



XAVIER UNIVERSITY OF LOUISIANA

REQUEST FOR PROPOSAL

No. 2024-032424

Pouring Rights and

Beverage Vending Services

CLOSING

APRIL 26, 2024 (5:00 PM, CST)

ELECTRONIC SUBMITTAL ADDRESS

[Cwrigh14@xula.edu](mailto:Cwrigh14@xula.edu)

## 1.0 GENERAL

### 1.01 SCHEDULE OF EVENTS

- Issue Date: March 25, 2024
- Pre-Proposal Conference (ZOOM): April 8, 2024 – 3:00-6:00 pm CST
- Deadline for Clarification or Change: April 15, 2024- 3:00pm CST
- Closing April 26, 2024 – 5:00 pm CST
- Opening Bids (Zoom): April 29, 2024- 10:30am CST
- Selected Vendor Notification May 18, 2024

This schedule of events is subject to change. Any changes will be made through the issuance of written Addenda.

### 1.02 PRE-PROPOSAL CONFERENCE

A voluntary pre-Proposal conference will be held in person on April 8 between the hours at 3:00 pm and ending at 6:00 pm CST via zoom. Please RSVP to the administrative contact listed below including the names of the people who will be attending the hour-long pre-proposal conference on Proposer's behalf. Additional details about the pre-proposal conference will be provided prior to the pre-proposal conference.

### 1.03 ISSUING OFFICE

The Office of Student Affairs at Xavier University of Louisiana (XULA) is the issuing office and is the sole point of contact for this Request for Proposal. Address all concerns or questions regarding this Request for Proposal to the administrative contact identified below. Communication during the Request for Proposal process is restricted, please see section 7.02 for more information about communications during the Request for Proposal process.

### 1.04 ADMINISTRATIVE CONTACT

Name: Curtis Wright

Title: Vice President for Student Affairs

Telephone: 504.520.7356

Fax: 504.520.7929

E-Mail: cwrigh14@xula.edu

### 1.05 DEFINITIONS

As used in this Request for Proposal, the terms set forth below are defined as follows:

- a. "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Request for Proposal.
- b. "Closing" means the date and time specified in a Request for Proposal as the deadline for submitting offers.

- c. "Days" means calendar days, including weekdays, weekends, and holidays, unless otherwise specified.
- d. "Exhibits" means those documents which are attached to and incorporated as part of the Request for Proposal.
- e. "Proposal" means a binding offer submitted by an entity in response to a Request for Proposal issued by the university.
- f. "Proposer" means an entity that submits a response to a Request for Proposal issued by the university.
- g. "Request for Proposal" (RFP) means a solicitation document to obtain written, competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.
- h. "Responsible" means when an entity has demonstrated their ability to perform satisfactorily under a contract by meeting the applicable standards of responsibility.
- i. "Responsive" means when the Proposal is substantially compliant in all material respects with the criteria outlined in a Request for Proposals.
- j. "Signed" means any mark, word, or symbol that is made or adopted by an entity indicating an intent to be bound.

2.0 INTRODUCTION AND BACKGROUND
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2.01 INTRODUCTION

XULA is seeking Responsive Responsible Proposers to submit Proposals for Pouring Rights and Beverage Vending Services on the Xavier University of Louisiana campus. The successful Proposer will be expected to create a comprehensive, integrated beverage program that will increase and maintain customer satisfaction by providing quality beverages, trending products, and state-of-the-art equipment, while partnering with XULA to advance its strategic plan, health, wellness, recycling, sustainability, campus life, and student development.

XULA's current campus Pouring Rights and Beverage Vending Services contract with Coca-Cola Bottling Company United Gulf-Coast, LLC d/b/a Crescent City Coca-Cola Bottling Company LLC was negotiated in 2018 and will expire on June 30, 2024. XULA values the relationship created through a comprehensive exclusive Pouring Rights and Beverage Vending Services contract and remains committed to an aggregated approach for a new contract with a single provider. This partnership opportunity may span a

contractual term of 5, 10 or 15 years based on Proposals received and what is determined to be in the best interest of XULA.

## 2.02 BACKGROUND

### a. Xavier University of Louisiana - General

Being America's only Historically Black and Catholic University is just the first of the distinctions that have set Xavier University of Louisiana apart for more than eight decades. Despite its relatively small size (3,300 students), Xavier is a nationally recognized leader in the STEM and health sciences fields, producing more African American students who graduate from medical school each year than any other university in the United States. Its College of Pharmacy is also among the top producers of African American pharmacists.

Xavier's liberal arts-based programs in areas such as art, business, education, psychology, and political science – as well as recent additions of bioinformatics, data science, neuroscience, crime and social justice and jazz studies – offer students an unbeatable combination of traditional classroom study, hands-on research, service-learning opportunities, and life experiences.

The winning Xavier formula? Provide students with a well-balanced curriculum and an environment that nurtures their intellect and feeds their souls. Its moderate enrollment breeds a "quality not quantity" approach that lends itself to a low faculty/student ratio (13 to 1) and encourages close faculty-student interaction and enhances opportunities to work with a mentor in collaborative classroom projects, high-level undergraduate research, and service-learning activities. Moreover, if there is one defining trademark that seems to separate Xavier students from other college students, it's that they don't compete against one another academically. Instead, they study together, support each other, and, if necessary, they teach each other. In fact, it is considered a barometer of what a student knows about a particular concept or subject matter that he/she knows it well enough to teach it to someone else.

Today Xavier remains committed to its founding mission of serving the underrepresented Black population and the "the promotion of a more just and humane society." And yet its doors have and still are, open to all races and creeds. The current student population is 71.6 percent black and 19 percent Catholic. Xavier's origins date back to 1915, when then Mother Katharine Drexel, a former Philadelphia socialite who founded the Sisters of the Blessed Sacrament and devoted her life to the education of African Americans and Native Americans, opened a high school on the site previously occupied by Southern University. A Normal School, offering one of the few career fields (teaching) open to Blacks at the time, was added two years later. Ten years later, in 1925, Xavier University of Louisiana became a reality when the College of Liberal Arts and Sciences was established. The first degrees were awarded three years later. In 1927, a College of Pharmacy was opened.

Recognizing the University's need for a separate identity and room to expand, Drexel, who was canonized a Roman Catholic Saint in 2000 by Pope John Paul II, bought a tract of undeveloped land for a campus on the corner of Palmetto and Pine Streets in 1929. Construction on the U-shaped, gothic administration building (now a city landmark) was completed in 1933. The campus has expanded three-fold since then. Although, the Sisters still maintain a vital presence on campus, today Xavier is governed

by an independent, lay/religious Board of Trustees on which the Sisters have representation. Dr. C Reynold Verret has served as president since 2015.

Xavier is located near the heart of New Orleans in a quiet neighborhood dotted with bungalows. An enclosed campus green mutes the urban feel of the encroaching city, and yellow brick buildings have been erected among the older historical limestone structures. Xavier was hard-hit in 2005 by Hurricane Katrina (much of the campus was underwater), but \$130 million in renovations as well as the construction of the state-of-the-art Pharmacy Pavilion, Convocation Center, and St. Katharine Drexel Chapel, leave no traces of that tragic event.

XULA's 40-hour credit core curriculum seamlessly integrates the rich legacy and tradition of Xavier's identity with its status as a premier institution for contemporary liberal arts education. Throughout the core, students are constantly challenged to think critically and innovatively about their world, regions, communities, and themselves. Students begin with early foundational courses that include communication, rhetoric, quantitative skill, and critical reasoning. They then progress to exploration courses that investigate the natural world, build connections with our human past, study human behavior, inquire about life's deep questions, discover their own creativity, dig deep into issues of faith and society, and learn more about the richness of African American heritage. The final stages of the core, the Engagement level, and Senior Capstone promote intellectual development that empowers students to engage holistically with complex issues. Both Xavier's core and each discipline's specific curriculum are guided intimately by the University's mission such that students are developed to be life-long learners and global leaders that actively contribute to a more just and humane society for all. Not surprisingly, more than 30 percent of Xavier students go on to graduate or professional school.

Today, Xavier maintains its reputation as one of the most effective teaching institutions anywhere. The College of Arts and Sciences and the College of Pharmacy offers preparation in varied fields on the undergraduate, graduate, and professional degree levels. More than half of Xavier's students currently major in the natural or health sciences, especially in biology, chemistry, and pharmacy. Other popular majors include education and counseling, business, and communications. The University offers high-quality programs in a wide range of other disciplines in the fine arts and humanities, and the social and behavioral sciences. Tuition and room and board compare favorably with that of other private institutions. In addition, 87 percent of Xavier's undergraduates who applied for need-based financial aid qualified for it. Xavier traditionally competes for students with Howard University, Spelman University, Morehouse College, and LSU-Baton Rouge.

Xavier is a member of the Red River Athletic Conference, which is affiliated with the National Association of Intercollegiate Athletics (NAIA). It offers the following intercollegiate sports: - basketball, baseball, competitive cheer, cross country, soccer, softball, tennis, track and field, and volleyball (women only).

#### b. Partnership

Xavier University of Louisiana has partnered with Crescent City Coca-Cola Bottling Company LLC to develop and advance university strategic efforts. As we look at this opportunity for partnership through

Pouring Rights in the future, we are interested in how the Proposer can work with XULA to advance the following efforts:

- **Diversity, Equity and Inclusion:** Central to XULA’s mission is to prepare our students to contribute to the promotion of a more just and humane society. To that end, a primary goal is to develop a culture of belonging, collaboration, and innovation. Part of this is building an organizational culture founded on the values of inclusion and mutual respect, collaboration, and humility, so that people from every background are welcomed.
- **Health and Wellness:** XULA’s teaching and research in health and equity are at the forefront of addressing rapidly changing needs. We know that health and wellness are critical for students’ academic and personal success, and we want to nurture healthier options on campus for students, faculty, and staff.
- **Recycling and Sustainability:** XULA has a deep commitment to recycling and sustainability. Our Office of Sustainability partners with our student groups to lead recycling efforts, that now collects from all buildings on campus and processes tons of recycling and compost per year. XULA develops and maintains a cost effective and efficient waste management program that focuses on reducing, reusing, and recycling with trash disposal as a last resort. In addition, XULA is committed to sustainability and reducing its greenhouse gas (carbon) emissions.
- **Student Development:** Students are the heartbeat of everything we do at XULA. As we approach our 100<sup>th</sup> Anniversary in 2025, we strive to improve students’ health and well-being, academic success, and career opportunities. XULA creates networks of support that help students on their educational path to graduation in order to move forward with skills for a better future.

### c. Stakeholders

XULA manages and operates on-campus dining, vending machines, Café Noire (products by Starbucks), SubConnection (sandwich shop), a Chick-Fil-A, and catering services. Sodexo Magic has a contract to operate and manage food and beverage service concessions at all on-campus dining and athletic facilities. Sodexo’s contract with XULA contains provisions requiring their adherence to the Pouring Rights and Beverage Vending Services contract while operating at XULA.

Other contractors on campus who provide food and beverage service must comply with the Pouring Rights and Beverage Vending Services contract. The XULA Bookstore is operated by Barnes and Noble and are expected to comply with the Pouring Rights and Beverage Vending Services contract. The resulting Pouring Rights and Beverage Vending Services contract will be managed and maintained

by four primary stakeholders: the Office of Student Affairs Operations, Sodexo Magic Dining Services, Barnes and Noble Bookstore and Intercollegiate Athletics (“Stakeholders”.) These Stakeholders comprise a majority of the beverage and vending sales on campus.

#### i) Office of Student Affairs Operations

The Office of Student Affairs Operations is located in the campus University Center and supports the University mission by creating community centered inclusive facilities and environments, by providing formal and informal gathering spaces that build meaningful relationships. The Office coordinates efforts for the Office of Residential Education, the University Center and manages the vending machine

oversight in all of the University buildings. We are a student-centered office that fosters student engagement through events, activities, and employment. Campus Housing consists of four (4) residence halls and a master lease with two (2) off-campus apartments. The total residential population exceeds 2000 students. The Office of Student Affairs Operations in concert with the Vice President of Student Affairs, supports the auxiliary services, who must abide by the Pouring Rights and Beverage Vending Services contract. In addition, to operating housing, the Student Affairs Operations Office manages on-campus Residential Conferences program offering housing accommodations and food service to a variety of camps and conference groups primarily during the summer months. The Office has oversight of the beverage and snack vending machines for campus.

#### ii) Sodexo Magic Dining Services

All on-campus residents are required to choose one of three dining plans, which provide students with Flex Bucks to spend at any dining location on campus. Sodexo Magic operates and serves faculty, staff, students and the public in the following locations with beverage service in the main dining hall, SubConnection, Chick Fil A, concessions in the Convocation Center and Café Noire. Sodexo Magic dining facilities accept cash, debit, credit, Flex Bucks and Rush Bucks.

Location Beverage Service Venue Service Notes:

Café Noire (Starbucks)- Located in the Library

- We have a single door displace cooler, the only product that we sale is Smart water. 5 cases weekly.

SubConnection (Sandwich Shop)- Located in the University Center

- We have 2 double door coolers, and one single door cooler. We sale a variety of Coke products, 42 to 48 cases weekly.

