockets; provided however, the University makes no representation or warranty concerning the quality or continuity of such service; nor does the University assume or accept any liability whatsoever with respect to an electrical interruption's impact on vending sales or maintenance of inventory. The University shall not provide network connectivity for any Approved Vending Machine. Contractor shall pay all costs associated with non-cash modes of payment (i.e., debit/credit cards), including costs of hardware, software, wireless devices, maintenance of the foregoing, and any vendor transaction fees associated with such cards.

2.10.2 The Contractor shall:

- a) pay, when due, all taxes, assessments, license fees, permits (including parking), or other obligations, which are now or may be imposed in the future by any governmental authority arising out of the conduct of Contractor's business (including, without limitation, the ownership and operation of the Approved Vending Machines or the selling of Approved Vending Beverages at the Approved Vending Locations);
- b) charge, collect, and pay all applicable sales, use, and/or excise taxes that may be imposed upon Approved Beverages of Approved Vending Machines; and
- c) in Contractor's own name (as appropriate) remit to and file with the proper governmental authorities all the foregoing taxes, assessments, fees, and necessary returns and comply with all regulations and rules promulgated by such governmental authorities. Upon the University's reasonable request, Contractor shall deliver to the University proof of the payment of all taxes.

3. **GRANT OF EXCLUSIVE BEVERAGE POURING AND RETAIL RIGHTS**

3.1 Ensuring Fountain and Retail Quantities Needed. The Designated Non-Vending Beverages shall be provided to the University and the University shall have the right to offer to sell or

dispense, either in fountains, bottles, or cans, in buildings and athletic facilities at UNK, such Designated Non-Vending Beverages. Contractor shall use its best efforts to provide the University with Designated Non-Vending Beverages adequate to meet its requirements, at the times and locations, and in the quantities and types requested by the University and those food service businesses obligated by University policy and contracts to serve Contractor's Beverages. Should Designated Non-Vending Beverages be provided by Suppliers, Contractor shall:

- a) cause any such Supplier to agree to provide its Designated Non-Vending Beverages in quantities adequate to meet all the University's requirements for such Supplier Beverages; and
- b) ensure the Supplier's prompt performance of all delegated Contractor obligations under this Agreement.

3.2 Grant of Exclusive Rights; Initial Non-Vending Beverage Cost to University; Price Adjustment.

3.2.1 Except as explicitly provided for to the contrary, the University grants Contractor the exclusive right to make Beverages available for sale and distribution at UNK, including all fountain sales, bottle and can sales in all locations where Beverages are sold or distributed at UNK. The University, its dining services, concessions or other retailing outlets shall serve or dispense, at a minimum, in fountains, bottles and cans, Contractor's Designated Non-Vending Beverage products in all UNK facilities. In no circumstance shall Competitive Beverages be permitted in or on the UNK Campus, except as otherwise permitted in this Agreement. Contractor will have exclusive rights in the Beverage category regarding pouring and retail rights at UNK, Teams' sponsorships, and licenses to the UNK Marks.

3.2.2 Throughout the Term, the Contractor shall offer to sell to the University and its dining services provider, concession and other retailing outlets, and the University agrees to purchase from Contractor, at prices not to exceed the Non-Vending Beverage Cost, as indicated in **Exhibit D**, attached hereto and incorporated herein, as adjusted from time-to-time, on terms of net forty-five (45) days:

- a) all the University requirements of bottles and cans of Designated Non-Vending Beverages; and
- b) all the University requirements of fountain dispensed Designated Non-Vending Beverages. See **Exhibit C** for detail on specific products and prices.

3.2.3 Designated Non-Vending Beverages will be sold by Contractor to the University at the Non-Vending Beverage Cost to University set forth on **Exhibit C** attached and incorporated herein by this reference. The Non-Vending Beverage Cost to University on **Exhibit C** shall be effective on January 1, 2020 and remain unchanged through December 31, 202_. On January 1 of each Year after December 31, 202_, the Contractor may increase the Non-

Vending Beverage Cost to the University of the bottles and cans it offers and sells to the University, its dining services, concessions and other retailing outlets; provided however the annual price increase shall not exceed, on a percentage basis and in the aggregate, the cumulative change in the CPI since:

- (a) January 1, 2020, for the initial price increase, if any; or
- (b) the date of the previous price increase or any subsequent price increases.

The Contractor shall deliver to the University notice of the amount of any increase permitted under this section by November 1 prior to the Year to which the increase applies. The Contractor shall use commercially reasonable marketing efforts to ensure that any adjustment to the Non-Vending Beverage Cost to the University does not negatively impact the University's revenue from the sale of Designated Non-Vending Beverages.

3.2.4 The price for fountain dispensed post-mix Designated Non-Vending Beverages will be \$__ per gallon through December 31, 202_. On January 1, 202_, and on January 1 of each Year thereafter, prices for fountain-dispensed post-mix Designated Non-Vending Beverages shall not exceed, on a percentage basis and in the aggregate, the cumulative change in the CPI since:

- (a) January 1, 2020, for the initial price increase, if any; or
- (b) the date of the previous price increase for any subsequent price increases.

Notwithstanding the foregoing, juice prices, which may be adjusted on January 1 of each Year, will be determined by Contractor using comparable discounts from the list price effective January 1, 2020, and are not subject to limitations based on the CPI as discussed in this section. Contractor agrees to notify the University of pricing adjustments no later than December 1 prior to the Year in which the adjustments are to take effect.

3.2.5 Contractor price/cost increases permitted by this section are contingent upon the timely University notification (i.e. November 1 for Non-Vending Beverage Cost to University or December 1 for fountain post-mix Designated Non-Vending Beverages pricing).

3.2.6 Support-in-Kind; Student and Other Campus Activities. Each Year, the Contractor will provide reasonable quantities of its signature Beverages, such quantities to be mutually agreed upon, at no cost to the University for the following: _____.

3.3 Beverage Warranty. The Contractor warrants and covenants that all Beverages distributed by Contractor pursuant to this Agreement will be unadulterated and in compliance with all applicable federal, state and local food, safety, and health laws, rules and regulations.

