

EXHIBIT A - CAMPUS BEVERAGE PROGRAM SERVICE (CBPS)

Terms and Conditions

1. SCOPE OF THE WORK

- 1.1. The scope of the work to be performed by the Contractor entails certain services related to the provision of beverage services at Marshall University, located in Huntington, West Virginia, to include the operation of the Campus Beverage Program.
- 1.2. The Contractor shall operate a Campus Beverage Program in accordance with this Contract. The Contractor shall provide, in accordance with the terms and conditions of this Contract, all the management, personnel, beverage products, supplies, equipment, materials, technical support, training, systems, and effort necessary for the management of Campus Beverage Program functions, at a level of quality acceptable to the University. The Contractor will be responsible for beverage purchases and production, quality control, human resources management (hiring, training, development, dismissal, etc.), and financial management of the Campus Beverage Program. The University shall have the right to designate appropriate staff to work proactively and in liaison with the Contractor to insure full compliance with all terms and provisions of the Contract.

2. TERM OF CONTRACT

- 2.1. Operation and management of the Campus Beverage Program Service (CBPS) contract shall commence on **August 16, 2019** and shall remain in effect until August 15, 2020, unless terminated, canceled, or extended as otherwise noted in the final contract. Extensions to this contract are the prerogative of the University and not a contractual right of the Contractor.
- 2.2. The University reserves the right to renegotiate based on conference alignment and annual review for other changes.
- 2.3. *CONTRACT EXTENSION*
The University reserves the right to extend the period of any resultant contract for supplemental periods of 12 months. Extension of this contract is limited to nine (9) 1-year renewal periods. This contract shall automatically renew for each one-year extension period unless notice of intention not to renew is provided to the other party in writing at least 90 days prior to the end of the preceding contract period. In the event of contract extension, the Contractor will be required to provide complete and current submittals prior to the extension.

3. CONTRACT CANCELLATION

- 3.1. Failure to maintain the required Certificates of Insurance may be cause for contract termination. If the Contractor fails to maintain and keep in force the insurance, the University shall have the right to cancel and terminate the Contract without notice.
- 3.2. In the event that either party shall fail to perform under the material terms of this Contract or to maintain or keep in force any of the material terms and conditions of this Contract, the aggrieved party may notify the other party in writing via certified mail of such failure

and demand that the same be remedied within ten (10) calendar days. Should the defaulting party fail to remedy the same within said period, the other party shall then have the right to terminate this Contract by giving the other party sixty (60) days written notice. In addition, if at any time a petition in bankruptcy shall be filed against the Contractor and such petition is not dismissed within ninety (90) days, or if a receiver or trustee of Contractor's property is appointed and such appointment is not vacated within ninety (90) days, University may terminate this Contract by giving thirty (30) days' notice in writing of such termination.

- 3.3. The University may discontinue this Contract, in whole or in part, without penalty at any time due to non-appropriation of funds.

4. DAMAGES

Marshall University will not be responsible for damage or loss to vending equipment or contents due to vandalism, robbery or any other action or cause. The University will cooperate to that extent it deems feasible in guarding against such occurrences.

5. PROVISION OF ANNUAL PLAN

- 5.1. The Contractor shall submit and present to the University an Annual Plan for the following fiscal year that addresses the following items:
- Quality Assurance Plan Updates;
 - Pricing Increases;
 - Proposed Changes to the Organizational Chart;
 - Employee Training Programs;
 - Detailed Marketing Plan;
 - Proposed Capital Expenditures and FF&E Budget by location.
- 5.2. As part of the plan the Contractor shall conduct and submit a SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis of the current beverage program in comparison to best practices in the industry. The plan shall be based on identified goals and objectives as mutually agreed upon by the Contractor and the University.
- 5.3. The University shall have the right to make any changes to the plan or to refuse to expend any money suggested by the Annual Plan. Once the plan is approved by the University, the Contractor will be responsible to comply with the plan, and shall not substantially deviate from the plan without the express written consent of the Campus Beverage Program Liaison, except where such deviation is due to and is in direct proportion to an increase in business in excess of the pro forma operating statement. At the close of each fiscal quarter, or more frequently if deemed necessary, the Contractor and the Campus Beverage Program Liaison shall meet to review operating results for the fiscal year to date, as well as operating plans for the balance of the fiscal year.

6. SUSTAINABILITY

- 6.1. The University shall provide waste containers, bag liners, and recycling containers in the vending areas, where necessary, and in sufficient number, to maintain sanitary standards for trash disposal. All waste containers and recycling containers shall be kept in a clean and satisfactory condition at all times, and emptied as necessary by the University.

- 6.2. The University shall be responsible for the costs of insect and pest control in all vending service and storage areas. The contractor shall maintain maximum insect and pest control for its products and equipment.
- 6.3. All losses of equipment supplied as a part of this Agreement incurred by Contractor for whatever cause, including but not limited to fire, accident, theft or vandals, shall be the sole responsibility of the Contractor.
- 6.4. The contractor shall comply with University policies and procedures related to recycling of waste materials, purchase of recycled materials and participate in required waste separation programs. The University shall arrange for space and/or suitable containers required for recycling. The contractor shall remove all waste packaging, master cartons, boxes, etc., from the vending service and storage areas to dumpsters or recycling sites provided and serviced by the University. Cardboard cartons shall be taken by the contractor to collection points identified by the University or be removed from campus by the contractor.

7. DIVERSITY

- 7.1. Marshall University (MU) is committed to supplier diversity. By taking an active role in working with Diverse Suppliers, MU can optimize price, service, and delivery conditions while building the local community and economy. Please provide your company initiative to this regard.

8. KEY PERSONNEL AND STAFF SUPPORT

- 8.1. The contractor shall provide expert administrative, purchasing, equipment consulting, and personnel supervision. Contractors shall have in their employ, sufficient qualified and competent personnel to perform work promptly and in accordance with the terms and conditions specified herein.
- 8.2. An adequate staff of employees, to be approved by the University, shall be on duty to provide campus efficient, prompt and sanitary service. The University shall have the right to review the staffing patterns and job schedules, and require the contractor to take appropriate action to insure adequate service. The University may require the contractor to increase staff based on the needs of the operation. The University shall be the final approving authority for adequate staffing requirements.
- 8.3. Contractor shall be responsible for supervision and control of its employees and agents while on University property. The University reserves the right to require the Contractor to remove any employee or agent of the Contractor at any time, whether temporarily or permanently, from University property.
- 8.4. Contractor shall provide headquarters management staff to routinely review and inspect operations and fill staff vacancies. The Contractor shall appoint a Contract Liaison to consult with the University on current and future programs and act with full authority on the Contractor's behalf in all matters pertaining to Contract specifications.
- 8.5. Personnel relations of employees on the contractor's payroll shall be the contractor's responsibility. The contractor shall comply with all applicable government regulations related to the employment, compensation, and payment of personnel. Personnel of the

contractor shall observe all regulations of the University. Failure to do so may be grounds for dismissal.