Chick Fil A – Located in the University Center

- Six flavors of bag in the box product. Six taps of Legacy Machine.

Main Dining Hall – Located in the University Center

- 3 Free Style Machine with the products.

Total weekly product used total: \$4500 to \$5800

#### iii) Intercollegiate Athletics (“Athletics”)

XULA is a member of the Red River Athletic Conference and offers a broad-based intercollegiate athletics program that provides student athletes with opportunities in fourteen sports. This experience, at the highest level (Division I) of the National Association of Intercollegiate Athletics (“NAIA”), enriches the collegiate experience for those who are privileged to participate while they pursue a quality education.

The XULA athletic facilities covered by the contract include:

- Convocation Center
- Convocation Center Annex
- Tennis Complex
- Fitness Center

d. XULA Purchases

The following represents the XULA’s purchase volume in raw cases of sales for the last six (6) fiscal years through the existing contract. Time periods are for XULA’s fiscal year July 1st – June 30th.

Type	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024
<b>Bottle/Can</b>	3574	1620	1334	1555	1623	1328
<b>Vending</b>	3011	2420	1010	2224	3136	2130
<b>Fountain</b>	803	1045	625	1038	958	703
<b>Total</b>	7388	5085	2969	4817	5717	4161

Sales volume data provided in this RFP is for information purposes only and is not a guarantee of future volume or sales. Sales earned by the contractor may be more or less than in prior years.

f. Equipment

The list included in Exhibit C details the equipment types and locations installed by Crescent City Coca-Cola Bottling Company LLC. This list is included for information purposes so that Proposers have an idea of the types and quantities of equipment currently provided.

XAVIER CONVOCATION CENTER-M2-ANNEX LOB	500381743	DN17001782	front lobby, 7900 WASHINGTON AVE, NEW ORLEANS, LA, 70125-1053
XAVIER UNIV ART VILLAGE BUILD-M1-#39	500935033	RY17000162	, 3520 PINE ST, NEW ORLEANS, LA, 70125-1016
XAVIER UNIVERSITY KD-M1-4TH FLOOR	600189148	RY14010330	, 7235 DREXEL DR, NEW ORLEANS, LA, 70125-1141
XAVIER UNIVERSITY KD-M2-5TH FLOOR	600189149	RY02017034	I/S 5TH FL KITCHEN 1 5th 2Z, 7235 DREXEL DR, NEW ORLEANS, LA, 70125-1141
XAVIER UNIVERSITY LLC-M08	600188934	RY02014782	I/S FL3 KITCHENETTE 3rd KITCHENETT, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125



XAVIER UNIVERSITY LLC-M09	600188935	313995	5TH FLOOR 5TH FLOOR KITCHEN, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY LLC-M10	600188961	RY02036085	LIVING/LEARNING CENT 4TH FLOOR 420 KITCHE, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY LLC-M11	600189979	DN14003151	LIVING AND LEARNING 1st CTR 1ST FL, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY LLC-M12	600189981	DN14003162	2ND FLOOR LLC KITCHENETT 220, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY NEW DORM-M01- 4TH	500936951	RY02038132	De Porres 4tg fl, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M02- NEW DORM	600188933	RY98017983	St Martin Deporres 5th, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M03- NEW DORM	600188939	FL0116308	DE PORRES 7TH FL 7th, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M04	600186243	CH002501	SCIENCE BLD BRKRM 20 1ST FLOOR student lo, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M05	600186244	V0125530	SCIENCE, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M06	600186317	123764	admin bldg, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M07	600188905	DN14003159	I/S 1ST FL LIB 20Z, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M1	600187664	RY08003179	ST. MARTIN DE PORRES 1ST FLOOR KITCHEN, 1000 S NORMAN C FRANCIS,

			NEW ORLEANS, LA, 70125-1219
XAVIER UNIVERSITY-M1	600189338	DN15003826	I/S STUDENT FITNESS 1 CTR MULTI, 801 S NORMAN C FRANCIS, NEW ORLEANS, LA, 70125-1214
XAVIER UNIVERSITY-M1	600189459	DN15007357	- Xavier- basketball 2nd Convocati, 7900 STROELITZ ST, NEW ORLEANS, LA, 70125- 1034
XAVIER UNIVERSITY-M1	600190110	3012022	1ST FL DE PORRES, 1001 JEFFERSON PKWY S, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M1	600190160	DN15003145	4TH FLOOR XAVIER SOU 4th lounge, 1 DREXEL DR, NEW ORLEANS, LA, 70125- 1056
XAVIER UNIVERSITY-M13- CP	600189752	3017560	police 1, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M14- ADM	600190043	RY14003574	ADMIN ANNEX 1st, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M15	600190047	DN14003164	PHARMACY 1ST FLOOR HALL, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M16- SM	600190048	RY03016106	ST MICHAEL HALL 1ST FLOOR LOUNGE, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M17- PH	600190049	RY02034747	PHARMACY BLDG CONT/C 1st AN 27143, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M18- XS	600190051	RY00053637	SOUTH 2ND FL, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M1- BUILDING SVCS	500302087	DN16003855	across from Channel 1st 8 news, 1041 NORMAN C FRANCIS,

			NEW ORLEANS, LA, 70125-1235
XAVIER UNIVERSITY-M2	600187538	DN11006798	BLDG 17 UNIV CENTER 2ND FLOOR GAMEROOM, 801 S NORMAN C FRANCIS, NEW ORLEANS, LA, 70125-1214
XAVIER UNIVERSITY-M20- KD	600190067	DN14003077	KD 1st left s, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M21- PP	600190068	622035	St Michael 1st fl St Michael, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M22	600190087	6637234	SOUTH XAVIER 4TH FL, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M23	600190109	RY05006702	LIBRARY 2ND FL, 7325 PALMETTO ST, NEW ORLEANS, LA, 70125
XAVIER UNIVERSITY-M2-KD	600190069	RY02004440	6TH FLOOR, 7238 DREXEL DR, NEW ORLEANS, LA, 70125- 1142
XAVIER UNIVERSITY-M4	600188179	DN11006796	I/S JOSEPH ACADEMIC 1st fl. 20Z, 801 S NORMAN C FRANCIS, NEW ORLEANS, LA, 70125-1214
XAVIER UNIVERSITY-M6- SMT	600188287	RY00056057	DEPORRES RESIDENCE H 3RD FLOOR KITCHEN, 801 S NORMAN C FRANCIS, NEW ORLEANS, LA, 70125-1214
XAVIER-M5- UNIVERSITY SMT	600188286	417800	2ND FL DE PORRES, 801 S NORMAN C FRANCIS, NEW ORLEANS, LA, 70125- 1214

### 3.0 CONTRACT

#### 3.01 CONTRACT SCOPE OF WORK AND TERMS & CONDITIONS

A contract containing the anticipated scope of work and contractual terms and conditions is included in Exhibit

A.

#### 4.0 PROPOSER QUALIFICATIONS

##### 4.01 MINIMUM QUALIFICATIONS

To qualify as a Responsive Proposer, the Proposer needs to meet the following minimum qualifications.

- a. Proposer must have a product portfolio encompassing the following types of beverages:
  - a. Carbonated sodas (bottled, cans, and fountain)
  - b. Fruit juices (bottled or cans)
  - c. Teas (bottled)
  - d. Coffee (bottled)
  - e. Water (bottled)
  - f. Sports drinks (bottled)
- b. Proposer must have at least five (5) years of successful delivering the above product portfolio to higher education clients; and
- c. Proposer must have the locations and resources to provide delivery and service within 4 hours to the XULA campus.

#### 5.0 SUBMISSION AND SUBMITTALS

##### 5.01 SUBMISSION

Proposers must submit their Proposal as attachment(s) in an e-mail to [cwrigh14@xula.edu](mailto:cwrigh14@xula.edu). Electronic versions must be sized appropriately for transfer (under 150 mb per email.) Multiple emails may be sent to submit proposal attachments as necessary. Proposals must be received, in their entirety, no later than the Closing date and time indicated in the schedule of events. The e-mail subject line should contain the RFP number and RFP title. Only those Proposals received at this e-mail address by the Closing date and time will be considered Responsive. Do not e-mail a copy of the Proposal to any other XULA e-mail addresses.

It is highly recommended that the Proposer confirms receipt of the email with the XULA Administrative Contact noted in this RFP. The XULA Administrative Contact may verify receipt but will NOT verify the

integrity of the attachment(s), answer questions related to the content of the Proposal or address the overall Responsiveness of the Proposal.

## 5.02 SUBMITTALS

It is the Proposer's sole responsibility to submit information in fulfillment of the requirements of this Request for Proposal. If submittals are not substantially compliant in all material respects with the criteria outlined in the RFP, it may cause the Proposal to be deemed non-Responsive.

Each part of the Proposal should be complete so that the evaluation of both Part I and Part II can be accomplished independently and concurrently.

### a. Cover Letter

The Proposal should include a Cover Letter including the following:

- i) The name, title and contact information of: 1) a primary contact person who may be reached throughout the evaluation period, and 2) an individual with authority to negotiate and contractually bind the Proposer;
- ii) A statement that the Proposer meets all the minimum qualifications described in the RFP (See, Section 4.01); and
- iii) A statement affirming that neither Proposer nor any individual assigned to provide all or part of the services to XULA have any conflicts of interest with XULA, or its respective governing bodies, committees, or employees. If the Proposer cannot provide such a statement because of a conflict of interest, state the nature of the conflict, and describe the provisions that will be made to address the conflict.

### b. Part I: Technical and Management Proposal

The Proposer's name and the words "XULA Pouring Rights and Beverage Vending Services RFP Part I – Technical and Management Proposal" clearly listed on the cover of the Part I Proposal.

#### i) Title Page:

Name, title, and contact information of the Proposer including name of the person(s) who prepared the Proposal.

#### ii) Table of Contents

#### iii) Minimum Qualifications:

Provide evidence that Proposer meets the minimum qualifications described in the RFP (See, Section 4.01).

iv) Company Overview:

Provide an overview of Proposer's company, including:

A. A brief history of the company, especially as it relates to the higher education market, including revenue levels, number of current accounts, years in business, and quantity/type of staff.

B. Mission, vision, and values: Include a copy of the company's mission, vision, and values and how that is evident in daily work throughout the company.

C. Current clients: Provide a list of all current higher education clients and contract start and end dates.

D. Former clients: Provide a list of clients (higher education clients preferred if available) where Proposer's services have: 1) been terminated (either by Proposer or by the client), or 2) resulted in a notice of cure from the client. Provide the following information regarding these clients:

- Name and address of the company
- Name and title of client contact
- Telephone number and email of client contact
- Date and reason for termination, or notice of cure

E. A description of Proposer's internal administrative systems, including but not limited to, inventory control, reporting of sales, and internal audit.

v) Management Profile:

Provide (i) an organizational chart or short profile of Proposer's management structure and (ii) a plan for administrative management and supervision of staff required to implement the services under this RFP. This should include a description of any regional or headquarters support and the resumes of key personnel, including those employees who would be responsible for the contract if it were awarded to Proposer.

vi) Product Description and Pricing:

Submit a comprehensive list of all beverages to be offered at XULA if Proposer is selected for Contract award. List should be organized in a table and include the following columns:

- Category or Item Description
- Item Name
- Container Type (bottle, can, bib)
- Container Size (in ounces or gallons)
- Case Count

- Price per case or per unit for gallon size containers

Separately, submit a list of all beverage service containers (cups, containers, and lids) available for XULA to purchase under a contract. The list should be organized in a table with columns applicable to the products offered and include price.

vii) Product Expansion:

Include information on what Proposer does to expand new products and respond to trends and changes in customer beverage preferences.

viii) Equipment and Maintenance:

A. Submit a list of future equipment (quantity, type, and placement locations) Proposer intends to provide XULA's campus. Include visual representations of equipment.

B. If your Proposal does not include supplying all new equipment at the start of the contract, provide a schedule or plan for phasing in new equipment.

C. Describe Proposer's program for preventative maintenance and regular replacement of worn, malfunctioning or damaged equipment. This should include all beverage equipment.

D. Provide information about the type of card readers installed on beverage vending machines and how those will work with "XULA Flex Bucks" card which connects to Banner using Transact.

E. Please note which, if any, vending machines are available with "XULA branded wrapping" and if available, please provide photos or illustrative representations of wrapped machines.

ix) Partnership

Describe how Proposer has advanced the following efforts within Proposer's own company and at other higher education clients. Include details if there are any commitments offered as part of your Proposal.

A. Diversity, Equity and Inclusion:

Describe programs and initiatives that company has implemented to increase diversity, equity and inclusion.

B. Health and Wellness:

Describe any proposed awareness campaigns, strategies in support of health and wellness, and initiatives to encourage the use and purchase of healthier beverages.

C. Recycling and Sustainability:

Describe any programs for encouraging recycling and sustainability.