3.4 Coolers; Fountain Equipment.

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- 3.4.1 The Contractor shall provide and deliver to the University and its dining service provider, concession and other retailing outlets, at no cost or expense to the University, all menu boards for retail sales and coolers reasonably necessary to merchandise and sell Designated Non-Vending Beverages (“Cooler(s)”). Contractor warrants that each Cooler shall be new or like new at the time the Cooler is placed in service at UNK. Contractor represents that to the best of its knowledge, after due examination, each Cooler is free from defects in workmanship or design. All equipment provided by Contractor will at all times remain the property of the Contractor, and the University shall have no duty to insure such equipment from loss or damage.
- 3.4.2 As of the Effective Date of this Agreement, Contractor shall provide and install at no cost to the University all Fountain Equipment at UNK, including its dining services, concession and other retailing outlets. The Fountain Equipment shall be new equipment or refurbished to be as good as new equipment. Any such equipment provided by Contractor under this Agreement will at all times remain the property of Contractor and the University shall have no duty to insure such equipment for loss or damage. The Fountain Equipment shall be of a quality which meets or exceeds the standards set forth in the RFP, provided, however, that Fountain Equipment shall not be required to meet “Energy Star” standards until such time that as “Energy Star” standards are available for Fountain Equipment.
- 3.4.3 Contractor shall respond 24-hours, seven (7) days a week for service and repair of Fountain Equipment and Coolers located in residence hall dining facilities. Similarly, with respect to Fountain Equipment and Coolers located in UNK athletic facilities, Contractor agrees that it shall respond 24-hours, seven (7) days a week for service and repair of such Fountain Equipment and Coolers for the day before, the day of, and the day after any event scheduled at the relevant athletic venue. Contractor shall make best efforts to commence service and repair within four (4) hours after notification of malfunctions by the University. All other Fountain Equipment and Cooler service and repair shall commence on the day the University notifies Contractor of the malfunction, if the notification is delivered prior to 12:00 p.m. (noon); or if notification of malfunction is delivered on or after 12:00 p.m., then no later than noon of the subsequent day. Contractor shall maintain the Fountain Equipment and Coolers so as to assure that it dispenses appropriate product, including but not limited to proper syrup/liquid mix, temperature, no overspray and no spillage.
- 3.4.4 Contractor will provide at no charge regular mechanical repair reasonably needed for Fountain Equipment. Any removal, remodel, relocation or reinstallation of dispensing equipment, flavor changes, alterations prompted by changes in weather seasons or line changes will be provided without charge. Contractor agrees to provide to the University a maintenance log of all Fountain Equipment and Coolers at such regular intervals in a format with such information as may be reasonably requested by the University.
- 3.4.5 On-Going Responsibilities of the Contractor. In the event Contractor is unable or unwilling to perform the exclusive beverage and retail responsibilities heretofore mentioned and to

the extent allowed by law, Contractor will secure these operations from an alternative reputable source with written prior approval from the University. Notwithstanding the provisions of **Section 10**, the University will not be responsible during the Term for conducting said beverage pouring and retail responsibilities.

4. CONTRACTOR'S PERSONNEL AND UNIVERSITY BEVERAGE PROGRAM REPRESENTATIVE

- 4.1 From time-to-time Contractor shall designate, subject to the University's right to interview and approve such designation, a University Beverage Representative with authority to independently and effectively resolve issues and problems related to the University's Beverage Program. As of the Effective Date of this Agreement, _____, Contractor's [insert position title], is designated as the University Beverage Representative. Contractor and the University will annually, as part of a broader University's Beverage Program review, evaluate the performance of the Contractor's University Beverage Program Representative.
- 4.2 Contractor will conduct criminal background investigations at Contractor's expense of all Contractor employees assigned to serve the University's Beverage Program. Such background checks shall be made to the same degree of thoroughness, as those background checks the University conducts for newly hired staff at UNK. The University will be informed of any Contractor employee (or job candidate Contractor intends to employ) whose background check indicates a history of behavior that might adversely impact his or her work performance or the safety of persons or property at the University. Any action taken with respect to such employee or potential employee shall be mutually agreed upon by the parties, provided however, should the University in its sole discretion determine that the employee's past behaviors present an unacceptable risk and if otherwise permitted by law, the employee shall be terminated, or in the case of a job candidate, not be offered employment.
- 4.3 Contractor, on behalf of itself and any subcontractor to this Agreement, shall use an electronic verification system to determine the work eligibility status of new employees physically performing services with the State of Nebraska, as required by Neb. Rev. Stat. §§ 4-108 to 4-114, as in effect on the Effective Date of this Agreement, or as such law may be amended from time-to-time. Compliance with these Nebraska statutes shall be considered material to this Agreement.
- 4.4 All Contractor's employees while on campus (e.g. drivers, and service and repair personnel) shall be identifiable as Contractor's employees by wearing Contractor logo-identifiable uniforms with visible photo ID badges, issued by Contractor, attached to the uniform. The Contractor's employees must be prepared to show identification while working on the UNK campus. The Contractor employee uniforms are to be provided by the Contractor at Contractor's expense, must easily and appropriately identify the Contractor and employees

by name. Contractor's employees may be required, at Contractor's expense, to be issued UNK ID Cards designating the Contractor's employee as a contracted vendor of the UNK.

- 4.5 No later than July 15 of each Year, representatives from each party, including Contractor's University Beverage Representative, shall meet to complete a detailed review of the University's Beverage Program, this Agreement and Contractor's performance. Benchmark measurements for performance and performance comparison analyses based upon such benchmarks shall be established and reviewed over the Term as part of the annual review meeting. The Contractor shall submit to the University, Contractor's report of strategies and planning goals for the ensuing Academic Year.

5. LICENSE TO USE UNIVERSITY MARKS; MARKETING PLANS

- 5.1 Grant to Use University Marks. On the terms and conditions set forth in this Agreement, the University grants the Contractor a royalty free, non-exclusive, non-assignable, non-sublicensable license to use, reproduce, and otherwise exploit throughout the United States, the University Marks shown on **Exhibit G**, subject to the exceptions in **Section 8**, for all Contractor's on-campus and off-campus marketing, advertising and promotional activities under this Agreement. This license includes the right to use the University Marks in or on all Contractor's marketing, advertising, promotional and packaging materials and activities under this Agreement, including point-of-sale materials, cups, vessels, cans, bottles, commemorative cans or bottles, can/bottle wraps and all other forms of packaging, broadcast, print, electronic and other forms of media, vending fronts and truck backs and sides, all of which shall be subject to the University's right of review and approval.