- 8.6. The contractor shall have the resources and staff for continually providing satisfactory training and development programs for their employees at all levels of the organization. Regularly scheduled employee training shall be conducted by the contractor regarding such subjects as refrigeration maintenance, defensive driving, equipment repair, and proper sanitation. The contractor shall be responsible for the expense of such training meetings.
- 8.7. The contractor shall provide employees uniforms and/or identification tags that identify the contractor and employee.
- 8.8. The contractor shall not furnish free or discounted vended beverages to its employees, those of the University, or any customer as a direct operating expense with a reduction of vending sales and/or commissions.
- 8.9. The University requires the contractor to pay parking fees for vehicles used on campus in the service of the contracts. The parking fee shall be required for the maximum number of the contractor's vehicles used on campus on any given day. Parking questions during the duration of the contract may be obtained by contacting MU Parking.

9. MARKETING AND MARKETING PLAN

- 9.1. The Contractor shall be responsible for developing a proactive annual Marketing Plan to promote the Campus Beverage Program to the University community. The Contractor's Marketing Plan shall include:
 - Market identification.
 - Goals and specific strategies to increase revenues and customer satisfaction, broaden participation, and create rapport and goodwill with the campus community, including new options and tactics such as event-based marketing.
 - Promotion initiatives.
 - Web page features development; new methods and/or mediums for communication.
 - Advertising and communication plan as it pertains to the development and production, including but not limited to, of the following materials, in order to promote the Campus Beverage Program annually:
 - Environmental, sustainability, nutritional, health and wellness information.
 - Location, variety, price competitiveness, and service hours.
 - Special events and new programs or offerings.
 - Implementation plan and schedule, including signage and advertising.
 - MU ID Card incentives.
 - Market research methods including mystery shopping and schedules for performance of such; describe how resultant data will be utilized to strategize and maximize value and profitability of the Campus Beverage Program.
 - Success measures, customer surveying at a minimum of once a year, and action plans.
 - Marketing budget that will be allocated to the dining program, identifying costs, if any, to be borne by the University and/or any donation/sponsorship funding.

- 9.2. Contractor shall be required to use the approved University logo on all letterhead, business forms, correspondence, ads, promotional pieces, marketing, etc., subject to the approval of the University's Director of Trademarks and Licensing.
- 9.3. Contractor shall work closely with the University in developing all marketing and communications materials, in order to insure that the quality is first-rate and fully meets the needs of the University. Contractor shall be required to receive pre-approval from the University on all marketing and communications materials.
- 9.4. At a minimum, the Contractor shall be responsible to develop and produce the following materials to promote Campus Beverage Program annually:
Environmental, sustainability, nutritional, health and wellness information
- 9.5. Contractor shall provide to the University, at Contractor's expense, a reasonable number of business meals, new product demonstrations/sampling, and peer/market review opportunities for the purpose of reviewing concept and menu changes, reviewing promotional opportunities, quality control comparisons, and other related business purposes.

10. GENERAL STANDARDS OF OPERATION

- 10.1. The Contractor shall operate the Campus Beverage Program in a manner which meets or exceeds the requirements contained in this Contract and its attachments.
- 10.2. The Contractor shall be alert to changing campus beverage trends, new market forms of beverages, and changing dietary patterns evolving throughout the beverage industry. As a result, and with input from the University, the Contractor shall continually initiate ideas for varied and dynamic methods of beverage service merchandising, public relations, promotion, and menu presentations in all operations to increase service and maximize potential revenues.
- 10.3. Beverage prices shall be recommended by the Contractor subject to approval by the University's Campus Beverage Program Liaison. The Contractor will not alter prices once approved by the Campus Beverage Program Liaison without obtaining further approval, and must be able to justify that proposed price increases are the result of legitimately escalating costs of doing business.
- 10.4. The Contractor shall schedule regular meetings with the University's Campus Beverage Program Liaison in order to evaluate and obtain input into the Campus Beverage Program.

11. EQUIPMENT INVESTMENT AND MAINTENANCE

- 11.1. Equipment shall be listed as certified by the Automatic Merchandising Health-Industry Council. Vending equipment may be used or remanufactured. The vending equipment shall be compatible to accept cash, credit card, and campus debit card as a form of payment. Vending equipment should be compatible in terms of decor when two or more beverage machines are placed together at one location. The vending equipment shall be the same height to give uniformity of appearance, except as otherwise mutually agreed by the University and contractor.

- 11.2. The Contractor shall create a new vendor face which incorporates the Marshall logo for campus vending. It shall be mutually agreed upon by the contractor and University.
- 11.3. Location and Description of Required Vending Equipment, presents the initially required minimum equipment; but it is intended that at regular intervals during the duration of the contract the amount of required equipment shall be examined by the University and contractor with the objective of providing the best possible service to the students, staff, faculty, and guests. Equipment for vending required for this contract shall be for 20oz vending selections. All machines supplied must be manufactured after 2014.
- 11.4. Equipment Proposal – DINING, VENDING, CONCESSIONS, OTHER
The University and Contractor shall determine installation location of the required equipment at new and existing sites by mutual agreement. The Contractor shall assume sole expense and risk to place, install and maintain all soft drink dispensing and holding equipment. Where necessary, electricity, water and waste drainage shall be brought to the equipment by the University. All installation and alterations to the existing space and facilities shall have prior approval of the Contract Liaison.
- 11.5. The contractor shall provide Marshall University Contract Liaison with invoice copies to verify vending equipment purchases are in compliance with contract requirements. If used equipment is furnished, provide documentation to verify equipment was manufactured after 2014. Initial and subsequent installations of new and updated vending equipment shall be identified by type of equipment, serial number, manufacturer's meter readings and location. These listings are to be provided to the University not later than thirty (30) days after the effective date of the contract.
- 11.6. After the start of this contract, the contractor shall not add or remove vending or auxiliary equipment without prior written approval of the University. All schedule revisions shall be recorded on the monthly revenue and equipment commission report.
- 11.7. At regular intervals during the contract, the amount of required equipment shall be examined by Contract Liaison and contractor with the objective of providing the best possible service to eligible users.
- 11.8. Equipment shall be maintained throughout the life of the Contract free and clear of any liens, mortgages, and encumbrances unless otherwise agreed by the University. Contractor shall institute and maintain a program of preventive maintenance and regular replacement of worn, damaged, or malfunctioning soft drink pouring equipment.
- 11.9. All material, equipment and supplies provided to the University must comply fully with all safety requirements set forth by the WV Administrative Code, rules of the Industrial Commission on Safety, and all applicable OSHA standards. During the course of this contract, the contractor is fully liable for public and private protection. The University and Contractor will discuss the feasibility and terms of installing equipment and programs for new technological developments at mutually agreed locations.
- 11.10. Where necessary, and mutually agreed by the University, utilities shall be brought to equipment by the University. The contractor shall be responsible for paying the costs of connections from the equipment to the provided utility source, including all other costs of installation of the equipment.