D. Student Development:

Describe any student career development programs and employment opportunities for students and graduates. Describe how Proposer engages with students about these or other opportunities.

x) Additional Information:

Provide any other information you believe will be helpful to the selection committee in evaluating your Proposal.

c. Part II: Financial Proposal

i) Financial Proposal - Exhibit D:

In a separately saved document, provide the Financial Proposal by completing Exhibit D; feel free to attach additional pages if needed. Proposer should base its Financial Proposal on three different options with the variable being the duration of the contract for 5, 10, or 15 years. Proposers should indicate which duration of contract is preferred on Exhibit D. Financial Proposals should include provision for the following:

A. Signing Bonus (optional): a one-time upfront signing bonus payable upon contract execution;

B. Annual Incentive: an Annual Incentive payment to XULA for the rights granted in Exhibit A, based on a beverage sales volume of 75,000;

C. Volume Increase Rebate: an additional rebate per case or unit for gallon size containers, for sales exceeding 75,000;

D. Athletic Sponsorship: an annual dollar value that Proposer commits to sponsor athletic opportunities through the Contract and for which Contractor will receive an equivalent value of athletic assets.

E. Donated Product: donated product in dollars per year to be offered to XULA for use as needed throughout the fiscal year;

F. Student Scholarships: dollar value of student scholarships offered;

G. Beverage Vending Commission % Rate: percent of beverage vending gross sales, that XULA



will receive if higher than the Minimum Beverage Vending Revenue;

H. Minimum Beverage Vending Revenue: minimum annual amount XULA will receive for beverage vending sales; and

I. Any other discounts, incentives, or other financial considerations that Proposer wishes to offer.

ii) Certifications - Exhibit F

iii) References - Exhibit G

Include at least five current references from higher education clients, with a preference for references located within the Gulf Coast.

## 6.0 EVALUATION

### 6.01 EVALUATION

The stages of review and evaluation are as follows:

a. Determination of Responsiveness:

XULA will first review all Proposals to determine Responsiveness. Proposals that do not comply with the instructions, that are materially incomplete, that do not meet the minimum requirements, or that are submitted by Proposers who do not meet minimum qualifications may be deemed non-Responsive.

Written notice will be sent to Proposers whose Proposal is deemed non-Responsive identifying the reason. A Proposer has the right to appeal the decision.

b. First Stage Evaluation:

Those Proposals determined to be Responsive will be evaluated and scored based on the evaluation criteria listed below. Scores will be used to determine which Proposers fall within a competitive range. The competitive range consists of Proposers whose scores, when viewed alongside all Proposals, form a group of the highest scoring Proposers that rise above a natural break in the scores.

XULA reserves the right to ask follow-up questions of Proposers during first stage evaluations. The questions will be for the purpose of clarification of information already contained in submittals and not be an opportunity to submit additional documentation or change existing documentation.

XULA may award after the first stage evaluation to the highest ranked Proposer without moving on to the second stage evaluation. If this option is selected, written notice of intent to award the contract to the highest ranked Proposer will be provided to all Responsive Proposers, or an award may be made directly without notice of intent in those instances of a single Responsive Proposer.

c. Second Stage Evaluation:

If award is not made after the first stage evaluation, XULA may choose any of the following methods in which to proceed:

- i) Issue an invitation to Proposers within the competitive range requesting an interview, presentation, site visit or any other evaluative method that is relevant to the goods or services solicited in the Request for Proposal.
- ii) Engage in discussions with and receive best and final Proposals from all Proposers in the competitive range or all Proposers submitting Responsive Proposals.

d. Additional Stages of Evaluation:

If after completion of the second stage of evaluation, an award is not made, XULA may add another stage or multiple stages of evaluation using any of the methods outlined in the second stage evaluation above.

## 6.02 EVALUATION CRITERIA

First stage evaluation of Proposals will employ the following criteria:

Company & Management – 5%

- Higher education experience, mission, vision, values, internal administrative systems, inventory control, reporting of sales, and internal audit.
- Organizational chart, management structure, administrative management of account, regional headquarters support, and key personnel.

Product – 25%

- Current product mix and plans for expanding product.

Equipment and Maintenance – 5%

- Equipment to be provided, plan for phasing in new equipment, beverage vending card readers, and proposed XULA branding on vending machines.

Partnership – 15%

- Diversity, Equity and Inclusion; Health and Wellness; Recycling and Sustainability, and Student Development.

Financial Proposal – 50%

- Financial Proposal from Exhibit D calculated as follows for one year:
  - o Signing Bonus (optional)

- o + Annual Incentive
- o +Volume Increase Rebate (an estimate will be used for evaluation purposes only)
- o +Value of Athletic Sponsorship
- o +Donated Product
- o Student Scholarships
- + Beverage Vending Commission % x Actual Beverage Vending Sales for 2022/2023
- + Beverage Vending Minimum Commission, if higher than Beverage Vending Commission %
- o +/- Any other discounts or financial considerations
- o - Product Pricing (a market basket will be used for evaluation purposes only)

### 6.03 NEGOTIATIONS

XULA may commence serial negotiations with the highest ranked Proposer or commence negotiations with some or all Responsive Proposers within the competitive range.

### 6.04 INVESTIGATION OF REFERENCES

XULA reserves the right to investigate and to consider the references and the past performance of any Proposer with respect to such things as its performance or provision of similar goods or services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, subcontractors, and workers.

XULA may postpone the award or execution of the contract after the announcement of the notice of intent to award in order to complete its investigation.

### 6.05 CONTRACT AWARD

Contract will be awarded to the Proposer who, in XULA's opinion, meets the requirements and qualifications of the RFP and whose Proposal is in the best interest of XULA. If a successful contract cannot be completed after award, XULA may conclude contract negotiations, rescind its award to that Proposer, and return to the most recent RFP evaluation stage to negotiate with another Proposer for award.

<b>7.0 INSTRUCTIONS TO PROPOSERS</b>
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### 7.01 APPLICABLE STATUTES AND RULES

This RFP is subject to the applicable provisions and requirements of the Louisiana Revised Statutes, Louisiana Administrative Rules, and XULA Standards and Policies. This RFP, and any dispute arising out of this RFP, shall be construed in accordance with, and governed by, the laws of the State of Louisiana. Any

other action to enforce any provision of this RFP or to obtain any relief from or remedy in connection with this RFP may be brought only in the Circuit Court of Louisiana for Orleans Parrish.

#### 7.02 COMMUNICATIONS DURING RFP PROCESS

Proposers are prohibited from communicating with XULA employees, other than the Administrative Contact, or any party in a position to create an advantage for the bidder or disadvantage for other bidders with respect to this RFP process or award of a new contract. This restricted period of communication begins on the date the RFP is issued and ends with the conclusion of the appeal period following notice of intent to award. This restriction does not apply to communications during a pre-Proposal conference or other situations where the XULA Administrative Contact is present. A Proposer who intentionally violates this requirement or otherwise benefits from such a violation by another party may have its Proposal rejected due to failing to comply with all prescribed solicitation procedures.

#### 7.03 REQUESTS FOR CLARIFICATION OR CHANGE

Requests for clarification or change of the Request for Proposal must be in writing and received by the Administrative Contact no later than the Deadline for Request for Clarification or Change as specified in the schedule of events. Such requests for clarification or change must include the reason for the Proposer's request. XULA will consider all timely requests and, if acceptable to XULA, amend the Request for Proposal by issuing an Addendum. Requests must be clearly marked as a Request for Clarification or Change and include the RFP Number and Title.

#### 7.04 ADDENDA

Only documents issued as written Addenda by the Office of Student Affairs serve to change the Request for Proposal in any way. No other direction received by the Proposer, written or verbal, serves to change the Request for Proposal. Addenda will be publicized on the XULA procurement website. Proposers are advised to consult the XULA Student Affairs' website prior to submitting a Proposal in order to ensure that all relevant Addenda have been incorporated into the Proposal. Proposers are not required to submit Addenda with their Proposal. However, Proposers are responsible for obtaining and incorporating any changes made by Addenda into their Proposal. Failure to do so may make the Proposal non-Responsive, which in turn may cause the Proposal to be rejected.

#### 7.05 PREPARATION AND SIGNATURE

All Proposals requiring signature must be Signed by an authorized representative with authority to bind the Proposer. Signature certifies that the Proposer has read, fully understands, and agrees to be bound by the Request for Proposal and all Exhibits and Addenda to the Request for Proposal.

#### 7.06 PUBLIC RECORD

Upon completion of the RFP process, information in all Proposals will become subject records that can be disclosed under Louisiana Public Records Law. Louisiana Revised Statute *La. R.S. HTU44:1UTH, et seq* contains exemptions from disclosure including "trade secrets", which may include, but are not limited to: any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or

compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. NOTE: Price is not considered a trade secret.

If a Proposal contains “trade secrets” the Proposer must only mark those sections of the Proposal with the words “TRADE SECRET” prior to, and at the end of, the trade secret information; provided, that such mark shall not be sufficient to make any information a “trade secret.” Only bona fide “trade secrets” may be exempt and only if public interest does not require disclosure, and OSU may make the determination about whether any portion of a Proposal is a “trade secret” at its sole discretion. Marks or claims that the entirety of a Proposal is “trade secret” or “confidential” WILL RESULT IN NONE OF THE PROPOSAL BEING TREATED AS SUCH.

#### 7.08 MODIFICATION

Modification of a Proposal after submittal but prior to Closing may be completed by submitting a written notice indicating the modifications and a statement that the modification amends and supersedes the prior Proposal. After the Closing, Proposers may not modify their Proposal.

#### 7.09 WITHDRAWALS

A Proposer may withdraw their Proposal by submitting a written notice to the Administrative Contact identified in this Request for Proposal prior to the Closing. The written notice must be on the Proposer’s letterhead and signed by an authorized representative of the Proposer.

#### 7.10 LATE SUBMITTALS

Proposals and written notices of modification or withdrawal must be received no later than the Closing date and time. For purposes of this RFP, the official date and time is the date and time that the email is received at the [cwrigh14@xula.edu](mailto:cwrigh14@xula.edu) email address. XULA may not accept or consider late Proposals, modifications, or withdrawals. Sole responsibility rests with the Proposer to ensure XULA’s receipt of its Proposal prior to Closing. XULA shall not be responsible for any delays or misdeliveries caused by transmission errors, malfunctions, or electronic delays including those within XULA’s network. IT IS THE PROPOSER’S RESPONSIBILITY TO ENSURE OSU HAS RECEIVED THE PROPOSAL BY CLOSING DAY AND TIME. Any risks associated with electronic transmission of the Proposal are borne by the Proposer.

#### 7.11 PROPOSAL OPENING

Proposals will be opened immediately following the Closing. Proposers may request to attend a virtual Proposal opening which may be conducted via Zoom or other electronic meeting platform. Please inform the XULA Administrative Contract if you would like to attend the Proposal opening. Only the names of the Proposers submitting Proposals will be announced. No other information regarding the content of the Proposals will be available.

#### 7.12 PROPOSALS ARE OFFERS

The Proposal is the Proposer’s offer to enter into a contract pursuant to the terms and conditions specified in the Request for Proposal, its Exhibits, and Addenda. Any failure or unwillingness by Proposer to execute a contract with XULA containing the terms and conditions specified in this Request for

Proposal shall subject Proposer's award to potential revocation. In the event that terms and conditions specified in the Request for Proposal are further negotiated by Proposer, subsequent to award and prior to contract execution, XULA expressly reserves the right to modify its expectations related to other terms and adjust the proposed contract accordingly. Should the terms and conditions specified in the Request for Proposal not be reflected in a mutually agreed upon contract at execution, the parties shall work together in good faith to equitably reflect any such discrepancies with respect to other aspects of the executed contract.

All Proposals, upon submission to XULA, will become its property for use as deemed appropriate. By submitting a Proposal, the Proposer covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information.

Proposers are expected to have assessed the conditions that may affect goods and services to be provided. Proposer will be conclusively presumed to have full knowledge of any and all conditions affecting in any way the

performance of the work to be performed under the contract that were or should have been discovered by a reasonably prudent Proposer. It is each Proposer's responsibility to familiarize itself with relevant facilities at XULA, and Proposer assumes full responsibility to provide goods and/or services as specified herein pursuant to its Proposal, if accepted by XULA.

#### 7.14 RIGHT TO REJECT

XULA may reject, in whole or in part, any Proposal not in compliance with the Request for Proposal, Exhibits, or Addenda, if upon XULA's written finding that it is in the public interest to do so. XULA may reject all Proposals for good cause, if upon XULA's written finding that it is in the public interest to do so. Notification of rejection along with appeal rights will be sent to Proposers whose Proposal is rejected.

#### 7.15 AWARDS

XULA reserves the right to make award(s) by individual item, group of items, all or none, or any combination thereof. XULA reserves the right to delete any item from the award when deemed to be in the best interest of XULA.

#### 7.16 CONTRACT REVIEW AND NEGOTIATION

Prior to execution of a Contract, the Contract may be reviewed and negotiated. This review may result in modifications of the applicable terms and conditions specified on XULA's website, in the RFP, Exhibits, Addenda, or those proposed by a bidder. XULA's negotiation of, or acceptance of alternate terms and conditions, is at XULA's discretion as may be in the best interest of XULA.

#### 7.17 APPROVALS

Contract award is subject to all required XULA approvals. XULA will have no obligation or liability whatsoever to the Proposer selected as result of this RFP unless and until a contract satisfactory to XULA is approved and executed by both parties.