The Contractor shall not alter, modify, dilute, or otherwise misuse or bring disrepute to a University Mark. Throughout the Term and subject to the exceptions noted in **Section 8**, the University shall not grant any person or entity a license to use the University Marks to market, advertise, promote or sell any Competitive Beverage. This license shall terminate upon the termination of this Agreement. Upon the termination of this license, the Contractor shall cease using the University Marks in any capacity. In no event shall the Contractor claim or assert any ownership interest in the University Marks.

- 5.2 Additional Uses. Contractor shall have the right to use University Marks, subject to the limitations and prior written approvals required in this **Section 5** and the exceptions noted in **Section 8**, in promotions with Contractor's customers in all channels of trade, including without limitation grocery and retail stores, drug retailers, quick serve and all other types of restaurants, mass merchandisers, institutional and "at-work" food service operations, convenience stores ("oil and gas" retailers), video and music retailers, movie theaters and indoor entertainment venues, theme parks and outdoor attractions and sports venues, provided that such usage is limited to Contractor's Beverage packaging and advertising or promotional materials solely related to the marketing of Approved Beverages.

5.3 Official Beverage Designation. In addition to the rights granted in **Sections 5.1** and **5.2** and subject to the exceptions noted in **Section 8**, Contractor shall have the right, without further payment of any royalty, in any of Contractor's marketing, advertising or promotional activities or materials to refer to any Approved Beverage as an "Official Beverage" of UNK or the Teams, and to refer to Contractor as a "sponsor" of UNK or the Teams.

5.4 Rights Not Granted. In the event Contractor desires to use University Marks on merchandise (including without limitation prizes or other items given or sold at reduced prices as fulfillment of promotional offers) other than Approved Beverage packaging and advertising or promotional materials related to the marketing of Approved Beverages, Contractor either shall obtain the merchandise from a manufacturer licensed by the University, or shall obtain a separate license from the University for which Contractor shall pay a mutually agreed upon royalty.

5.5 Unrelated Business Income. Contractor will not use the University Marks in any manner that would result in payments to the University by Contractor being taxed as unrelated business taxable income under the Internal Revenue Code (even if such use or action is otherwise permitted hereunder). Contractor acknowledges and agrees that the University does not endorse, advertise, or market Contractor or any of Contractor's products. Contractor agrees that:

- a) it will make no representation that the University endorses, advertises, or markets Contractor or any of its respective products; and
- b) it will take no action (and will not allow any action to be taken) that will constitute or could reasonably be interpreted as an endorsement or advertisement by the University of Contractor or any of its respective products.

Contractor will fully cooperate with the University to avoid taking any action that would result in the Internal Revenue Service treating all or part of any licensing revenues attributed to this Agreement, as unrelated business taxable income.

5.6 Contractor Dedicated Marketing Resources; Review of Marketing Materials.

5.6.1 In addition to any license fees or commissions described in this Agreement, Contractor also agrees to expend in value no less than \$___ annually to promote and market the University Company Beverage program. For purposes of meeting or exceeding this annual marketing resource requirement, any Company product distributed without charge to the University shall be valued at the University's Non-Vending Beverage cost.

5.6.2 Prior to any marketing distribution or promotional launch, and no less than thirty (30) days before the beginning of each Academic Year, Contractor shall submit to the University for approval Contractor's marketing plans for the ensuing Academic Year, including:

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- a) any marketing or promotional activity that will utilize the University Marks; and
- b) any items created by Contractor that incorporate any of the University Marks.

Such submitted marketing plans shall include a marketing plan response for each Academic Term. In addition, the plans shall include:

- 1) a descriptive list of activities;
- 2) beverages to be promoted;
- 3) date of the proposed activities;
- 4) an explanation of how the plans address monthly sales data and the needs of the UNK community;
- 5) no less than two programs aimed to increase vending sales; and
- 6) on-campus and off-campus retail programs.

5.7 The University will use its best efforts to respond within ten (10) business days of receipt of any marketing approval request. The University will not unreasonably withhold its approval of such submissions by Contractor under this Agreement. Upon approval, implementation of any marketing plan shall be the responsibility and at the expense of Contractor. Contractor acknowledges that withholding approval will not be considered unreasonable if:

- a) University determines that the University Marks have been used incorrectly in a technical sense (such as improper color or trademark nonconformity);
- b) University determines that Contractor's proposed promotional activity or use of University Marks will adversely reflect upon the University's professional image;
- c) University determines the activity is likely to result in unfavorable tax consequences (i.e. unrelated business income tax); or
- d) University determines that the use of the University Mark, or the marketing and promotional activity infringes upon rights granted to another party whose principal business is unrelated to the manufacture or distribution of Beverages.

5.8 Annual Marketing Report. Within ninety (90) days of each Year's end, Contractor shall provide the University a report of all marketing expenditures related to Beverage vending at UNK for the previous Year. The report shall specifically set out expenditures for 'premiums' or 'giveaways' described in the Contractor's Proposal, as well as descriptions and amounts of the general print and broadcast media advertising proposed in Contractor's Proposal. Individual expenditures of less than \$500 may be aggregated as a single sum in the report; however, a clear explanation of the promotional efforts represented by any aggregated sum are to be included in the report.