- 11.11. The University shall not guarantee an uninterrupted supply of water, steam, electricity or heat except that it shall be diligent in restoring service following an interruption. The University shall not be liable for any loss that may result from the interruptions or failure of any such utility services.
- 11.12. All equipment owned by the contractor shall remain with the contractor. However, the University agrees to take such measures as may be reasonably required, as defined by the University, for the protection against loss by pilferage or destruction. Required equipment repairs expense shall be the contractor's responsibility.
- 11.13. The vending machines shall be operated during the entire year, but with reduced selections arrived at by mutual agreement for the summer session and University vacation breaks.
- 11.14. Contractor shall provide at each vending beverage service equipment location, operating instructions and information to eligible users where malfunction reports and refund requests may be made. All information including permits, licenses and price regulation required to be posted shall be displayed in an appropriate manner agreed by the University without defacing of the facilities of the University.
- 11.15. The contractor shall be responsible for control of keys obtained from the University and the security of those areas for which and when they are used by its representatives. The contractor shall be responsible for immediately reporting all the facts relating to losses incurred, equipment damage or break-ins to their equipment and areas of the University. The University shall designate the authority who shall receive these reports and be responsible for key issue and periodic review of key control.
The contractor is responsible for the purchase of padlocks and other security devices which may be required by the contractor to further ensure revenue, product or property. The University shall provide the contractor with routine campus protection currently available to vending beverage service, such as night patrol, door checks, security consulting, call response, etc.
- 11.16. The University and contractor shall mutually determine the additional security measures required to control unauthorized access to all vending beverage service areas included in this contract.
- 11.17. The contractor shall be responsible for replacement of lost keys and the cost of re keying and replacement of lock cylinders required as a result of their negligence and/or loss of keys.
- 11.18. Change making equipment on vending machines shall have the capability of customer selection of changing coins, \$1.00 and \$5.00 bills. The contractor shall provide and service the changers with amounts of change at frequent intervals to ensure change is continually available. All vending equipment shall have the capability of returning change in amounts of \$.05, \$.10 or \$.25 as required, and have adequate change inventory for required returns.
- 11.19. All vending machines shall be equipped with a microprocessor controlled dollar bill acceptor as an equipment accessory for all vending locations.

- 11.20. All vending machine coin/bill changer mechanisms shall be electronic and maintained at the full change bank capacity and inventoried each time the machine is serviced and brought up to capacity. The coin changers shall be designed with automatic refill features.
- 11.21. Items sold through vending equipment shall not be manually sold by vending attendants or route employees. Prior to requiring manual sales of items sold through vending equipment, high volume areas shall be equipped with additional vending equipment of the type required. Location sales during the equipment stocking processes shall not be done manually.
- 11.22. Provide debit card readers to all vending machine to allow for MU ID card payment method. The readers should be compatible with campus debit card system.
- 11.23. Provide credit card method of payment at all vending machines. The credit card processing must be PCI compliance. Locations will be mutually agreed upon by University and Contractor.
- 11.24. Contractor shall be responsible for providing Vending Misers for all vending machines.
- 11.25. Contractor shall provide equipment that meets all ADA compliance requirements.
- 11.26. See Appendix B and C for detailed list of equipment requirements.
- 11.27. Maintenance and Service of Equipment
The premises, equipment, supplies and facilities shall be maintained throughout the life of this contract in condition satisfactory to the University and in compliance. The contractor shall adhere to the highest standards of cleanliness and sanitary practices, including beverage and equipment handler's appearance and performance in the preparation, service, transport and storage of beverage and related items. Structural, utility and equipment changes necessary in order to comply with such requirements shall be made by the University at its expense.
- 11.28. The contractor shall maintain in a sanitary condition all vending machines. This includes selector buttons, knobs, handles, and cabinet tops. Screens, compressor zones and condensers shall be inspected regularly for dust, seepage and other residue and shall be kept clean.
- 11.29. Contractor's employees shall be responsible for inspecting under and behind the vending machines and supplemental equipment for evidence of dirt, debris and vermin. When cleaning of these areas is required, the contractor shall provide access, by kick plate (skirt) removal or machine movement, and advise the University of the Need for cleaning.
- 11.30. Consultant inspectors of the Health Departments of the division and campus safety personnel and environmental health specialists shall have complete cooperation and access to all vending service, production and storage areas for inspections which they may conduct. These inspections may be at the request of the University or on said agency's own discretion. A management representative of the contractor shall conduct equipment and facilities maintenance and sanitation inspections periodically. A copy of all inspection reports shall be furnished to the University by the contractor. The

contractor is responsible to implement corrective operating measures required as a result of these inspections and reports within ten days notification from the inspecting agency and by mutual agreement of the University.

- 11.31. The contractor shall institute and maintain a program of preventive maintenance and regular replacement of worn, damaged, or malfunctioning equipment. This program shall be described in detail with each bidder specifying equipment and parts on-hand to meet emergencies and routine maintenance and repair. The University shall not perform maintenance or repair on any equipment of the contractor or that on loan to the University.
- 11.32. The University shall be responsible for the purchase of non-beverage capital equipment and shall authorize the repair and replacement of worn, damaged or malfunctioning equipment and related facilities. Where it has been determined by the University that damages were due to the contractor's negligence, the University shall, at its option, request the contractor to make and/or pay for the necessary repairs and replacement, or repair or replace said non vending capital equipment and related facilities and invoice the contractor.
- 11.33. The contractor shall respond to emergency equipment service and repair calls/reports within a minimum of four (4) hours for fountain/pouring equipment between the hours of 7:00 AM and 7:00 PM, Monday through Friday and four (4) hour response time during weekends. Equipment which cannot be returned to full service within 24 hours of notification of needed repair shall be replaced with comparable equipment of like quality until the original equipment is returned to service. The equipment repair service shall respond to emergency and daily routine maintenance requirements in a manner which limits equipment down time and customer inconvenience. The contractor shall provide the University a toll free number to call or accept long distance calls for required service 24 hours per day, 7 days a week.
- 11.34. The contractor shall maintain a continual program of equipment replacement in high volume locations where obsolescence becomes a factor resulting in potential service or sales reduction.
- 11.35. The contractor shall keep the University informed on new industry security measures in use. The University shall institute or execute such measures required to accomplish maximum property, product and revenue security when presented in writing by the contractor and mutually agreed by the University. Improvements on equipment occurring during the life of this contract shall be incorporated by the contractor on the originally installed vending equipment and subsequent installations where it is deemed feasible by the University and mutually agreed by the contractor. Such improvements shall include, but not be limited to: fail safe no touch burglar alarms, self-locking coin boxes and various electronic security, debit card readers and metering devices.
- 11.36. The University shall provide daily floor maintenance in the vending areas, and the contractor shall cooperate in keeping this service to a minimum. Route employees shall clean floor spillage which occurs in the process of filling or sanitizing equipment. The University shall be responsible for the periodic stripping and sealing or waxing of floors in the vending areas, and shall furnish at its expense the necessary equipment, supplies and labor. The University and contractor shall mutually develop a semi-annual

schedule for the University to thoroughly clean and seal the floor under and in the adjacent area of vending equipment.

11.37. Service Requirements

The Contractor shall provide the services described in the Proposal and Contractor's response to the Proposal obtaining Exclusive Soft Drink Pouring and Vending Rights for beverage operations not covered herein may be added by the University to this Contract without voiding provisions of the existing Contract. Additional services shall be furnished to the University by the Contractor with additional consideration.

11.38. Recognizing that successful performance of this Contract is dependent on favorable response, the Contractor shall meet every month, or as needed with the Contract Liaison or designee to review operation and make necessary adjustments. The contractor agrees to maintain good public relations with the university. After the initial Contract year, the parties may upon mutual agreement adjust the specific terms of this Contract. All adjustments shall be proposed in writing to the Contract Liaison. All required Contract amendments shall be issued by university.

11.39. Contractor shall be financially responsible for obtaining all required permits, licenses, and bonds to comply with pertinent Board of Regents, Marshall University regulations, and municipal, county, state and federal laws, and shall assume liability for all applicable taxes including but not restricted to sales and property.

