



Purchasing Department
Mailing Address: 4400 University Drive, Mailstop 3C5
Street Address: 4441 George Mason Boulevard,
University Hall, 4th Floor, Suite 4200
Fairfax, VA 22030
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STANDARD CONTRACT GMU-1503-18

This Contract dated on this 25th day of September 2019 by Coca-Cola Bottling Co. Consolidated hereinafter called "Contractor" (located at 5401 Seminary Road, Alexandria, VA 22311-1213) and Commonwealth of Virginia, George Mason University hereinafter called "Mason".

- I. **WITNESSETH** that the Contractor and Mason, in consideration of the mutual covenants, promises and agreement herein contained, agree as follows:
- II. **SCOPE OF CONTRACT:** The Contractor shall provide Beverage Pouring Rights for George Mason University as set forth in the Contract Documents.
- III. **PERIOD OF CONTRACT:** July 1, 2020 through June 30, 2030 with two (2) five-year renewal options.
- IV. **FINANCIAL COMMITMENTS:**

Item	Frequency	Amount	Other Description
Pouring Rights Fee	Annually	\$437,500	Due on August 15 of each contract year
Contract Administration Fee	Annually	\$100,000 + 3% annual escalation	Due on August 15 of each contract year
Minimum Commission Guarantee	Twice	\$100,000	Due on December 10 and May 10 of each year with the difference between the guarantee and actual commission earned being due July 15
True-Up Commission	Annually	Varies	The difference between the minimum commission guarantee and actual commissions earned during the contract year (July 1-June 30) is due July 15 for each contract year
Campus Marketing Fund	Annually	\$15,000	Administered by the contract administrator and held by the contractor to process expenditures in each contract year by June 30
Sustainability Fund	Annually	\$5,000	Administered by the contract administrator and held by the contractor to process expenditures in each contract year by June 30
Athletic Equipment Fund	Annually	\$20,000	Administered by the athletics equipment manager and held by the

				contractor to process expenditures in each contract year by June 30
One-time PowerAde Fund	Once		\$10,000	Activity to occur once during the contract term.
Equipment/GFV Upgrades			\$33,000	Activity to occur between July 1, 2020 and June 30, 2021
Athletics Gratis Product	Annually	1,775 cases (12oz cans, 12oz Powerade and/or Dasani water)		Gratis product to be coordinated by Athletics and used between July 1 and June 30 of each year
Athletics Gratis Product	Annually	725 cases (12oz cans and/or Dasani water)		Gratis product to be coordinated by the contract administrator and used between July 1 and June 30 of each year

- A. **Commission Definition:** Product Vend Rate x Units Sold = Theoretical Cash (from any form of payment) x commission rate (commission rate is 40%).
- B. No taxes or fees of any kind will be added to customer vending transactions.
- C. Quarterly commission reports are due by the 15th day of the month following the last day of the month of each quarter in which the commission is earned. The fiscal year is July 1 – June 30.
- D. Athletics sponsorships/marketing is not a part of this contract; however, it does include annual Men's and Women's VIP basketball tickets (4 for each game) for home games with Green Room hospitality for Men's games. Tickets shall be managed through the contract administrator on behalf of contractor.
- E. Vending prices will increase in year 6 by .50 cents with contractor reserving the right to review prices annually and make price change recommendations to Mason for approval.

	Package	Year 1-5	Year 6-10
a.	20oz Carbonated	\$2.00	\$2.50
b.	20oz MinuteMaid Refresh	\$2.00	\$2.50
c.	20oz Dasani	\$2.00	\$2.50
d.	20oz Powerade	\$2.00	\$2.50
e.	20oz Gold Peak Tea (12/cs)	\$2.00	\$2.50
f.	20oz VitaminWater/SmartWater	\$2.00	\$2.50
g.	13.7oz Dunkin Donuts (12/cs)	\$3.00	\$3.50
h.	16oz Monster Energy/Java	\$3.00	\$3.50
i.	20oz Honest Tea	\$3.00	\$3.50

- F. Core Power for Athletics only will be sold at \$19.50 per case.