6. **SPONSORSHIP RECOGNITION**

- 6.1 Grant of Rights. Subject to the exceptions listed in **Section 8**, the University grants Contractor the exclusive sponsorship rights in the Beverage category in connection with the UNK campus and the Terms set forth on **Exhibit H**.
- 6.2 Unrelated Business Income. All such sponsorship recognition, including without limitation game sponsorships, presenting sponsorships, naming rights or sponsorship promotional acknowledgment opportunities relating to signage, shall be structured to conform to the rules applicable to a “qualified sponsorship payment” under IRC §513(i) and Treas. Reg. §1.513-4. Unless otherwise permitted by IRC §513(i) and Treas. Reg. §1.513-4, all sponsorships shall be made under arrangements where there is no provision or expectation that the Contractor will receive any substantial return benefit other than the use or acknowledgment of the name and logo (or product lines) of the Contractor’s trade or business. Such use or acknowledgment may include:
- a) exclusive sponsorship arrangements;
 - b) logos and slogans that do not contain qualitative or comparative descriptions of the Contractor’s products or services;
 - c) a list of the Contractor’s locations, telephone numbers, or internet address; 4) value-neutral descriptions, including displays or visual depictions of the Contractor’s product-line or services; or
 - d) the Contractor’s brand or trade names and product or service listings, but shall not include any “advertising” [as defined in Treas. Reg. 1.513-4(c)(v)], including any message containing qualitative or comparative language, price information or other indications of savings or value, endorsement, or other inducement to purchase, sell, or use the Contractor’s products or services.

In the event any payment or portion thereof made to the University pursuant to this Agreement is deemed to constitute taxable income to the University, the parties shall in good faith renegotiate such portion or portions of this Agreement which result in such taxable income.

- 6.3 Approval of Sponsorship Recognition Materials. Prior to distribution and/or installation of sponsorship recognition materials, Contractor shall submit to the University for approval any proposed sponsorship signage or other sponsorship recognition materials. The University will use best efforts to respond within ten (10) business days of receipt of any approval request. The University will not unreasonably withhold its approval of such submissions by Contractor under this Agreement. Contractor acknowledges that withholding approval will not be considered unreasonable if:
- a) University determines that Contractor’s proposed materials adversely reflect upon University’s professional image;
 - b) University determines the activity is likely to result in unfavorable tax consequences, i.e. unrelated business income tax; or

- c) University determines that the proposed materials infringe upon rights granted to another party whose principal business is unrelated to the manufacture or distribution of Beverages.
- 6.4 Post-Season and Other Tournaments. Due to reasons beyond the University's control, display of sponsorship recognition materials may not be allowed in the case of certain exhibition, pre-season, conference, regional, National Collegiate Athletic Association ("NCAA") or other tournaments/games, whether those events take place in facilities located on University property or in facilities located in off-campus venues. In such instances, the University may have no authority regarding sponsors appearing in tournament venues, and therefore, certain of Contractor's recognition materials may be removed or covered during the period of said tournaments/games; sponsorship announcements may not be made; and exclusive sponsorship grants may be voided, in order to meet the requirements of the sports event organizer. Contractor shall not be relieved or released from any obligation stated in this Agreement should such an occurrence take place during the Term. Any such removal, cover, or subsequent reinstallment of Contractor's sponsorship materials shall be accomplished without cost to Contractor.
- 6.5 Non-UNK Venues.
- 6.5.1 In all instances, the University has in good faith promised Contractor the sponsorship recognition and economic benefits accompanying this Agreement with the belief that all such recognition and economic benefits are readily available. However, should any person or entity, other than the University, own or control the operations of an off-campus athletic venue, refuse to allow the University to provide Contractor with the recognition and benefits promised herein, following the University's reasonable efforts and attempts to negotiate with the sports venue's owner/operator, then the University's obligations to provide such recognition and benefits at these off-campus, non-University controlled venues shall be waived; certain of Contractor recognition materials may be removed or covered; and sponsorship announcements may not be made, in order to meet the requirements of the sports venue owner/operator/controller. Contractor shall not be relieved or released from any obligation stated in this Agreement should such an occurrence take place during the Term. Any such removal, cover, or subsequent reinstallment of Contractor's sponsorship materials shall be accomplished without cost to Contractor.
- 6.5.2 In addition, with respect to future athletic venues not owned or otherwise fully under University control, (e.g. a municipal arena providing sports venues to the University), the University will negotiate in good faith with the sports venue sponsorship rights holder and the Contractor to provide the Contractor with sponsorship recognition substantially equivalent to that set forth on **Exhibit H**, attached hereto and incorporated herein.
- 6.6 Company Marks. Contractor hereby grants to the University a non-exclusive license to use, and authorizes the University to sublicense others to use and subcontract with others to manufacture products incorporating or bearing Company's trademarks, trade names, logos,

slogans, trade dress and other intellectual property of indicia, solely for the purposes of performing the University's obligations hereunder, including distributing, announcing and installing the sponsorship recognition elements described in this Agreement. The University shall not be obligated to pay or to cause any sublicensee to pay any royalty or other fee to Contractor with respect to any such use.

7. **STUDENT INTERN PROGRAM**

Upon the request of the University, Contractor shall cooperate with the University to develop a student internship for the purposes of working and consulting on campus life initiatives, health and wellness concerns, recycling, student body outreach, or such other areas of student interests as may be beneficial to the students and the parties.

8. **EXCLUSIVE RIGHTS; EXCEPTIONS**

8.1 Exclusive Rights.

8.1.1 Contractor will have the exclusive right to be the "Official Soft Drink of the University of Nebraska at Kearney", the "Official Soft Drink of Loper Athletics", and the nonexclusive right to be a "Proud Sponsor of UNK [or Loper] Athletics".

8.1.2 Subject to the terms and conditions of this Agreement, the parties acknowledge and agree that the University shall have the right to accept funds (not Beverage product) donations from persons associated with or owning interests in Competitive Beverages.

8.1.3 The University will not grant, nor allow anyone on the University's behalf to grant, any of the following rights or benefits to an entity other than Contractor:

- a) the right to be recognized as, or to use in any manner the phrase, "Official Soft Drink of the University of Nebraska at Kearney", the "Official Soft Drink of Loper Athletics", or any comparable phrase, or in any manner recognize a Competitive Beverage in association with UNK or the Teams;
- b) the right to display any Competitive Beverage's trademarks, slogans, logos, or similar indicia or marks of identification, or any Competitive Beverage's products or services, within or on any UNK facility, including athletic facilities while such facilities are being used as a competition venue by UNK's Department of Intercollegiate Athletics, or any parking areas for these facilities. Except as specifically stated herein to the contrary, the University shall not allow any Competitive Beverage's manufacturer or distributor to display any sign or electronic message, broadcast any audio message, or install or operate any point of presence including any kiosk or information booth at any UNK facility when such facility is serving as a venue for an event or activity sponsored by the University.