### 7.18 PROPOSAL RESULTS

A written notice of intent to award will be issued to all Responsive Proposers along with appeal rights for aggrieved Proposers. The Proposal file will be available for Responsive Proposer's review during the appeal period. Proposers must make an appointment with the Administrative Contact to view the Proposal file. After the appeal period, the file will be available by making a Public Records Request to XULA's Office of Fiscal Services.

### 7.19 PROPOSAL PREPARATION COST

XULA is not liable for costs incurred by the Proposer during the Request for Proposal process.

### 7.20 PROPOSAL CANCELLATION

If a Request for Proposal is cancelled prior to the Closing, all Proposals that may have already been received will be deleted. If a Request for Proposal is cancelled after the Closing or all Proposals are rejected, the Proposals received will be retained and become part of XULA's permanent Proposal file.



## **POURING RIGHTS AND BEVERAGE VENDING CONTRACT**

CONTRACT FOR THE PURCHASE OF

POURING RIGHTS AND

BEVERAGE VENDING SERVICES

CONTRACT NO. 2024-032424

## EXHIBIT A

This Contract is between Xavier University of Louisiana (“XULA”) and [Contractor’s name] (“Contractor”). WHEREAS XULA competitively solicited for the services outlined in this Contract under Request for Proposal number 2024-032424 entitled Pouring Rights and Beverage Vending Services and Contractor was selected as the Proposer best able to provide this service; and WHEREAS Contractor understands the requirements for the services outlined in this Contract, and is willing and able to provide, in accordance with the terms of this Contract, the services.

NOW, THEREFORE, XULA and Contractor agree as follows:

### 1. DEFINITIONS

When used in this Contract, the following words have the meanings set forth in this section:

1.1. “Athletics” means the department of Intercollegiate Athletics at Xavier University of Louisiana.

1.2. “Beverage” means all canned, bottled, or syrup-based non-alcoholic carbonated and noncarbonated beverages, which will be comprised of sodas, juices, teas, water, sports drinks, and coffee drinks, except that “Beverage” does not include the following:

- Any kind of plain or flavored milk, milk alternatives, or milk products including milkshakes.
- Fresh-pressed or made to order vegetable and fruit juices including smoothies.
- Fresh-brewed coffee, tea, chocolate, or cider products whether cold or hot.
- Any barista prepared drinks.
- Tap water, hydration stations, water coolers, and flavored or plain water in 1-gallon or larger containers.
- Hydration or nutritional drinks for athletes who participate in Athletics.
- Culturally specific beverages.
- Products bearing the name Monster, and Starbucks.
- Products for which Contractor has no directly competing products.

An initial list of Beverages and pricing to be supplied by Contractor is attached to this Contract as Attachment A, Beverage and Price List. Conflict in the determination of what constitutes a Beverage will be resolved jointly by XULA and Contractor. If the parties cannot resolve the conflict, XULA’s determination controls.

1.3. “Beverage Equipment” means Beverage vending machines, refrigerated product coolers, fountain dispensers, ice machines, carbon dioxide tanks, switchover technology, gas and syrup lines, vending cash accepters and card readers, and any other equipment or technology for use in the sale of Beverages under this Contract.

1.4. “Xavier Campus” means the area inside XULA’s campus boundaries identified in red in Attachment B, Xavier Campus Map, as it now exists or may be amended by XULA from time to time during the term of this Contract. It does not include extension sites, experiment stations, satellite operations or other campuses (or any other sites that in the future may become a XULA campus).

1.5. “Marks” means the approved names and logos of XULA, as shown in Attachment C, Approved Names and Logos of XULA, as may be amended by XULA from time to time.



1.6. "University Center" or "UC" means the building and organization on the XULA campus by that name.

1.7. "Sponsorship Activation" means the approved products and assets Contractor may use to manufacture, advertise, distribute, and sell Beverages, as listed in Attachment D, Approved Products and Assets.

1.8. "Stakeholders" means University Housing and Dining Services, Bookstores, and Athletics or any combination thereof.

## **2. CONTRACT TERM AND TERMINATION:**

### **2.1. Contract Term**

This Contract is effective on [insert date] and expires on [insert date].

### **2.2. Termination**

This Contract may be terminated at any time by mutual consent of both parties or by XULA upon thirty (30) days' written notice. In addition, XULA may terminate this Contract at any time by written notice to Contractor if (a) Federal or state statutes, regulations or guidelines are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract, or that otherwise makes this contract unlawful; (b) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; or (c) XULA fails to receive funding, appropriations, allocations or other expenditure authority as contemplated by XULA's budget and XULA determines, in its assessment and ranking of the policy objectives explicit or implicit in XULA's budget, that it is necessary to terminate the Contract, or (d) if the XULA program for which this Contract was executed is abolished.

XULA may also terminate this Contract at any time by written notice for default if Contractor is in breach of any of the terms of this Contract, including without limitation if (a) Contractor fails to timely provide services or materials as required by this Contract; or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms and conditions, and after receipt of written notice from XULA, fails to correct such failure(s) within ten (10) days. Termination of this Contract under this section or any other section shall not prejudice to XULA's other rights and remedies available to it under this Contract and at law or in equity.

### **2.3. Remedies for Contractor's Default**

In the event Contractor is in default (which includes without limitation, incomplete services), XULA may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to: (a) rejection of the services, (b) requiring Contractor to correct any defects without charge, (c) negotiation with Contractor to sell the services to XULA at a reduced price, (d) termination of the Contract, (e) withholding all moneys due for the services Contractor has failed to deliver within any scheduled completion dates or has performed

inadequately or defectively, (f) initiation of an action or proceedings for damages, specific performance, or declaratory or injunctive relief, or (g) exercise of its right of offset. These remedies are cumulative to the extent the remedies are not inconsistent, and XULA may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

### **3. GRANT OF RIGHTS:**

#### **3.1. Beverage Services Rights**

Subject to the terms and exceptions set forth in this Contract, XULA hereby grants to Contractor an exclusive right to supply, sell, distribute, and vend Beverages (hereinafter "Beverage Services") at locations as requested by XULA including:

- At catered events, and when XULA's Catering department is catering at off-site venues.
- Donation of Beverages for XULA's use or distribution.
- Sponsorships of conferences, events, and programs when located on the Xavier University of Louisiana campus.
- Sampling of Beverages on XULA Campus.
- Designation as the official Beverage partner of Athletics.

In addition, subject to the terms of this Contract, Contractor shall be permitted to sell XULA licensed and branded Beverages using XULA Marks through Contractor's normal distribution channels off campus.

In exchange for the exclusive rights, Contractor will, as further set forth herein:

- Supply, deliver and stock Beverages.
- Supply, deliver, install, and repair all Beverage Equipment.
- Advertise and market Beverages on the Corvallis Campus at current prices, if applicable.
- Make shelf space available at Barnes and Noble Bookstore and Sodexo Magic retail locations for milk, milk alternatives, and noncompeting products not offered in Contractor's portfolio.

#### **3.2. Permitted Exceptions**

Contractor's exclusive rights for provision of Beverage Services under section 3.1 do not include or pertain to:

- Advertising in XULA student newspapers and publications, or sponsorship of programs on any student-run XULA radio or television stations.
- Athletic events or tournaments, including but not limited to NAIA events and Red River Conference or other athletic conference events.
- Events "presented by" a competing Beverage provider on the XULA Campus.
- Consumption by students, faculty, staff, or campus visitors of competitive Beverages purchased outside a XULA Campus location for personal consumption or for consumption by their group, office, or organization and not for resale or distribution.

- XULA's existing contract in the Athletics venues for Powerade. At the conclusion of that contract, Contractor may have the opportunity to buy the exclusivity at the higher of either the market value or the amount set out in the expired contract.
- Research funded by competitors, so long as only the company name is used to acknowledge the research, and acknowledgement does not include advertising the competitor's products or services (including messages containing qualitative or comparative language, price information, or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use such products or services).

### 3.3. Additional XULA Locations

During the term of this Contract, XULA, in its sole discretion, may choose to offer to Contractor the opportunity to provide Beverage Services at other locations outside of the XULA Campus. In the event XULA and Contractor agree that extension of the Beverage Services to additional locations is appropriate and desired, both parties agree to negotiate financial requirements and any additional terms and conditions and make those modifications through written amendment to this Contract.

To the extent XULA permits Contractor to provide any service to XULA locations outside of the XULA Campus and such permission is not documented through an amendment to this Contract, such permission shall constitute only a temporary courtesy and does not grant Contractor any ongoing rights to provide services to such locations.

## 4. PRODUCT MIX AND PRICING

### 4.1. Product Mix and Availability

Contractor shall provide for retail sale a mix of Beverage products and packages as agreed to by the parties. The initial Beverage product and package mix are set forth in Attachment A, Beverages and Service Containers Price List. Newly developed, produced or acquired products, not available as of the date of this Contract, may be added after XULA consent and through written amendment of this Contract. Both parties agree to discuss availability, pricing, financial requirements and any additional terms and conditions necessary to make available newly developed, produced or acquired products, subject to XULA's approval at its sole discretion.

Contractor will provide each Beverage in sufficient quantities as may be required by XULA to fulfill its needs under this Contract. If Contractor fails to provide sufficient quantities requested by XULA within a reasonable timeframe as specified by XULA, then XULA may obtain a substitute beverage for any such Beverage. If Contractor fails to provide sufficient quantities of each Beverage within 30 days of initial notification, then XULA in addition to pursuing remedies available elsewhere in this Contract, may remove the unavailable product from the definition of Beverage. This does not limit the availability of other remedies set forth in this Contract.

### 4.2. Product Responsibility

Contractor agrees to only carry products that have a positive reputation in the media. If, in XULA's sole discretion, a product generates a negative reputation in the media, XULA has the right to immediately remove, and/or require Contractor to remove, the product from the XULA Campus and no longer permit the product in the future. In addition, XULA may replace the product with a similar competing product.

#### 4.3. Beverage Service Containers

Contractor shall provide beverage cups, containers, and lids to XULA for resale at the prices listed in Attachment A, Beverages and Service Containers Price List. Contractor prices for such items should be competitively priced. XULA may use self-branded and generic cups and lids and may purchase them from other suppliers if available at prices lower than those offered by Contractor.

#### 4.4. Beverage and Product Pricing

Contractor shall sell Beverages and product to XULA at prices no higher than those set forth in Attachment A. Contractor must adhere to and maintain the price commitments and incentives listed in Attachment A for a minimum of three (3) years.

After three (3) years, Contractor may request that pricing be increased once per year with an effective date of September 1. Any agreed price increase shall not exceed the lower of either three percent (3%) or the 12-month percentage change for annual data from the prior year using the Bureau of Labor Statistics Consumer Price Index ("CPI"), Southeast Region, unadjusted data for Nonalcoholic Beverages and Beverage Materials.

Contractor will submit price increase requests, in writing, to XULA's Contract Administrator no later than July 1 for an effective date of September 1. For price increases to take effect, XULA must approve of Contractor's requested price increase in writing and amend this Contract by the effective date.

#### 4.5. Vending Sale Prices

Contractor's vending sale prices will be in alignment with XULA's retail sale pricing. When vending sale pricing is out of alignment, Contractor will adjust vending sale prices in order to bring vending

sale prices into alignment. Contractor will submit vending sale price increase requests, in writing, to XULA's Contract Administrator no later than June 1 for an effective date of September 1. For vending sale price increases to take effect, XULA must approve of Contractor's requested vending sale price increase in writing by July 1.

Contractor will communicate the vending sale price increase to customers by displaying a notice on all vending machines a minimum of 60 days before the vending sale pricing increase will take effect.

#### 4.6. FOB Destination

All prices are FOB destination, including transportation costs, packaging, crates, containers, loading, unloading and any other requirements necessary to complete delivery on an FOB destination basis.

#### 4.7. Additional Fees and Surcharges

No additional fees or surcharges above the prices stated in Attachment A are allowed including but not limited to fuel surcharges, environmental fees, increased labor charges, or minimum order fees.

### **5. DELIVERIES AND STOCKING**

#### 5.1. Product Deliveries

All deliveries are to be made by Contractor upon request by the individual Stakeholders with no minimum order quantities. Each Stakeholder represents a different XULA operational unit. Orders placed by a Stakeholder will be packaged and delivered specifically for that Stakeholder and will not be combined with other Stakeholders' deliveries. Some Stakeholders may have multiple locations to which deliveries are required. Contractor will work with Stakeholder to establish delivery routes, locations, and specific schedules. Deliveries must be coordinated with each Stakeholder.

## 5.2. Delivery Schedules

Contractor will deliver a minimum of three days between Monday and Friday each week when there are deliveries to be made. Products will only be delivered between the hours of 6:00 am – 10:00 am. In the event deliveries are delayed due to abnormal weather conditions or other reasons, beyond the control of Contractor, it is the responsibility of Contractor to notify the Stakeholder with an update of the expected delivery time. Special requests for Beverages will be delivered within 4 hours of request for such.

## 5.3. Delivery Receipt

An official delivery ticket will accompany each delivery showing the Contract number, date of delivery, product quantities included in delivery, unit prices, line-item totals and extended grand total. The ticket will be presented to, and signature requested from the individual authorized to accept deliveries by the Stakeholder.

