

REQUEST FOR PROPOSAL #2019-051
Pouring Rights
RESPONSE ADDENDUM #05

DATE: May 1, 2019

CLARIFICATIONS AND REQUIREMENTS

1. **Deadline for Submission** is modified to **June 5, 2019 at 11:59 pm** to allow you time to consider the information provided to the final question response noted directly below and to address a clarification #3. Adjustments to oral presentations will be communicated once the venue is finalized.
2. All pricing, financial and non-financial incentives will be included in Appendix D, Rider A-1.
3. In addition to the review of RFP Appendix D and response to RFP Appendix E, the Respondent will provide any of the following contractual requirements for the University's review. These additions will be considered as part of the evaluation for RFP Section 2.1 for Appendix D and E.
 - a. Proposal for equipment management terms and conditions.
 - b. Standard Lease Terms and Conditions for equipment supplied by the Respondent.
 - c. Proposal for Beverage Signage Plan
4. Modification to Section 2.4 Award Protest to support procedural change. Award protests will be heard by Chief General Services Officer.

QUESTIONS

1. We would like to understand the extent of the marketing/associational rights being offered. For example, if the Bears were to make the Frozen Final Four, we would like to promote that accomplishment nationally. We can only do that if we agree on certain associational rights. Can you please detail what rights are being made available through this RFP?

ANSWER

RFP APPENDIX D ADDITIONS AND APPENDIX E REQUIREMENTS

The following terms and conditions will be incorporated into RFP Appendix D to support the University grants of marketing and association rights. Respondent will provide an acknowledgement and acceptance to these terms in their response to Appendix E and/or provide adjustment to language markups and additions. The Appendix E response will be considered as part of the evaluation for RFP Section 2.1 for Appendix D and E.

41. MARKETING AND ASSOCIATION RIGHTS

41.1 University Right of Prior Approval

- 41.1.1 **Approval Right.** University will have the right to approve in advance (i) the concept for any promotional activity with respect to University that will utilize the University Marks, and (ii) any materials created by Sponsor that incorporate any of the University Marks.
- 41.1.2 **Sponsor's Promotion Activities.** University will cooperate with Sponsor's activities, on and off-Campus, designed to promote Sponsor's sponsorship association with University, the Campus and the University Marks.
- 41.1.3 **Approval Guidelines.** University will not unreasonably withhold, condition or delay approval of such intended uses of the University's marks. University will have ten (10) business days from receipt to respond to any written submission by Sponsor. If University fails to respond within that time period, then the Sponsor will submit the concepts for advertisements and promotional activities to the University through its Licensing Coordinator for approval at the address set forth below. If University still does not respond within 48 hours of that notice, Sponsor is entitled to treat the submission as approved.

REQUEST FOR PROPOSAL #2019-051
Pouring Rights
RESPONSE ADDENDUM #05

If the University disapproves any concepts or materials submitted by Sponsor, the University shall provide Sponsor with written reasons as to why such concepts or materials were disapproved and how the concepts or materials can be altered to meet University's approval. Withholding approval is considered unreasonable unless it is based on:

- i. University's determination that University Marks have been used incorrectly in a technical sense (such as improper color or trademark nonconformity); or
- ii. University's reasonable determination that Sponsor's proposed promotional activity or use of University Marks will reflect negatively on University; or
- iii. University already has a sponsor for a particular channel.

41.2 Trademark Rights

- 41.2.1 License Grant. Subject to University's approval rights in Section 41.1, University grants Sponsor a license to use the University Marks – throughout the State of Maine on a royalty-free basis – for the purposes of promoting Company Beverages. The license gives Sponsor the right to use the University Marks in or on all of Sponsor's advertising, promotional and packaging materials and activities, which include: point-of-sale materials; cups, cup lids, vessels, cans, bottles, commemorative cans or bottles, can/bottle wraps and all other forms of primary and secondary packaging; broadcast, print, electronic and all other forms of media; and merchandise.
- 41.2.2 Customer Use. The license also gives Sponsor the right to use the University Marks in joint advertising and promotions with Sponsor's customers and to display the University Marks with its customers' trademarks, logos or branded products in or on all advertising, promotional and packaging materials and activities, so long as they appear with Sponsor's trademarks and the customer is not depicted as a sponsor of University (unless the customer is in fact a sponsor of the University). University acknowledges that Sponsor's customers operate in all channels of trade, including grocery stores, mass merchandise stores, convenience stores, oil and gas/petroleum stores, drug stores, quick serve restaurants and all other types of restaurants, institutional foodservice operations, video and music stores, movie theaters and indoor entertainment venues, and theme parks and outdoor attractions. Because they are included in the Sponsorship Fees, no separate royalty or license fee will be charged to Sponsor for its customers for using the University Marks in this manner.
- 41.2.3 Merchandise Use. Subject to University's approval rights in Section 41.1, Sponsor may create merchandise bearing trademarks of Company Beverages together with any of the University Marks. Sponsor will not pay any royalties to University for this merchandise, so long as it is distributed in connection with Company Beverages, free of charge or sold at a subsidized price (taking into account Sponsor's overhead costs associated with the relevant promotion). University agrees that royalties will not apply in any circumstances to any of the following that bear University marks; cups, vessels, cans, bottles, commemorative cans or bottles, can/bottle wrap[s] and all other forms of packaging, vendor fonts, and advertising or promotional materials.