- c) the right to display such Competitive Beverage’s emblems, trade names, trademarks, service marks, designs, logos, characters, identifications, symbols and other proprietary identifying designs, products or services on any materials of any nature licensed, sold or distributed at UNK;
- d) any license to allow a Competitive Beverage to use any of the University’s Marks; provided, however, that it shall not be a violation of this Agreement for the University to comply with bylaws, rules or regulations of the NCAA even if such bylaws, rules or regulations may require that University Marks be used in connection with a Competitive Beverage’s commercial activities under certain circumstances. For example, it shall not be a violation of this Agreement to permit University Marks to be used by the Mid-America Intercollegiate Athletics Association (MIAA) or its member institutions in connection with a Competitive Beverage’s commercial activities, provided that such use is solely in conjunction with games and events comprising pre-regular season play or post-regular season play, such as bowl games, conference or NCAA play-offs. Further, it shall not be a breach of this Agreement should the MIAA Conference affiliate or associate itself with a Competitive Beverage and such affiliation or association involves a promotional design that uses logos or marks from all of the schools in the MIAA or its successor conference;
- e) the right to sell, distribute, serve or otherwise make available or advertise, market, promote or endorse Competitive Beverages at or in connection with UNK or the Teams.

8.2 Exceptions.

8.2.1 The University, on behalf of UNK, is a party to the following contracts which involve food or beverage service at UNK, referred to as “Pre-existing Contracts”:

Contract Party	Contract Date
Sodexo America, LLC	May 21, 2019 to June 30, 2024
Runza Restaurants	July 1, 2017 to June 30, 2022
First Choice Vending	July 21, 2014 to July 20, 2020

Such pre-existing contracts are public records available to Contractor upon request, the terms of which are incorporated herein by this reference. No provision of the pre-existing contracts nor the University’s performance of its obligations under the terms of the pre-existing contracts shall be cause or reason to claim or allege the University to be in breach of this Agreement. Notwithstanding any provision herein to the contrary, no rights or other benefits are granted to Contractor in this Agreement which interfere or may interfere with the University’s performance of its obligations under the pre-existing contracts. In addition, the University reserves the right to renew, restate, extend, or amend the pre-existing contracts and award rights to parties other than those listed above; provided that, the rights granted to the contract party are substantially similar to those contained in the pre-existing

contracts as they exist on the Effective Date of this Agreement. To the extent that Beverages are served by the contract parties listed above pursuant to the pre-existing contracts, Contractor agrees to provide Approved Beverages to the contract parties in support of the University's operations and the pre-existing contracts for concessions and food services. Should, during the Term, any pre-existing contract terminate or expire, no extension, renewal, renegotiated contract, or new award of the pre-existing contract rights shall be granted, unless such extension, renewal, renegotiated contract, or new award provides for exclusive service of Approved Beverages during the Term, or any extension or renewal of this Agreement or "re-award" of new pouring rights to the Contractor.

- 8.2.3 The University may infrequently invite or allow events, performances, or exhibitions to UNK that are parts of a national, regional or statewide tour, and such tour may be sponsored in whole or in part by a Competitive Beverage. In such cases, it will not be a violation of this Agreement for the event, performance or exhibition to acknowledge the sponsorship of a Competitive Beverage; provided that the acknowledgment is of a temporary nature, visible solely within the venue for such event, performance or exhibition, and makes clear that the Competitive Beverage is a sponsor of the event, performance or exhibition and not a sponsor of UNK or the Teams. The University will take reasonable steps to clarify the absence of any relationship between the Competitive Beverage and UNK or the Teams. UNK shall provide Contractor with no less than thirty (30) days prior written notice, or if impracticable, as much notice as practicable, of such an event, performance or exhibition on campus.
- 8.2.4 The University offers an entrepreneurship camp for children at UNK. In such case, it will not be a violation of this Agreement if during the camp the children sell Approved Beverages or Competitive Beverages at UNK as part of their educational experience.
- 8.2.5 Nothing contained herein will prevent on-campus consumption by students, faculty, staff or their guests, or the general public, of Competitive Beverages purchased outside of UNK for individual use and not for resale.
- 8.2.6 It shall not be a violation of this Agreement for the University or its employees and students to engage in academic research involving a Competitive Beverage so long as the research does not involve the sale or distribution of a Competitive Beverage at UNK.
- 8.2.7 It shall not be a violation of this Agreement for a Competitive Beverage to be served as part of medically related patient care at student health centers on campus.
- 8.2.8 It shall not be a violation of this Agreement for the University or any Team to comply with bylaws, rules or regulations, terms, conditions, agreements, or contracts of any events sponsored by a third party provided that the University is not the originator of any such events and acts solely as the host venue at which the third-party events will take place.

- 8.2.9 It shall not be a violation of this Agreement for a visiting team to use a Competitive Beverage or Sports Drink, its container, cups, towels or other items in its team bench area or as its sponsor.
- 8.2.10 It shall not be a violation of this Agreement for student organizations, student groups, academic associations, and third-party golf tournaments to obtain sponsorship from Competitive Beverage companies so long as such Competitive Beverages are not distributed, sold or offered at UNK. The University will take reasonable steps to prevent said organizations from selling or otherwise dispensing Competitive Beverages at UNK. Furthermore, the University shall take reasonable steps to address and seek to stop such organizations from creating the impression that the University or the Teams endorse or have a relationship with a Competitive Beverage. However, individuals may consume Competitive Beverages as provided in **Section 8.2.5** or as provided in Section **8.2.11**.
- 8.2.11 It shall not be a violation of this Agreement for the University to provide Competitive Beverages to visitors, dignitaries and performers invited by the University when such products are specifically itemized and contractually required by the visitor, dignitary or performer.
- 8.2.12 It shall not be a violation of this Agreement for the University to open additional convenience stores at UNK as long as those stores abide by the terms and conditions of this Agreement.
- 8.2.13 Brewed Awakening, a student run business, is located the West Center building on campus and provides experiential learning for students within the College of Business and Technology. This business primarily serves as a coffee shop but also provides catering for UNK and community events. Nothing within this Agreement shall be interpreted to prohibit or hinder the activities of this group.
- 8.2.14 The University represents, and Contractor acknowledges, that the University has or will have licensing agreements that provide for:
- b) Starbucks retail operations located in the Nebraskan Student Union; and
 - c) a separate, non-branded coffee bar in its Fine Arts building, both of which are managed by a separate third-party proprietor, as well as the potential for similar coffee-focused retail operations at other UNK locations over the Term.