## 5.4. Delivery to Campus Facilities

Due to campus traffic conditions and loading dock limitations, deliveries will be difficult or impossible if made by tractor-trailer truck. Contractor will be responsible for facilitating delivery to each location specified by Stakeholders in a manner reasonably acceptable to the Stakeholders.

## 5.5. Beverage Stocking in Refrigerated Coolers

Contractor will stock, clean and face displayed Beverages in refrigerated coolers and vending units. Beverages will only be stocked between the hours of 6:00 am – 10:00 am or 2:00 pm to 5:00 pm, with a preference from XULA for the earlier time slot. Contractor's representative will check in with Stakeholder's manager on duty when arriving on site to stock. Contractor will remove debris created when stocking Beverages and dispose or recycle of debris appropriately.

Contractor will manage the inventory of Beverages at each location by stocking in the First-In-FirstOut (FIFO) method. Contractor will pick up and issue credit for items that are damaged, stale, and, as communicated to Contractor by XULA, slow sellers. Changes in stocking layouts must be approved by Stakeholder before change is made by Contractor.

## 5.6. Beverage Stocking in Vending Machines

All of the vending machines will be stocked by Contractor with Beverages on a regular basis dependent upon the throughput of each individual machine. Contractor will be responsible for monitoring the throughput of all machines, as well as anticipating the impact of all XULA regular and special programs which could impact specific machines' throughput. Contractor will ensure that all vending machines are

appropriately stocked and resolve “out of order”, “out of stock” or stale Beverages within 24 hours after notification.

## 6. BEVERAGE EQUIPMENT

### 6.1. General

Contractor will install new, replace or upgrade all existing Beverage Equipment on a schedule determined and agreed to by XULA and Contractor at no cost to XULA. Contractor will supply, stock, deliver, install, maintain, and repair all Beverage Equipment, including all piping/tubing/connections and related paraphernalia, to make all of Contractor’s Beverage Equipment operationally ready at no cost to XULA. Contractor will also provide any additional Beverage Equipment, or remove Beverage Equipment, associated with facilities growth, remodeling, or increased demand during the term of the Contract. Contractor will coordinate the delivery and installation of its Beverage Equipment with Stakeholders. All new, replacement or upgraded Beverage Equipment must be unused, heavy-duty commercial, EnergyStar® qualified, and of the latest model available from a nationally known manufacture. Specific models of Beverage Equipment will be agreed-upon between Contractor and XULA at time of ordering. Stakeholders, in consultation with Contractor, will determine the operating location of Beverage Equipment. Nothing in this Contract will prevent Contractor’s provision of Beverage Equipment of a higher quality.

### 6.2. Promotions, Promotional Supplies and Equipment

All promotions, promotional supplies and related equipment must be approved by Stakeholder prior to implementation. Location of promotional supplies and equipment will be designated by XULA with input from Contractor. Contractor will provide any necessary supplies and equipment to implement Contractor’s sales promotions (e.g., signage, end-cap coolers, counter-top coolers, full size visicoolers, floatation barrels, and point-of-sale displays.)

### 6.3. Contractor’s Property

All Beverage Equipment provided by Contractor is and will remain the property of Contractor. Contractor is required to keep an accurate inventory of all Beverage Equipment including at a minimum: locations, model, type, description, and value.

### 6.4. Beverage Equipment Replacement or Upgrades

During the term of this Contract, Contractor will work with Stakeholders to replace or upgrade older Beverage Equipment. Contractor and XULA will discuss and mutually decide on replacements based on problems and issues related to the Beverage Equipment’s age, appearance, technical advances, and potential energy-usage savings.

### 6.5. Fountain Equipment

All fountain equipment must be of the most recent design of proven efficiency, be a complete operational system and include:

- Ability to operate on a 1, 2.5, 3 or 5-gallon bag-in-the box (“BIB”) design.

- Multi-head, high volume capacity.
- Ability to dispense carbonated and non-carbonated water.
- Water filters and separate water supply shut offs.
- Locks and/or shut-off devices and filtered with a stainless steel, vented, double check valve backflow.
- 50lb capacity carbon dioxide tanks with capped faucet and with automatic switch over equipment.
- Ice dispensers where needed and/or requested by XULA.
- Syrup system with rack, tanks or boxes, couplers, tubing and pumps.
- Plumbing from wall to fountain dispenser including shutoff valve, water regulators filters, tubing, and drain.
- Refrigeration – ice cooled, electrical cooling.
- Valves with covers, nozzles/diffusers, actuators, brix, flow control, and block.
- Easy and full disassembly of all Beverage contact surfaces for routine cleaning and sanitizing.
- Overall clean appearance with merchandiser, cabinet, and cup dispenser.
- Design of the fountain lit promotional display will be approved by XULA prior to placement.

Contractor will stock all fountain equipment with Beverages on a weekly or bi-weekly basis as needed. Contractor will provide all carbon dioxide as needed at no cost to XULA. Contractor will provide XULA with educational information about the equipment including daily cleaning procedure, product rotation, wall chart and basic troubleshooting. Contractor will supply portable fountain service equipment for campus events as needed by Stakeholders.

#### 6.6. Refrigerated Product Coolers

XULA must approve installation of refrigerated product coolers in different locations other than those locations where they are already installed. All refrigerated product coolers will meet the latest ADA standards.

#### 6.7. Beverage Vending Machines

XULA must approve installation of vending machines in different locations other than those locations where vending machines are already installed as of the effective date of this Contract. Each Beverage vending machine will be installed with a non-resettable counter that correctly identifies the number of products dispensed and the amount of revenue received. All vending equipment will be sufficiently placarded to allow for identification and reporting of any issues related to the machine. All vending equipment will meet the latest ADA standards. As a convenience, and not subject to the Beverage Services rights granted under this Contract, when requested by XULA, Contractor will review and if feasible, provide vending to XULA associated programs located outside of the XULA Campus for the time period and to the extent determined by XULA. If vending is provided under this option, all applicable sections of this Contract will apply including commission.

##### 6.7.1. Vending Equipment Damage

Losses incurred from the operation of vending equipment due to theft, fire, vandalism, damage, etc., will be absorbed by Contractor, will not be the responsibility of XULA, and are not to be factors in the

computation of XULA commissions. Contractor will promptly repair or replace any lost or damaged equipment.

#### 6.7.2. Cash and Card Accepters

Each Beverage vending machine will accept coins, bills and make change. For new installations, coin and bill accepters and changers must be new, heavy-duty commercial, and of the latest model available from a nationally known manufacturer. Each Beverage vending machine will also include card readers that accept credit, debit, and “smart” cards, including XULA’s “Flex Bucks” which connects to Banner using Transact, but may change during the term of this Contract, in which case Contractor shall update its card readers. Contractor will be responsible for providing connectivity for the card readers.

#### 6.7.3. Cellular Wireless Connections

Contractor will install, and maintain as operational, cellular wireless connections to connect card readers. In some instances, card readers may not be feasible due to limitations in cellular wireless reception. In this case, Contractor is not required to install card readers. Contractor’s installation of any additional machines with card reader reception will be tested and fully functional before operation.

Contractor will bear the cost of installing and maintaining the wireless card readers and all associated wireless charges. Contractor will set all wireless readers for single transactions so that each transaction is cleared fully before another transaction occurs.

#### 6.7.4. Data Protection / PCI DSS Compliance

6.7.4.1. Contractor acknowledges and agrees that it is responsible for the security of all XULA customer cardholder data in its possession, and that such data may only be used for completing the contracted services identified in this Contract, or as required by the PCI DSS or applicable law.

6.7.4.2. Contractor represents, warrants and covenants that for the life of the contract and while Contractor has involvement with XULA customer cardholder data, the software and services used for processing transactions shall be compliant with standards established by the Payment Card Industry Security Standards Council (<https://www.pcisecuritystandards.org/>). Contractor is required to annually, on the anniversary of date the contract is fully executed, provide a copy of its Attestation of Compliance (AOC) to XULA. If requested at any other time, Contractor shall furnish proof of compliance with the Payment Card Industry Data Security Standard (PCI DSS) within 10 business days of the request.

6.7.4.3. Contractor will inform XULA within 24 hours if it has knowledge of a security breach or reason to believe that a security breach is reasonably likely to have occurred. Contractor agrees to indemnify and hold XULA, its officers, board members, employees, and agents, harmless for, from, and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees), damages and expenses arising out of or relating to any loss of XULA customer credit card or identity information managed, retained, or maintained by Contractor, or their subcontractors, agents, representatives, or affiliates, including but not limited to fraudulent or unapproved use of such credit card or identity information. Contractor must inform all customers whose card holder data was affected in accordance with applicable law.



6.7.4.4. Contractor agrees that notwithstanding anything to the contrary in the Contract or amendment, XULA may terminate the Contract immediately without penalty upon notice to the Contractor in the event Contractor fails to maintain compliance with the PCI DSS or fails to maintain confidentiality or integrity of any cardholder data.

## **7. SERVICE AND MAINTENANCE**

### 7.1. Preventative Maintenance

[Contractor's Preventative Maintenance program will be added after contract award.]

### 7.2. Maintenance and Service

Contractor will, at own expense, maintain and repair Beverage Equipment promptly to good working order. Contractor will provide service on a year-round basis, 24 hours a day, seven (7) days a week.

### 7.3. Service Calls

Contractor will maintain a 24-hour service hot-line, including weekends and holidays for Stakeholder's use. Contractor will arrive to service Beverage Equipment within four (4) hours of a service call. Contractor will maintain a log of all service calls received and the disposition of each. This log will be available for XULA's review upon request.

### 7.4. Temporary Beverage Equipment

Contractor will provide a temporary unit to replace any Beverage Equipment that cannot be returned to full service within five (5) calendar days of XULA's first service call. Temporary unit will be in place at the end of the five (5) calendar day period. After five (5) calendar days if the Beverage Equipment is not returned to full service and a temporary unit is not in place, Contractor will be subject to a \$100 fee per day until a fully operational unit is in place.

### 7.5. Beverage Equipment Replacement

Contractor will replace any Beverage Equipment that has frequently recurring maintenance and/or mechanical problems with a permanent replacement unit. For purposes of this section "frequently recurring" means six (6) or more service calls within thirty (30) calendar days. Any replacement Beverage Equipment will be of equal or superior quality to the Beverage Equipment originally installed.

### 7.6. Service Levels and Escalation

[Contractor's plan for service levels and escalation will be added after contract award.]

## **8. STAFF**

### 8.1. Provision of Staff

Contractor will provide experienced and qualified staff in numbers sufficient to ensure efficient, hygienic and orderly performance of the Beverage Services. Contractor's staff will behave with courtesy and professionalism in dealing with the Xavier University Campus community.

Contractor's staff will comply with XULA's rules, regulations, standards and policies, as well as all applicable provisions of this Contract. Failure to do so is grounds for XULA to require Contractor to

immediately remove a staff member from all XULA owned or controlled properties. Nothing in this Contract will be deemed to relieve Contractor from liability for any deficiencies in performance by Contractor's staff.

## 8.2. Reassignment

XULA may require Contractor to reassign a Contractor employee or agent to no longer perform work under this Contract if, at any time, XULA determines at its sole discretion that the Contractor employee or agent is performing unsatisfactorily or may create a danger to the health or safety of XULA and its campus community.

## 8.3. Uniforms

Contractor's staff that perform deliveries, stocking, installation, maintenance, or repair will wear neat and clean company uniforms appropriate to their positions while on duty. Contractor is responsible for all costs attendant to providing and replacing such uniforms.

## 8.4. Designated Manager

8.4.1. Contractor will designate an experienced and capable manager ("Manager") who will be responsible at all times for implementation of this Contract.

8.4.2. Contractor and XULA agree that the Manager is an individual whose special qualifications and involvement in Contractor's performance of services form part of the basis of agreement between the parties for this Contract and is an individual through whom Contractor shall provide to XULA the expertise, experience, judgment, and personal attention required to perform services provided under this Contract.

8.4.3. Neither Contractor nor the Manager shall delegate on-going performance of services to others without first obtaining XULA's written consent. Further, Contractor shall not, without first obtaining XULA's prior written consent, re-assign or transfer the Manager to other duties or positions so that the Manager is no longer available to XULA. If Contractor requests XULA to approve a re-assignment or transfer of the Manager, XULA shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Manager.

8.4.4. Contractor will provide XULA with the Manager's office telephone, cell-phone number and email address. Contractor will keep this information current at all times.

8.4.5. In a temporary absence of the Manager, Contractor will designate an alternate employee to provide continuation of services during the absence. If the Manager's absence is expected to last for a duration of 2 months or longer, Contractor will designate an alternate Manager under the same terms and conditions as the Manager.

8.4.6. The intent of this provision is to give XULA access at all times to an individual with full authority to make decisions on behalf of Contractor. Nothing in this section is intended to preclude XULA from directly discussing matters relating to this Contract with any of Contractor's staff.