11.40. Contractor shall provide methods of determining customer preference of product and flavors to be served at various venues. The contractor shall be alert to changing beverage trends and new market and changing diet patterns throughout the beverage service industry. As a result, the contractor shall be expected to initiate ideas for varied methods of beverage service, and by mutual agreement implement these variations within the conditions of this contract.

11.41. The University shall encourage and cooperate with the contractor to promote and merchandise services and products to the fullest to assure students, faculty, staff, and guests are attracted to, and enjoy and fully utilize beverage services. The contractor, with approval from the University, shall implement, merchandise and promote new services and product variations in a manner typically used by commercial operations (i.e., sample tasting). Promotion techniques may include paid ads in authorized campus publications, radio announcements, posters, and approved point of purchase displays. Provide product information on available products and flavors.

11.42. The University shall have the right to make reasonable regulations on the method of service, opening and closing hours, safety, sanitation, maintenance and use of Vending Beverage Service areas and the contractor agrees to comply with such regulations. Authorized representatives of the University shall have the full right of access to all vending areas at any and all times.

12. SYSTEM & REPORTING SUPPORT

12.1. Contractor shall provide information relating to technology use for vending services. Provide information on inventory management system that tracks vending machine inventory levels by product category.

- 12.2. Contractor shall provide reporting of revenue by period and product flavors. Provide low level inventory alert reports.

13. CAMPUS DEBIT CARD PROGRAM

- 13.1. The University will initially require the successful respondent to provide ID card readers in all vending machines in current locations in or on University property that can physically be connected to the University card system. Additional machines must also be on the card reader system (readers, maintenance and installation on vendor equipment is at Contractor's expense). All exemptions to this requirement require the University's approval.

14. FINANCIAL PROPOSAL AND CONSIDERATIONS

- 14.1. Beverage Pricing Model for Term of Agreement
Product costs quoted herein shall be firm for one (1) year for all fountain and bottled products purchased by University. Thereafter, price adjustments may be made at twelve (12) month intervals not to exceed the Consumer Price Index (CPI) for price increases effective at the beginning of the new Academic year.
- 14.2. The price of vending products charged to the customers must remain firm for two (2) years. Thereafter, requests to increase the price of the product in the vending machines must be submitted to the Contract Liaison and approved by a Vending Pricing Review Board at University for price increases effective at the beginning of the academic year.
- 14.3. Cost change proposals for vended products to University must be submitted to the Contract Liaison not less than forty-five (45) days prior to the beginning of the academic year in which they are to be effective. Effective dates will be the beginning of the academic year. The cost changes must be supported by documented increases in the cost to the contractor which are demonstrated to be industry wide. The documentation may include, but is not limited to, Consumer Price Index, Midwest Region, for all Items. The base index shall be the index average for the month prior to the time this contract is awarded.
- 14.4. Failure to agree on a price change shall be grounds for termination of the contract in accordance with the Termination Clause.
- 14.5. Requests to increase the price of the product in a vending machine to our customers must be submitted by the contractor to the Contract Liaison.
- 14.6. All invoice prices shall be the last approved pricing.

15. CONTRACTOR'S ADMINISTRATIVE RESPONSIBILITIES

- 15.1. Comply with applicable laws, ordinances, regulations and rules of federal, state and local authorities, relating to Campus Beverage Program, including but not limited to, sanitation and safety requirements, health policies and procedures, wages and hours of employment, withholding taxes, and Equal Employment Opportunity. Results of all inspections will be immediately given to the Campus Beverage Program Liaison.
- 15.2. Notify the Campus Beverage Program Liaison immediately of any unsafe or unhealthy

conditions and take appropriate action to remedy the condition(s).

- 15.3. Inform the Campus Beverage Program Liaison of any personal injuries and accidents which require medical treatment.
- 15.4. Establish an active program of social responsibility and commitment for protection of the environment that includes measuring and reporting as appropriate in food waste local purchases.
- 15.5. Obtain all necessary state and local permits and licenses and pay all inspection fees associated with the operation of the Campus Beverage Program.
- 15.6. Collect and remit to the appropriate taxing authorities all federal, state and local taxes on Contractor's operations.
- 15.7. Remit all license fees payable as required by approved licensing contracts.
- 15.8. With regard to University owned equipment, the contractor shall implement the facility management and maintenance plan described in the RFP and in the contractor's response.
- 15.9. The Contractor shall be responsible to participate with the University in any routine reporting of beverage equipment condition and/or maintenance. The Contractor shall be responsible for the recommendation of any additional maintenance or replacement of specific equipment on an as needed basis. Requests for maintenance and/or replacement of equipment shall be a cost to the University and shall be subject to University approval. The Contractor agrees to assist the University in the selection and procurement of approved equipment purchases. The Contractor may be asked by the University to directly purchase equipment, in which case, the University will reimburse the Contractor for exact said expenditures that contains no mark-up or additional fees, upon conveyance of a good and sufficient Bill of Sale from the Contractor to the University, which shall include the original invoice pertaining to the purchase. At the termination or expiration of the contract, the Contractor shall return to the University all University owned FF&E items then associated with the operation of the Campus Beverage Program Service.
- 15.10. Maintain any and all Contractor owned equipment in excellent repair and condition, said cost of maintenance to be considered a Cost of Operations.
- 15.11. Be responsible for maintaining first aid equipment and supplies in all production and service areas for use by staff and employees.
- 15.12. Be responsible for scheduling of maintenance and/or replacement of all Contractor provided non-consumable and capital equipment, upon review and approval of the University's Campus Beverage Program Liaison.
- 15.13. Provide for the transportation needs of management staff.
- 15.14. Provide and ensure that all vehicles, their maintenance and insurance, are up to date and in good working order, as required to deliver the Campus Beverage Program Services
- 15.15. Provide clerical support for management staff.

- 15.16. Develop and perform procedures for cash collection in compliance with the University's requirements and subject to the University's approval. The Contractor is responsible for compliance with these requirements.
- 15.17. At the end of each monthly accounting period, conduct a physical inventory of all beverages on hand, including cost, for use in developing monthly financial statements and accounting reports.
- 15.18. Provide monthly financial statements, to include profit and loss statements and other accounting reports as necessary to the University showing the status of the program and the basis for Contractor compensation, as applicable. Said profit and loss statements and other financial reports shall clearly delineate all income and expenses by type (i.e., for income – cash income, debit income, etc.), without mingling. On both a monthly and annual basis, individual profit and loss statements will be provided for each beverage operation, with a comparison to the previous year month and Year to Date activity. Additionally the Contractor shall provide a monthly and annual profit and loss summary statement for the contract as a whole. While audited financial statements will not be required, the University reserves the right to audit the Contractor's books and records, at any time, with 48 hours' notice.

16. RECORD KEEPING

The Contractor is required to file and maintain records for a period of five years (longer if required by law) for all necessary Federal, State, County, and local forms and claims for all of the programs the University is now utilizing or may choose to utilize in the future.