These retail operations are not considered full service or quick serve restaurants and serve Ancillary Beverages at UNK, some of which may be served in cups bearing trademarks other than those of the Contractor and Company. It shall not be a violation of this Agreement for the University to serve the aforementioned Ancillary Beverages in such trademarked cups or the trademark bearing cups of any other entity chosen to supply/serve the above described Ancillary Beverages on-campus in their stead.

Furthermore, it shall not be a violation of this Agreement for the University or these entities to sell Ancillary Beverages, so long as such Ancillary Beverages are:

- 1) part of the entity's line of standard products sold in the entity's other company outlets;
- 2) not identifiable with any major beverage competitor of the Contractor; and
- 3) purchased from the Contractor when such are available and stocked by the Contractor.

The University may enter into third party agreements for coffee-focused retail operations in addition to those existing at the beginning of the Term. Each of these agreements would be subject to competitive bidding. The University will notify Contractor at least thirty (30) days prior to beginning the bidding process for a new retail operation, and Contractor will be encouraged to submit a bid that may lead to a separate agreement for the Contractor to operate a specific coffee-focused retail site selected by the University. Should Contractor elect not to bid for a new retail site, the University may enter into such arrangements with other coffee-focused retailers to provide such operation as the University determines in its sole discretion.

9. **FINANCIAL CONSIDERATION; RECYCLING SUPPORT**

9.1 Annual Fixed Fee. On or before January 1, 2020, Contractor shall pay to the University the sum of _____. On or before each and every January 1 remaining in the Term, Contractor shall pay to the University the sum of _____ ("Annual Fixed Fee"). This Annual Fixed Fee is earned at the start of each calendar year in the Term.

9.2 Commissions. In addition to the amount owed pursuant to **Section 9.1** above, Contractor shall pay to the University a Commission of ___ percent (___%) of the gross revenue, net of applicable taxes and deposits, collected from Approved Beverage Vending sales.

Commissions shall be remitted by Contractor to UNK within thirty (30) days following the end of each calendar month during the Term. Contractor shall provide UNK with documentation, accompanying the payments, explaining the calculation of all Commissions. Upon reasonable request by UNK, Contractor will make available such financial records pertaining to Commissions, as may be reasonable for internal and/or external audits to confirm the accuracy of the Commission calculation and payments.

9.3 In addition, Contractor shall annually pay to or provide the University with the following:

[Insert]

9.4 Contractor shall provide \$_____ annually during the Term to support UNK's sustainability efforts.

9.5 Delivery of Payments. The amounts owed pursuant to this section shall be considered paid in full upon delivery of good funds to:

University of Nebraska at Kearney
Office of Business Services
2124 Warner Hall
2504 9th Avenue
Kearney, Nebraska 68849

10. **TERMINATION AND SUSPENSION**

10.1 Termination by University.

10.1.1 Without limiting its rights under **Section 11.1**, the University shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the Contractor upon the occurrence of one or more of the following events:

- (a) The Contractor fails to perform one or more of its material obligations under this Agreement after the University has provided notification of such failure(s) and granted thirty (30) days to cure the breach; provided, if such breach or default is of a type which may not be reasonably cured within such thirty (30) day period, then such thirty (30) day period shall be extended for such additional periods as may be reasonably necessary, as long as the Contractor has commenced the cure within such initial thirty (30) day period and diligently pursues such cure to completion.
- (b) The Contractor is unable to pay its liabilities when due, shall make an assignment for the benefit of creditors or shall file a voluntary petition in bankruptcy or be adjudicated bankrupt or insolvent, or if a receiver is appointed for the Contractor's business or property, or if a trustee in bankruptcy or insolvency shall be appointed under the laws of the United States of America or any state.

10.1.2 Upon the effective date of such termination by the University, the University shall avail itself of such remedies as are available under the law, including but not limited to the following:

- a) University shall have the right to immediately remove all of Contractor's signage;
- b) Contractor's exclusive rights under this Agreement, and as specifically set forth in **Section 8**, shall cease;
- c) Contractor's right to use University Marks will terminate;
- d) Contractor shall remove at its expense all of its Approved Vending Machines and Fountain Equipment and Coolers;

- e) Contractor shall have no obligation to pay any amounts under **Section 9** earned by the University after the effective date of termination; provided however, that any amounts earned prior to termination shall survive termination.

10.2 Termination by Contractor.

10.2.1 Without limiting its rights under **Section 11.2**, the Contractor will have the right to terminate this Agreement upon one hundred eighty (180) days prior written notice to the University upon the occurrence of one or more of the following events:

- a) the University fails to perform one or more of its material obligations under this Agreement after the Contractor has provided notification of such failure(s) and granted thirty (30) days to cure the breach; provided, if such breach or default is of a type which may not be reasonably cured within such thirty (30) day period, then such thirty (30) day period shall be extended for such additional periods as may be reasonably necessary, as long as the University has commenced the cure within such initial thirty (30) day period and diligently pursues such cure to completion.
- b) if the University is unable to pay its liabilities when due, shall make an assignment for the benefit of creditors or shall file a voluntary petition in bankruptcy or be adjudicated bankrupt or insolvent, or if a receiver is appointed for the University's business or property, or if a trustee in bankruptcy or insolvency shall be appointed under the laws of the United States of America or any state.

10.2.2 If the Contractor elects to terminate this Agreement as provided for in **Section 10.2.1**, without prejudice to any other rights or remedies available to Contractor, Contractor shall pay any outstanding amounts earned through the effective date of termination. Contractor shall have no obligation to pay any amounts under **Section 9** earned after the effective date of termination. Any amounts earned prior to termination shall survive termination.

10.3 Approved Vending Machines and any other Contractor equipment must be removed upon termination or expiration of this Agreement. Should Contractor fail to so remove the Machines and equipment, the University may remove and store the Machines and equipment at Contractor's cost without liability for damage, lost revenue or any other claim associated with such removal and storage.