## 8.5. Background Checks

8.5.1. The facilities that comprise the XULA Campus are designated as critical, occupied or security sensitive facilities. Thus, Contractor shall conduct criminal background checks, including sex offender registration checks, (for both: Louisiana at a minimum and national for Contractor employees who formerly lived outside of the state of Louisiana) on each Contractor employee and agent with satisfactory results before referral or placement at any XULA Campus location.

8.5.2. Disqualifying crimes include 1) felony convictions of any kind within the last eight (8) years, 2) all crimes involving weapons of any kind ever committed, 3) all person-to-person crimes involving physical injury to another person ever committed, 4) sexual offenses of any kind ever committed, including stalking, and 5) child abuse, molestation, child pornography or other crimes involving child endangerment, including neglect and abandonment of any kind ever committed.

8.5.3. Contractor will require Contractor's employees and agents to self-disclose to Contractor any new convictions that occur within three business days of the conviction and Contractor shall immediately reassess the individual's assignment under this Contract.

8.5.4. XULA, at its discretion, may require Contractor to reassign a Contractor's employee to no longer perform work under this Contract or for XULA if, at any time, XULA believes that the Contractor's employee may create a danger to health or safety of the university community.

8.5.5. Contractor is solely responsible for complying with all applicable federal, state or local laws, rules and regulations, including but not limited to the Fair Credit Reporting Act and equal opportunity laws and regulations, when conducting background checks. The costs and Fair Credit Reporting Act obligations for criminal background checks are the responsibility of Contractor.

8.5.6. Contractor shall maintain a security log including a list of Contractor employees working in, accessing, or who will enter XULA's critical, occupied or security-sensitive facilities; verification of each Contractor employee's satisfactory and unsatisfactory results of criminal background checks; each Contractor employee's site assignment; and each revocation of a Contractor employee's site assignment. Contractor shall update and maintain the security log during the duration of the contract and twenty-four (24) months after. Contractor shall

provide OSU with access to the security log for audit and copying purposes within twentyfour (24) hours of XULA's request.

8.5.7. Contractor shall require Contractor's subcontractors and agents providing services under this Contract to comply with this provision. XULA may audit Contractor's background check processes at any time to ensure compliance with this section. Failure of Contractor to comply with this section is a material breach of the Contract and may result in XULA seeking monetary damages or pursuing other remedies, Contractor termination by XULA without further liability or obligation, or both. Contractor shall indemnify, defend, and hold harmless XULA and its directors, agents, trustees and employees from all claims, suits, and actions arising out of or related to any and all claims relating to the conducting of such checks and any adverse action that may be taken as a result of such checks.

8.5.8. Contractor will perform the criminal background checks within the 12 months immediately preceding the Contractor employee's referral or placement at any XULA work location.

8.6. Drug and Alcohol Testing

The Contractor will conduct drug and alcohol testing of each Contractor employee with satisfactory background check results before their referral or placement at any XULA Campus location. Contractor will perform the drug and alcohol checks within the 12 months immediately preceding the Contractor employee's referral or placement at any XULA Campus location.

#### 8.7. Access to Residence Halls

Contractor must check out an access card from the University Center ID Card Office in order to access any of the residence halls. The University Center ID Card Office is open 9:00 am – 5:00 pm Monday – Friday.

### 9. FINANCIAL REQUIREMENTS

#### 9.1. Payment to XULA

##### 9.1.1. Annual Payments

In consideration of the Beverage Services rights granted, Contractor will pay XULA the amounts indicated below on an annual basis.

Funding Description Amount

Annual Incentive \$[\_\_\_\_]\*

Volume Increase Rebate \$[\_\_\_\_]

Student Scholarships \$[\_\_\_\_]

Misc. 1 \$[\_\_\_\_]

Misc. 2 \$[\_\_\_\_]

\*The Annual Incentive amount identified above is subject to a Volume Threshold of 75,000 Units ("Volume Threshold") for the period July 1 through June 30, which correlates to XULA's fiscal year.

Commencing on July 1, 2024, and on July 1, every year thereafter, Contractor will pay XULA 90% of the Annual Incentive. The remaining 10% ("Annual Incentive Retainer"), and the Volume Increase Rebate will be withheld by Contractor and is subject to the Funding Reconciliation described below. All other amounts are due to XULA no later than July 1.

##### 9.1.1.1. Funding Reconciliation

Contractor will provide XULA with the sales volumes no later than August 1 of each year with respect to the prior year, including Contractor's reconciliation calculations based on the following:

- If XULA achieves a sales volume of 100% of the Volume Threshold, Contractor shall pay XULA the 10% Annual Incentive Retainer that was withheld for a total of 100%.
- If XULA achieves a sales volume below 100% of the Volume Threshold, a percentage of the Annual Incentive equal to the percentage that the sales volume is below 100% will be deducted from the Annual Incentive Retainer withheld by the Contractor. (Example: 95% of volume is

attained then 5% of Annual Incentive (which represents half of the Annual Incentive Retainer) will be kept by Contractor and Contractor will pay XULA an amount of the Annual Incentive Retainer that equals 5% of the Annual Incentive.)

- If XULA achieves a sales volume below 90% of the Volume Threshold, a percentage of the Annual Incentive equal to the percentage that the sales volume is below 100%, minus the 10% Annual Incentive Retainer, will be reimbursed by XULA. (Example: 85% of volume is attained then all of the Annual Incentive Retainer will be kept by Contractor and XULA will reimburse Contractor 5% of the Annual Incentive.)
- If XULA achieves a sales volume above 100% of the Volume Threshold, Contractor will pay XULA the Volume Increase Rebate [to be completed after contract award].

Any amounts owing under the funding reconciliation will be due by October 1 of each year.

#### 9.1.1.2. Form of Payment

All annual payments made pursuant to this Contract will be made by check to the XULA Contract Administrator.

#### 9.1.2. Beverage Vending Commission

Contractor will pay XULA a commission of [X]% on gross revenues from all vended Beverages. Commission payments will be made by check no later than the 10th of each month and distributed as follows:

- All beverage vending machines located at XULA campus will be submitted to the Assistant Vice President for Student Affairs.

#### 9.1.3. Monthly Vending Reports

Contractor will provide a complete monthly report of vending operations and commissions paid to the Stakeholders by the 10th of each month. Monthly report will include both the beginning and ending meter readings from vending operations sorted by different types of sales (cash or card sales.) The report will be sorted by building, showing the gross receipts on each machine, the commission thereon, the total commission for each building, and the grand total for XULA Campus and auxiliary locations. The report will also include machines that are out of order. An electronic re-sortable copy of the report will also be available, upon stakeholder request.

#### 9.1.4. Donated Product

[Donated Product information will be added after contract award.]

#### 9.1.5. Late Payments

Late payments are subject to a late payment fee of one-and-one-half percent (1-1/2%) per month, or portion thereof, of any balance due.

#### 9.1.6. Acceptance

The receipt or acceptance by XULA of any statements or payments made hereunder to shall not preclude XULA from questioning the correctness thereof at any time and, in the event that any inconsistencies or mistakes are discovered in such statements or payments, they will immediately be rectified by Contractor and the appropriate payment will be made by Contractor to XULA.

### 9.2. Payment to Contractor

Contractor will send accurate invoices directly to the individual Stakeholder who ordered, received, and accepted the Beverages. The method of invoicing is subject to approval by XULA. The method of invoicing shall be uniformly applied to all XULA Stakeholder invoices. At a minimum Contractor shall include the following in each invoice:

- Quantity Ordered
- Quantity Delivered
- Date of Delivery
- Price per Unit
- Total by Line Item (price per unit \* quantity delivered)
- Total Invoiced Amount

Invoices that are submitted with discrepancies or errors will not be paid, nor will they accrue any late payment charges until corrected and resubmitted by Contractor. Invoices that are not corrected within 30 days after notice of need for correction will not be paid.

XULA will pay Contractor for the Beverages at the prices and rates specified in Attachment A herein. Contractor shall look solely to XULA for payment of all amounts XULA owes to Contractor. Payment of XULA invoices is normally made within 30-45 days following the date the invoice is received. After 45 days, Contractor may assess overdue account charges up to a maximum of two-thirds of one percent (2/3 of 1%) per month or eight percent (8%) per annum on the outstanding balance.

### 9.3. Financial Reporting

Contractor will prioritize the reporting needs of XULA and will be flexible to develop and provide any reporting requested. All reporting will be done on a fiscal year basis (July 1 – June 30); Contractor will provide all other reasonable data or formats requested by XULA in a timely fashion. Contractor will prepare and submit to XULA, at the Business Review, a comprehensive financial summary showing all transactions with and payments to XULA.

## 10. BUSINESS REVIEWS

Contractor will participate in periodic in-person meetings where the parties get together to discuss different aspects of the contract and business operations (“Business Review”) as requested by the XULA Contract Administrator. During the first year of the Contract, Contractor and XULA will participate in Business Reviews quarterly. After the first year, the Business Reviews will be held semi-annually in the Fall and Spring. The Fall Business Review will focus on financial information, sales data and volumes from the preceding fiscal year (July 1 – June 30) and the Spring Business Review will focus on current marketing data nationally and locally as available.

## 11. ATHLETICS

### 11.1. Athletic Sponsorships

[Additional information about Athletic Sponsorships will be added after contract award.]

### 11.2. Compliance with Sports Organizations Rules

Contractor shall not take any action or enter into any agreements related to this Contract that would violate any rules or regulations of RRAC, any other athletic conference of which XULA is a member, NAIA, or any other applicable governing sports organizations.

### 11.3. Athletics Facility Concessionaire

Contractor will work directly with XULA Athletics' current contracted food concessionaire to determine the Beverage Equipment and levels of service personnel needed at all XULA Athletics events. All Beverage vending machines available to the public and located in Athletic facilities must be decommissioned when the Athletics facility concessionaire is operating.

## **12. PARTNERSHIP**

[Additional information about Contractor's partnership will be added after contract award.]

### 12.1. Diversity, Equity and Inclusion

[To be completed after contract award]

### 12.2. Health and Wellness

[To be completed after contract award]

### 12.3. Recycling and Sustainability

[To be completed after contract award]

### 12.4. Student Development.

[To be completed after contract award]

## **13. INTELLECTUAL PROPERTY LICENSE AND SPONSORSHIP RIGHTS**

### 13.1. Grant of License and Restrictions

Subject to the terms of this contract, XULA hereby grants to Contractor, a non-exclusive, nontransferable, revocable license to use the Marks, solely in connection with the Sponsorship Activation of the Beverages as listed in Attachment C: Approved Names and Logos of XULA, within the United States of America, its territories and possessions, and United States military bases abroad and for the duration of the contract.

Nothing in this contract shall be construed to prevent XULA from granting any other licenses or rights for use of the Marks. XULA retains all rights to use and license the Marks. The right granted in this Contract to Contractor shall be non-divisible and shall not be transferable or assignable without XULA's prior written consent, which XULA may withhold in its sole and absolute discretion. Any such assignment or transfer without such consent shall be void and of no effect.

### 13.2. Ownership and Protection of Rights

Contractor recognizes the great value of the goodwill associated with the Marks and acknowledges that such goodwill belongs exclusively to XULA. Contractor acknowledges XULA's exclusive right, title and interest in and to the Marks and will not at any time do or cause any act or thing contesting or in any way impairing or tending to impair any part of such right, title and interest. Contractor shall not in any manner represent that it has any ownership in the Marks or in any registration, and the Contractor acknowledges that use of the Marks shall not create any right, title, or interest in favor of the Contractor, but all uses of the Marks by the Contractor shall inure to the benefit of XULA.

Contractor shall not register or attempt to register the Marks or any confusingly similar mark in any country or territory. Contractor shall use the highest ethical standards in its business activities and shall not do anything to bring XULA into an unfavorable light. If XULA determines, at its sole discretion, that any business activities of Contractor or use of the Marks portrays XULA in an unfavorable or unauthorized manner, then Contractor shall cease such activities immediately upon notice from XULA.

Upon expiration or termination of this Contract, whichever occurs first, Contractor will cease and desist from all use of the Marks in any way and will deliver to XULA all advertising, promotional materials and signage containing the Marks.

Contractor agrees to assist XULA in the protection of the rights of XULA in and to the Marks and shall provide, at reasonable cost to be borne by XULA, any evidence, documents, and testimony concerning the use by Contractor of the Marks, which XULA may request for the use in obtaining, defending, or enforcing rights in any XULA Marks or related application or registration. Contractor shall notify XULA in writing of any infringements by others of the Marks of which it is aware. XULA shall have the right to determine whether any action shall be taken on account of any alleged infringements. Contractor shall not institute any suit or take any action on account of any alleged infringements without first obtaining the written authorization of XULA. Contractor agrees that it is not entitled to share in any proceeds received by XULA (by settlement or otherwise) in connection with any formal or informal action brought by XULA.

### 13.3. Use of the XULA Marks

The Marks shall be displayed only in accordance with the rules provided by XULA. Such rules are described in Attachment D: Approved Products and Assets of this Contract. XULA may change these rules from time to time, and Contractor agrees to comply in all respects with the amended requirements of such rules. Contractor will have reasonable time, in no event less than thirty (30) days, to comply with the changes in such rules.