- V. **CONTRACT ADMINISTRATION:** Mr. David Atkins, Director, Licensing, Marketing and Administration, Auxiliary Enterprises, shall serve as Contract Administrator for this Contract and shall use all powers under the Contract to enforce its faithful performance. The Contract Administrator shall determine the amount, quality and acceptability of work and shall decide all other questions in connection with the work. All direction and order from Mason shall be transmitted through the Contract Administrator, however, the Contract Administrator shall have no authority to approve changes which shall alter the concept or scope or change the basis for compensation.
- VI. **PAYMENTS:** All payments shall be made to George Mason University and mailed to George Mason University, 4400 University Drive, MS 4A1, Merten Hall, Room 3200, Fairfax, VA 22030, ATTN: David Atkins.
- VII. **THE CONTRACT DOCUMENTS SHALL CONSIST OF (In order of precedence):**
- This signed form;
 - Request for Proposal GMU-1503-18 Issued December 14, 2018;
 - Negotiations emails (Round 1, Round 1.1 and Round 2 dated 7/30/19, 8/22/19 and 8/23/19);
 - Contractor's BAFO's (dated 8/27/19 and 8/30/10);
 - Contractor's Proposal dated May 15, 2019
- VIII. **GOVERNING RULES:** This Contract is governed by the provisions of the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in

particular § 23-38.90 of the Restructuring Act, referred to as the "Governing Rules" and the *Purchasing Manual for Institutions of Higher Education and their Vendors*. Documents may be viewed at: <https://vascupp.org>

- IX. CONTRACT PARTICIPATION:** It is the intent of this Contract to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institutions, or Mason's affiliated corporations may access this Contract if authorized by the Contractor.

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor, this Contract may be extended to the entities indicated above to purchase at Contract prices in accordance with Contract terms. The Contractor shall notify Mason in writing of any such entities accessing the Contract.

No modification of this Contract or execution of a separate contract is required to participate. The Contractor will provide semi-annual usage reports for all entities accessing the Contract. Participating entities shall place their own orders directly with the Contractor and shall fully and independently administer their use of the Contract to include contractual disputes, invoicing and payments without direct administration from Mason. Mason shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the Contract. It is understood and agreed that Mason is not responsible for the acts or omissions of any entity, and will not be considered in default of the Contract no matter the circumstances.

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

X. STANDARD TERMS AND CONDITIONS:

- A. APPLICABLE LAW AND CHOICE OF FORUM: This Contract shall be construed, governed, and interpreted pursuant to the laws of the Commonwealth of Virginia. All disputes arising under this Contract shall be brought before an appropriate court in the Commonwealth of Virginia.
- B. ANTI-DISCRIMINATION: By entering into this contract contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §§ 9&10 of the *Governing Rules*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Governing Rules*, § 35).

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

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- C. ANTITRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or

hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

- D. ASSIGNMENT: Neither party will assign or otherwise transfer its rights or obligations under this Contract without both parties' prior written consent. Any attempted assignment, transfer, or delegation without such consent is void.
- E. AUDIT: The contractor shall retain all books, records, and other documents directly pertaining to this contract for three (3) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- F. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- G. AUTHORIZED SIGNATURES: The signatory for each Party certifies that he or she is an authorized agent to sign on behalf such Party.
- H. BACKGROUND CHECKS: Contractor's employees (and subcontractors) performing services on any Mason campus must have successfully completed a criminal background check prior to the start of their work assignment/service. As stated in Administrative Policy Number 2221 – Criminal Background Investigations for University Employees, the criminal background investigation will normally include a review of the individual's records to include Social Security Number Search, Credit Report (if related to potential job duties), Criminal Records Search (any misdemeanor convictions and/or felony convictions are reported) in all states in which the employee has lived or worked over the past seven years, and the National Sex Offender Registry. In addition, the Global Watch list (maintained by the Office of Foreign Assets Control of The US Department of Treasury) should be reviewed. Signature on this contract confirms your compliance with this requirement.
- I. CANCELLATION OF CONTRACT: Mason reserves the right to cancel and terminate this Contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial Contract period is for more than 12 months, the resulting Contract may be terminated by either party, without penalty, after the initial 12 months of the Contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- J. CLAIMS: Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
1. The firm must submit written claim to:

Director of Purchasing and Accounts Payable
George Mason University
4400 University Drive, MSN 3C5
Fairfax, VA 22030
 2. The firm must submit any unresolved claim in writing no later than 60 days after final payment to the Director of Purchasing and Accounts Payable.
 3. Upon receiving the written claim, the Director of Purchasing and Accounts Payable will review the written materials relating to the claim and will mail his or her decision to the firm within 60 days after receipt of the claim.
 4. The firm may appeal the Director of Purchasing and Accounts Payable's decision in accordance with § 55 of the *Governing Rules*.
- K. COLLECTION AND ATTORNEY'S FEES: The Contractor shall pay to Mason any reasonable attorney's fees or collection fees, at the maximum allowable rate permitted under Virginia law, incurred in enforcing this Contract or pursuing and collecting past-due amounts under this Contract.