11. **INDEMNIFICATION**

11.1 Indemnification of the University. Contractor shall defend, hold harmless, and indemnify the University and each of its regents, officers, employees, and agents (each of which shall be referred to as a "University Indemnitee") from and against any and all claims, actions, judgments, losses, damages, liabilities, and expenses (including, but not limited to reasonable attorneys' fees) imposed upon, suffered, incurred by or asserted against a University Indemnitee arising from or relating to, directly or indirectly, Contractor's respective performance or breach of the terms of this Agreement and any transaction contemplated hereby, including, but not limited to, the respective acts or omissions of

Contractor's officers, employees or agents; provided however, that the Contractor shall not be liable under such indemnity for any portion of such claims, actions, judgments, damages, liabilities, or expenses resulting from the University Indemnitee's negligent or intentional, acts or failure to act. The obligations under this section shall survive the termination of this Agreement.

- 11.2 Indemnification of the Contractor. To the extent allowed by law, the University shall defend, hold harmless, and indemnify the Contractor, and its directors, officers, employees, and agents (each of which shall be referred to as a "Contractor Indemnitee") from and against any and all claims, actions, judgments, losses, damages, liabilities, and expenses (including, but not limited to reasonable attorneys' fees) imposed upon, suffered, incurred by or asserted against a Contractor Indemnitee arising from or relating to, directly or indirectly, the University's performance or breach of the terms of this Agreement, any transaction contemplated hereby, or the operating of the campuses, including, but not limited to, the acts or omissions of the University's employees or agents; provided however, that the University shall not be liable under such indemnity for any portion of such claims, actions, judgments, damages, liabilities, or expenses resulting from the Contractor Indemnitee's negligent or intentional, acts or failure to act. The obligations under this section shall survive the termination of this Agreement.

12. **INSURANCE**

- 12.1 Contractor shall procure and maintain such insurance, listed below, as shall protect Contractor from claims for personal injury, bodily injury and/or property damage which may arise from its obligations under this Agreement.
- 12.2 Commercial General Liability with limits of liability no less than \$1,000,000 each occurrence bodily injury and property damage, with a \$3,000,000 annual general aggregate limit; \$1,000,000 personal and advertising injury; \$1,000,000 products and completed operations aggregate; \$250,000 fire damage legal liability; and \$10,000 per person medical payments. Commercial General Liability will include the following coverages: premises operations, broad form property damage, completed operations, independent contractors and contractual, and products liability.
- 12.3 Automobile Liability providing coverage for owned, non-owned and hired vehicles with limits of liability no less than \$3,000,000 combined single limit per accident for bodily injury and property damage.
- 12.4 Worker's Compensation/Employer's Liability with limits of liability no less than:
- a) Worker's Compensation - Amounts as required by Nebraska statute.
 - b) Employer's Liability - \$500,000 bodily injury by accident, \$500,000 Disease - each employee, \$500,000
 - c) Disease - Aggregate

- 12.5 Umbrella/Excess Liability with limits of liability no less than \$10,000,000 each occurrence. The schedule of underlying insurance on this policy shall list both the commercial general liability policy and the automobile liability policy.
- 12.6 Property
- 12.6.1 Personal property - Replacement cost fire and extended coverage insurance, with vandalism, malicious mischief and sprinkler leakage endorsements, in an amount sufficient to cover full replacement costs of all Contractor's personal property, fixtures, stock, inventory, equipment and Contractor improvements.
- 12.6.2 Business income or interruption insurance in the amount of \$1,000,000 or thirty (30) days loss of income plus salaries, whichever is less.
- 12.6.3 The Board of Regents of the University of Nebraska, its affiliated organizations, officers and executives, administrators, employees and volunteers shall be named as additional insureds under the Commercial General Liability insurance policy and the Automobile Liability policy.
- 12.6.4 The insurance company or companies providing all such above listed insurance must be at least an A-, V rating size by Best's and authorized to do business in the State of Nebraska.
- 12.6.5 The certificate or certificates of insurance for the insurance coverages specified in this section shall be delivered to the Office of Business Services at the University of Nebraska at Kearney on or before the earlier of: thirty (30) days following execution of this Agreement; or seven (7) days prior to Contractor assuming operations under this Agreement. Each certificate shall state that the University will receive thirty (30) days written notice from the insurer in the event of any policy modification, cancellation or termination. The certificate or certificates for liability insurance shall indicate that the liability insurance is written on an "occurrence" form. "Claims made" policy forms are not acceptable.

In case of failure to deliver adequate or appropriate insurance, as described in this section, the University shall have the right to:

- a) secure such policies of insurance or services as described above and hold the Contractor responsible for the cost of said policies or services; or
- b) terminate this Agreement.

The University makes no representation that the limits or forms of coverage of insurance specified in the Agreement are adequate to cover Contractor's property or obligations under this Agreement.

13. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

13.1 University Representations. The University represents, warrants, and covenants to the Contractor that:

- a) It has full power and authority to enter into this Agreement and to grant and convey to the Contractor the rights set forth herein.
- b) All necessary approvals for the execution, delivery, and performance of this Agreement have been obtained, and this Agreement has been duly executed and delivered by the University and constitutes the legal and binding obligation of the University enforceable in accordance with its terms.
- c) Except as otherwise provided in this Agreement, the University has not entered into, and during the Term will not enter into:
 - 1) other agreements which would prevent it from complying with the provisions of this Agreement, or
 - 2) any agreement granting beverage rights that are inconsistent with the rights granted by it to Contractor pursuant to this Agreement, including any agreements with licensing agents, concessionaires or third-party food service operators, vending companies, and/or other entities which sell or distribute Beverages. Subject to the exceptions in **Section 8**, the University will require third parties (e.g., concessionaires, third-party food service operators, vending companies, licensing agents), to the extent the University has authority or control, to comply with the relevant provisions of this Agreement.
- d) The University has the right to license the University Marks to Contractor.

13.2 Contractor Representations. The Contractor represents, warrants, and covenants to the University that:

- a) It has the full power and authority to enter into and perform this Agreement.
- b) It has obtained all necessary approvals for the execution, delivery and performance of this Agreement. It has duly executed and delivered this Agreement, which now constitutes its legal and binding obligation enforceable in accordance with its terms.
- c) It has not entered into and during the Term will not enter into, any other agreements which would prevent it from fully complying with the provisions of this Agreement.
- d) It will require compliance with the relevant provisions of this Agreement by any Supplier.

14. **BOARD OF REGENTS APPROVAL**

14.1 This Agreement, neither in whole nor in part, shall be enforceable absent the approval of the Board of Regents of the University of Nebraska.

15. **MISCELLANEOUS**

15.1 Assignment. Neither party may assign its rights under this Agreement to another, whether by contract or by operation of law, without the express written consent of the other party, which consent shall not be unreasonably withheld. Any attempt to so assign this Agreement shall be cause for immediate termination of the Agreement, notwithstanding any other provisions to the contrary. This Agreement is made for the exclusive benefit of the parties and no benefit to any third party is intended.

15.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

15.3 Notice. Any notice provided for in this Agreement shall be in writing and shall be deemed to have been given, delivered, or served when delivered personally to the party who is to receive such notice or when mailed by U.S. registered or certified mail, postage prepaid, to such party at the following addresses:

To University:

University of Nebraska at Kearney
Office of Business Services
Warner Hall 2124
2504 9th Street
Kearney, Nebraska 68849
Attn: Director of Business Services

To Contractor:

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

15.4 Modification; Waiver of Rights. This Agreement may be modified, amended, or waived only by a written agreement signed by an authorized representative of Contractor and the University of Nebraska at Kearney Chancellor or his/her designee. The course of dealing between the University and Contractor will not modify or amend this Agreement in any respect. Any delay by the University or Contractor in the exercise of any of their respective rights and obligations under this Agreement will not be construed as a waiver of any such rights or obligations to be performed. A waiver of a breach of any provision of this Agreement will not:

- a) operate or be construed as a waiver of any subsequent breach;
 - b) limit or restrict any right or remedy otherwise available to University or Contractor;
or
 - c) operate or be construed as a waiver of compliance by University or Contractor as to any other provision of this Agreement.
- 15.5 Order of Priority. The order of priority of the documents that form this Agreement is: first, duly executed amendments to the Agreement (to the extent not superseded by a subsequent amendment), second, this Beverage Rights Licensing Agreement, including incorporated exhibits.
- 15.6 Entire Agreement; Severability. This Agreement constitutes the entire Agreement between the parties with respect to all subject matter and supersedes all prior negotiations and understandings, whether verbal or written. Each provision of this Agreement is severable from all others. If any provision of this Agreement will be determined to be invalid or unenforceable by a court of competent jurisdiction, the provision will be deemed modified only to the extent necessary to render it valid and enforceable, and all remaining provisions of this Agreement will remain in full force and effect.
- 15.7 Independent Contractors. This Agreement does not constitute and will not be construed as constituting a partnership or joint venture, or an employee/employer relationship or one of principal and agent, it being understood that Contractor and the University are and will remain independent parties.
- 15.8 Governing Law and Forum. This Agreement shall be governed by the laws of the State of Nebraska, without regard to its choice of law provisions. Any legal actions brought by either party hereunder shall be instituted in the state or federal courts located in Lancaster County, Nebraska.

[The remainder of this page is intentionally left blank]

In Witness Whereof, the parties have entered into this agreement as of this ____ day of _____, 2019.

Contractor:

The Board of Regents of the University of Nebraska:

By: _____
[Name]
[Title]

By: _____
Susan M. Fritz, Interim President

Attest: _____
Carmen K. Maurer
Corporation Secretary

List of Exhibits and their Contents

Exhibit	Exhibit Name	Contents based on RFP Attribute Response
Exhibit A	Approved Vending Beverages	
Exhibit B	Approved Vending Locations and Refund Locations	
Exhibit C	Approved Vending Prices	
Exhibit D	Non-Vending Beverage Prices	
Exhibit E	Vending Sales Reports	
Exhibit F	Preventative Maintenance Program	
Exhibit G	University Marks	
Exhibit H	Sponsorship Recognition and Ticket Package	
Exhibit I	“Healthier for You” Approved Vending Beverages	
Exhibit J	Quality Standards for	

	Approved Vending Beverages	
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EXHIBIT A
Approved Vending Beverages

EXHIBIT B
Approved Vending Locations and Refund Locations

EXHIBIT C
Approved Vending Prices

EXHIBIT D
Non-Vending Beverage Prices

EXHIBIT E
Vending Sales Reports

EXHIBIT F
Preventative Maintenance Program

EXHIBIT G
University Marks

EXHIBIT H
Sponsorship Recognition and Ticket Package

Such rights to sponsorship recognition will include, but not be limited to, the following:

- Agreed upon UNK’s athletic facilities panel displays.
- Advertising opportunities within the Health and Sports Center and Cope Stadium.
- The University shall with reasonable frequency make announcements at its various regular home sporting events held on the UNK campus, thanking Contractor for its support, and further to the effect that Contractor is the “Official Soft Drink of the University of Nebraska at Kearney,” the “Official Soft Drink of Loper Athletics”, a “Proud Sponsor of Loper Athletics” or such other similar announcement so long as such announcement does not comprise advertising as prohibited by the income tax considerations discussed in greater detail below.
- Contractor shall be provided by the University opportunities throughout the Year in reasonable numbers to be agreed upon by the parties, for purposes of offering Approved Beverage samples to persons attending events at UNK, following the explicit approval by the University.

In partial consideration of the rights granted in this section, as well as those granted in the balance of this Agreement, annually Contractor shall provide one (1) Sideline Cooler Kit. See **Appendix 1** –Sideline Cooler Kit. In addition to the product included in the Sideline Cooler Kit, Contractor will provide an additional 200 squeeze bottles annually.

Tickets. The University shall provide to Contractor four (4) season tickets for any intercollegiate sports program at UNK which offers season tickets to the public. Contractor receives an economic benefit for such tickets and passes, the fair market value of which shall reduce, for purposes of computing federal income tax, any charitable deduction Contractor chooses to report in relation to the payments described in this section.

APPENDIX 1 TO EXHIBIT H
Sideline Cooler Kit

EXHIBIT I
“Healthier for You” Approved Vending Beverages

EXHIBIT J
Quality Standards for Approved Vending Beverages