The Marks shall only be used as outlined in Attachment D: Approved Products and Assets. Any additional use must be approved by XULA in writing and may be subject to additional financial terms, which must be mutually agreed upon by Contractor and XULA.

### 13.4. Procedure for Approval



Contractor understands and agrees that it is an essential condition of this Contract to protect the standards and good reputations of XULA and agrees that all Sponsorship Activation shall be of high and consistent quality, subject to the prior written approval and continuing supervision and control of XULA. Contractor shall submit all Sponsorship Activation to XULA in a timely fashion to ensure that XULA has adequate time to review such materials prior to the date of their proposed use by Contractor, and Contractor must receive prior written quality control approval by XULA as provided herein.

Prior to the manufacture, use, distribution or sale of any Sponsorship Activation, Contractor shall submit to XULA for approval, at Contractor's expense and in the format required by XULA, at least one sample of each proposed Sponsorship Activation as the same would be manufactured, used, distributed or sold. If XULA approves in writing the proposed Sponsorship Activation, the same shall be accepted to serve as an example of quality for that Sponsorship Activation, and production quantities may be manufactured by Contractor in strict conformity with the approved sample. All approvals provided herein are effective only for the Term in which Contractor has submitted and XULA has approved the Sponsorship Activation unless Contractor is otherwise notified in writing by XULA. Contractor shall not depart from the approved quality standards in any material respect without the prior written approval of XULA. Sponsorship Activation not meeting those standards shall not be distributed or sold under any circumstances without XULA's prior written authorization.

XULA shall have the right to test, inspect and monitor any and all use of the Marks for the purposes of maintaining quality control standards. If applicable, Contractor shall permit XULA's authorized representative to enter the Contractor's business during regular business hours, with or without advance notice, for the purposes of inspecting to assure Contractor's compliance with the terms of this section. Contractor shall promptly correct and remedy any deficiencies in its use of the Marks and conformance to the quality control standards upon reasonable notice from XULA.

If XULA notifies Contractor of any defect in any Sponsorship Activation or of any deviation from the approved use of any of the Marks, Contractor shall have fifteen (15) days from the date of notification from XULA to correct every noted defect or deviation. Defective Sponsorship Activation in Licensee's inventory shall not be used, distributed or sold and shall, upon request by XULA, be immediately recalled from the marketplace and destroyed or submitted to XULA, at XULA's option and at Contractor's expense. However, if it is possible to correct all defects in the Sponsorship Activation in Contractor's inventory, said items may be distributed or sold after all defects are corrected to the satisfaction of XULA, which shall be indicated in writing.

Any unauthorized or unapproved use by Contractor of any Marks shall constitute grounds for immediate termination of this Contract and also may result in action against Contractor for trademark infringement and/or unfair competition, other applicable claims, and collection of monetary damages.

## **14. INSURANCE**

### **14.1. General Liability Insurance**

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance, including Products and Completed Operations coverage, with minimum limits of \$2,000,000 per occurrence and \$4,000,000 aggregate. Such insurance policy is to be issued by an insurance company authorized to do business in the State of Louisiana with an A.M. Best

rating of at least A-VII, or such other insurance carrier approved in writing, in advance, by XULA. XULA and its officers, board members, employees, and agents shall be included as additional insured in said insurance policy to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

#### 14.2. Automobile Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance. This coverage can be provided by combining the Automobile Liability Insurance with the General Liability Insurance. Minimum Coverage shall not be less than \$2,000,000 combined single limit per occurrence.

#### 14.3. Property Insurance

The Contractor will maintain Property Insurance during the term of the Contract that covers all property used for Contract work and all Contractor-owned property that is present on XULA owned or controlled property.

#### 14.4. Crime Insurance

The Contractor will maintain during the term of the Contract Crime Insurance, to include employee dishonesty coverage, which includes coverage for all directors, officers, agents, and employees of the Contractor with minimum limits of \$1,000,000 per loss. Coverage should be provided using ISO form CR 00 01 Employee Dishonesty Coverage Form or its equivalent and must include ISO endorsement CR 04 01 Clients' Property or its equivalent and ISO endorsement CR 20 14 Loss Payable or its equivalent. The coverage shall not contain a condition requiring an arrest and conviction.

#### 14.5. Cyber Liability or Privacy and Network Liability Insurance

Contractor will maintain during the term of the Contract, Cyber Liability or Privacy and Network Liability Insurance with minimum limits of \$2,000,000 per claim and \$2,000,000 aggregate. The insurance shall provide coverage for the following risks: 1. Liability arising from theft, dissemination and/or use of confidential or personal information stored or transmitted in electronic form, 2. Network security liability arising from the unauthorized access to, use of or tampering with computer systems including hacker attacks, inability of an authorized third party to gain access to Contractor's services including denial of service, unless caused by a mechanical or electrical failure, 3. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related or phone related property and the data, software, and programs thereon. In the event that the cyber liability or privacy and network liability insurance required by this Contract is written on a claims-made basis, Contractor performing under this Contract warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period or "tail coverage" will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

#### 14.6. Primary Coverage

Insurance carried by Contractor under this Contract shall be primary and non-contributory.

#### 14.7. Subcontractors

If Contractor enters into subcontracts for any services to be provided by Contractor to XULA, Contractor shall require that all subcontractors maintain insurance meeting all the requirements of Contractor stated in this section.

#### 14.8. Workers' Compensation

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Louisiana Workers' Compensation law and shall comply with LRS 23:1020.1, which requires them to provide workers' compensation coverage that satisfies Louisiana law for all their subject workers, unless such employees are exempt under LRS 23:1020.1.

#### 14.9. Certificates of Insurance

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance and any applicable endorsements to the XULA Contract Administrator, upon request. The Certificate(s) will specify all of the parties who are Additional Insureds. Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

#### 14.10. Notice of Cancellation or Change

Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, or canceled except after thirty (30) days prior written notice has been given to XULA, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice will be sent directly to XULA. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker will notify XULA of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

### **15. INDEMNIFICATION**

#### 15.1. Indemnity

Contractor shall indemnify, hold harmless and, not excluding XULA's right to participate, defend XULA and its officers, board members, employees, agents and other representatives from and against all liabilities, claims, actions, damages, losses, or expenses, including without limitation reasonable attorneys' fees and costs, that: (i) are caused or alleged to be caused, in whole or in part, by any breach by Contractor of any term or condition of this Contract or by the negligence, omissions, wrongful acts or willful misconduct of the Contractor or any of its officers, directors, agents, employees, or subcontractors; (ii) allege Contractor's services, information or materials supplied by Contractor to XULA under this Contract, or XULA's use of any of the foregoing infringes on any patent, copyright, trade secret, trademark, or other proprietary right of a third party; or (iii) are caused or alleged to be caused by any product liability claims or suits related to the use or consumption of products purchased from Contractor.

## 15.2. Defense

Contractor shall have control of the defense with counsel reasonably acceptable to XULA, except that: (i) XULA may join the defense with its own counsel and at its own expense if XULA determines there is a conflict of interest or there is an important government principle at issue, and (ii) XULA's consent is required for any settlement that requires XULA to pay any money, does not release XULA from all liability from the claim, or adversely affects XULA's interest.

## 16. LAWS AND POLICIES:

### 16.1. Applicable Law; Jurisdiction and Venue

16.1.1. The laws of the State of Louisiana (without giving effect to its conflict of laws principles or laws) govern all matters arising out of or relating to the Contract, including, without limitation, its validity, interpretation, construction, performance, or enforcement. Any party bringing a legal action or proceeding against the other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of Louisiana for Orleans Parish.

16.1.2. Notwithstanding paragraph (a), if a legal action or proceeding must be brought in a federal forum, the party shall bring the legal action or proceeding in the United States District Court for the District of Louisiana. This paragraph does not authorize Contractor to bring a legal action or proceeding against XULA in a federal forum except to the extent Congress has validly abrogated XULA's sovereign immunity. This paragraph is also not a waiver by XULA of any form of immunity, including without limitation sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.

16.1.3. Except as set forth in paragraph (b), the parties' consent to in personam jurisdiction in the above courts and waive any objection to venue and any objection that the forum is inconvenient.

### 16.2. Compliance with Applicable Laws and Policies

The parties shall at all times comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. The parties shall at all times comply with all applicable standards and policies of XULA, including without limitation any such laws or regulations regarding employment discrimination. If this Contract is being funded with federal funds, Contractor agrees to comply with all applicable federal contracting statutes, regulations, and policies.

Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) LRS 23:332, as amended; (ix) the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; (x) the Health Insurance Portability and Accountability Act requirements noted in LRS 22:1079OAR 125-055-0115; (xi) the Louisiana Consumer Identity Theft Protection Act, LRS 9:3568; (xii)

all regulations and administrative rules established pursuant to the foregoing laws; and (xiii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

### 16.3. Public Records Law Notice

XULA advises Contractor that information XULA receives may be subject to public inspection under Louisiana Public Records Law (LRS 44:1-44:41).

### 16.4. Safety and Health Requirements/Hazard Communication

Services supplied under this Contract must comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Louisiana safety and health requirements, including those of the State of Louisiana Workers' Compensation Division. Contractor will notify XULA prior to using products containing hazardous chemicals to which XULA students or employees may be exposed. Upon XULA's request, Contractor shall immediately provide Material Safety Data Sheets, for the products subject to this provision.

### 16.5. Firearms Policy; Weapons and Destructive Devices

Contractor and Contractor's employees, agents, and subcontractors must comply with XULA policy that prohibits the possession of firearms, weapons, and destructive devices on XULA property.

### 16.6. Parking

Contractor and Contractor's employees, agents, and subcontractors doing business on the XULA Campus must park in compliance with XULA Vehicle Use and Parking Policies. Vehicles parked not in compliance with XULA parking policies are subject to parking citations and/or towing off campus. Expenses resulting from Contractor's parking violations are solely Contractor's expense.

### 16.7. Sexual Misconduct and Discrimination

Contractor and Contractor's employees, agents, and subcontractors must comply with XULA's policy on Sexual Misconduct and Discrimination and are prohibited from engaging in sexual violence, harassment, and discrimination of members of the XULA community.

### 16.8. Smoking Policy

XULA has a policy that prohibits Contractor and Contractor's employees, agents, subcontractors from smoking on the XULA campus or other XULA owned property. The smoking prohibition includes all indoor and outdoor spaces, vehicles, and vaping. See Smoking and Tobacco Use on University Property for more information.

### 16.9. XULA Policies and Standards

Contractor shall comply with all applicable university policies and standards which can be found at:

[https://www.xula.edu/\\_blocks/navigation/sub-navs/student-handbook-2023-24.pdf](https://www.xula.edu/_blocks/navigation/sub-navs/student-handbook-2023-24.pdf)

## **GENERAL TERMS AND CONDITIONS:**

### 17.1. Order of Precedence

In the event of a conflict, all the terms and conditions of this Contract, its exhibits, and any amendments thereto supersede all terms and conditions on any forms used by the Contractor.

### 17.2. No Third-Party Beneficiary

XULA and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third parties.

### 17.3. Assignment/Subcontract/Delegation

Contractor shall not assign, subcontract, delegate or otherwise transfer any of its rights or obligations under this Contract, without the prior written approval of XULA. Any assignment of rights or delegation of duties is prohibited under this section, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights or delegation of duties in violation of this section is void. XULA's consent to delegation does not relieve Contractor of any of its performance obligations.

### 17.4. Waiver

No waiver of an obligation under this Contract is effective unless it is in writing and signed by the party granting the waiver. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Contract operates as a waiver or estoppel of any right, remedy, or condition.

### 17.5. Access to Records and Audit

Contractor shall maintain accurate books, records, documents, and other evidence (collectively, "Records") following accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. Contractor shall permit XULA and the federal government and their respective duly authorized representatives to have access to the Records that are directly pertinent to this Contract for the purpose of conducting an audit, or other examination, or for creating excerpts or transcripts. Contractor shall maintain Records for XULA's review for at least six years beyond the term of the Contract. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse XULA.

XULA shall have the right to an independent third-party audit of the Contractor's records associated with or related to the goods or services provided for under this Contract. XULA may request an independent third-party audit no more than once per calendar year. XULA will determine the timeperiod that will be the subject of the audit. However, the entire term of the Contract, including the original term and any subsequent renewals or extensions, may be the subject of the independent third-party audit at any time. Contractor shall bear the full cost of such independent third-party audit.

#### 17.6. Government Employment Status

Contractor certifies that either (a) it is not currently employed by XULA or the federal government; or (b) if Contractor is so employed, Contractor has fully disclosed to XULA in writing such employment status, is in full compliance with any statutes, regulations, and XULA or the federal government policies regarding employee contracting, and agrees to indemnify and hold harmless XULA for any failure by Contractor to comply with such statutes, regulations, or policies.

#### 17.7. Independent Contractor Status

The services to be rendered under this Contract are those of an independent contractor. XULA reserves the right (a) to determine and modify the delivery schedule for the services and (b) to evaluate the quality of the services; however, XULA may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the services. Contractor is not an officer, employee, or agent of XULA. Contractor has no authority to act on behalf of XULA and shall not purport to make any representation, contract, or commitment on behalf of XULA.