41.3 Beverage Availability Rights

University grants Sponsor the following Beverage availability rights:

- 41.3.1 Beverage Rights. Except as provided in Section 46, only Company Beverages can be sold, dispensed, or served on Campus. All Company Beverages sold, dispensed, or served on Campus must be bought from Bottler, either directly or through Bottler as Company's agent. University will make Company Beverages available for sale on Campus in all packages forms, through fountain dispensing, hawking, vending or any other means agreed upon by Sponsor and University. University will use its reasonable, good faith efforts to maximize the sale and distribution of Company Beverages on Campus.

REQUEST FOR PROPOSAL #2019-051
Pouring Rights
RESPONSE ADDENDUM #05

- 41.3.2 Beverage Availability Guidelines. Sponsor shall have the obligation to make Beverages available for sale in amounts reasonably deemed necessary by University to serve University's needs. University agrees that, unless agreed to by Bottler, University shall purchase all Products from Bottler (either directly or through Bottler as Company's agent), provided that if Bottler is unable or fails to supply any Products which the University desires to purchase, than University may purchase such Products from another authorized Company distributor. If University cannot purchase such Products from Bottler or other reasonable sources due to unavailability, University may purchase Competitive Products during such time of unavailability. In such event, University shall not grant the manufacturer or distributor of such Competitive Products the right to advertise or promote the fact that such Competitive Products have been purchased by the University or are available on Campus.

41.4 Beverage Merchandise Rights

Sponsor has the right to merchandise Company Beverages on Campus, including the following specific rights:

- 41.4.1 Point-of-sale Materials. Company Marks will be prominently displayed on all menu boards and all dispensing equipment at all foodservice/concession locations, and on all Company Beverage vending machines on Campus. Point-of-sale materials depicting Company Beverages, including translates and pictorials on dispensing equipment, will be clearly visible to the purchasing public at all foodservice and concession locations on Campus.
- 41.4.2 Concession and Menu board Advertising. Trademarks of Company Beverages must be prominently displayed on the menu boards of all food and refreshment outlets except at athletic venues on campus. The Company at its cost and discretion, will make available to the University Sponsor's standard menu boards at certain locations on campus as mutually agreed between University and Company. Sponsor acknowledges that in the dining commons and other similar locations where the menu boards have been designed for aesthetic reasons, the trademarks for Company Beverages will be displayed at the University's reasonable discretion.
- If the University's menu boards have photo translates, University shall ensure that advertising provided by Sponsor and depicting Company Beverages appears in at least one translate in each menu board. University will supply the required electricity for all lighted concession and menu board advertising that advertise or promote Company Beverages. All signs and panels must be illuminated. At all reasonable times, the University will provide Sponsor access to its concession and menu board advertising to replace, remove, or modify it.
- 41.4.3 Approved Cups; Beverage Hawking. Except as permitted in Section 46 below, all Beverages served, sold, or dispensed in any manner on Campus must be provided in Approved Cups, in Company's packaging or in promotional containers designed or approved in writing by Company, if and to the extent provided by Sponsor at no cost to the University. During all University events at which any food or Beverage items are hawked in the stands, including, without limitation, home football and basketball games, Company Beverages will be hawked in the stands.
- 41.4.4 Alternative Distribution. University will sell Beverages using Company-trademarked materials, such as hawking trays, kiosks, themed mobile/push carts and themed umbrellas, if and to the extent provided by Sponsor.
- 41.4.5 Sports Drink Sidelines Rights. University will use cups, coolers and equipment featuring agreed to brand trademarks - as may be mutually agreed to by the parties - on sidelines

REQUEST FOR PROPOSAL #2019-051
Pouring Rights
RESPONSE ADDENDUM #05

and players' benches, and in locker rooms for all intercollegiate athletic events on Campus. Company may also make such Company Beverages available for consumption by players, coaches and staff on the sidelines, player's benches, and in locker rooms. Notwithstanding the foregoing, the University shall retain the right to approve the use of any other Company beverage on sidelines, players' benches and in locker rooms for all intercollegiate athletic events. Such items shall be provided by the Sponsor from time to time.

41.5 Sponsorship, Promotional and Advertising Rights

University grants Sponsor the following sponsorship, promotional and advertising rights:

- 41.5.1 Designations. Sponsor may promote the fact that Sponsor is a sponsor of the University and that Company Beverages are available on Campus. This promotion may occur in advertising (including television, radio, print and all other media), on packaging (including cups and containers), and at the point of sale of any Company Beverages, both on and off-Campus. For example, Sponsor may refer to itself in any of Sponsor's marketing, advertising or promotional materials as "sponsor" of the University, and refer to any Company Beverage in any of Sponsor's marketing, advertising or promotional materials as the "official" or "exclusive" Beverage of University or the Campus.
- 41.5.2 Promotional Rights. Subject to University's approval rights in Section 41.1, Sponsor will engage in promotional activities in order to establish and promote Sponsor's sponsorship association with University, the Campus and the University Marks. Subject to the limitations in Section 41(b), these promotional activities may be conducted jointly with Sponsor's customers.
- 41.5.3 Consumer Surveys. Upon mutual agreement of the parties, Sponsor will have the right to sample and survey persons on Campus regarding Company Beverages or for other Beverage-related purposes, including, without limitation, at University home athletic events, and to survey persons on Campus regarding Company Beverages.
- 41.5.4 Signage for Products. Sponsor is entitled to have signage on Campus for Company Beverages. Signage plan will be reviewed and agreed to in writing between Sponsor and University.

41.6 Permitted Right Exceptions

- 41.6.1 Product Exceptions. Exclusive Rights means that the successful vendor will have exclusive product presence unless a desired product or similar product is not available from the vendor. In that case, we reserve the right to source outside of the contract but will not exceed 20% of total beverage products offered. Examples might include popular trending beverages, locally produced beverage products or perhaps sustainable packaging alternatives. Exclusive rights shall not extend to fraternity or sorority housing, to performers appearing on campus or to intercollegiate athletic associations, such as, Learfield IMG College.
- 41.6.2 Beverage Exceptions. University may serve, sell or dispense read-to-drink hot and cold coffee, milk or hot tea in unsealed containers. Such coffee and tea Beverages may be made available in unbranded cups. University may sell, serve and dispense on campus packaged water bearing only University marks so long as such water is purchased exclusively from Sponsor.
- 41.6.3 Competitive Product Exceptions. University may sell, serve or dispense the following Competitive Products purchased from the Bottler in all packages and flavors available from Bottler: Sunkist, Canada Dry, Moxie, Yoo Hoo, and Orangina.
- 41.6.4 Package Exceptions. Additionally, University may continue to sell and/or dispense only the following beverages and packages purchased from someone other than Bottler, and only in the University's retail convenience stores on Campus;

REQUEST FOR PROPOSAL #2019-051
Pouring Rights
RESPONSE ADDENDUM #05

- i. Water in one (1) gallon jugs;
- ii. 100% juices in two (2) liter sealed containers; and
- iii. Juice concentrate in 11.5 oz sealed containers.

41.6.5 Third Party Exceptions. The provisions of this Agreement shall not apply to products and services provided to third party paid performers having no affiliation with the University, who perform at the Collins Center for the Arts and other performance venues on University campuses and with intercollegiate athletic associations, such as, Learfield IMG College.

41.6.6 Competitor Products Display Guidelines. University may display trademarks for the Competitor Products listed above on menu boards, dispensing equipment and coolers to indicate availability. But those Competitive Products must not otherwise be marketed, advertised, promoted or sampled on Campus or in association with University, the Campus or the University Marks.

41.7 Beverage Signage Plan

Sponsor is entitled to have signage on Campus for Company Beverages. Signage plan will be reviewed and agreed to in writing between Sponsor and University, see Master Agreement Exhibit A for agreed Signage Plan.