- L. COMPLIANCE WITH LAW: All goods and services provided to Mason shall be done so in accordance with any and all local, state and federal laws, regulations and/or requirements. This includes any applicable provisions of FERPA or the "Government Data Collection and Dissemination Practices Act" of the Commonwealth of Virginia.
- M. CONFIDENTIALITY OF PERSONAL IDENTIFIABLE INFORMATION: The Contractor shall ensure that personally identifiable information which may include but is not limited to personal identifiers such as name, address, phone, date of birth, Social Security number, student or personal identification number, non-directory information and any other information protected by state or federal privacy laws will be collected and held confidential, during and following the term of this contract, and will not be divulged without the individual's and Mason's written consent and only in accordance with federal law or the Code of Virginia. The Contractor shall utilize, access, or store personally identifiable information as part of the performance of this contract in a secure environment and immediately notify Mason of any breach or suspected breach in the security of such information. Contractor shall allow Mason to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. If Contractor provides goods and services that require the exchange of personal identifiable information the following Data Security Addendum shall apply and be incorporated into this contract: <http://fiscal.gmu.edu/wp-content/uploads/2017/04/Data-Security-Addendum.pdf>
- N. CONFLICT OF INTEREST: Contractor represents to Mason that its entering into this Contract with Mason and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by Virginia State and Local Government Conflict of Interests Act (Va. Code 2.2-3100 *et seq*), the Virginia Ethics in Public Contracting Act (§57 of the *Governing Rules*), the Virginia Governmental Frauds Act (Va. Code 18.2 – 498.1 *et seq*) or any other applicable law or regulation.
- O. DEBARMENT STATUS: As of the effective date, the Contractor certifies that it is not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of services covered by this Contract, nor is the Contractor an agent of any person or entity that is currently so debarred.
- P. ENTIRE CONTRACT: This Contract constitutes the entire understanding of the Parties with respect to the subject matter herein and supersedes all prior oral or written contracts with respect to the subject matter herein. This Contract can be modified or amended only by a writing signed by all of the Parties.
- Q. FORCE MAJEURE: Mason will not be responsible for any losses resulting from delay or failure in performance resulting from any cause beyond Mason's control, including without limitation: war, strikes or labor disputes, civil disturbances, fires, natural disasters, and acts of God.
- R. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into this contract Contractor certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- S. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless George Mason University the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.
- T. INDEPENDENT CONTRACTOR: The Contractor is not an employee of Mason, but is engaged as an independent contractor. The Contractor shall indemnify and hold harmless the Commonwealth of Virginia, Mason, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to the Contractor's performance of this contract. Nothing in this contract shall be construed as authority for the Contractor to make commitments which will bind Mason or to otherwise act on behalf of Mason, except as Mason may expressly authorize in writing.
- U. INFORMATION TECHNOLOGY ACCESS ACT: Computer and network security is of paramount concern at George Mason University. The university wants to ensure that computer/network hardware and software does not compromise the security of IT environment. You agree to use commercially reasonable measures in connection with any offering your company makes to avoid any known threat to the security of the IT environment at George Mason University

All e-learning and information technology developed, purchased, upgraded or renewed by or for the use of George Mason University shall comply with all applicable University policies, Federal and State laws and regulations including but not limited to Section 508 of the Rehabilitation Act (29 U.S.C. 794d), the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia, as amended, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by or on behalf of the University. The Contractor shall also comply with the Web Content Accessibility Guidelines (WCAG) 2.0. For more information please visit <http://ati.gmu.edu>, under Policies and Procedures.