#### 17.8. Notice

A party giving or making any notice, request, demand, or other communication (each a "Notice") pursuant to this Contract must give the Notice in writing and use one of the following methods of delivery: personal delivery, United States Postal Service Registered or Certified Mail (return receipt requested and postage prepaid), overnight courier (with all fees prepaid), facsimile or e-mail to the other party's address as listed below. Notice to XULA is to be delivered to the contact identified below except where this Contract expressly directs or permits delivery of Notice to a different contact.

Notice is effective: (i) if given by facsimile, upon receipt by the sending party of an appropriate facsimile confirmation; (ii) if given by e-mail, by confirmation of receipt by return e-mail, which is not satisfied by an automatically-generated message that the recipient is out of the office or otherwise unavailable; or (iii) if given by any other means, when delivered at the address specified in this section.

For Xavier University of Louisiana

XULA Contract Administrator

Curtis Wright

Vice President for Student Affairs

1 Drexel Drive

New Orleans, LA 70125

Telephone: (504) 520-7356

Fax: (504) 520-7929

E-mail: [cwrigh14@xula.edu](mailto:cwrigh14@xula.edu)

For Contractor

[Name]

[Title]

[Address]

[City, State, Zip]

Telephone: [Phone Number]

Fax: [Fax Number]

E-mail: [E-Mail Address]

#### 17.9. Recycled Products

Contractors will use recycled products to the maximum extent economically feasible in the performance of the Contract.

#### 17.10. Sales and Use Taxes

XULA shall pay all applicable sales, excise, or use taxes incurred by XULA in connection with this Contract, which for the sake of clarity does not include any sales by Contractor through vending machines. Contractor shall be responsible for all other taxes, including taxes based upon Contractor's income and including Louisiana's Corporate Activity Tax. Contractor shall indemnify, defend, and hold harmless XULA from and against any interest, penalties, or other charges resulting from the non-payment or late payment of taxes or other charges for which Contractor failed to pay in a timely manner.

#### 17.11. Force Majeure

Neither party is responsible for delay caused by an act or event that prevents the party from performing its obligations under this Contract where such cause is beyond the party's reasonable control and the nonperforming party has been unable to avoid or overcome the act or event by the exercise of due diligence. Such acts or events include without limitation fire, riot, acts of nature, pandemic, epidemic or other health emergency as declared by the health authority, terrorist acts, or other acts of political sabotage or war. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. However, if delay due to a force majeure event continues for an unreasonable time, as determined by XULA, then XULA is entitled to terminate the Contract.

#### 17.12. Execution and Counterparts

This Contract may be executed by facsimile or PDF and in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.



17.13. Survival

The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.

17.14. Severability

If any provision of this Contract is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Contract remain in full force and effect if the essential terms and conditions of this Contract for both parties remain valid, legal and enforceable.

17.15. Merger

This Contract, including all documents referred to herein and attached hereto, constitutes the entire agreement between the parties and supersedes all prior representations, understanding and agreements between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Contract. No amendment, consent, or waiver of terms of this Contract shall bind either party unless it is in writing and signed by authorized representatives of each of the parties. Any such amendment, consent, or waiver is effective only in the specific instance and for the specific purpose given.

17.16. Certifications and Signatures

This Contract must be signed by an authorized representative of Contractor. The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms.

Contractor is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment under this Contract. Contractor will not, by virtue of this Contract, be eligible for federal Social Security, employment insurance, workers' compensation, or the Public Employees' Retirement System, except as a self-employed individual.

Each of the parties has caused its duly authorized representative to execute this Contract on the date set forth in its respective signature block below.

**CONTRACTOR:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**XULA:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

# **Attachment A**

Beverages and Service Containers Price List

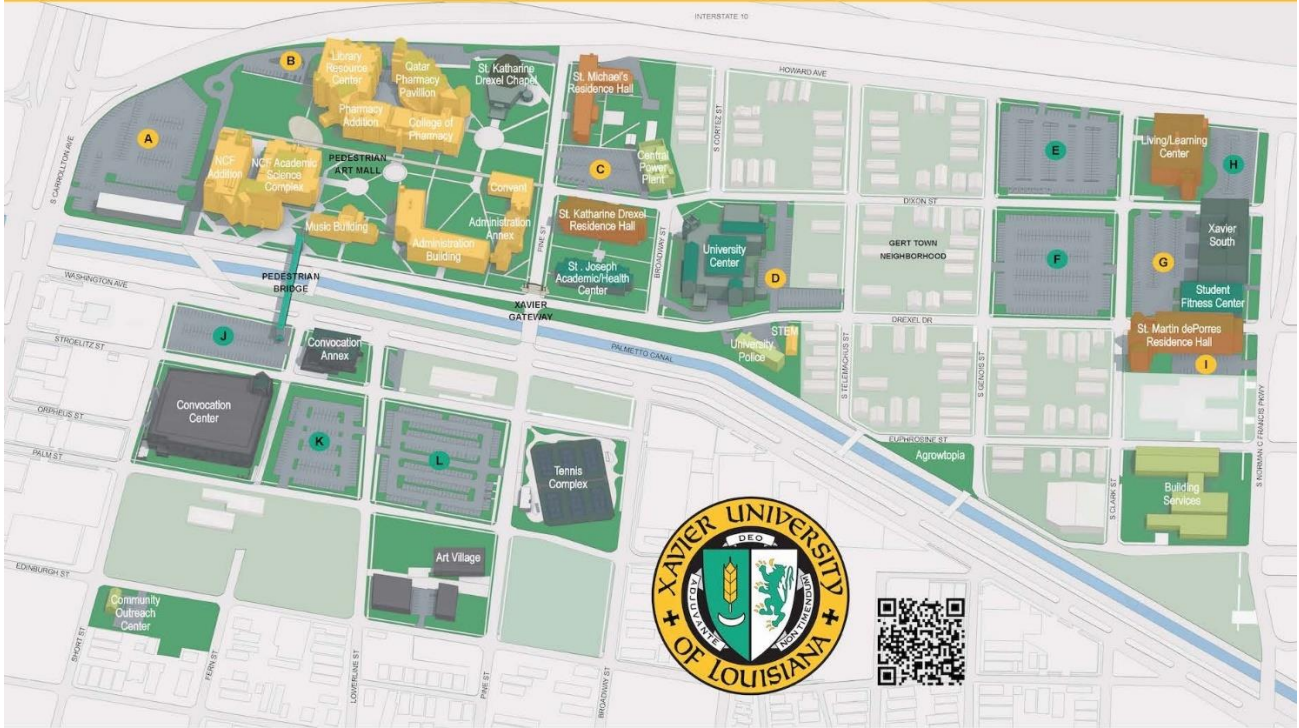
[To be added after contract award.]

Remainder of page left intentionally blank.

# Attachment B

## XULA Campus Map

# Xavier University Campus Map



### CAMPUS BUILDINGS

- = Academics
- = Student Housing
- = Support Services
- = Student & Cultural Life
- = Arts & Athletics

### PARKING LOTS

- A = Faculty, Staff, Reserve
- B = Faculty, Staff, Vendors
- C = Faculty, Staff, Reserve
- D = Faculty, Staff, Reserve
- E = Open
- F = Open
- G = Faculty, Staff, Reserve
- H = Student
- I = Open
- J = Open
- K = Open
- L = Open

# Attachment C

## Approved Names and Logos of XULA



*All uses of the University Seal must be APPROVED by the Marketing and Communications Department. ;*



**XAVIER PROUD** **XAVIER PROUD** **XAVIER DOCTOR** **XAVIER PHARMACIST**

**XAVIER PRIDE** **XAVIER ALUMNI** **XAVIER LAWYER** **XAVIER PROUD**

**XAVIERALUMNI** **XULA | XAVIER**  
UNIVERSITY OF LOUISIANA

**XAVIERGOLD**

# Attachment D

## Approved Products and Assets

Contractor is granted the right to use the Marks, on a royalty-free basis, for the purposes of marketing, advertising, or promoting Beverages. Any such use of the Marks is subject to XULA's approval, which shall not be unreasonably withheld. Use of the Marks is approved in the following categories:

1. Advertising, Promotional and Packaging Materials and Activities:

- a. Point-of-sale materials (e.g., pole signs, price signs/banners, display wraps, shelf-signs, stand ups, cooler clings) and vender fronts.
- b. Cups, cup lids, vessels, cans, bottles, commemorative cans, or bottles.
- c. Can/bottle wraps and all other forms of primary and secondary packaging.
- d. Television, radio, print, signage, outdoor, electronic, internet, mobile, wireless, and all other media, whether now or hereafter known.

2. XULA Campus Activations:

- a. XULA Campus marketing activations as mutually agreed upon by XULA and Contractor and reviewed and approved on an annual basis.
- b. Sampling of Contractor's Beverages on XULA's Campus in a form and manner as specifically authorized and approved by XULA in accordance with rules and procedures established by XULA.

3. Licensed Products:

- a. Merchandise and promotional premiums, whether sold or distributed free of charge. Contractor agrees to only use XULA licensed or approved suppliers for the production of all licensed products. Any additional use of the Marks must be mutually agreed upon by XULA and Contractor and may result in an increase in the Annual Incentive payment.

4. Athletics Sponsorship Opportunities:

- a. Time-out commercials during all home Volleyball and basketball Game
- b. Half-time commercial during all home Basketball Game
- c. 3-point shootout competition
- d. sponsorship at a Basketball or volleyball game
- e. t-shirts tossed into the crowd, a tent at the game, coupon distribution to fans in attendance, etc. (T-shirts and promotional items provided by your company)

- f. Hydration/ Fueling Station for student athletes in training/weight room
- g. annual sponsorship of the jumbotron and/or electronic scorer's table
- h. naming rights to the Crosstown Classic (annual rivalry game between XULA and Dillard University)
- i. naming rights to spaces and buildings (see below)

**ATHLETICS**  
**NAMING OPPORTUNITIES**

Leaving your lasting legacy on Xavier University of Louisiana by funding one of the following opportunities in your name or that of someone special with a gift payable over five years.





**Convocation Center**  
Facility: \$5,000,000  
Sports Medicine Training Room: \$25,000\*  
Seat Plaques: \$500\*



**Convocation Center  
Basketball & Volleyball Courts**  
Court: \$100,000  
Team Locker Rooms: \$10,000\*  
Single Player's Locker: \$500\*



**Convocation Center  
Annex**  
\$500,000



**Tennis Center**  
\$2,500,000



**Fitness Center**  
\$250,000



**Convocation Center /  
Convocation Center Annex /  
Athletic Performance Center**  
Office Space: \$500\*

COMING SOON

FUTURE  
**Athletic Performance Center**  
Building: \$100,000  
Fueling Station: \$5,000\*  
Providing food, hydration, and recovery for athletes before, during, and after training.



SPONSORSHIP PACKAGE

\*Denotes Annual Contribution

XULA ATHLETICS | XULAGOLD.COM



SPONSORSHIP PACKAGE

\*Denotes Annual Contribution

XULA ATHLETICS | XULAGOLD.COM

## Exhibit D

### Financial Proposal

	5 Year Option	10 Year Option	15 Year Option
1. Signing Bonus (optional)			
2. Annual Incentive based on 75,000 case/unit volume (\$ per year)			
3. Volume Increase Rebate (\$ per case/unit above 75,000. If this rebate will increase from contract year to contract year, provide a chart for each year of the contract.)			
4. Athletic Sponsorship (\$ per year)			
5. Donated Product (\$ per year)			
6. Student Scholarships (\$ per year)			
7. Beverage Vending Commission % Rate			
8. Beverage Vending Minimum Commission (\$ per year)			
Indicate the contract term preference in the boxes to the right. 1 is the most preferred and 3 the least preferred.			

If additional financial considerations are proposed, please include them as a separate document.

Company Name: \_\_\_\_\_

**EXHIBIT F**  
**CERTIFICATIONS**

By signature below the undersigned certifies that they are authorized to act on behalf of the bidder and agrees and certifies that:

- the bidder, to the best of the undersigned’s knowledge, is not in violation of any Louisiana tax laws defined in LRS 47:101
- pursuant to XULA policy that they have not discriminated and will not discriminate against Minority, Women, Service-Disabled Veterans or Emerging Small business in obtaining any required subcontracts;
- they have read, understands, and agrees to be bound by the RFP and all Exhibits and Addenda;
- the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Proposal or contract termination; and
- they will furnish the designated item(s) and/or service(s) in accordance with the RFP and the contract.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Title: \_\_\_\_\_ Email: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address, City, State, Zip: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**EXHIBIT G**

**REFERENCES**

COMPANY NAME: \_\_\_\_\_

---

REFERENCE 1

COMPANY:

CONTACT NAME/TITLE:

PHONE NUMBER:

EMAIL:

---

REFERENCE 2

COMPANY:

CONTACT NAME/TITLE:

PHONE NUMBER:

EMAIL:

---

REFERENCE 3

COMPANY:

CONTACT NAME/TITLE:

PHONE NUMBER:

EMAIL:

---

REFERENCE 4

COMPANY:

CONTACT NAME/TITLE:

PHONE NUMBER:

EMAIL:

REFERENCE 5

COMPANY:

CONTACT NAME/TITLE:

PHONE NUMBER:

EMAIL: