

**EXCLUSIVE SPONSORSHIP AGREEMENT**

**between**

**THE UNIVERSITY OF OTTAWA**

**and**

**COCA-COLA BOTTLING LTD.**

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## EXCLUSIVE SPONSORSHIP AGREEMENT

THIS AGREEMENT made as of the 1st day of September, 1997,

BETWEEN:

THE UNIVERSITY OF OTTAWA, a body corporate incorporated under the University of Ottawa Act (Ottawa) in the Province of Ottawa

(hereinafter called "U of O")

AND:

COCA-COLA BOTTLING LTD., a corporation incorporated under the laws of Canada, having an office at 42 Overlea Boulevard, Toronto, Ontario, M4H 1B8

(hereinafter called "CCB")

WITNESSES THAT WHEREAS:

- A. U of O is charged with the operation and administration of the educational facilities and campus known as "The University of Ottawa" situate in Ottawa, Ontario;
- B. CCB is an authorized bottler and distributor in Canada of beverages manufactured or produced under licence;
- C. U of O and CCB have agreed that for the term of this Agreement:
  - (a) CCB will supply Cold Beverage Products to U of O and parties designated by U of O for use on Campus;
  - (b) CCB will supply to U of O or parties designated by U of O beverage dispensing, vending, point of sale and other equipment and will maintain and service all such equipment; and

- (c) U of O will provide to CCB certain exclusive supply, advertising, marketing and promotional rights;

all on the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE in consideration of the premises, the mutual covenants and agreements herein contained, and for other good and valuable consideration (the sufficiency of which is hereby mutually acknowledged), the parties hereto covenant and agree as follows:

1. **INTERPRETATION**

1.1 **Definitions**

Unless otherwise indicated herein, the terms set forth below as used in this Agreement shall have the following meanings:

- (a) "Agreement" means this Exclusive Sponsorship Agreement made as of the 1<sup>st</sup> day of September, 1997, including the recitals and all Schedules hereto;
- (b) "Annual Sponsorship Fee" means the fee payable on the first day of each Contract Year by CCB for the rights granted to CCB hereunder, as more particularly described in paragraph 7.1 hereof;
- (c) "Authorized Cups" means, unless otherwise agreed, the disposable cups used to serve Cold Beverage Products of CCB, illustrating one or more of the Coke Marks and, unless otherwise agreed by U of O, one of the U of O Marks, and supplied by CCB to U of O or Designated Purchasers pursuant to paragraph 4.1 hereof;
- (d) "Business Day" means any day except Saturday or Sunday or a statutory holiday in the Province of Ontario;
- (e) "Campus" means, collectively, those lands, grounds and facilities (other than the Excluded Facilities) within the University that, as at the Commencement Date are, and any lands, grounds and facilities within the University that in the future are, controlled and/or operated by U of O or in respect of which U of O has, pursuant to

a written agreement or otherwise, the right to designate the supplier and advertiser of Cold Beverage Products, which at the Commencement Date means those facilities shaded black and those lands or grounds outlined in red on the map attached hereto as Schedule A except for the facility located at 100 Marie-Curie (for greater certainty, the Ottawa Health Sciences Centre and related lands and grounds are not part of the "Campus", although Guindon Hall, one building within the Centre, is included as part of the "Campus" for the purposes of this Agreement);

(f) "CCB Marks" means the registered and unregistered trade marks, trade names, logos and design marks from time to time which CCB is authorized by its licensors to use in connection with the Cold Beverage Products of CCB;

(g) "Cold Beverage Products" means:

(i) all carbonated and non-carbonated, natural or artificially-flavoured, non-alcoholic beverages, whether consumed independently or used as a mixer, including but not limited to: non-alcoholic beverages with nutritive or non-nutritive sweeteners; flavoured and/or sweetened water; naturally or artificially flavoured fruit juices; fruit juice-containing drinks, fruit-flavoured drinks (sweetened or unsweetened); fruit punches and ades; hypertonic, hypotonic and isotonic energy and fluid replacement drinks (sometimes referred to as "sports drinks"); frozen carbonated beverages; bottled/canned carbonated and non-carbonated waters, and packaged cold teas and coffees; and

(ii) all drink or beverage bases, whether in the form of syrups, powders, crystals, concentrates or otherwise, from which drinks and beverages as described in sub-paragraph (i) are prepared;

including but not limited to those listed in Schedule F hereof, but does not include:

- (iii) dairy and dairy-like beverages including, without limitation, milk, milkshakes, flavoured milk, hot chocolate and cocoa, and coffee beverages which are primarily (that is, more than 50%) dairy based;
  - (iv) cold brewed coffee or tea, hot coffee, hot tea, tea bags, loose tea, loose coffee grains or beans, water packaged in bulk or water drawn from the public water supply;
  - (v) beer and near beer beverages whether alcoholic or non-alcoholic;
  - (vi) alcoholic or low alcoholic beverages, and non-alcoholic wines, coolers and spirits;
  - (vii) all drink or beverage bases, whether in the form of syrups, powders, crystals, concentrates or otherwise, from which drinks and beverages as described in sub-paragraphs (iii) through (vi) are prepared; and
  - (viii) freshly squeezed or extruded vegetable and fruit juices;
- (h) "Cold Beverage Products of CCB" means such Cold Beverage Products in such flavours, brands, packaging and dispensing forms as may from time to time be manufactured, sold or distributed by or on behalf of CCB, including but not limited to those listed in Schedule F hereof;
- (i) "Commencement Date" means September 1, 1997;
  - (j) "Commission" means an amount equal to the greater of:
    - (i) the Guaranteed Annual Minimum Commission set out in paragraph 7.3.2 hereof, and
    - (ii) <sup>17(i)(a)</sup>  $\frac{1}{2}$  of Net Revenues from Vending Machines from and after the Commission Start Date;

17(i)(a)

except that during the ~~Extended~~ Period the "Commission", when payable under this Agreement, shall mean          of Net Revenues (which, for clarification, is not intended to include any Guaranteed Annual Minimum Commission);

- (k) "Commission Start Date" means September 1, 1999;
- (l) "Contract Year" means each period of one year throughout the Term (or Extended Period) beginning with the Commencement Date and thereafter beginning with each anniversary date of the Commencement Date;
- (m) "Designated Purchasers" includes the University Materials Management Services, University Sports Services Department, the Student Federation of University of Ottawa, the Graduate Students' Association, the Student Association Faculty of Arts Inc., the Administration Students Association and such other on-Campus licensees or lessees of U of O, or of one of the previously mentioned Designated Purchasers, who are designated by U of O as permitted to purchase Cold Beverage Products directly from a distributor for resale on Campus from time to time, which at the Commencement Date means those listed in Schedule B;
- (n) "Equipment" shall have the meaning set forth in paragraph 5.1.1 hereof;
- (o) "Equipment Services" shall have the meaning set forth in paragraph 5.7.1 hereof;
- (p) "Excluded Facilities" means those buildings and areas described in Schedule C together with additional buildings and areas as may be consented to in writing by CCB from time to time, who shall act reasonably in determining whether to provide its consent;
- (q) "Extended Period" shall have the meaning set out in paragraph 8.2 hereof;
- (r) "Fountain Supply Services" shall have the meaning set forth in paragraph 4.1 hereof;
- (s) "Graphic Standards", as the context requires, shall mean the graphic standards developed by either U of O or CCB (stipulating the format, style and treatment



approved in writing by U of O or CCB, as the case may be, with respect to their respective marks, logos, etc.) and setting out the specifications and standards relating to the use and reproduction of official marks, trade-marks, logos, crests and other marketing and advertising materials;

- (t) "Guaranteed Annual Minimum Commission" shall have the meaning set out in paragraph 7.3.2 hereof;
- (u) "Inter-University Sports Events" means sporting events on Campus open to general public attendance and of which one or more of the University's inter-university league Teams are participating;
- (v) "Intramural Sport Events" means sporting events on Campus open to general public attendance and at which one or more of the University's students, staff or faculty are participating;
- (w) "Net Revenues" means all gross revenues from Cold Beverage Products sold through the Vending Machines less any municipal, provincial or federal sales taxes or deposits or license fees now or in the future imposed on these sales or the Cold Beverage Products;
- (x) "Premiums" means those items of merchandise (excluding food and beverages) which:
  - (i) are given away free of charge or sold at a subsidised price by CCB for advertising or promotional purposes at any step of the distribution process; and
  - (ii) bear one or more of the CCB Marks; and
  - (iii) are approved in advance in writing by U of O for use by CCB pursuant to the provisions of this Agreement;

- (y) "Private Events" means events or activities held on or about the Campus which are attended by invitation only and are not open to general public attendance or general student body attendance;
- (z) "Rules and Regulations" means the rules and regulations of general application established by U of O from time to time, written notice of which has been given to CCB, providing for the orderly and efficient use and operation of the University or any facility which is a part of the University;
- (aa) "Services" means the Vending Machine Supply Service, the Fountain Supply Services and the Equipment Services;
- (bb) "Standard Physical Case" shall mean the standard case sizes and conversion ratios generally utilized by CCB on an industry-wide basis and communicated by CCB to the industry for a "standard physical case" of each Cold Beverage Product of CCB, being that listed in Schedule J with respect to the brands listed in Schedule F;
- (cc) "Teams" means the official athletic teams representing the University in Inter-University Sports Events;
- (dd) "Term" means the 10 year period commencing on the Commencement Date and terminating on August 31, 2007 subject to paragraph 8.2;
- (ee) "U of O Marks" means the registered and unregistered official marks, trade marks, trade names, logos and design marks from time to time owned or claimed by U of O or which U of O has the legal right to use and sublicense, including but not limited to those set out in Schedule D attached hereto (which includes the "GeeGee " logo adopted by certain of the Teams);
- (ff) "U of O Sponsored Events" means sporting, educational or other events or activities open to general public or general student attendance and occurring on or about the Campus which are expressly authorized and sponsored by U of O, and at which Cold Beverage Products are to be served or made available, which for greater certainty excludes an Unauthorized Event and a Private Event, but includes

Intramural Sport Events, Inter-University Sport Events and official U of O authorized Team events;

- (gg) "Unauthorized Events" means events or activities held on or about the Campus from time to time without the authorization of U of O at which Cold Beverage Products are likely, in U of O's reasonable judgment, to be served or sold (other than Private Events or U of O Sponsored Events);
- (hh) "University" means the educational facilities and campus known as "The University of Ottawa" situate in Ottawa, Ontario, all as more particularly outlined on the map attached hereto as Schedule A (it being understood that, for the purposes of this Agreement, the streets, roadways, sidewalks and boulevards bounding the University are not part of the University);
- (ii) "Vending Machines" means all of the various Cold Beverage Product vending machines on or about the Campus from time to time, whether or not located in an Excluded Facility, which are on loan from CCB and are intended to dispense a selection of CCB's Cold Beverage Products (it being understood that page 1 of Schedule E lists the existing U of O vending locations as at the Commencement Date and that pages 2 and 3 of Schedule E illustrate various alternative locations for additional Vending Machines);
- (jj) "Vending Machine Supply Service" shall have the meaning set forth in paragraph 4.2.1 hereof;
- (kk) "Volume Expectation" means six hundred and ninety-one thousand (691,000) Standard Physical Cases of Cold Beverage Products of CCB (for greater certainty, this calculation would not include the 175 ml package or the "portion pak/minute pak" of Minute Maid branded juices);
- (ll) "PepsiCo" means PepsiCo Inc. and/or its associated or affiliated bodies corporate or franchises, licensees or any of their respective franchised bottlers and/or any restaurants owned directly or indirectly now or in the future by PepsiCo Inc. or

any of its associated or affiliated bodies corporate or franchisees or licensees, which includes (for as long as they remain owned directly or indirectly by PepsiCo Inc. or any of its associated or affiliated bodies corporate or franchisees or licensees) Kentucky Fried Chicken, Taco Bell, Hostess, Frito Lay and Pizza Hut at the Commencement Date and any other such entities once their names are provided in writing to U of O by CCB. For greater certainty, it is the intention of the parties that the inclusion of "PepsiCo" owned entities in this definition is not intended to prohibit sponsorship activities involving these entities provided such activities do not relate to or involve Cold Beverage Products.