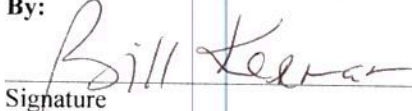
- V. INSURANCE: The Contractor shall maintain all insurance necessary with respect to the services provided to Mason. The Contractor further certifies that they will maintain the insurance coverage during the entire term of the Contract and that all insurance is to be placed with insurers with a current reasonable A.M. Best's rating authorized to sell insurance in the Commonwealth of Virginia by the Virginia State Corporation Commission. The Commonwealth of Virginia and Mason shall be named as an additional insured.
1. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence for bodily injury or property damage, personal injury and advertising injury, products and completed operations coverage;
 2. Workers Compensation Insurance in an amount not less than that prescribed by statutory limits; and, as applicable;
 3. Commercial Automobile Liability Insurance applicable to bodily injury and property damage, covering owned, non-owned, leased, and hired vehicles in an amount not less than \$1,000,000 per occurrence; and
 4. An umbrella/excess policy in an amount not less than five million dollars (\$5,000,000) to apply over and above Commercial General Liability, Employer's Liability, Workers' Compensation, and Commercial Automobile Liability Insurance.
- W. INTELLECTUAL PROPERTY: Contractor warrants and represents that it will not violate or infringe any intellectual property right or any other personal or proprietary right and shall indemnify and hold harmless Mason against any claim of infringement of intellectual property rights which may arise under this contract.
- X. NON-DISCRIMINATION: All parties to this Contract agree to not discriminate on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age (except where sex or age is a bona fide occupational qualification), marital status or disability.
- Y. PUBLICITY: The Contractor shall not use, in its external advertising, marketing programs or promotional efforts, any data, pictures, trademarks or other representation of Mason except on the specific written authorization in advance by Mason's designated representative.
- Z. REMEDIES: If the Contractor breaches this Contract, in addition to any other rights or remedies, Mason may terminate this Contract after written notification of such a breach and the expiration of a reasonable cure period without prior notice.
- AA. RENEWAL OF CONTACT: This Contract may be renewed by Mason upon written agreement of both parties for two (2) successive five (5) year periods. All terms, conditions and prices will be discussed and agreed to (in writing) between both parties prior to any renewal.
- BB. REPORTING OF CRIMES, ACCIDENTS, FIRES AND OTHER EMERGENCIES: Any Mason Employee, including contracted service providers, who is not a staff member in Counseling and Psychological Services (CAPS) or a pastoral counselor, functioning within the scope of that recognition, is considered a "Campus Security Authority (CSA)." CSAs must promptly report all crimes and other emergencies occurring on or near property owned or controlled by Mason to the Department of Police & Public Safety or local police and fire authorities by dialing 9-1-1. At the request of a victim or survivor, identifying information may be excluded from a report (e.g., names, initials, contact information, etc.). Please visit the following website for more information and training: <http://police.gmu.edu/clery-act-reporting/campus-security-authority-csa/>.

- CC. SEVERABILITY: Should any portion of this Contract be declared invalid or unenforceable for any reason, such portion is deemed severable from the Contract and the remainder of this Contract shall remain fully valid and enforceable.
- DD. SOC/SSAE16: To facilitate compliance with SSAE16, contractor must provide George Mason University with its most recent SOC report and that of all subservice provider(s) relevant to this contract. It is further agreed that the SOC report, which will be free of cost to George Mason University, will be provided annually, within 30 days of its issuance by the auditor, and no later than February 1. The SOC report should be directed to Mrs. Peaches Nicholls at pnicholl@gmu.edu or other representative identified by the University. Vendor also commits to providing George Mason University with a designated point of contact for the SOC report, addressing issues raised in the SOC report with relevant subservice provider(s), and responding to any follow up questions posed by George Mason University in relation to the SOC report.
- EE. SOVEREIGN IMMUNITY: Nothing in this Contract shall be deemed a waiver of the sovereign immunity of the Commonwealth of Virginia and of Mason.
- FF. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent from Mason. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish Mason the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of this Contract.
- GG. UNIVERSITY REVIEW/APPROVAL: All goods, services, products, design, etc. produced by the Contractor for or on behalf of Mason are subject to Mason's review and approval.
- HH. WAIVER: The failure of a party to enforce any provision in this Contract shall not be deemed to be a waiver of such right.

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

Coca Cola Bottling Company Consolidated

By:



Signature

Name:

Bill Keenan

Title:

Director of Premise

George Mason University

By:

Signature

Name: _____

Title: _____