17. MARSHALL UNIVERSITY RIGHTS

The University shall maintain the following rights:

- 17.1. **Right to Inspect and Audit:** While audited financial statements are not required, the University retains the right to request such and inspect, audit and reproduce all records, receipts and disbursements in connection with the operation of the Campus Beverage Program at any time at its expense, upon 48 hours written notice.
- 17.2. **Right of Approval of Subcontractors:** The Contractor shall not subcontract any service required in this contract without first obtaining the prior written consent of the University.
- 17.3. The University, at its discretion and without limitation, shall have the right to add or remove vending machines and/or services.

18. RESTRICTIONS TO THE CONTRACTOR

18.1. **REMOVAL OF EQUIPMENT**

The Contractor may not remove any University owned equipment from the premises without written permission from the Campus Beverage Liaison.

18.2. **UNAUTHORIZED USE**

The Contractor may not prepare food and/or beverages on the premises for sale or use for any purpose not covered by this agreement unless mutually agreed upon in writing by University and Contractor.

18.3. **HIRING OR USE OF EMPLOYEES**

The Contractor and the University mutually agree not to hire any of the other's management employees for the length of the contract and for the first full year thereafter, without prior approval of the other.

18.4. **USE OF UNVERISTY TRADEMARKS**

The Contractor covenants and agrees not to (1) use the words "Marshall University" (whether alone or in combination with other words), (2) display or otherwise use the name, emblem, or logo (or any similar name, emblem, or logo) of any department, or other component, constituent, or affiliate of the University, or (3) otherwise refer to the University or any department, or other component or affiliate of the University, whether in or any sign, advertisement (including any newspaper, television, or radio advertisement), commercial announcement, circular, flier, other publication or employee uniform without the approval of the University's Director of Trademarks and Licensing.

18.5. **INFORMATION**

All information of any type that is made available by the University to the Contractor or its employees or agents or that becomes available to Contractor or its employees or agents by virtue of carrying out this agreement will be held in strict confidence by the Contractor and its employees and agents.

19. PAYMENTS TO MARSHALL UNIVERSITY

19.1. Unless **otherwise** noted in this contract, annual payments to the University under the financial proposals shall be made upon execution of the contract or, in the case of additional annual payments, upon the anniversary date of the contract for the corresponding contract year.

19.2. The Contractor shall maintain accurate, complete and separate books of accounts according to generally accepted accounting principles reflecting the Campus Beverage Program, together with appropriate supporting data and documents. Within ten (10) days after the end of each Reporting Period, the Contractor shall provide Reporting Period financial statements including an income statement, a balance sheet, and budget versus actual Reporting Period and year-to-date reports in a form acceptable to the Campus Beverage Program Liaison. Such reports will include previous year month and year to date information as well. With the year-end financial statement, Contractor shall remit to the University any monies due or any undisputed portion thereof reflected on said statements. All reports shall be in accordance with University fiscal year.

20. CONTRACTOR SPONSORSHIP

Contractor, at the direction of the University, shall provide beverage services for the Office of the President, to include official events, hospitality functions, and Presidential meal service.

21. TERMINATION OF CONTRACT FOR CONVENIENCE

21.1. The performance of work under this contract may be terminated by either party, without cause, by giving 120 day prior written notice of intent to cancel to the other. Contract Administrator (Purchasing Buyer) will issue such notice to the contractor.

21.2. **DISPUTES**

With respect to terms or items over which the parties are in dispute, except as otherwise provided herein, the University may elect to attempt to resolve the matter by mediation. A mediator shall be selected by mutual agreement of the parties.

21.3. **ASSIGNMENT**

The Contractor shall not sell, transfer, sublease, or otherwise assign its obligation under this contract or any portion thereof, or any of its rights, title, or interest therein, without the prior written consent of the University, whose consent will not be unreasonably withheld.

21.4. **USE OF THIRD PARTY CONTRACTORS**

All goods and services provided to the University through third party contractors must be contracted through the Contractor. The Contractor shall be responsible for compliance with all terms and conditions of the contract and for all acts and omissions of its third party contractors and suppliers. Any failure by a third party contractor to adhere to the contract shall be deemed a breach of the contract by the Contractor.

21.5. **OTHER CONTRACTS**

The University may undertake or award contracts other than beverage service contracts for University related work or functions, and the Contractor shall fully cooperate with such other firms and the University's staff and carefully fit its own work to such additional work. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other firm or by the University's staff. The University shall equitably enforce this section as it relates to all firms, to prevent the imposition of unreasonable burdens on any one firm.

21.6. **COMPLIANCE WITH LAWS**

The Contractor must be familiar with, have a working knowledge of, and comply with all Federal, State, and local regulations, ordinances, codes and laws. In addition, the Contractor must be familiar with and have experience preparing and filing all required forms, reports, and submittals. The Contractor hereby represents and warrants that: a) it is qualified to do business in the State of West Virginia and that it will take such action as, from time to time, may be necessary to remain so qualified; b) it is not in arrears with respect to the payment of any monies due and owing the State of West Virginia or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this contract; c) it shall comply with all Federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this contract; and d) it shall procure, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this contract.

21.7. **WEST VIRGINIA LAW PREVAILS**

The place of performance of this contract shall be the State of West Virginia. This contract shall be construed, interpreted, and enforced according to the laws of the State of

West Virginia, and all claims and disputes shall be brought to court in the State of West Virginia.

21.8. **MARSHALL UNIVERSITY POLICIES, RULES AND REGULATIONS**

The Contractor agrees to abide by all the University policies, rules and regulations in effect for all University employees while working on the premises and/or dealing with any University employees off the premises in furtherance of the Contractor's obligations under this contract.

21.9. **RETENTION OF RECORDS**

The Contractor shall retain and maintain all records and documents relating to the performance of this contract for five years after final payment by the University hereunder or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the University including the Campus Beverage Liaison or his/her designee, at all reasonable times.

21.10. **NONAVAILABILITY OF FUNDING**

If funds are not appropriated or otherwise made available for continued performance for any fiscal period of this contract succeeding the first fiscal period, this contract shall be canceled automatically as of the beginning of the new fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the University's rights or the Contractor's rights under any termination clause in this contract. The effect of termination of the contract hereunder will be to discharge both the Contractor and the University from future performance of the contract, but not from their rights and obligations existing at the time of termination. The University shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this contract or any portion thereof for each succeeding fiscal period beyond the first.

21.11. **DELAYS AND EXTENSIONS OF MARSHALL UNIVERSITY**

The Contractor agrees to perform this agreement continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this contract. The University extensions may be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a University or State contract, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or the delay of a subcontractor or supplier arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractor or supplier.

21.12. **CASUALTY**

During the Term of the contract, if a beverage service facility is damaged by fire or any other cause, the University shall have the right and option to either (a) replace and restore the premises, in which case this contract shall continue in full force and effect, or (b) terminate the contract as to the affected beverage service facility or facilities. In no event shall the University be required to make available an amount to repair or restore the premises in excess of any insurance proceeds available to the University. The University shall not be liable for any inconvenience or annoyance to the Contractor or injury to the business of Contractor resulting in any way from such damage or the repair or restoration

thereof.

21.13. **CONTRACTOR'S RESPONSE TO CASUALTIES, ACCIDENTS AND CLAIMS**

The Contractor shall promptly investigate all accidents and claims for damage relating to the ownership, operation, and maintenance of the Campus Beverage Program and facilities. The Contractor shall report to the Campus Beverage Liaison any such incident that is material or any significant injuries, together, if applicable, with the estimated cost of repair or extent of damages thereof. Contractor agrees to cooperate freely with the University and any insurance carrier to the end that all such claims will be properly investigated and defended. The Contractor shall prepare any and all reports required by any insurance company as a result of any such incident and shall submit to the Campus Beverage Liaison the paperwork concerning any material incident for approval prior to submission to any such insurance company.

21.14. **INDEMNIFICATION**

The Contractor shall be responsible for and shall indemnify and hold harmless the University and its officers, agents and employees from and against any and all loss, claims, damages, liabilities, judgments, penalties, fines and costs of any and all legal action, including attorney's fees, (hereinafter collectively referred to as, "Damages") of any nature arising out of or resulting directly or indirectly from the performance of the contract including, without limiting the generality of the foregoing, all loss, claims, damages, liabilities and costs of suits, including attorney's fees, for personal or bodily injury or death, damages to property, or liens of workman and materials resulting directly or indirectly from the negligence of by Contractor and not caused by the negligence of the University. Any Damages paid by the Contractor shall not be considered a Cost of Operation. The University has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract. The University has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract. The Contractor shall immediately notify the Campus Beverage Liaison of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the contract and shall also immediately provide said note in writing. The Contractor will also cooperate, assist, and consult with the University in the defense or investigation of any claim, suit, or action made or filed against the University as a result of or relating to the Contractor's performance under this Contract.

21.15. **RELEASE**

The Contractor expressly releases the University from all liability for any destruction, damage to, loss or theft, of its equipment, supplies, beverage, or any other property on the premises used by Contractor and for injury to any of its employees, except caused by the University's negligence.

21.16. **SUSPENSION OF WORK**

The University unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance under this contract for such period of time as the University may determine to be appropriate for the convenience of the University.

21.17. **LIABILITY FOR LOSS OF DATA**

In the event of loss of any data or records necessary for the performance of this contract where such loss is due to the error or negligence of the Contractor or its agent, the Contractor shall be responsible, irrespective of the cost to the Contractor, for recreating such lost data or records.

21.18. **WAIVER OF RECOVERY**

Each party hereto waives its rights, and the rights of its subsidiaries and affiliates, to recover from the other party hereto and its subsidiaries and affiliates for loss or damage to such party's building, equipment, improvements and other property of every kind and description resulting from fire, explosion or other cause normally covered in standard broad form property insurance policies.

21.19. **SEVERABILITY**

In the event any term or provision of this contract or any application to any person or circumstance shall be declared prohibited, invalid, or unenforceable to any extent in any jurisdiction, as determined by a court of competent jurisdiction, such term or provision shall, in that jurisdiction, be ineffective only to the extent of such prohibition, invalidity, or unenforceability, or as applied to such persons or circumstances, without invalidating or rendering unenforceable the remaining term or provision hereof or affecting the validity or enforceability of such term or provision in any other jurisdiction or as to other persons or circumstances in such jurisdiction, unless such would effect a substantial deviation from the general intent and purpose of the parties or make a significant change in the economic effect of the contract on the party benefited by such term or provision.

21.20. **SURVIVAL**

The University and the Contractor agree that those obligations of the parties which by their terms require performance after termination or expiration of the contract, shall survive the termination or expiration of the contract.

21.21. **SAFETY**

All manufactured items and/or fabricated assemblies subject to operation under pressure or operation by connection to an electric source, which are furnished by the Contractor, shall be constructed and approved in a manner acceptable to the appropriate state inspector. This customarily requires the label or re-examination listing or identification marking of the appropriate safety organization, such as the American Society of Mechanical Engineers for pressure vessels; and the Underwriter's Laboratories and/or National Electrical Manufacturer's Association for electrically operated assemblies, where such approvals or listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by the Contractor shall meet all requirements of the Occupational Safety and Health Act (OSHA).

21.22. **INSURANCE**

During the term of this Agreement, the Contractor shall maintain, at its own cost and expense, the following types of insurance with insurers licensed to do business in the State of West Virginia and approved by the University.

Commercial General Liability Insurance covering the Contractor and the University with not less than \$5,000,000 combined single limit of liability for bodily injury and property damage for each occurrence. The following coverage parts shall be included: personal

injury groups A, B, and C with employee exclusion deleted; broad form property damage; and contractual liability.

Workers' Compensation and Employer's Liability Insurance covering each employee engaged in the performance of the work under this agreement, with a limit of liability in accordance with applicable law in the case of Workers' Compensation Insurance, and with the following limits of liability in the case of Employer's Liability Insurance:

Bodily injury by accident	\$100,000 each accident
Bodily injury by disease	\$500,000 policy limit
Bodily injury by disease	\$100,000 each employee

Comprehensive Motor Vehicle Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the activities undertaken under this agreement, with a combined single limit of liability for bodily injury and property damage of not less than \$2,000,000 per occurrence.

Umbrella liability coverage of \$5,000,000 per occurrence.

Prior to the award of the contract, the Contractor will deliver to Marshall University Purchasing certificates of insurance evidencing the coverage indicated above. Each certificate of insurance, with the exception of Workers' Compensation and Employer's Liability, shall name "Marshall University" as an additional insured, with respect to all operations of the Contractor and its contractors, subcontractors, and their employees, agents, and representatives, including work performed by or on behalf of such parties and the certificate holder, and shall provide for a 30-day written notice of cancellation or material change. Failure or inability to secure the required minimum, or fully adequate, insurance or bonding by/for the Contractor, any subcontractor, any employee, or agents of either, shall in no way relieve the Contractor of the responsibility for its own acts or the acts of any subcontractors or any employees or agents of either.

Each of the policies required by subparagraphs 31.1, 31.2, 31.3, and 31.4 shall provide that the insurance company or an attorney approved by the insurance company shall defend any suit or proceeding against the University, its agents, or employees, alleging any omission or act arising out of or relating to this agreement or the activities undertaken by or on behalf of the Contractor under this agreement, even if such suit is groundless, false, or fraudulent.

The required insurance will be primary coverage; any insurance the University may purchase will be excess and noncontributory. The Contractor's Commercial General Liability Insurance will be written to cover claims incurred, discovered, manifested, or made during or after the expiration of the Agreement.

The Contractor agrees, at its sole expense, to provide attorneys to defend against any such Claim against any Indemnity whether or not such Claim is rightfully brought or filed. At the individual option of an Indemnity, such Indemnity may defend itself at its own expense.

22. NOTICES

All notices required to be given by one party to the other hereunder shall be in writing and shall be addressed as follows:

If to the University:

Tracey Brown Dolinski, Purchasing Director
Marshall University Office of Purchasing
One John Marshall Drive
Huntington, WV 25755

Contract Administrator
William "Tootie" Carter
Marshall University
Memorial Student Center, Suite 2W6
One John Marshall Drive
Huntington, WV 25755
PHONE: 304-696-2528
carterw@marshall.edu

David Steele
Marshall University
Shewey Building 201
One John Marshall Drive
Huntington, WV 25755
PHONE: 304-696-2483
Steele@marshall.edu

If to the Contractor:

23. PREVAILING DOCUMENTS

To the extent that any provisions of the Contractor's proposal are inconsistent with the Request for Proposal prepared by the University, the Request for Proposal prepared by the University shall prevail. To the extent that any provisions of the Request for Proposal are inconsistent with this contract, the contract shall prevail.

24. REPRESENTATIONS

Each party to this contract represents and warrants to the other that it has full right, power, and authority to execute this contract.

25. VENDOR OPERATED VENDING SERVICE

25.1. Records Retention

Contractor shall maintain complete and accurate records in accordance with accepted industry accounting practices and keep in a safe place all such financial records and statements pertaining to the operations of this institution for a period of five (5) years from the close of each year's operation.

25.2. All records maintained by the Contractor pertaining to the Exclusive Soft Drink Pouring and Vending Rights shall be open to inspection and/or audit by the University at any mutually agreed upon time. The Contractor shall advise the Campus Beverage Program Liaison and University's Internal Auditor of the Contractor's schedule of records and operations at the University. The University shall have the option to participate in the contractor's audits and may request a full report of these audits.

25.3. The contractor shall maintain complete and accurate records of vending transactions for each vending machine in accordance with accepted industry accounting practices, and shall keep in a safe place all such financial records and statements pertaining to the operations at the University for a period of three (3) years from the close of each year's operation.

25.4. Vending Collections/Meter Counts

A representative of the University may accompany the contractor's employees when meter counts and money collections are made at a time pre-determined and agreed by the University. Cash receipts collected from the equipment may be jointly counted by the University and the employee at a location and by means determined by the University and mutually agreed by the contractor.

25.5. Basis for Vending Commissions

Commissions will be paid to the University from "cash collected" less sales tax for each monthly period. Collections shall be bagged and counted by machine, reconciled to reported inventory sales and not co-mingled with changer funds.

25.6. All vending equipment shall be equipped by the contractor with non-reset item sale counters and/or totalizers which are maintained in continual operative condition; and each period statement shall include beginning and ending counter route inventory cards.

25.7. Refunds and tests shall be deducted from vending commission statement gross sales item categories in which refund and tests occurred prior to computation of State and local sales tax and commissions due the University.

25.8. Vending Sales Tax Determination

Sales tax collected from vending machines shall be deducted from gross receipts, before computing the Sales Tax, provided the customers are advised of the amount of sales tax they are paying by posted sign.

25.9. Sales Tax Change

The University's vending commissions under this contract are determined in part with the contractor's full consideration of applicable State, Federal, county or local excise and sales taxes on all products at the start of this contract. In event of an increase in these taxes or increase in tax structure changing contractor's tax liability and affected vending

product sale price is not adjusted, commissions shall be reduced the exact same amount in dollar terms to compensate the contractor for tax increase. In the event of tax decrease, and no decrease in gross sales price is affected, the University shall receive the exact same amount in commission compensation for such decreased tax.

25.10. Vending Vandalism or Theft

Vending commissions shall not be paid on the contractor's revenue losses resulting from vandalism or theft of money or product from vending equipment at the University.

25.11. Vending Reports

The University shall require the contractor to provide vending sales and commission reports that provide the following information:

- Product code for all products in all the vending machines.
- Building location of machine(s)
- Machine number
- Selling price of products
- Date machine installed (separate report)
- Date machine removed from service (separate report)
- Designation of new or used machine at time of installation (separate report)
- Gross and net sales and sales tax for each machine by location each period
- Year to date gross and net sales and sales tax for each machine by location each period
- Total commission for each machine by location for each period
- Year to date commission for each machine by location each period
- Refunds and tests for each item category
- Required beginning and ending meter reading

Prior to the start of the contract, the University and contractor shall mutually agree on the report(s) format Exhibit F and contents to satisfy these requirements.

25.12. Vending Refund System

The contractor shall attach to vending machines, information to the user where to report out of order or malfunction complaints, product quality comments or refund requests on cash sales. Complaints, comments and refund requests should be directed to the Student Center Main Office, Room 2W6, Memorial Student Center, (304) 696-6472. Contractor shall provide and maintain a balance of \$100.00 in change in the Memorial Student Center Main Office and will provide refund slips for the purpose of refunding users who have lost money in machines. The contractor shall make refund exchanges in the Student Center Main Office, as requested, Monday through Friday. . Refund balances shall also be provided for both the South Charleston and Mid-Ohio Valley campuses.

25.13. Vending Commission Payments

The contractor shall pay the University the commission percentage of each period net (gross sales less State and local Sales Tax) vending sales on or before the 15th day following the last day of the period in which commissions were earned. The contractor shall accompany this payment with a detailed explanation of dollar sales by item category, by location, by each vendor, and an extension of commissions and a composite statement of said sales and commissions. Causes of abnormal revenue deviations shall be noted by the contractor as part of these statements.

- 25.14. The University requires a minimum of twelve (12) monthly revenue and commission statements annually, including periods of reduced revenues.
- 25.15. Vending commission's payments not received by the University on the 15th day following the last day of the period in which it was earned shall be paid by the contractor plus a minimum interest penalty on the commissions due at the prevailing interest percentage and conditions the State of West Virginia uses for delinquent income tax.
- 25.16. Vending Equipment Removal Commissions
On expiration or termination of this contract, vending commissions due the University shall be paid on sales until all equipment has been removed, and the removal date shall be indicated on the period statement when each piece of equipment was removed, including equipment removed at any time during the contract period prior to expiration.
- 25.17. Vending Statement Review
On request of the University the contractor shall meet with the University and review each period statement, explain deviations, discuss problems, and mutually agree on courses of action to improve the results of the required services included in this contract. Period statement adjustments required as a result of review and/or audit shall be identified and reflected on the next period statement.
- 25.18. Audit
Cash collections reports, route inventory cards, and reported sales shall be audited on regular schedule, as determined by the University, to verify the contractor's inventory control and reported commissions.
- 25.19. Periodic reviews, conducted jointly by representatives of the University and the contractor shall be made to ensure that commissions and guaranteed payments, pricing structure and other phases of the operation are conducted in the most efficient and financially sound basis.
- 25.20. All records pertaining to the operations of vending beverage service shall be open for inspection and/or audit by the University at any or all reasonable times.
- 25.21. The University shall be advised by the contractor of the schedule of the contractor's audit of their records and operations at the University. The University shall have the option to participate in the contractor's audits and may request a full report of these audits.
- 25.22. Products, Ordering and Delivery Requirements –Full Service
All material, equipment and supplies provided to the University must comply fully with all safety requirements set forth by University, the Rules of the Industrial Commission on Safety and all applicable OSHA Standards.
- 25.23. General Requirements
All products delivered shall be transported at the proper storage temperature. Delivery is to be made in clean, enclosed, and as necessary, temperature controlled trucks. Non-compliance will result in refusal of product and replacement at contractor's expense. Delivery trucks size should be appropriate to the campus size and limitations.

Additional items may be added to this contract at the discretion of the University. Prices for these items will be at the same rate as like items on the contract. Products which are

no longer manufactured or which are not being ordered in sufficient quantity may be deleted from this contract by the University. The Contractor shall promptly notify the University of new or discontinued items. All changes must be submitted to Contract Liaison for approval and a change order to the purchase order will be issued with new effective date.

26. NON-EXCLUSIVE AGREEMENT

26.1. Permitted Exceptions

For as long as a similar Product is unavailable, The University shall have the right to make available for sale on the campus (i) freshly-brewed coffee and freshly brewed specialty coffee, (ii) freshly-brewed tea, (iii) hot chocolate, and (iv) milk. This shall not be deemed to allow advertising or promotional rights with respect to such Competitive Products except that trademarks for such Competitive Products may be displayed on menu boards and on dispensing equipment.

For certain special private events held by student organizations and for receptions in University's residence halls, Competitive Products may be made available if donated or purchased by attendees of such events; provided, however: (i) such event is not open to the general public; and (ii) any such Competitive Products shall be made available solely for personal consumption by the attendees of the event and not for resale on the Campus.

The University will ensure that no permanent or temporary advertising, signage, or trademark visibility for Competitive Products is displayed on Campus except for advertising in the student newspaper and except for ads on the student radio station broadcast on Campus as the University cannot control such activities.

27. TRANSITION PLAN

27.1. Removal of Equipment upon Termination of Contract

Upon termination or expiration of this Contract, Contractor shall vacate and return the premises to the University in the same condition at the time the Contractor entered the premises, reasonable use and wear expected.

27.2. Soft drink dispensing and holding equipment not removed from the University locations on termination of this Contract after ten (10) days written notice to the Contractor may be removed and treated as abandoned property. All costs of removal, storage and product and revenue loss shall be the contractor's.

27.3. In all locations, remote soda and CO2 lines are to remain in location and in no way be removed, damaged or destroyed.

28. Contract Administration

UNIVERSITY

The Contract Liaison for the University are:

William "Tootie" Carter
Marshall University
Memorial Student Center, Suite 2W6
One John Marshall Drive
Huntington, WV 25755
PHONE: 304-696-2528
carterw@marshall.edu

David Steele
Marshall University
Shewey Building 201
One John Marshall Drive
Huntington, WV 25755
PHONE: 304-696-2483
Steele@marshall.edu

CONTRACTOR

Contract Liaison for the successful Bidder will be listed in the bid and must be agreed to by the Contract Liaison. The Contract Liaison for the Contractor is authorized to give the approvals and negotiate changes required under this Contract on behalf of the Contractor.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date herein below set forth.

BY: _____
(Affix Corporate Seal):

BY: MARSHALL UNIVERSITY

Signature

Signature

Printed Name

Printed Name

Title

Title

Witness Signature

Witness Signature

Title

Title

Date

Date

LIFE OF CONTRACT PAGE

LIFE OF CONTRACT: This contract becomes effective on August 16, 2019 and extends for a period of **one (1) year** or until such reasonable time thereafter as is necessary to obtain a new contract. Such "reasonable time" shall not exceed twelve (**12**) months upon expiration of one (**1**) year from the effective date of this contract by giving the Director of Purchasing thirty (**30**) days written notice.

RENEWAL: This contract may be renewed upon mutual written consent, submitted to the Director of Purchasing thirty (30) days prior to the date of expiration. Such renewal shall be in accordance with the terms and conditions of the original contract and shall be limited to nine (9) successive one (1) year periods.

CANCELLATION: The Director of Purchasing reserves the right to cancel this contract immediately upon written notice to the vendor if the commodities or services supplied are of an inferior quality or do not conform to the specifications of the bid and contract herein.

OPEN MARKET CLAUSE: The Director of Purchasing may authorize a spending unit to purchase in the open market, without the filing of a requisition or cost estimate, items specified on this contract for immediate delivery in emergencies due to unforeseen causes (including but not limited to delays in transportation or an unanticipated increase in the volume of work).

TIME: Time consumed in delivery or performance is of the essence.

ORDERING PROCEDURE: Departments shall submit a requisition for commodities covered by this contract to the Purchasing office. Purchasing will then issue a purchase order to the vendor as authorization for shipment. If the vendor accepts credit cards, purchases may also be made using the P-card up to the established transaction limit for the department.

FUNDING PARAGRAPH: Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for these services, this contract becomes of no effect and is null and void after June 30.

INTEREST: Should this contract include a provision for interest on late payments, the agency agrees to pay the maximum legal rate under West Virginia Law. All other references to interest charges are deleted.

CONTRACT PRICING: Unless otherwise allowed by the Director of Purchasing, price increases will be approved only at the beginning of each renewal period. All adjustments will be made in dollars, not per cent. Requests for price increases must be received in writing by the Director at least thirty (**30**) days in advance of the effective date. Vendors may add products throughout the term of this contract when it is in the best interest of the University. The Director at Marshall University will determine which products will be added. Price decreases will be "passed through" to Marshall University.

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** – Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Any disputes brought by Vendor arising out of the agreement and any counter-claims or cross-claims by Marshall University (“Marshall”) shall be presented to the West Virginia Legislative Claims Commission. Any disputes brought by Marshall University (“Marshall”) arising out of the agreement shall be presented in the Circuit Court of Cabell County, West Virginia, or other appropriate Court having jurisdiction over the matter.
2. **HOLD HARMLESS** – Any provision requiring Marshall to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** – The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State’s governing law.
4. **TAXES** – Provisions in the agreement requiring Marshall to pay taxes are deleted. As a State entity, Marshall is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will Marshall file any tax returns or reports on behalf of Vendor.
5. **PAYMENT** – Any reference to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** – Any provision for interest or charges on late payments is deleted. Marshall has no statutory authority to pay interest or late fees.
7. **NO WAIVER** – Any language in the agreement requiring Marshall to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** – Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, Marshall agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which Marshall may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** – Any provisions limiting Marshall’s right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** – Marshall recognizes an obligation to pay attorney’s fees – costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** – Notwithstanding any clause to the contrary, Marshall reserves the right to assign the agreement to another State of West Virginia Agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of the Marshall prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** – Marshall, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor’s liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** – Marshall shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Marshall agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** – Any provision requiring Marshall to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. Marshall may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by Marshall prior to the end of any current agreement term.
16. **RENEWAL** – Any references to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** – Any provision requiring Marshall to purchase insurance for Vendor’s property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, Marshall does recognize a right of repossession with notice.
19. **ACCELERATION** – Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties.
22. **DELIVERY** – All deliveries under the agreement will be FOB destination unless otherwise stated in the State’s original solicitation. Any contrary delivery terms are hereby deleted.
23. **PUBLICITY** – Vendor shall not, in any way or in any form, publicize or advertise the fact that Vendor is supplying goods or services to Marshall without the express written consent of Marshall.

- 24. **UNIVERSITY MARKS** – Vendor shall not, in any way or in any form use Marshall’s trademarks or other intellectual property without prior written consent of Marshall.
- 25. **INTELLECTUAL PROPERTY** – Marshall will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising out of the agreement, and Vendor will execute any assignments of other documents necessary for Marshall to perfect such rights, provided that, for research collaboration pursuant to subcontracts under sponsored research agreements, intellectual property rights will be governed by the terms of the grant or contract to Marshall to the extent such intellectual property terms to apply to subcontractors.
- 26. **FERPA**. Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 (“FERPA”). To the extent that Vendor receives personally identifiable information from education records as defined in (FERPA), Vendor agrees to abide by the limitations on re-disclosure set forth in which states that the officers, employees and agents of a party that receives education record information from Marshall may use the information, but only for the purposes for which the disclosure was made.

ACCEPTED BY:
MARSHALL UNIVERSITY

OFFICE OF PURCHASING

Signed: _____

Title: Director, Office of Purchasing _____

Date: _____

VENDOR

Company Name: _____

Signed: _____

Title: _____

Date: _____