1.2 **Schedules**

The following Schedules are attached to this Agreement and shall form a part hereof:

<u>Schedule</u>	<u>Description</u>
A	Campus
B	Designated Purchasers
C	Excluded Facilities
D	U of O Marks
E	Vending Machines and Locations
F	Cold Beverage Products of CCB
G	Signage and Advertising
H	Wholesale and Retail (Vending Machine) Prices
I	Conditions of Use of U of O Marks
J	Standard Physical Case - Conversion Table
K	Financial Summary
L	Intentionally Deleted
M	List of Official Publications as at Commencement Date
N	CCB Equipment Loan Agreement

### 1.3 Number and Gender

All words contained in this Agreement shall be read as the singular or the plural and as the masculine, feminine or neuter gender as may be applicable in the particular context, and shall result in the particular clause being given the most reasonable interpretation.

### 1.4 References

The words "herein", "hereby", "hereunder", "hereof", "hereto", and words of similar import, refer to this Agreement as a whole and not to any particular section, paragraph or clause of this Agreement. References to sections, paragraphs or clauses refer to the sections, paragraphs and clauses of this Agreement unless otherwise stated.

### 1.5 Currency

All sums of money expressed in this Agreement are expressed in lawful money of Canada.

## 2. GRANT OF RIGHTS

### 2.1 Rights

Subject in each case to the provisions of this Agreement (including, without limiting the generality of the foregoing, the provisions of paragraphs 2.3, 2.4, 4.9 and 12.7), U of O hereby grants to CCB for the duration of the Term:

- (a) the exclusive right to supply Cold Beverage Products to U of O or Designated Purchasers, as may be required by U of O or such Designated Purchasers, as the case may be, for consumption or use on Campus, all as more particularly set out in paragraphs 2.2 and 2.3 hereof;
- (b) the exclusive right, subject to the restrictions set out in paragraph 2.3(a), to designate itself as an "Official Sponsor/Supplier" of one or more of the Teams, and as an "Official Sponsor/Supplier" of the University;

- (c) the exclusive right to advertise Cold Beverage Products on Campus on the basis set out in Section 6 hereof;
- (d) the exclusive right to:
  - (i) use one or more of the U of O Marks on Campus in the promotion and advertising of Cold Beverage Products in connection with a U of O Sponsored Event or, from time to time, in connection with an event on Campus other than a U of O Sponsored Event, and
  - (ii) from time to time, promote Cold Beverage Products on Campus but not in connection with any specific event on Campus or specific U of O Mark,

subject in all cases to:

- (iii) the prior written approval of U of O as to whether or not the proposed promotion or activity should be proceeded with at all and, if so, as to the nature, manner and extent of the use, if any, of the U of O Marks in connection therewith, and
- (iv) the other terms and conditions described in Section 3;
- (e) the exclusive right to use one or more of the U of O Marks in a specific activity promoting and advertising Cold Beverage Products in association with:
  - (i) scheduled Inter-University Sport Events, and
  - (ii) those U of O Sponsored Events mutually agreed to by U of O and CCB,
  - (iii) other events and activities expressly approved by U of O,

in conjunction with specified customers of CCB approved by U of O who may be identified in electronic or print media and on point-of-sale materials with their respective marks, logos and branded products and generally identified as participants in such promotional activity (it being understood and agreed that under no circumstances shall CCB's customers be presented as, or appear to be

themselves, sponsors of or suppliers to U of O, or the University), but subject to the prior written approval of U of O on a case by case basis as to the proposed customer of CCB, the proposed promotional activity, the nature, manner and extent of the use of the U of O Marks, and the other terms and conditions described in Section 3 hereof; and

(f) the exclusive right to display signage for one or more of the Cold Beverage Products on the Equipment and at the locations and in the manner designated in Section 6;

(g) together with its agents and employees, a reasonable non-exclusive right of access over the Campus for the purpose of fulfilling its obligations hereunder, provided that such access:

(i) does not unreasonably conflict with or impede the carrying on of any activities on Campus, and

(ii) is subject always to the restrictions set forth herein and to the Rules and Regulations, as well as any requirements under any collective bargaining agreements in place from time to time in respect of any aspect of the Campus;

such agents and employees to wear and carry appropriate identification to readily identify them as authorized CCB representatives; and

(h) the exclusive right to sample Cold Beverage Products on Campus, subject to the prior approval of U of O as to the manner, frequency and extent of such sampling.

## 2.2 **Scope of Exclusivity**

Subject in each case to the provisions of this Agreement (including, without limiting the generality of the foregoing, the provisions of paragraphs 2.3, 2.4, 4.9 and 12.7):

(a) U of O shall ensure that CCB will be the exclusive supplier and advertiser of Cold Beverage Products on Campus such that the Cold Beverage Products of CCB will

be the only Cold Beverage Products made available for sale or distribution on Campus;

- (b) U of O will not license any other person or entity to use in, on or about the Campus the U of O Marks in connection with the sale of Cold Beverage Products;
- (c) U of O will not grant to any manufacturer or supplier of Cold Beverage Products, other than CCB, the right to associate its Cold Beverage Products with U of O or with the Teams;
- (d) U of O shall ensure that future leases or licences that it may grant on Campus contain provisions prohibiting throughout the Term the lessee or licensee from selling or advertising or promoting Cold Beverage Products on Campus other than those of CCB;
- (e) U of O will use reasonable commercial efforts to encourage those persons or entities having control over the Excluded Facilities not to purchase or advertise Cold Beverage Products other than the Cold Beverage Products of CCB for sale, distribution or promotion in the Excluded Facilities and, in particular:
  - (i) U of O will use its reasonable commercial efforts to enforce the rights, if any, it may have as lessor under any lease or license agreements governing any of the Excluded Facilities in order to protect the exclusive rights of advertising and supply granted to CCB by U of O hereunder; and
  - (ii) as such lease or license agreements come up for renegotiation or expire, to the extent that U of O has the right to do so, U of O will include provisions in any new or renegotiated lease or license agreement prohibiting the lessee or licensee from selling or advertising Cold Beverage Products other than the Cold Beverage Products of CCB;
- (f) U of O shall use its reasonable commercial efforts to ensure that no Cold Beverage product other than those of CCB shall be distributed or sold to an Excluded Facility in any manner which would reasonably be interpreted to



associate such other Cold Beverage Product with the University, the Campus or the Teams.

2.3 Limitations on Exclusivity

The exclusivity of the grant of rights under this Agreement or the exercise of such rights, as the case may be, is subject to the following:

- (a) CCB's exclusive right to designate itself as an "Official Supplier/Sponsor" under paragraph 2.1(b) above shall, unless otherwise previously agreed to in writing by U of O upon the specific request from time to time of CCB, be exercised only at U of O Sponsored Events and only upon U of O giving its prior approval as to the manner and extent of such exercise;
- (b) CCB acknowledges that U of O has little control over Unauthorized Events and that U of O's obligations with respect to Unauthorized Events shall be limited subject to compliance with Section 29, to the following:
  - (i) should the Office of Materials Management Services receive actual notice of an Unauthorized Event sufficiently in advance of the event taking place it will take commercially reasonable steps to (A) inform the organizers of such Unauthorized Event that CCB has exclusive rights to supply Cold Beverage Products on Campus, and (B) ensure that the Unauthorized Event be held in a manner which is not inconsistent with CCB's exclusive rights hereunder;
  - (ii) if the Office of Materials Management Services receives inadequate or insufficient advance notice of an Unauthorized Event, then upon it becoming aware of the Unauthorized Event, if the Unauthorized Event has not yet commenced U of O shall use reasonable commercial efforts to ensure that any Cold Beverage Products other than the Cold Beverage Products of CCB to be distributed or available for sale at such event shall be served in unmarked cups and that the supply of such Cold Beverage Products not be advertised or publicized;

- (c) U of O shall not have any obligation to control the supply of Cold Beverage Products to Private Events (except that, if the Office of Materials Management Services has actual and sufficient advance notice that the Private Event is:
- (i) being catered by a Designated Purchaser, then U of O shall ensure that the Cold Beverage Products of CCB be served to the exclusion of any other Cold Beverage Products); or
  - (ii) not catered by a Designated Purchaser but likely to serve Cold Beverage Products then U of O shall use reasonable commercial efforts to encourage the supply of the Cold Beverage Products of CCB at such Private Event to the exclusion of any other Cold Beverage Products;
- (d) U of O shall be entitled to permit the advertising by a competing supplier of Cold Beverage Products of such competing supplier during events or exhibitions, including, without limitation, charity, entertainment, educational, sporting or other events, travelling exhibitions or touring shows (the "Excepted Events") held on or about the Campus which are sponsored in whole or in part by such competing supplier and for which advertising rights in favour of such competing supplier are mandated in a pre-existing (prior to the event) sponsorship agreement between the competing supplier and the organizer of, or athletes or artists performing in, such Excepted Events, but only in respect of the venues, areas or facilities hosting or involved in the Excepted Events, provided that:
- (i) the exclusive supply rights granted to CCB herein are not restricted during such Excepted Events;
  - (ii) the total number of such Excepted Events does not exceed ten in any one Contract Year;
  - (iii) any advertising for such Excepted Events involving Cold Beverage Products other than the Cold Beverage Products of CCB shall be limited to the duration and specific location of the Excepted Event, such advertising

will not (beyond advertising the facility on Campus as the venue for the particular Excepted Event) create the impression that the competing supplier sponsoring such Excepted Event is a sponsor of U of O, the University, the Campus or the Teams, and CCB's signage will not be covered, non-illuminated or removed during such Excepted Events; and

- (iv) U of O gives CCB reasonable advance notice of such Excepted Events;
- (e) U of O shall not be accountable for the individual use and consumption on or about Campus of, or for individuals on or about Campus associating themselves in any manner with, competing Cold Beverage Products including consumption or advertising by individual students, faculty members, Team members and coaches or opposing Team' players and coaches, provided that U of O will circulate a statement to the faculty members and the Teams encouraging the individuals comprising same to respect the relationship between U of O and CCB. For greater certainty, U of O agrees that CCB shall be the exclusive Cold Beverage Products supplier with which the Teams shall be associated (that is, in a sponsorship, endorsement or any similar capacity) during the Term and U of O agrees that it will request (or to the extent U of O controls sufficient rights, require) that, in circumstances where they are representing the Team on Campus, all individual Team members refrain from engaging in sponsorship or endorsement activities related to Cold Beverage Products other than the Cold Beverage Products of CCB; and
- (f) CCB's right of exclusivity with respect to the advertising of Cold Beverage Products on Campus is, in relation to flyers, posters, magazines, newspapers, radio and other media, in reference only to the official publications controlled by U of O (including its University Sports Department), a list (current to the Commencement Date) of which is attached as Schedule M.

#### 2.4 Subject to Laws

The exercise of the various rights granted under this Agreement and the performance of obligations under this Agreement are subject to all applicable laws, regulations and

ordinances of governmental authorities. CCB shall comply with all applicable laws, regulations and ordinances from time to time in effect in fulfilling its duties or exercising its rights hereunder. All rights, authorizations and consents not expressly granted by U of O under this Agreement to CCB are expressly reserved to U of O.

2.5 **Exclusive Negotiations**

U of O and CCB agree to explore on an exclusive basis during the first six months of the last year of the Term or Extended Period, as the case may be, opportunities for a new exclusive sponsorship arrangement between them.

3. **U of O MARKS**

3.1 **Use of Marks**

The exercise of the rights granted to CCB pursuant to this Agreement to use the U of O Marks, as permitted, in connection with the advertising or promotion of CCB's Cold Beverage Products is subject in each case to the prior written approval of U of O, and each such applicable approval must be requested and obtained on a case by case, separate use basis. If the U of O Marks, are to be used in combination with the CCB Marks, there must be an identifiable separation between the U of O Mark and the Coke Mark such that there are two or more distinct marks rather than a new composite mark. The consent to use the U of O Marks in accordance with the provisions of this Agreement is also granted subject to compliance by CCB with the conditions set forth in Schedule I hereof.

3.2 **Promotional Activities**

The promotional activity permitted under this Agreement will be conceived, designed and implemented by CCB in cooperation with U of O and in the best interests of the University and CCB. All proposed promotional activities shall require the prior written approval of U of O and each such applicable approval must be requested and obtained on a promotion by promotion basis. Once approval is obtained, CCB shall not deviate in any material respect from the approved activity. CCB shall present to U of O for its review, comment and written approval as required, a conceptual outline in reasonable detail of each promotional activity planned for

execution at least 30 days in advance of the proposed execution date, together with the details of the proposed use of the U of O Marks, CCB Marks and, if applicable, any trade marks of CCB's customers. U of O shall notify CCB of its approval or disapproval within ten (10) Business Days of receiving the conceptual outline for a particular promotion and if an approval or disapproval is not provided to CCB by U of O within such ten (10) Business Day period, then U of O shall be deemed to have provided its approval.

#### 4. SUPPLY OF COLD BEVERAGE PRODUCTS

##### 4.1 Fountain and Non-Vended Supply

During the Term, CCB shall supply and deliver free of charge, and sell (the "Fountain Supply Services"), on its usual trade terms as to the number of days within which U of O or a Designated Purchaser, as the case may be, must pay for the Cold Beverage Products, each of the Cold Beverage Products it from time to time manufactures or bottles and/or distributes together with Authorized Cups, to U of O or to Designated Purchasers, as the case may be, in such quantities and at such locations on or about the Campus as may be reasonably directed by U of O or by each Designated Purchaser. U of O may add, change or remove a Designated Purchaser at any time and from time to time, and shall give reasonable advance notice in writing of such addition, change or removal to CCB. Unless otherwise agreed, delivery of Cold Beverage Products will be made during normal business hours and within two (2) Business Days from the time the order is placed. U of O and its Designated Purchasers shall be entitled to return to CCB all Cold Beverage Products which:

- (a) do not meet the standards of quality provided for in this Agreement;
- (b) are stale-dated or spoiled at the time of delivery;
- (c) remain unsold upon the termination or expiration of the Term (so long as such products are saleable as determined by CCB, acting reasonably and have been properly stored).

#### 4.2 Supply of Vended Product

4.2.1. During the Term, CCB shall diligently deliver to, stock and restock, free of charge, Cold Beverage Products in each of the Vending Machines at a frequency which is sufficient to continuously meet the demand for each of the Cold Beverage Products dispensed by each Vending Machine (the "Vending Machine Supply Service").

4.2.2. All stocking services shall be performed by qualified employees, and shall be provided promptly and courteously with the minimum amount of interruption and inconvenience possible. CCB's employees shall respond to any stocking service request:

- (a) if the request is made by 11:00 a.m. on a Business Day, then before 4:00 p.m. that same day; or
- (b) in any other case, by 12:00 p.m. noon on the next Business Day following the day the request was made; or
- (c) at such time as may be mutually agreed upon by the parties.

4.2.3. In providing the Vending Machine Supply Service, CCB shall use all reasonable efforts to maximize Net Revenues from Vending Machines and Commissions in a manner which is consistent with the standards required hereunder and all other terms and conditions of this Agreement.

4.2.4. Only CCB's Cold Beverage Products shall be vended through the Vending Machines. U of O agrees that, without the consent of CCB, no vending equipment for Cold Beverage Products other than the Vending Machines shall be located on or about the Campus.

#### 4.3 Ordering Cold Beverage Products

4.3.1. With respect to each of the Cold Beverage Products which may be purchased by U of O or a Designated Purchaser hereunder:

- (a) CCB shall at all times have available a sufficient supply of each Cold Beverage Product it from time to time manufactures or bottles and/or distributes to enable it to promptly fill orders from U of O or any Designated Purchaser;
- (b) U of O and the Designated Purchasers shall each be entitled to select in their sole discretion which of CCB's Cold Beverage Products it wishes to purchase from time to time;
- (c) CCB shall accept and fill orders for the Cold Beverage Products from U of O or any Designated Purchaser based solely upon a purchase order or upon such other method of ordering Cold Beverage Products as U of O or a Designated Purchaser and CCB may mutually agree upon. Unless otherwise agreed, all orders will be communicated to CCB during normal business hours.

4.3.2. CCB and U of O shall agree on the selection of Cold Beverage Products that shall be offered for sale from time to time in the Vending Machines.

4.3.3. During the Term CCB will not substantially reduce the scope of the variety of its Cold Beverage Products available as at the Commencement Date. In addition to the Cold Beverage Products listed in Schedule F, CCB will also arrange for the supply to U of O and its Designated Purchasers at their request of Minute Maid branded juice in 175 ml packages at competitive prices (but, for greater certainty, the sales volumes of such 175 ml packages of Minute Maid branded juices shall not be included in calculating whether the Volume Expectation has been achieved unless and until CCB itself supplies such (or similar) products). CCB shall at all times use all reasonable commercial efforts to provide at least one brand (which brand shall be one of the top five in sales in the industry category) in each segment of the carbonated, non-carbonated, "sports drink", natural and artificially flavoured drink categories, as available products evolve in the industry from time to time.

#### 4.4 New Products

In addition to the list of Cold Beverage Products currently available attached as Schedule F, CCB shall inform U of O and the Designated Purchasers of new Cold Beverage

Products acquired for distribution or developed by CCB and shall make all such new products available hereunder as soon as they are available to any other customer in Ontario. For greater certainty, all of the terms and conditions hereunder shall apply to any such new Cold Beverage Products to the same extent as the same shall apply to existing Cold Beverage Products.

#### 4.5 Quality

In the event that the quality of any Cold Beverage Product supplied by CCB deteriorates in any material respect (through no fault of U of O), or in the event that there is an occurrence or factor connected with any Cold Beverage Product supplied by CCB (which is not connected to the acts or omissions of U of O or of a student or students of U of O) which reflects unfavourably in any material way upon the good name, goodwill or reputation of the University or any of the Teams (as determined by U of O in its reasonably exercised discretion), U of O shall have the right, in addition to any other remedies available to it, upon prior written notice to CCB, to source from any other supplier (except PepsiCo) a comparable Cold Beverage Product if the quality, occurrence or factor (as the case may be) is not remedied or corrected to the satisfaction of U of O, acting reasonably, within thirty (30) days of such notice, and may continue to do so until either the quality, occurrence or factor has been so remedied or corrected or until a comparable Cold Beverage Product is available from CCB.

#### 4.6 Wholesale Pricing

4.6.1. The Cold Beverage Products of CCB shall be sold to U of O and the Designated Purchasers at the wholesale prices set out in Schedule H under the heading "Wholesale Prices", plus applicable taxes and deposits, which prices shall remain firm until the second anniversary of the Commencement Date. Thereafter, effective on or after the 1st day of September for any Contract Year during the Term, one or more of the above referenced prices may be increased by CCB (but not more than once during each such Contract Year) to an amount which is not greater than the wholesale prices for the immediately preceding Contract Year as increased by a percentage equal to the percentage increase in the Canada Consumer Price Index (All Items) as published by Statistics Canada (or any successor government agency) for Canada for the immediately preceding calendar



year from January 1st until December 31st, up to a maximum price increase of 3% unless otherwise approved by U of O (such approval not to be unreasonably withheld).

4.6.2. Authorized Cups and lids shall be provided to U of O and the Designated Purchasers at the wholesale prices set out in Schedule H. Wholesale prices for Authorized Cups bearing the U of O Marks will not reflect any additional cost or mark up above the wholesale prices for cups not bearing the U of O Marks. Prices for Authorized Cups and lids shall not be increased until after the second anniversary of the Commencement Date. Thereafter, price increases shall be governed by the same restrictions as are set out in paragraph 4.6.1 applicable to Cold Beverage Product wholesale price increases.

4.6.3. Notwithstanding the provisions of this paragraph 4.6, in the event there is a significant ingredient change or new formulation of a Cold Beverage Product of CCB, or a significant and unusual increase or decrease in the applicable prevailing sweetener costs or other direct production costs to CCB of its Cold Beverage Products ("Extraordinary Change(s)") and, as a result of such Extraordinary Change(s):

- (a) CCB increases the applicable price(s) charged to purchasers of similar prestige purchasing similar volumes of CCB's Cold Beverage Products as the total volume purchased under this Agreement, then CCB shall increase the price(s) to be paid by U of O and the Designated Purchasers under this Agreement but only for those Cold Beverage Products of CCB directly affected by such Extraordinary Change(s) and only to the extent of the lowest equivalent increase charged to any other such purchaser and CCB's actual cost increase, whichever is lower, provided that such increased prices are cost justified and become effective only after sixty (60) days' notice to U of O and the Designated Purchasers by CCB; OR
- (b) CCB's direct production costs for its Cold Beverage Products decreases, and CCB decreases or declines to increase or reduces an otherwise available increase in the applicable price(s) charged to purchasers of CCB's Cold Beverage Products of similar prestige and purchasing similar volumes as the total volume purchased under this Agreement, then CCB shall offer an equivalent decrease, reduced increase or reduction to U of O and the Designated Purchasers.

4.6.4. CCB shall give U of O and all Designated Purchasers at least sixty (60) days' written notice of any proposed price increase under paragraph 4.6.1.

4.6.5. U of O shall not be responsible for any failure of or delay in payment to CCB by any Designated Purchaser other than those which are departments of the University, for Cold Beverage Products supplied hereunder. Notwithstanding the foregoing, in the event of a failure or delay (of more than 60 days) in payment to CCB by a Designated Purchaser, U of O shall use reasonable efforts to ensure payments to CCB of any amounts owing by such Designated Purchaser. CCB shall be entitled to set off against any monies owing and payable to U of O hereunder any unpaid debt owing to CCB hereunder (and which has been outstanding more than 60 days) by U of O or a Designated Purchaser provided however that:

- (a) CCB shall have used and shall continue to use reasonable collection efforts to collect the debt (excluding the commencement and pursuit of legal proceedings);
- (b) CCB shall not exercise its right of set off in respect of any debt, the validity of which the other party is in good faith disputing with CCB;
- (c) CCB shall give at least 15 days' prior written notice to U of O as to the identity of the debtor and the details of the amount owed, in respect of which CCB intends to exercise its right of set off; and
- (d) CCB shall generally keep U of O apprised of all delinquent accounts and CCB's efforts to collect same.

#### 4.7 Retail Pricing

U of O acknowledges and agrees that CCB has the exclusive right to establish its own retail prices for Cold Beverage Products sold by CCB on Campus through Vending Machines. CCB agrees that, for at least the first two years following the Commencement Date, it shall make available for sale through Vending Machines its Cold Beverage Products at retail prices which do not exceed those maximum retail prices set forth in Schedule I hereof. Thereafter, Vending Machine retail prices shall be reviewed by the parties annually and may be increased in CCB's

discretion, provided that U of O shall be entitled to continue to establish from time to time a suggested maximum price increase.

4.8 **Warranty**

CCB warrants that the Cold Beverage Products supplied by it pursuant to this Agreement shall be fit for their intended purpose, shall be of good quality, and shall comply with all applicable laws, regulations and shall meet or exceed industry standards. CCB further warrants that the level of Services provided by it hereunder shall be consistent with the best standards prevailing in the industry.

4.9 **Unavailability of Cold Beverage Products**

If there is no comparable non-carbonated Cold Beverage Product of CCB to that which U of O wishes to dispense or sell at the Campus (the "Competitive Product"), then U of O shall be entitled to source the supply of such Competitive Product from a supplier other than CCB ("Competitive Supplier") provided that:

- (a) U of O has first notified CCB of the desire for such Competitive Product and obtained CCB's consent in writing, which consent will not be unreasonably withheld (and CCB will provide its response to any such request within 5 Business Days);
- (b) U of O shall not enter into any exclusive supply contracts with any Competitive Supplier for such Competitive Product;
- (c) if CCB subsequently produces and/or is able to supply a Cold Beverage Product which is comparable to a Competitive Product that U of O is purchasing from a Competitive Supplier for supply or sale at the Campus, then U of O will, 30 days after being satisfied (acting reasonably) that such CCB Product is comparable to the Competitive Product, cease purchasing such Competitive Product from the Competitive Supplier and purchase such comparable Cold Beverage Product exclusively from CCB under the terms of this Agreement;

- (d) U of O shall use commercially reasonable efforts to dispense all such Competitive Products in cups, vessels and containers that do not bear advertising (including trade marks or trade names or logos) of the Competitive Supplier and shall not dispense such Competitive Products in Authorized Cups without first having obtained the consent of CCB (which consent shall not be unreasonably withheld); and
- (e) the Competitive Supplier shall not be PepsiCo and the Competitive Product shall not be a Cold Beverage Product of PepsiCo.

U of O agrees not to grant any marketing or advertising rights with respect to the Competitive Products to any Competitive Supplier except that the Competitive Product name may appear on menus or menu boards, if applicable, where such Competitive Products are sold.

## 5. SUPPLY AND MAINTENANCE OF EQUIPMENT

### 5.1 Equipment Supply

5.1.1. CCB shall within three (3) months after the execution of the Agreement by all parties, unless otherwise mutually agreed by CCB and U of O, at its cost, replace all existing Cold Beverage Products fountain and other dispensing equipment, merchandisers, coolers and Cold Beverage Products vending machines on Campus with such fountain and dispensing equipment (including, without limitation, portable bars and carts, and "on field/on floor" dispensers), merchandisers, coolers and Vending Machines as are mutually agreed upon, and which are in good working condition, "like new" appearance and are comparable to the newest available model of similar equipment used by CCB in the ordinary course of its business which, in the case of Vending Machines, as of the Commencement Date means the "Vendo 511" model unless otherwise mutually agreed (which requirements are collectively referred to as the "Standards"). The Vending Machines provided by CCB shall all be capable of adapting to and linking with a debit card or "smart" card system. CCB shall also supply (as soon as practicable following the Commencement Date unless otherwise mutually agreed by CCB and U of O) at its cost, such additional equipment and Vending Machines as it and U of O determine to be necessary to meet demand for Cold Beverage Products on Campus, at such locations as may be agreed to in advance by CCB and U of O (it being agreed that the total number of all Vending Machines in the first Contract Year will not

exceed 71). CCB shall supply additional bars and carts for portable use as may be agreed by CCB and U of O, and shall supply sufficient "on field/on floor" dispensers (of a size acceptable to U of O, acting reasonably) as may be reasonably required as determined by CCB and U of O for use by Team members/staff and opposing team players/staff. CCB covenants and agrees that all Cold Beverage Products dispensing equipment (including portable bars and carts, and "on field/on floor" dispensers), merchandisers, coolers, Vending Machines and point-of-sale materials supplied to the Campus by CCB (collectively, the "Equipment") shall, after upgraded or replacement Equipment has been provided, throughout the Term meet or exceed the Standards. All Equipment supplied by CCB shall be C.S.A. approved.

## 5.2 **Implementation**

CCB will, entirely at its own expense, provide, install and prepare for operation (excluding the cost of providing and installing all facilities as are reasonably necessary for the use and operation of the Equipment, such as but not limited to, electricity service and power outlets, drainage and/or water supply outlets and shut-off valves, which shall be paid for by U of O), the Equipment at such times as may be reasonably directed by U of O. A supply of electricity and water for each item of Equipment shall be provided by U of O at no cost, provided that U of O does not guarantee an uninterrupted supply of water or electricity and shall not be responsible for any loss or damage which may result from interruptions or failures of any such utility service. Notwithstanding the foregoing, U of O shall take reasonable steps to restore such supply after an interruption, without undue delay. U of O may withhold its consent to a new or relocated Equipment location if in its reasonably exercised discretion the cost of providing drainage or utilities necessary for the operation of the Equipment at that location would be unreasonably high.

## 5.3 **Ownership**

All Equipment (including can vendors, bottle vendors, premix beverage dispensers, postmix beverage dispensers, superfreezers and coolers) supplied by CCB hereunder is and shall be owned by CCB, and is hereunder loaned at no charge by CCB to U of O or a Designated Purchaser, as the case may be, until the expiration or earlier termination as provided herein of the Term or such earlier date as it may be removed by CCB because it is no longer required for the dispensing or sale of Cold Beverage Products, or it is replaced. U of O or a Designated Purchaser, as the case may be,

will exercise or cause to be exercised the same standard of care of the Equipment as a prudent owner would exercise if they owned the Equipment, but shall not have any obligation to maintain, repair or insure the Equipment except as indicated below. CCB shall be responsible for any loss, damage or destruction of or to the Equipment, provided however that U of O shall be responsible for damage or destruction to Equipment other than Vending Machines (reasonable wear and tear excepted) arising from or caused by the negligence of U of O or its agents or employees. U of O (and/or the Designated Purchasers if appropriate in U of O's opinion) shall, prior to delivery of any Equipment, execute CCB's standard form of equipment loan agreement (a copy of which is attached hereto as Schedule N) provided that in the event of any inconsistencies or conflict between the terms of the loan agreement and the terms of this Agreement, the terms of this Agreement shall prevail.

5.4 **Equipment Use and Signage**

The parties agree that unless otherwise approved in writing in advance by CCB the Equipment may be used solely to dispense or sell the Cold Beverage Products of CCB, and may at the discretion of CCB display the CCB Marks.

5.5 **Ongoing Upgrades and Supply**

At least once each Contract Year during the Term, CCB and U of O shall jointly conduct an Equipment and location audit and shall review Equipment upgrade, location upgrade and additional Equipment supply opportunities. CCB shall throughout the Term continue, at its own expense, to upgrade existing Equipment as may be reasonably required to maintain the Standards. CCB shall also continue, at its own expense, to provide, install and prepare for operation such additional Equipment as may reasonably be required on Campus at particular locations, if any, that may be agreed upon acting reasonably from time to time by U of O and CCB. Ownership of all such Equipment shall be determined in accordance with paragraph 5.3. Installation costs for electric power outlets, drainage and/or water supply and/or similar facilities necessary for the use and operation of the Equipment shall be paid for by U of O.

5.6 **Warranty**

CCB warrants that the Equipment and equipment parts supplied by it pursuant to this Agreement shall meet the Standards, and shall comply with all applicable laws, regulations and shall meet or exceed industry standards.

5.7 **Service**

5.7.1. CCB will, throughout the Term, maintain, service and promptly repair or replace, at no charge, on a "priority" basis all Equipment and materials supplied by CCB hereunder as is necessary to maintain the Equipment and materials in good working order at all times (the "Equipment Services"). As part of the Equipment Services, CCB shall carry out regular inspections and preventative maintenance and service. All Equipment Services shall be performed by qualified technicians and shall be consistent with industry standards, and shall be provided promptly and courteously with the minimum amount of interruption and inconvenience possible. CCB's technicians shall respond on site within twenty-four hours of any repair service request.

5.7.2. CCB shall appoint a designated representative from among its best personnel who shall be assigned to the management of the Campus account. The designated representative shall be personable, qualified and experienced in duties of the type required to be performed by the designated representative.

5.8 **Recycling Containers and Change Machines**

CCB shall at its expense supply one or more recycling containers for Cold Beverage Products to be situate at each "vending bank", being a group of more than one Vending Machine, but shall not be obligated to service such recycling containers.

5.9 **Debit Card/Smart Card Systems**

At the request of U of O, CCB will at its expense acquire and install operational debit card or "smart card" technology (as selected by U of O), but not both at the same time, in those Vending Machines directed by U of O acting reasonably and approved by CCB (such

approval not to be unreasonably withheld) capable of accepting a U of O authorized debit card or "smart card", as the case may be, provided the cost of such debit card or "smart card" technology is reasonable in the circumstances. Installation of the requested debit card or "smart card" technology, as the case may be, shall be completed within 60 days of the request of U of O or within a reasonable period of time thereafter. Upon installation, the debit card/"smart card" readers shall be included within the definition of Equipment for the purposes of this Agreement. CCB will during the Term update the debit card or "smart card" technology, as the case may be, as may be reasonably required so that it remains compatible throughout the Term with U of O technological requirements from time to time provided the costs required to be incurred by CCB in order to update such technology are reasonable.

6. **ADVERTISING**

6.1 **Signage**

Subject to the provisions of this Agreement, during the Term U of O shall make available for use by CCB (at no additional fee) the signage type and the number of signs all as described in Schedule G. All CCB signage shall be approved in advance by U of O, such approvals not to be unreasonably withheld or delayed, and shall be in accordance with U of O signage policies from time to time.

6.2 **Sign Inserts and Displays**

During the Term, CCB will provide to U of O at CCB's expense appropriate sign inserts and display materials for use in connection with the signage space to be provided by U of O pursuant to paragraph 6.1 and Schedule G. All graphics depicted on such signs must be approved by U of O (such approval not to be unreasonably withheld or delayed) prior to installation or display, as the case may be.

6.3 **Temporary Event Signage**

From time to time at CCB's written request on a case by case basis, and at CCB's sole expense, U of O may permit CCB to display on a temporary basis during a U of O Sponsored Event additional signage, provided that any such additional temporary signage shall be subject to



the prior written approval of U of O after reviewing CCB's proposal (which shall be presented in reasonable detail as to size, kind, location, etc.), which approval will be reasonably exercised.

6.4 **Signage on Equipment**

Subject to the provisions of this Agreement, CCB shall be entitled to display the CCB Marks on the Equipment.

6.5 **Advertising in Official Publications**

Throughout the Term CCB, at its sole expense, shall have the right to advertise the Cold Beverage Products of CCB or to illustrate one or more of the CCB Marks, as may be agreed by U of O, in those official publications of U of O listed in Schedule G in the frequency, size, format and kind of advertisement noted in Schedule G in respect of each such publication, provided however that:

- (a) the right to continue to advertise in any particular publication shall terminate should such publication be discontinued without substitution, or should such publication cease to accept all advertising;
- (b) the form and content of the advertising is approved in advance by U of O; and
- (c) CCB shall be responsible, at its own expense, for delivery on a timely basis to the particular publication of satisfactory "camera ready" ad copy and any other materials necessary for each approved advertisement.

Should the event in 6.5(a) occur, then U of O agrees to provide to CCB, at no cost to CCB, comparable alternative advertising rights if and when the same becomes available.

6.6 **Other Advertising**

During the Term should U of O Materials Management Services permit from time to time the display of logos other than those of U of O or a Designated Purchaser or the name of or associated with the food and beverage facility itself, on menus or menu boards in a particular food and beverage facility operated by it, CCB shall be given the opportunity at no additional fee to

display one or more of the CCB Marks on such menu or menu board, subject to the prior written approval of U of O as to the nature, manner and extent of such use. CCB shall be responsible, at its cost, for delivery of "camera ready" ad copy and any other materials necessary for such advertisement.

7. **CONSIDERATION**

7.1 **Annual Sponsorship Fee**

In consideration for the rights granted pursuant to Section 2 hereof, CCB shall pay to U of O an Annual Sponsorship Fee for and in advance of each of the 10 Contract Years comprising the Term in the amount of \$385,000 per Contract Year. The aggregate Annual Sponsorship Fee for each Contract Year shall be paid in advance to U of O and in full on or before the first day of each such Contract Year. U of O acknowledges the receipt from CCB in advance of the execution of this Agreement of a cheque for \$100,000 (the "deposit") (plus GST) of the Annual Sponsorship Fee applicable to the first Contract Year, the balance of which will be paid by CCB to U of O on the earlier of September 1, 1997 and the date of execution of this Agreement by both parties.

7.2 **Additional Marketing/Promotional Support**

In addition to the Annual Sponsorship Fee, CCB agrees to provide at its cost the following marketing and promotional support in connection with the U of O 150<sup>th</sup> anniversary celebration to take place throughout 1998:

- (a) CCB will during 1998 provide reasonable promotional and advertising support for the 150<sup>th</sup> anniversary celebration as mutually agreed upon by CCB and U of O, including, without limitation, placing bottle neck ringers for a period of time to be agreed upon by the parties on selected Coca-Cola 2 litre displays throughout the national capital region printed with a schedule highlighting the various events for the 150<sup>th</sup> anniversary celebration;
- (b) the bottle neck ringer displays shall be supported, where possible, by overhead signage to generate awareness in the community of the University's anniversary;

- (c) the selection of bottle neck ringer displays shall be those displays which are selected by CCB within the national capital region where CCB's 2 litre bottles are available for sale, it being agreed that CCB shall use commercially reasonable efforts to include the displays in as many stores as possible; and
- (d) the schedule of events to be printed on the bottle neck ringer shall be approved in advance by U of O.

### 7.3 Commission and Vending Reports

7.3.1. Subject to paragraph 7.3.2., CCB shall pay to U of O the Commission for each Contract Year, or portion thereof, commencing on the Commission Start Date and continuing for the balance of the Term including any Extended Period. The Commission shall be payable monthly on the fifteenth day of each month in respect of Net Revenues from Vending Machines for the previous month. Throughout the Term and any Extended Period, CCB shall provide to U of O monthly vending reports in detail satisfactory to U of O acting reasonably, setting out the volume of Cold Beverage Products (in units of Standard Physical Cases) dispensed for sale through Vending Machines and the Net Revenues and corresponding Commission for the previous month and the cumulative total for the Contract Year and the Term to date, as well as any other available data as may be mutually agreed upon by the parties such as the frequency of credit payments and sales data by machine, brand and package.

7.3.2. Notwithstanding paragraph 7.3.1 hereof, CCB shall pay to U of O the amount of annual guaranteed minimum commission (the "Guaranteed Annual Minimum Commission") for each of the 3<sup>rd</sup> through the 10<sup>th</sup> Contract Years, inclusive, of the Term in the respective annual amount designated for each such year in the first row (entitled "Vending Comm.") of the Financial Summary attached as Schedule K hereto, totalling \_\_\_\_\_ over the eight years. CCB shall pay 17(1)(a) the Guaranteed Annual Minimum Commission to U of O annually in advance of each of the 8 Contract Years, commencing with Contract Year 3, on the first day of each such Contract Year. The amount of Guaranteed Annual Minimum Commission paid in advance for a particular Contract Year will be credited against the monthly payments of Commission provided for in paragraph 7.3.1 until such time as the entire amount of such Guaranteed Annual Minimum Commission for that

Contract Year has been so credited, whereupon CCB shall again pay to U of O the monthly Commission payments contemplated under paragraph 7.3.1.

7.3.3. CCB has forecasted that the amount of Commission payable to U of O over and above the Guaranteed Annual Minimum Commission will be at least the respective annual amounts designated in row four of the Financial Summary attached as Schedule K (entitled "Incremental Vending Commissions Forecast"). U of O acknowledges that these amounts are forecasts only and not guaranteed amounts.

7.3.4. In addition to the Commission, CCB agrees to pay to U of O a performance incentive payment for all sales of Minute Maid brand Cold Beverage Products (the "MM Products") to U of O or to Designated Purchasers during the Term (and any Extended Period), in the following amounts:

- (a) upon the purchase of at least 90 "Minute-Paks" of MM Products per Minute Maid dispenser, CCB shall pay to U of O a rebate of \$1.00 for each such case (inclusive of the 90 case minimum); or
- (b) upon the purchase of at least 120 "Minute-Paks" of MM Products per Minute Maid dispenser, CCB shall pay to U of O a rebate of \$2.00 for each such case (inclusive of the 120 case minimum); and
- (c) in addition to the foregoing, CCB shall pay a rebate of \$0.50 for each and every case of "Portion Pak" MM Products purchased by U of O or a Designated Purchaser during the Term (and any Extended Period).

All such performance incentive rebates shall be paid quarterly, based upon MM Product purchase reports prepared by CCB for each quarter (each quarter to be based upon a Contract Year rather than a calendar year), and remitted to U of O within 30 days of the end of each such quarter together with the applicable report.

7.4 **Taxes**

In addition to the Annual Sponsorship Fee, Commission and performance incentive rebates payable by CCB hereunder, CCB shall include in their remittance to U of O the GST and any other taxes exigible in respect of such payments.

7.5 **Distribution**

U of O shall be solely responsible for distributing any portion of the Commission and/or rebates to any other parties within the University who may have a legal entitlement thereto and shall indemnify and hold CCB harmless from any Liabilities and Expenses (as those terms are defined in 13.2) connected with or arising from such distribution or non-distribution by U of O.

8. **VOLUME EXPECTATION**

8.1 **Expectation**

Over the course of the 10 year Term, U of O expects to purchase and pay for, whether directly or through Designated Purchasers, that volume of Cold Beverage Products of CCB which, when added to the volume of Cold Beverage Products of CCB sold through Vending Machines or otherwise purchased on Campus, totals at least the Volume Expectation.

8.2 **Expectation Shortfall**

In the event that the Volume Expectation has not been achieved on or before the commencement of the final month of the Term, the parties will calculate the shortfall in terms of Standard Physical Cases (the "Shortfall") and at the option of CCB to be exercised in its sole discretion by written direction to U of O at least 20 days prior to the expiration of the Term, the Term of this Agreement shall be extended on a monthly basis at no additional Annual Sponsorship Fee payable whatsoever, for a period (the "Extended Period") which is the shorter of:

- (a) the number of additional months required in order for the Volume Expectation to be satisfied over the course of the Term plus the Extended Period; or
- (b) twenty four months.

CCB's right to extend the Term of this Agreement as contemplated above shall be the only remedy available to CCB in the event the Volume Expectation is not attained on or before the commencement of the final month of the Term. CCB shall continue to pay all rebates during the Extended Period. In addition, as long as the volume of Cold Beverage Products of CCB sold through Vending Machines is at least 85,328 Standard Physical Cases by the end of the Term, CCB shall pay to U of O the Commission (of \_\_\_\_\_ of Net Revenues) monthly, during any such Extended Period (provided that should the volume of sales through Vending Machines reach 85,328 Standard Physical Cases on a date during the Extended Period, then from that date onward CCB shall pay to U of O the Commission (of \_\_\_\_\_ of Net Revenues) on a monthly basis throughout the balance of the Extended Period). 17(1)(a)

8.3 **Volume Expectation Reports**

CCB shall provide U of O with quarterly Volume Expectation reports by the 20<sup>th</sup> day of the month immediately following the end of each quarter (based upon a Contract Year rather than a calendar year, and commencing with the quarter ending November 30, 1997) in detail satisfactory to U of O acting reasonably, setting out the volume of Cold Beverage Products (in units of Standard Physical Cases):

- (a) supplied by CCB and paid for by U of O and the Designated Purchasers, and
- (b) dispensed for sale through Vending Machines,

both for the preceding quarter and as a cumulative total for the Contract Year and the Term as a whole.

9. **PREMIUMS**

With the express prior written consent of U of O, which consent may be arbitrarily withheld, CCB shall be entitled to distribute Premiums in accordance with the rights granted hereunder, provided however that:

- (a) the Premiums shall only be distributed pursuant to and in accordance with a marketing plan or promotional activity approved in advance by U of O in writing and shall relate only to the Cold Beverage Products of CCB;
- (b) CCB shall select Premiums so as to avoid products and suppliers which compete with any "official" suppliers and/or sponsors of U of O under exclusive supply and/or sponsorship agreements (at the commencement of each Contract Year, U of O shall provide to CCB a complete list of its official suppliers and sponsors as at that time);
- (c) the Premiums to be distributed by CCB shall be of a quality commensurate with CCB's Cold Beverage Products; and
- (d) the Premiums shall be distributed only in close connection with the Cold Beverage Products of CCB.

10. **PROTECTION OF MARKS**

10.1 If, during the Term of this Agreement, any unauthorized use or misuse of the U of O Marks occurs in connection with the Cold Beverage Products of CCB, CCB shall, immediately upon learning thereof, promptly notify U of O in writing setting forth the facts in reasonable detail. CCB agrees that U of O shall have the sole right to determine whether any action should be taken to terminate such unauthorized use or misuse or settle any action, proceeding or claim brought by U of O to terminate such misuse. In the event U of O elects not to take any action, CCB may request, but not compel, U of O to undertake such action at CCB's expense. CCB shall be entitled to recover such expenses from any monetary recovery in such action.

10.2 U of O and CCB agree to cooperate in good faith and each agrees to assist the other in the defence of any action, proceeding or claim with respect to the usage of any U of O Marks by CCB in accordance with this Agreement. CCB agrees that U of O shall have the sole right to determine whether any such action against U of O should be defended. In the event U of O elects not to defend such action, CCB may request, but not compel, U of O to undertake such defence at

CCB's expense. U of O agrees that CCB shall have the sole right to determine whether any such action against CCB should be defended by CCB.

10.3 If, during the Term of this Agreement, any unauthorized use or misuse of the CCB Marks occurs in connection with the Cold Beverage Products of CCB, U of O shall, immediately upon learning thereof, promptly notify CCB in writing setting forth the facts in reasonable detail. U of O agrees that CCB shall have the sole right to determine whether any action should be taken to terminate such unauthorized use or misuse or settle any action, proceeding or claim brought by CCB to terminate such misuse. In the event CCB elects not to take any action, U of O may request, but not compel, CCB to undertake such action at U of O's expense. U of O shall be entitled to recover such expenses from any monetary recovery in such action.

10.4 U of O and CCB agree to cooperate in good faith and each agrees to assist the other in the defence of any action, proceeding or claim with respect to the usage, if any, of any CCB Marks by U of O in accordance with this Agreement. U of O agrees that CCB shall have the sole right to determine whether any such action against CCB should be defended. In the event CCB elects not to defend such action, U of O may request, but not compel, CCB to undertake such defence at U of O's expense. CCB agrees that U of O shall have the sole right to determine whether any such action against U of O should be defended by U of O.

10.5 U of O recognizes the value to CCB of maintaining the integrity of the CCB Marks wherever the Cold Beverage Products of CCB are sold, dispensed, promoted, advertised or displayed at or throughout the Campus or in other areas where the Cold Beverage Products of CCB are advertised under this Agreement. U of O agrees that should it utilize any of the CCB Marks during the Term, any such usage shall be within the format, style and treatment furnished or approved in writing by CCB. U of O shall undertake whatever measures are necessary so as to ensure that the CCB Marks are used only in accordance with the provisions of this Agreement. U of O acknowledges CCB's exclusive right, title and interest in and to the CCB Marks, and covenants and agrees not at any time to do or cause to be done any act contesting or in any way impairing or intending to impair any part of such right, title and interest in connection with any use by it of the CCB Marks pursuant to this Agreement, and U of O shall not in any manner represent that it has any ownership in the CCB Marks. U of O further acknowledges that its use



of the CCB Marks pursuant to this Agreement shall not create in its favour any right, title or interest in or to the CCB Marks, and agrees that all of its use of the CCB Marks shall enure to the benefit of CCB. Upon termination of U of O's rights hereunder, in any manner provided herein, U of O shall cease and desist from all use of the CCB Marks in any way and furthermore U of O shall at no time adopt or use without CCB's prior written consent any work or mark which is likely to be similar to or confused with the CCB Marks.

11. **TERM**

Unless earlier terminated in whole or in part pursuant to the provisions hereof, the Term of this Agreement shall commence on the Commencement Date and shall continue for a period of ten years thereafter, expiring on August 31, 2007 (subject to extension in accordance with paragraph 8.2). All rights granted to U of O by CCB and to CCB by U of O hereunder shall expire upon the expiration or sooner termination of the Term.

12. **TERMINATION/FORCE MAJEURE**

12.1 **Termination**

12.1.1. Unless otherwise expressly provided to the contrary herein, in addition to all other remedies available to it in law or in equity, U of O or CCB, as the case may be (the "Non-defaulting Party") may at its sole option immediately terminate this Agreement in its entirety effective upon notice to the other such party (herein called the "Defaulting Party") in the event that:

- (a) the Defaulting Party is U of O and the default is a breach of CCB's exclusive advertising or supply rights hereunder, and such breach continues to exist after ten (10) business days from the date of the giving by the Non-defaulting Party of notice and particulars of that breach in writing to the Defaulting Party (provided that if the cure of such default cannot reasonably be completed within 10 business days, then the Non-defaulting Party shall not have the right to terminate this Agreement so long as the Defaulting Party is diligently and in good faith pursuing the remedy of such default);

- (b) the Defaulting Party is CCB and the default is a breach of CCB's obligations to supply Cold Beverage Products hereunder or a breach of CCB's obligations to pay fees, commissions or any other monies hereunder, and such breach continues to exist after ten (10) business days from the date of the giving by the Non-defaulting Party of notice and particulars of that breach in writing to the Defaulting Party (provided that if the cure of such default cannot reasonably be completed within 10 business days, then the Non-defaulting Party shall not have the right to terminate this Agreement so long as the Defaulting Party is diligently and in good faith pursuing the remedy of such default);
- (c) the Defaulting Party is in breach of any material provision of this Agreement (other than those described in clauses (a) and (b) above) and such breach continues to exist after thirty (30) days from the date of the giving by the Non-defaulting Party of notice and particulars of that breach in writing to the Defaulting Party;
- (d) the Defaulting Party ceases or threatens to cease carrying on its business or a resolution is passed for the winding up or liquidation of the Defaulting Party;
- (e) a petition is filed or an order is made for the winding up or liquidation of the Defaulting Party;
- (f) the Defaulting Party becomes insolvent or makes a bulk sale of its assets or a general assignment for the benefit of its creditors or a proposal under the Bankruptcy and Insolvency Act, or if a bankruptcy petition shall be filed and presented against the Defaulting Party or if a custodian or receiver/manager or any other officer with similar powers is appointed in respect of the Defaulting Party or either of their properties, or any substantial part thereof;
- (g) any proceedings are commenced in respect of the Defaulting Party under creditors arrangements legislation; or
- (h) an encumbrancer shall lawfully take possession of the property of the Defaulting Party or any substantial part thereof, or if a distress or execution or any similar

process is levied or enforced against the Defaulting Party and remains unsatisfied for such period as would permit such property or part thereof to be sold thereunder, provided that in any such case the taking of such possession, distress or execution, as the case may be, could reasonably be considered to jeopardize the carrying on of the Defaulting Party's obligations under this Agreement.

12.1.2. Upon the occurrence or happening of any events of default by U of O as set out in paragraph 12.1.1, and if as a result CCB shall properly terminate this Agreement, then U of O shall forthwith pay to CCB all monies due and payable to CCB hereunder, if any, and shall repay the pro rata portion of any prepaid amounts paid by CCB to U of O, such pro rata portion to be calculated in accordance with paragraph 12.6. If U of O shall properly terminate this Agreement pursuant to paragraph 12.1.1, then CCB shall forthwith pay to U of O all monies due to U of O as of the effective date of such termination including without limitation all Commissions and rebates accrued but not yet paid as of that date.

## 12.2 **Involuntary Loss of Facility**

Notwithstanding the provisions of paragraphs 12.1 hereof, in the event that during the Term hereof U of O (or its successors and assigns, as the case may be) permanently loses the right (it being understood that U of O may not give up the right voluntarily) or authority to designate the supplier of Cold Beverage Products in respect of a particular area or facility on Campus and is unable (after using reasonable commercial efforts to do so) to have the provisions of this Agreement assumed by the person, if any, who will have the right to so designate the supplier of Cold Beverage Products in respect of such area or facility, then U of O shall give notice to CCB and either U of O or CCB may elect to partially terminate this Agreement by notice in writing to the other, but only in respect of the particular area or facility. Upon partial termination of this Agreement with respect to a particular area or facility, all rights of CCB with respect to such area or facility shall thereupon cease (including the exclusive right to supply Cold Beverage Products for use at the area or facility), and the amount of the Annual Sponsorship Fee and the Guaranteed Annual Minimum Commission for the then current Contract Year and future Contract Years as well as the Volume Expectation shall be adjusted on a fair and equitable basis as agreed to by U of O and CCB, each acting reasonably. Neither party shall have any claim or right of action whatsoever against the other in respect of such termination or any loss or damage arising as a result, its only recourse being the right to have an adjustment, if appropriate, on a fair and equitable basis, of the Annual Sponsorship Fee, Guaranteed Annual Minimum Commission and Volume Expectation in respect of the terminated area or facility. In determining the amount of any fair and equitable

adjustment, the parties shall take into account, in addition to any other factors either one of them may feel are appropriate, the following factors:

- (a) the period that may be remaining in the current Contract Year, and in the Term as a whole, as at the date of loss of facility;
- (b) the relative volume of sales in the terminated area or facility of the Cold Beverage Products of CCB; and
- (c) the relative volume of sales from any additional Vending Machines and/or any new or expanded areas or facilities which have been added to or incorporated within the Campus since the Commencement Date.

In the event of the permanent loss of: (a) the University Centre; or (b) one or more other areas or facilities on Campus during the Term, and should the lost area/areas or facility/ facilities represent a loss of more than 10% of the volume of sales of the Cold Beverage Products of CCB then, unless U of O has during the Term expanded or increased its facilities, areas and/or the number of Vending Machines on Campus resulting in 10% or more in additional sales of Cold Beverage Products of CCB (or can demonstrate that it will do so within 12 months of the loss), CCB may at its option terminate this Agreement in its entirety upon reasonable notice to U of O and the provisions of 12.1.2 shall apply in the event of such termination notwithstanding that such loss is not deemed an event of default pursuant to 12.1.1. For greater certainty, the phrase "permanent loss" or "permanently loses" does not include a temporary (less than 12 months) loss or closure and means a loss which is not intended to be replaced, or which is in fact not replaced or the drop in volume of sales of Cold Beverage Products of CCB is not made up within 12 months. The Office of Materials Management Services shall give notice to CCB as soon as it becomes aware of any permanent loss of a facility as contemplated hereunder.

### 12.3 Resolution of Disagreement

Should U of O and CCB be unable to agree, within 30 days, upon the manner and extent of the adjustment, if any, to current and future Contract Years' Sponsorship Fees, Guaranteed Annual Minimum Commission and/or to the reduction in the Volume Expectation, where contemplated under this Agreement, either shall, by notice to the other, refer the disagreement to a committee comprised of two representatives, one appointed by each of U of O and CCB. The committee will seek to resolve the dispute in a manner consistent with the objectives of the parties hereto to foster a sound, mutually beneficial, business relationship. If

PAGE 42 WAS PULLED OUT OF THE  
CONTRACT OBTAINED FROM THE  
FREEDOM OF INFORMATION REQUEST

WE ARE CURRENTLY ATTEMPTING  
TO OBTAIN THIS MISSING PAGE  
FROM THE U of O ADMINISTRATION

slowdown, damage to facilities necessary for the production, transportation, manufacture or delivery of Cold Beverage Products of CCB where such damage was beyond the reasonable control of CCB and which CCB cannot or could not reasonably protect or have protected itself against, temporary loss of U of O's entitlement to occupy or control the Campus or any part thereof for any reason beyond its reasonable control and which it cannot or could not reasonably protect or have protected itself against, or any other cause (other than lack of funds or credit) beyond the reasonable control of the party claiming the benefit of this clause and which that party cannot or could not reasonably protect or have protected itself against (collectively, the "Cause"), such party shall have the right, at its sole option, to suspend its obligations under this Agreement which the party is incapable of performing as a result of the Cause (but only with respect to any area or facility on Campus directly affected by such Cause) during such interruption or prevention and until such a time as such party can again perform its obligations hereunder, provided however that if any suspension by CCB or by U of O remains in effect for a duration of more than 120 continuous days or any number of suspensions remain in effect for more than 120 days in the aggregate during any Contract Year, then in either case the other party shall be entitled to terminate this Agreement (but only with respect to any area or facility directly affected by such Cause). Should U of O suspend its obligations under the Term pursuant to this paragraph 12.6, the amount of the Annual Sponsorship Fee and Guaranteed Annual Minimum Commission (including any pro rata "prepaid" amount if any of the then current Contract Year's Annual Sponsorship Fee and Guaranteed Annual Minimum Commission) and the Volume Expectation shall be adjusted on a fair and equitable basis during such suspension period by agreement of CCB and U of O (each acting reasonably) but only to the extent necessary, if any, to reflect the obligations under this Agreement which have been suspended. All Commission and rebates payable, if any, shall continue to be paid in the ordinary course. Should CCB suspend its obligations under the Term pursuant to this paragraph 12.6, then during the period of suspension:

- (a) there will be no pro rata refund of any prepaid amount of the Annual Sponsorship Fee or Guaranteed Annual Minimum Commission, nor any abatement in future Annual Sponsorship Fees or Guaranteed Annual Minimum Commissions;
- (b) CCB shall continue to pay all Commissions and rebates in accordance with this Agreement;

- (c) U of O and the Designated Purchasers shall be entitled to purchase Cold Beverage Products from another supplier on the basis set out in paragraph 12.7 hereof; and
- (d) there shall be a decrease in the Volume Expectation as agreed by U of O and CCB (each acting reasonably) to the extent necessary to reflect those obligations hereunder which have been suspended.

In calculating the pro rata "prepaid" amount of the current Contract Year's Sponsorship Fee, such calculation shall be made by multiplying the current Contract Year Sponsorship Fee by a fraction, the numerator of which is the number of days remaining in the current Contract Year and the denominator of which is 365.

#### 12.7 Failure to Supply CCB Cold Beverage Products

Should for any reason CCB be unable to supply one or more of the Cold Beverage Products of CCB in accordance with this Agreement for a period of 5 or more consecutive days during the Term, then U of O and the Designated Purchasers may take any steps reasonably necessary to ensure that the supply of Cold Beverage Products to the Campus is sufficient to meet the public demand therefor from time to time during the period of non-supply. To this end, U of O and the Designated Purchasers may purchase Cold Beverage Products from any local supplier, provided U of O and the Designated Purchasers' resume purchasing Cold Beverage Products exclusively from CCB within 10 days of notice from CCB that CCB's Cold Beverage Products are again available for immediate purchase and provided such local supplier is not PepsiCo and that such Cold Beverage Product is not a Cold Beverage Product sold, manufactured or distributed by PepsiCo.

#### 12.8 Removal of Equipment

Upon the termination of this Agreement, CCB shall, in accordance with a mutually agreed upon schedule, and in any event within 60 days of termination, take possession of and remove the Equipment whether or not it is attached to any other property. CCB shall take reasonable care in removing such Equipment not to damage the property of U of O and shall at its expense forthwith repair any such damage. U of O shall not move or remove any Equipment from

its location or cause or permit it to be moved or removed by anyone other than an authorized representative or agent of CCB, except where such move or removal is necessitated by safety considerations or in an emergency situation and CCB is not, or would not be, able to respond within the necessary time period, or in the event CCB fails to remove such Equipment when required to do so hereunder. Notwithstanding termination, CCB shall continue to pay all rebates and the Commission, if any, accrued and payable on remaining Equipment until all of the Equipment is removed.

12.9 **Survival**

The provisions of this Section 12 shall survive the termination (or partial termination) or expiration or suspension of this Agreement.

13. **INDEMNITY AND INSURANCE**

13.1 **Indemnity - CCB**

CCB shall indemnify and save harmless U of O and its Board of Governors, together with each of U of O's directors, officers, employees, agents, students, licensees and invitees, as may be applicable (collectively, the "Indemnitees") from and against any and all:

- (a) liabilities, losses, claims, demands, actions, causes of action, suits or proceedings whatsoever, including but not limited to those arising in respect of personal injury or death, property damage, or economic loss (collectively, the "Liabilities"), and
- (b) costs and expenses (including reasonable lawyers' fees and expenses on a solicitor and own client basis) whatsoever, reasonably and actually incurred (collectively, the "Expenses"),

made, brought or claimed against any of the Indemnitees or to which any of the Indemnitees may become subject, as a result of:



- (c) the breach or non-performance by CCB (or those persons for whom CCB is responsible at law) of any covenant, agreement, term or condition of this Agreement, or
- (d) the act or omission of CCB (or those persons for whom CCB is responsible at law), whether or not negligent, in connection with, directly or indirectly, the use and occupation of the Campus or any part thereof, by CCB or its agents, employees, licensees or invitees, or
- (e) the act or omission of CCB (or those persons for whom CCB is responsible at law), whether or not negligent, in connection with the supply, sale, or advertising of Cold Beverage Products of CCB or by the conduct of the operations of CCB under this Agreement, or
- (f) any claim that any use by U of O (or those persons for whom U of O is responsible at law) of the CCB Marks infringes or violates the rights of any third party (provided that the alleged infringing use by U of O or such persons was in the format, style and treatment furnished or approved in writing by CCB and in compliance with the Graphic Standards established by CCB for the use of the CCB Marks),

except where and to the extent that such Liabilities and Expenses are caused by the negligence or wilful act or omission of any of the Indemnitees.

### 13.2 **Indemnity - U of O**

U of O shall indemnify and save harmless CCB and its directors, officers, employees, agents, licensees and invitees (collectively, the "CCB Indemnitees") from and against any and all:

- (a) liabilities, losses, claims, demands, actions, causes of action, suits or proceedings whatsoever, including but not limited to those arising in respect of personal injury or death, property damage, or economic loss (collectively, the "Liabilities"), and

- (b) costs and expenses (including reasonable lawyers' fees and expenses on a solicitor and own client basis) whatsoever, reasonably and actually incurred (collectively, the "Expenses"),

made, brought or claimed against any of the CCB Indemnitees or to which any of the CCB Indemnitees may become subject, as a result of:

- (c) the breach or non-performance by U of O (or those persons for whom U of O is at law responsible) of any covenant, agreement, term or condition of this Agreement; or
- (d) the act or omission of U of O (or those persons for whom U of O is responsible at law), whether or not negligent, in connection with, directly or indirectly, the use, operation and occupation of the Campus or any part thereof by U of O or its agents, employees, licencees or invitees; or
- (e) any claim that any use by CCB (or those persons for whom CCB is responsible at law) of the U of O Marks infringes or violates the rights of any third party (provided that the alleged infringing use by CCB was in the format, style and treatment furnished or approved in writing by U of O and in compliance with the Graphic Standards established by U of O for the use of the U of O Marks),

except where and to the extent that such Liabilities and Expenses are caused by the negligence or wilful act or omission of any of the CCB Indemnitees.

### 13.3 **Insurance**

13.3.1. CCB shall, at its own cost, place and maintain the following insurance throughout the Term:

- (a) comprehensive general liability insurance including coverage in respect of products liability, property damage, personal injury including death, and such other perils as U of O may reasonably require from time to time, provided that in any event:

- (i) U of O and the Designated Purchasers shall each be named an additional interest covered with respect to liability arising from the operations of CCB under this Agreement,
  - (ii) the insurance shall provide for not less than thirty (30) days' written notice to U of O of cancellation, or amendment of a material nature, and shall contain a cross-liability clause and a severability of interest clause, and
  - (iii) the coverage shall provide for a limitation of liability as to any one occurrence of not less than TEN MILLION (\$10,000,000) DOLLARS;
- (b) property insurance on an "all risks" replacement cost basis covering loss or damage to the Equipment and other property supplied and owned by CCB hereunder, including provision for not less than thirty (30) days' notice to U of O of cancellation, or amendment of a material nature, and a waiver of subrogation against U of O and the Designated Purchasers;
- (c) automobile liability insurance for a limit of not less than TWO MILLION (\$2,000,000) DOLLARS, for all owned, leased or rented licenced vehicles used in the performance of this Agreement.

CCB shall deliver to U of O on or before the Commencement Date and on request at any time or from time to time thereafter satisfactory evidence of the foregoing insurance.

13.3.2. U of O shall, at its own cost, place and maintain the following insurance throughout the Term:

- (a) comprehensive general liability insurance including coverage in respect of products liability, property damage, personal injury including death, and such other perils as CCB may reasonably require from time to time, provided that in any event:
  - (i) CCB shall be named an additional interest covered with respect to liability arising from the operations of U of O under this Agreement,

- (ii) the insurance shall provide for not less than thirty (30) days' written notice to CCB of cancellation, or amendment of a material nature, and shall contain a cross-liability clause and a severability of interest clause, and
  - (iii) the coverage shall provide for a limitation of liability as to any one occurrence of not less than TEN MILLION (\$10,000,000) DOLLARS;
- (b) subject to the level of "self-insurance" underwritten by U of O from time to time, property insurance on an "all risks" replacement cost basis covering loss or damage to the property owned by U of O hereunder, including provision for not less than thirty (30) days' notice to CCB of cancellation, or amendment of a material nature, and a waiver of subrogation against CCB;
- (c) automobile liability insurance for a limit of not less than TWO MILLION (\$2,000,000) DOLLARS, for all owned, leased or rented licenced vehicles used in the performance of this Agreement.

U of O shall deliver to CCB on or before the Commencement Date and on request at any time or from time to time thereafter satisfactory evidence of the foregoing insurance.

13.4 **No Indirect or Consequential Loss**

Notwithstanding any other provision of this Agreement no party shall be entitled under any circumstances to claim any special, punitive, exemplary, indirect or consequential damages against any other party hereto, even if the possibility of such damages occurring is known.

13.5 **Survival**

The provisions of this Section 13 shall survive the termination (or partial termination) or expiration of this Agreement and enure to the benefit of the parties, and any Governor, member, officer, director, student, employee, agent, licensee or invitee of the parties.

14. REPRESENTATIONS AND WARRANTIES

14.1 CCB represents and warrants to U of O as follows:

- (a) CCB is a corporation duly incorporated pursuant to the laws of Canada, is qualified and registered to do business in Ontario, and has the full legal right, power and authority to enter into this Agreement and comply with its terms;
- (b) CCB, its authorized representatives, shareholders, directors, and officers, as the case may be, have done all things required by law and by CCB's charter documents to duly authorize the execution and performance hereof by CCB;
- (c) CCB is and throughout the period that this Agreement is in effect will continue to be:
  - (i) a lawful bottler of the Cold Beverage Products sold in association with the trade-mark "Coca-Cola" in the Province of Ontario and is entitled to distribute the same in the area in which the Campus is situate;
  - (ii) entitled to use in the manner contemplated herein all the trade-marks and other intellectual property rights associated with CCB's Cold Beverage Products it sells in Ontario including, without limitation, the CCB Marks;

and entering into this Agreement and complying with all its terms and conditions will not cause CCB to be in default under any contract or agreement to which it is a party or by which it is bound.

14.2 U of O represents and warrants to CCB as follows:

- (a) it is a university duly constituted under the laws of Ontario, is qualified to operate in Ontario, and has the full legal right, power and authority to enter into this Agreement and comply with its terms;

- (b) its authorized representatives have done all things required by law and under its charter to duly authorize its execution of this Agreement;
- (c) it is the owner or lawful user of the U of O Marks and has full authority to permit usage by third parties of the same;

and entering into this Agreement and complying with all its terms and conditions will not cause it to be in default under any contract or agreement to which it is a party or by which it is bound.

15. **ASSIGNMENT**

U of O's entering into this Agreement with CCB is based in substantial part on the unique attributes which CCB and its businesses offer, including their management, the Cold Beverage Products of CCB and their methods of operation. Therefore, neither this Agreement nor any of CCB's rights hereunder may be assigned or sublicensed by CCB without the prior written consent of U of O, which consent may be arbitrarily withheld, provided that CCB shall be entitled upon notice to U of O to assign this Agreement to another licensed bottler of Coca-Cola products or to any corporation all of the voting shares of which are owned, directly or indirectly, by one or more of the persons, firms or corporations which now own directly or indirectly the majority of the voting shares of CCB so long as such corporation first agrees in writing directly with U of O to be bound by this Agreement and continues to own, directly or indirectly the majority of the voting shares of (or other voting interests in) CCB. CCB shall continue to be bound by all of the provisions of this Agreement notwithstanding any such permitted assignment. Any attempted assignment or sublicense of this Agreement or any of CCB's rights hereunder in contravention of this paragraph 15 shall be void and a material breach of this Agreement.

16. **RELATIONSHIP OF THE PARTIES**

This Agreement does not constitute any party the agent of the other party, or create a partnership, joint venture or similar relationship between any two or more of the parties, and none of the parties shall have the power to obligate or bind any of the other parties in any manner whatsoever.

17. **DESIGNATED PURCHASERS**

U of O will be entitled to represent, act on behalf of, and communicate with and give instructions from time to time to CCB with respect to any or all matters under this Agreement concerning the Designated Purchasers, and CCB will respond and act in accordance with such communications and instructions of U of O from time to time. CCB shall be entitled to rely upon such authority without further enquiry.

18. **WAIVER**

Any waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. Any waiver must be in writing. Failure by any party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Time is of the essence of this Agreement.

19. **SEVERABILITY OF PROVISIONS**

The determination that any provision of this Agreement is invalid or unenforceable shall not invalidate this Agreement, and this Agreement shall be construed and performed in all respects as if such invalid or unenforceable provisions were omitted provided that in so doing the primary purpose of this Agreement is not impeded.

20. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding among U of O and CCB relating to the subject matter herein contained and supersedes all prior oral and written understandings, arrangements and agreements between the parties relating thereto; any amendment to this Agreement must be in writing, signed by all parties. All Schedules shall be part of this Agreement.

21.

**NOTICES**

All notices, requests or offers required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been duly given and received either (a) on the day of delivery, if delivered to U of O and CCB at:

If to U of O, to:

The University of Ottawa  
190 Laurier Avenue East  
Ottawa, Ontario  
K1N 6N5

Attention: Assistant Vice-Rector, Alumni & Development  
Facsimile: (613) 562-5127

with a copy to:

Director, Materials Management Services  
Facsimile: (613) 562-5780

If to CCB, to:

Coca-Cola Bottling Ltd.  
940 Belfast Road  
Ottawa, Ontario  
K1G 4A2

Attention: General Sales Manager

with a copy to:

Coca-Cola Beverages Ltd.  
42 Overlea Boulevard  
Toronto, Ontario  
M4H 1B8

Attention: the Secretary

Facsimile: (416) 424-6079

or such other address as each party may designate in writing to the other party for this purpose, or (b) on the fifth (5th) day after the date sent, when sent by prepaid registered mail to the addresses above, or (c) on the date next following when actually sent by facsimile transmission.



22. **HEADINGS**

The headings of the articles in this Agreement are for convenience only and shall not affect in any way the meaning of the provisions to which they refer.

23. **GOVERNING LAW**

This Agreement, and the insurance policies in force in connection with this Agreement, shall be governed by and interpreted under the laws of the Province of Ontario, Canada and the laws of Canada having application.

24. **ALTERNATIVE DISPUTE RESOLUTION**

Except as otherwise provided hereunder, in the event of a dispute hereunder, the parties will use their best efforts to settle such dispute through mediation or, failing a resolution of the dispute through mediation after a reasonable effort to do so, through binding arbitration under the provisions of the *Arbitration Act* (Ontario), the costs of which shall be borne equally by the parties hereto.

25. **INTEREST ON ARREARS**

Any amount payable under this Agreement which is not paid in full on the due date therefor shall bear interest at the rate per annum declared by The Toronto-Dominion Bank at its Main Branch in Ottawa, Ontario to be its prime rate of interest from time to time, plus three (3%) percent per annum, compounded monthly, not in advance, both before and after judgment, commencing on the due date thereof and continuing until the amount due is paid in full.

26. **BOOKS AND RECORDS**

During the Term, CCB shall maintain at its office in Ottawa, Ontario or any other location in Ontario that CCB deems appropriate and for 3 years following the expiry or earlier termination of the Term, complete and accurate books, records and accounts of the operations of CCB as they relate to this Agreement only, including without limitation such books, records and accounts as may reasonably be required to determine and verify all and any amounts payable by

CCB to U of O hereunder. U of O or its duly authorized representative, shall be entitled during normal business hours to examine, take copies of or extracts from all the books, records and accounts of CCB in relation to this Agreement. Notwithstanding the foregoing, any information of a competitive nature, including but not limited to, the cost to CCB of the Cold Beverage Products sold through the Vending Machines or sold to U of O or its Designated Purchasers, shall not be within the scope of this right of examination and access provided that CCB is able to provide to U of O reasonable justification for any price increase under Section 4.6.3 without U of O having access to such competitive information.

27. **AUDIT**

U of O may at any time and from time to time require the books, records and accounts maintained by CCB in relation to this Agreement as provided under Section 27 to be audited by an independent firm of chartered accountants selected by U of O in its sole discretion. If any such audit discloses that CCB has underpaid U of O in respect of amounts due and payable by CCB to U of O hereunder for any period by an amount greater than five (5%) percent, the cost of such audit shall be for the account of CCB and shall be payable by CCB to U of O forthwith on demand. Otherwise, the cost of such audit shall be for the account of U of O. The amount of any underpayment disclosed by the audit shall be payable forthwith together with interest from the date the amount or amounts were properly payable until the date of actual payment.

28. **CONFIDENTIAL INFORMATION**

The parties to this Agreement acknowledge and agree that the provisions contained in this Agreement are confidential to the parties and that they shall keep the provisions of this Agreement confidential. Without limiting the foregoing, the parties acknowledge and agree that the provisions of this Agreement constitute commercial and financial information which has been supplied in confidence. The parties to this Agreement acknowledge and agree that disclosure of the provisions of this Agreement could reasonably be expected to harm significantly the financial and/or economic interests of U of O and CCB. The parties to this Agreement further acknowledge and agree that the disclosure of the provisions of this Agreement could reasonably be expected to:

- (i) harm significantly the competitive position and/or interfere significantly with the negotiating position of CCB;
- (ii) result in similar information no longer being supplied to U of O by CCB; and
- (iii) result in undue financial loss or gain to other persons and organizations.

The parties acknowledge and agree that before any of the material provisions of this Agreement are disclosed, other than on a "need to know" basis, all parties to this Agreement will first agree in writing to any such disclosure. The parties further agree that they will use reasonable efforts to keep as confidential any confidential information that comes to the attention of a party as a result of this Agreement as confidential. Notwithstanding the foregoing, the parties may disclose the provisions of this Agreement:

- (a) to their employees, legal counsel and other professional advisors, to the extent reasonably necessary for them to carry out their duties;
- (b) as required by law;
- (c) as required by order of a Court or government authority.

29. **AMBUSH MARKETING**

In the event another person or entity attempts, without CCB's written consent, to supply to, advertise or otherwise associate its Cold Beverage Products with the University or by referring directly or indirectly to the Campus, Teams or U of O implies that its Cold Beverage Products are endorsed by or associated with the University, the Campus or the Teams (sometimes referred to as "Ambush Marketing"), then U of O, upon receiving actual notice of such actions, will oppose such actions by taking reasonable steps (including, but not limited to, written complaints to the violating party, cease and desist announcements and, subject to the proviso hereinafter set forth, in any case that it would be reasonable to do so in the circumstances the filing of appropriate legal actions such as temporary or permanent injunctive relief) to protect the exclusive association rights granted to CCB by U of O in this Agreement; PROVIDED

HOWEVER that U of O shall not be required to commence legal proceedings unless both U of O and CCB agree to such legal proceedings whereupon the actual fees, costs and expenses of pursuing such legal proceedings shall be borne 50% by U of O and 50% by CCB. In the event any Ambush Marketing activity occurs during the Term, upon learning thereof, each party hereto shall promptly notify the other party.

30. **ADVERTISING BY SPECIAL BRANDS**

Should U of O during the Term enter into an exclusive advertising arrangement with a "special brand", any advertising of such "special brand" shall be in association with products referred to or depicted in such advertising which are not Cold Beverage Products. The reference or depiction will not give undue prominence to the "special brand" name itself in relation to the advertisement as a whole. For the purposes hereof, "special brand" shall mean any specific retailer's brand name that has acquired a secondary meaning in the ordinary consumer's mind to be a name associated with one or more Cold Beverage Products for which CCB has a

comparable Cold Beverage Product, including without limitation, the special brand names "President's Choice", "Masters Choice" and "Our Compliments".

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

The Corporate Seal of )  
**THE UNIVERSITY OF OTTAWA** )  
was hereunto affixed in the presence of: ) (C/S)  
*Marc Huetlin* )  
Authorized Signatory )

\_\_\_\_\_)  
Authorized Signatory )

The Corporate Seal of )  
**COCA-COLA BOTTLING LTD.** )  
was hereunto affixed in the presence of: ) (C/S)  
\_\_\_\_\_)  
Authorized Signatory )

\_\_\_\_\_)  
Authorized Signatory )

*[Handwritten initials]*