NEW ‘CONTRACT”
Campus-wide Vending Machine Services

Between

Fashion Institute of Technology

AND

Company to be Named
CONTRACT

THIS CONTRACT (the ‘Agreement’) is made on ________________, 2018 by and between the Fashion Institute of Technology (“College”), a community college in the program of the State University of New York, located at 227 West 27 Street, New York City 10001 and ____________ (the “Contractor”).

WITNESSETH:

WHEREAS, College issued a Request for Proposals (“RFP”) for management and operation of certain vending machine services on the College campus and related activities, as further described in Section 5 of this Contract (“Campus-wide Vending Machine Services”);

WHEREAS, Contractor submitted a Proposal in response to the RFP and College selected Contractor’s Proposal; and

WHEREAS, the parties desire to enter into an agreement with respect to the performance of Campus-wide Vending Machine Services;

NOW THEREFORE, this Contract is entered into upon the following terms and conditions:

Section 1 - DEFINITIONS

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

1.1 “City” means New York City.

1.2 “Days” means calendar days unless otherwise specified.

1.3 “Law” means any law, statute, rule, regulation, ordinance and other pronouncement (including common law).

1.4 “Person” means any natural person, Contractor, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust or association.

1.5 “Proposal” means information, documents and samples provided by Contractor pursuant to the RFP.

1.6 “Staff” means a Person or Persons furnished by Contractor to perform the work of this Contract. Staff include Contractor’s employees, partners, agents and representatives, as well as Persons engaged by Contractor as consultants, coordinators, independent contractors, subcontractors, franchisees or in any other capacity.
1.7 “State” means New York State.

1.8 “Vending Locations” means the Vending Operations locations listed on Appendix A.

Section 2 - GRANT OF LICENSE

2.1 Rights. Subject to the terms and conditions herein, College hereby grants to Contractor, and Contractor accepts from College, an exclusive license to manage and provide Campus-wide Vending Machine Services at the College during the term of this Contract for the sole purpose of providing vended snacks and beverages to the College community and visitors to the College campus.

2.2 Exclusions and Exceptions. Notwithstanding anything to the contrary in Section 2.1, Contractor’s rights under this Contract do not include:

2.2.1 the right to sell vended snack or beverages in any location not part of Vending Locations.

2.3 Pouring Rights Contract. The College is a party to an agreement with Pepsi-Cola Bottling Company of New York that governs the brands of non-alcoholic beverages sold at the College. The terms of this “pouring rights” contract take precedence over any conflicting terms in this Contract. Contractor must use only those products permitted by the pouring rights contract, or any successor to it, when providing Campus-wide Vending Machine Services.

Section 3 - TERM

3.1 The term of this Contract is eight years beginning on January 1, 2019 and ending on December 31, 2026, unless terminated in accordance with the provisions of Sections 15 and 16.

3.2 College has one (1), two-year renewal option. College will exercise the option if it is in its best interest. If College elects to renew this Contract, it will send written notice to Contractor not less than 90 Days prior to the expiration date of this Contract or such renewal term. Failure to notify Contractor within this time period will not constitute a waiver of College’s option to renew. The renewal will be on the same terms and conditions as stated in this Contract unless the parties enter into a written agreement specifically stating otherwise.

3.3 If Contractor provides performance security in the form of a performance bond (see Section 4.2.2), Contractor shall provide a new bond for each renewal term, if any, no later than thirty (30) Days before commencement of the renewal term.
3.4 At College’s written request, Contractor must continue to provide Campus-wide Vending Machine Services for a period of no more than six months beyond the termination of this Contract or any renewal term thereof on the same terms and conditions as stated in this Contract.

Section 4 – PERFORMANCE SECURITY

4.1 At the time of signing this Contract, Contractor must deposit with College a certified check in the sum of $______, equal to 1/6 of the guaranteed minimum proposed, to be held by College, without liability for College to pay interest on it, as security for the full, faithful and prompt performance of the terms and conditions of this Contract.

4.2 In lieu of delivering cash as a security, Contractor may deliver one of the following to College:

4.2.1 an unconditional, irrevocable and transferable performance letter of credit issued for the account of College by a New York Clearing House Association member bank acceptable to College, in form and content satisfactory to College. The term of the letter of credit, as it may be extended, must not expire prior to the date that is 60 Days after the expiration of this Contract or renewal of it.

4.2.2 a Performance Bond in the form of Appendix B issued by a New York admitted carrier in the sum of $______, equal to one-half of the guaranteed minimum proposed, which bond will guarantee faithful performance of the terms and conditions of this Contract or any renewal of it.

4.3 In the event that Contractor defaults in respect to a material term or condition of this Contract, College reserves the right to use, apply or retain the whole or any part of the security described in Sections 4.1 and 4.2 to the extent required for any sum to which Contractor is in default or for any sum which College may expend or may be required to expend by reason of Contractor’s default. In the event that Contractor fully and faithfully complies with the terms and conditions of this Contract, any security deposit will be returned to Contractor after the expiration or termination of this Contract.

Section 5- SCOPE OF SERVICES

5.1 Schedule. Contractor must provide Campus-wide Vending Machine Services at no cost to College on a year-round basis, twenty-four hours a day, seven days a week.

5.2 Staff. Contractor must maintain at all times a minimum of one experienced and qualified Staff to ensure efficient, hygienic and orderly performance of the Campus-wide Vending Machine Services. Contractor’s Staff must maintain
proper standards of courtesy, service and professionalism in dealings with the College community.

5.2.1 Contractor must promptly remove and replace any Staff member that College, in its sole judgment, deems to be unsatisfactory, subject to compliance with applicable legal or College policy requirements and any collective bargaining agreements to which Contractor may be a party.

5.2.2 Contractor must designate an experienced and capable individual to be on-site manager of Campus-wide Vending Machines Services ("Manager").

(A) The Manager will be responsible at all times for implementation of this Contract and must have the authority to resolve problems with regard to quality, staff/customer relations, administrative issues and the like.

(B) The Manager must have completed all appropriate and required training per New York State and New York City requirements.

(C) The Manager serves subject to approval by College, and College reserves the right to interview any person whom Contractor proposes as Manager. In the absence of the Manager, Contractor must designate an alternate Manager under the same terms and conditions. The intent of this provision is to give College 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 College from discussing matters relating to this Contract with any other of Contractor’s Staff.

(D) The Manager must be available to College and College during all Campus-wide Vending Machine Services hours. Contractor must provide College with the Manager’s office telephone, facsimile, and cell-phone numbers and e-mail address. Contractor must keep this information current at all times. The Manager must be accessible by telephone to the College’s liaison for Campus-wide Vending Machine Services or designee within 30 minutes of attempted contact during hours when the College is open.

5.2.3 Contractor’s Staff must observe College rules, regulations and policies, as well as all applicable provisions of this Contract. Failure to do so is grounds for College to require temporary or permanent removal of a Staff member from the College campus. Nothing in this Contract will be deemed to relieve Contractor from liability for any deficiencies in performance by Contractor’s Staff.
5.2.4 Contractor’s Staff must wear neat, clean and attractive uniforms appropriate to their positions while on duty at the College campus. Contractor is responsible for all costs attendant to providing, cleaning and replacing such uniforms. Contractor’s Staff must wear visible nametags at all times during scheduled shifts.

5.2.5 Contractor shall comply with its own pre-employment background check policy, including ensuring that pre-employment screening and/or employment background checks are conducted on all Contractor’s staff who are expected to come onto the College’s campus. Contractor will comply with their policy in determining whether an individual may be placed on the College’s campus. Contractor must inform College should it obtain adverse information from its own pre-employment background check policy regarding a member of Contractor’s Staff. Notwithstanding the foregoing, Contractor shall ensure that its own pre-employment screening and/or employment background check is no less thorough or comprehensive than the pre-employment screening and/or employment background checks that College conducts on its own staff. Contractor agrees that to the extent permitted by law, Contractor will defend, indemnify and hold harmless College, City and the State, and each trustee, director, officer, employee, agent, successor and assign of any or all of them, from any and all claims, demands, liabilities, expenses, losses of every nature and kind, including but not limited to reasonable outside attorney’s fees and costs, as a result of a hiring by Contractor during the term of this Contract.

5.3 Pricing.

5.3.1 Maximum prices and portion sizes for the first seven months of the Contract are set forth in Appendix C. These prices and sizes shall also serve as a maximum price guide for other items not listed.

5.3.2 Vendor will guarantee the prices for first seven months upon signing of the contract. Contractor may not change prices or portion sizes without the prior written consent of College. Contractor must submit requests for price increases along with justification to the College six weeks in advance for review. College will not be unreasonable in withholding approval of a change, subject to Contractor’s presentation of documentation satisfactory to College supporting the request, such as a competitive analysis of prices or portions in comparable operations in like institutions or reference to the Consumer Price Index, New York metro area, not seasonally adjusted, for food and beverages. Any approved increase must be put into effect during the period between the College’s last summer session and the beginning of the fall semester.

5.3.3 Contractor and College will jointly determine prices and portion sizes for new items at the time of the introduction of such new items.
5.4 Number.

5.4.1 Contractor must provide no less than 20 snack vending machines and 22 beverage vending machines (collectively, the "Machines") at the Vending Locations listed on Appendix A.

5.4.2 Contractor must not add to, nor delete from, the number of Machines without the prior written approval of College.

5.4.3 In the event that the parties agree to Contractor's installation of one or more Machines that vend pizza, hot dogs, burritos and/or other similar hot or cold fresh foods, Contractor shall also supply convenient, easy-to-clean condiment and utensil stands, as approved by Contractor. Contractor and College, and microwave ovens, for customer use at locations to be mutually agreed upon by the parties.

5.5 Installation.

5.5.1 Contractor must coordinate the installation of the Machines with the removal of equipment by the outgoing contractor to ensure a minimum period of time without service.

5.5.2 Contractor reserves the right to inspect and approve all Machines prior to installation at the College.

5.5.3 Unless otherwise agreed by the parties, Contractor must deliver and install the Machines within 30 Days following the effective date of this Contract.

5.5.4 At the reasonable request of College and at no expense to either of them, Contractor must move a Machine or Machines within forty-eight (48) hours of such request.

5.5.5 Any installation of new Machines or relocation of existing Machines must be approved by the Director of Contracted Services.

5.6 Quality. The general Machine specifications included in Section 5.7 below are minima. Nothing in this Contract will be deemed a bar to Contractor's provision of Machines or Campus-wide Vending Machine Services of a higher quality.

5.7 General Machine Specifications.

5.7.1 At the time of installation, each Machine must be factory new, heavy duty commercial and among the latest models available. Notwithstanding the foregoing and subject to Pepsi's approval, Contractor may use beverage Machines installed on campus by Pepsi within the past two years so long as they otherwise meet the requirements of these Specifications.
5.7.2 Each snack Machine must be a Merchant Media machine manufactured by Crane Merchandising Systems, or approved equal, with an interactive touch-screen display that can show product promotions and nutritional information.

5.7.3 Each Machine must be installed with a non-resettable counter that correctly identifies the number of products dispensed and the amount of revenue received.

5.7.4 Each Machine must accept coins, dollar bills, and credit, debit and smart cards, and make change. Coin and bill acceptors and changers must be Mars Electronics/MEI, Coinco® or approved equal.

5.7.5 Each Machine must accept College’s campus card, if required. Contractor shall provide at its own expense, compatible equipment to integrate the College’s campus card system. Such equipment shall include but not limited to hardware, software, card readers, cabling and networking components. Additionally, the Contractor shall pay all applicable implementation costs, ongoing licensing fees, and transaction processing fees as determined by College.

5.7.6 When three or more Machines are placed together in one location, Machines must be compatible in terms of décor and consistent with the College’s branding. Machines must be the same height to give uniformity of appearance, except as otherwise mutually agreed by College and Contractor.

5.7.7 Each Machine must be user-friendly and EnergyStar qualified.

5.7.8 Each Machine must be marked with a prominent decal, sticker or other signage identifying the Machine by number and giving the name and address of Contractor and a toll-free service and/or text number and complaint number(s).

5.8 Products.

5.8.1 Contractor has the right of refusal regarding all products sold in the Machines. In the event that the College makes a determination that a particular product should not be sold or otherwise made available at the College, College shall advise Contractor and Contractor shall not stock such product in the Machines.

5.8.2 Beverage Machines must vend a variety of refrigerated soft drinks, real fruit beverages and water in cans and bottles or hot beverages in cups.
5.8.3 Snack Machines must vend a variety of candy, gum, bagged snacks, cookies and crackers that do not require refrigeration.

5.8.4 Subject to College’s approval, Contractor may provide Machines selling products in addition to those described in Sections 5.8.2 and 5.8.3.

5.8.5 Each product furnished must be a recognized name brand approved by College. If College is party to a “pouring rights” contract (see Section 2.3) during the term of this Contract or any renewals of it, Contractor must stock Machines with beverages permitted under that contract.

5.8.6 Contractor must supply high quality, fresh merchandise. All products must comply with all applicable USDA and FDA regulations and standards. Products must be replaced with fresh product on or before the freshness expiration date stamped on the package.

5.8.7 All product containers must comply with applicable labeling Laws.

5.9 **Ownership.** All Machines, together with the contents thereof will be the property of Contractor except that beverage Machines will be the property of Pepsi or its successor to the pouring rights agreement.

5.10 **Stocking.**

5.10.1 Contractor must keep Machines and condiment and utensil stands (see Section 5.4.3) well stocked and keep Machines and any microwave ovens fully operational at all times.

5.10.2 Time and routing of all deliveries must be coordinated with College so as not to interfere with normal College operations.

5.11 **Service.**

5.11.1 Contractor must, at its own expense, ensure that the Machines are maintained in good working order and that repairs are promptly made.

5.11.2 Contractor must establish and abide by a preventative maintenance program for all Machines consistent with best practices in the vending machine industry.

5.11.3 Contractor must maintain a 24-hour service hot-line, Monday through Friday, for College staff use.

5.11.4 Contractor must ensure that service personnel arrive to service Machines within four hours of placement of a service call. Contractor must maintain a log of all service calls received and the disposition of each. This log
must be available for College’s review.

5.11.5 Contractor must replace any Machine that:

(A) cannot be returned to full service within 72 hours of the College’s first service call;

(B) has frequently recurring maintenance and/or mechanical problems;
(For purposes of this Section "frequently recurring" means prompting six or more service calls within 30 Days.)

Any replacement Machine must be of equal or superior quality to the Machine originally installed.

5.11.6 Contractor must keep all Machines clean, sanitary and visually appealing by cleaning exterior surfaces at least once per week. Contractor must promptly remove any refuse caused by the stocking and/or maintenance of the Machines, and in the circumstances of Contractor’s failure to do so, Contractor agrees to pay College all costs for such removal. College will provide for normal custodial service around the Machines, however Contractor is responsible for areas in, under and behind all Machines. Contractor’s route personnel must clean floor spillage that occurs in the process of filling or cleaning Machines.

5.11.7 If and when a snack or beverage Machine is replaced or removed, the Contractor must notify the College and receive written approval prior to removal. The final meter reading for the replaced or removed vending machine must be recorded and shared with the College.

5.11.8 This Section 5.11 shall apply to any microwave ovens supplied pursuant to Section 5.4.3 above as though such ovens were Machines.

5.12 Collection of Monies; Refunds

5.12.1 Contractor must take meter readings and collect money from each Machine at least twice a week when classes are in session, and once a week during class breaks. Meter readings and money collection must take place during normal business hours, 9:00 am to 5:00 pm, Monday through Friday. College reserves the right to have a representative present during meter readings and collections.

5.12.2 Contractor must conspicuously display its refund policy at each vending location, including a toll-free number and/or text number to request a refund. Contractor’s refund policy is subject to College’s continuing approval. Refunds must be deducted from the appropriate gross sales item category, prior to the computation of sales tax and commissions due
College. The total amount of refunds must be shown on the monthly financial report to College.

5.12A Advertising. In the event that the parties mutually agree to the electronic display of advertising on Machines, the following terms shall apply:

5.12A.1 Machines displaying advertising shall be Merchant Media Snack or VE Connect Digital Machines that have touch-screens, or approved equal, to be provided by Contractor.

5.12A.2 College shall have the right to solicit private advertising for the Machines and/or to advertise College-related programs, news and events. College shall retain all net revenue generated by any private advertising sold by College. Contractor shall cooperate with College regarding display of advertising on the Machines.

5.12A.3 Contractor may also solicit private advertising for the Machines. Such advertising shall not supersede any advertising sold or displayed pursuant to Section 5.12A.2 above. College and Contractor shall mutually agree upon the frequency of display on any given Machine of any such advertising. College shall retain ____% revenue generated by any private advertising sold by Contractor.

5.12A.4 All advertising is subject to the approval of College. Without exception, the Machines shall not display advertisements for the following: cigarettes and tobacco-related products, alcoholic beverages, political affiliation, illegal activities, credit cards, health insurance, goods or services that violate any College policy or procedure, or other goods or services deemed by the College, in its sole and absolute discretion, to be incompatible with its mission.

5.13 Meetings. Contractor and representatives of College will meet from time to time to discuss administration of this Contract, evaluation of Campus-wide Vending Machine Services and such other matters as may arise. See also Section 6.8.

Section 6 - COMMISSIONS, PAYMENT AND ACCOUNTING MATTERS

6.1 Commissions and Other Support. In consideration of the rights granted to Contractor by College under this Contract, Contractor agrees to make the following payments to College:

6.1.1 One-time sign-on bonus of $_____ to be paid on the commencement date of this Contract; and

6.1.2 ____% of Annual Gross Sales or a guaranteed minimum annual payment to Contractor, regardless of Gross Sales in the amount of $______, whichever is greater.
Contractor will also provide the following additional support to College:

6.1.3 ___% of net advertising revenue generated pursuant to Section 5.12A;

6.1.4 An annual donation of $_____ for use as student scholarships;

6.1.5 An annual donation of $_____ to be made to the Fashion Institute of Technology Foundation; and

6.1.6 An annual donation of $______ in beverages & snacks to be used by the Fashion Institute of Technology’s athletics program.

6.2 Gross Sales. “Gross Sales” means aggregate revenues from Campus-wide Vending Machine Services, excluding the following: (A) sales, use or excise taxes imposed and collected by Contractor directly from customers and paid over to any governmental agency; and (B) refunds.

Note that Contractor shall only impose and collect sales tax on sales of items not exempt from New York State sales tax, as further described in Tax Bulletin ST-280, a copy of which is attached as Appendix D.

6.3 Monthly Payments and Reports. Except as set forth in Section 6.3.2 below, Contractor must submit commissions and other payments due to College on a monthly basis within 30 Days of the month’s end. Payments must be made by check payable to College or electronic funds transfer to:

6.3.1 Monthly Management Report. Payments must be sent to the Fashion Institute of Technology 227 West 27 Street, New York, NY 10001 attention: Anthony Lugo, Room 15-25 and accompanied by a monthly management report signed by the controller or comparable officer of the Contractor and showing the following for each Machines:

- Machine number
- Counter reading (beginning and ending)
- Gross receipts as determined by counter
- Actual cash taken from Machine
- Sales tax and refund deductions
- Net receipts applicable to commission
- Commissions paid to College by month and YTD, and
- Such other information as may be reasonably requested by College.

The monthly management report must also show monthly case counts for cold and hold beverages.
College reserves the right to view daily, weekly, and/or monthly Machines sales and service information remotely using Contractor’s revenue and inventory software. Contractor shall keep such software updated and operational.

6.4 **Year-End Reconciliation.** One year from the effective date of this Contract, and each full year thereafter during the life of this Contract, Contractor must pay College that portion of commissions as may as yet be due so as to equal the commission percentages required by this Contract. Payment must be made by the 30th Day of the first month of the following Contract year and recorded as commissions paid in the year due. On expiration or termination of this Contract, commissions due, if any, must be calculated and paid based on that portion of a full year for which Campus-wide Vending Machine Services were provided.

6.5 **Late Payments.** Delinquent 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.

6.6 **Records.** Contractor must maintain complete, accurate and separate books of account together with appropriate, detailed, supporting data and documents (including records of meter readings), in accordance with generally accepted accounting principles, for all transactions relating to the Campus-wide Vending Machine Services (the “Records”). Such Records must be held in compliance with Section 6 of the Standard Contract Clauses attached to this Contract as Appendix E.

6.7 **Inspection.** College or its auditors may inspect and review Records, and may require Contractor to furnish such other financial information related to Campus-wide Vending Machine Services, as College deems appropriate. In the event of any question as to the dollar amounts due College or Contractor, the decision of College’s auditors will be final and binding upon both parties to this Contract.

6.8 **Meetings.** College and Contractor will meet at least quarterly to review monthly reports, explain deficiencies, discuss problems and mutually agree on courses of action to improve the results of Campus-wide Vending Machine Services. Any adjustments to a monthly report required as a result of review and/or audit will be identified and reflected on the next monthly statement.

6.9 **Annual Audit.** Contractor must furnish to College as soon as available, and in any event within 90 Days after the end of each fiscal year of Contractor, audited financial statements of Contractor as of the end of such fiscal year prepared by an independent certified public accountant. These financial statements must include a record of all sales and commissions from Campus-wide Vending Machine Services.

**Section 7- UTILITIES**
7.1 College will furnish at no cost to Contractor cold water and electricity (the “Utilities”) necessary for the efficient performance of Campus-wide Vending Machine Services, except that:

7.1.1 Contractor will be responsible for any costs that result from changes in existing electrical service, plumbing service, ventilation, lighting, etc. required by Contractor to perform this Contract.

7.1.2 College does not guarantee an uninterrupted supply of the Utilities, and will not be liable for any damages or compensation should the provision of Utilities be interrupted.

7.2 Contractor must use best efforts to comply with energy conservation measures, including operating Machines in low-power mode, when a Vending Locations is not in use or when business volume dictates a reduction in the use of Utilities.

Section 8- SECURITY AND RISK OF LOSS

8.1 Contractor is responsible for any keys obtained from College and the security of those areas for which and when they are used by Contractor’s Staff, and for the cost of replacement of lost keys. If the College determines that keys lost by Contractor or its Staff could compromise campus security, Contractor will be responsible for all costs associated with re-keying the affected locations.

8.2 Contractor must immediately report to the College all thefts, break-ins and other law enforcement and security matters, as well as accidents involving its Staff or customers.

8.3 Contractor bears the risk of loss or damage to Campus-wide Vending Machine Services inventory, whether in transit, in a Machine or in storage. Contractor also bears the risk of loss for monies collected pursuant to Vending Machine Services. Losses or shortages of cash will not diminish monthly payment of commissions.

8.4 Contractor bears the risk of loss or damage to the Machines. The College is not responsible for any losses Contractor may incur due to damage to a Machine arising from any cause. The College assumes no responsibility for the protection of Machines against loss arising from vandalism, theft, fire, water or other causes.

8.5 Contractor bears the risk of loss or damage to College property resulting from Campus-wide Vending Machine Services except if College makes a determination that the loss or damage was due to causes beyond Contractor’s control or to robbery, fire, bombs, or similar causes or acts of third persons not employees or invitees of Contractor and provided that the foregoing causes or acts were not directed at Contractor. Except in the case of such excused loss or damage, Contractor must reimburse College at College’s cost for the repair or
replacement of such College property. College will give Contractor written notice of amounts to be reimbursed. Contractor must reimburse College within sixty (60) Days of the date of said written notice.

Section 9 - INSURANCE

9.1 Contractor must procure and maintain at its own cost throughout the term of this Contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with performance of the Campus-wide Vending Machine Services by Contractor or its Staff. Contractor must provide minimum insurance coverage as follows (the “Required Insurance”):

**Workers’ Compensation and Employers Liability**

As required by New York State Law.

**Commercial General Liability (ISO Form CG0001)**

- $2,000,000 general aggregate
- $1,000,000 per occurrence
- $1,000,000 personal injury/advertising injury
- $2,000,000 products/completed operations aggregate
- $10,000 per person medical payments

**Business Automobile Liability Insurance (ISO Form CA0001)**

- $1,000,000 combined single limit per accident for bodily injury and property damage, and covering all owned, non-owned or hired vehicles used by Contractor in connection with the Campus-wide Vending Machine Services.

**Umbrella/excess liability insurance with limits of:**

- $2,000,000 per occurrence
- $2,000,000 general aggregate

**Errors and omissions professional liability coverage with limits of:**

- $1,000,000 per occurrence
- $3,000,000 general aggregate

9.2 Each Required Insurance policy must specifically include liability assumed by Contractor under this Contract.

9.3 Each Required Insurance policy must be underwritten by a licensed insurance company authorized to do business in the State of New York and with a minimum of an “A-7” rating in the current edition of A.M. Best’s Insurance Guide.

9.4 Each Required Insurance policy must be endorsed to state that coverage may
not be suspended, voided, canceled, reduced in coverage or limits except after no less than 30 Days prior written notice has been given to College, nor may any Required Insurance policy be suspended, voided, canceled, reduced in coverage or limits by Contractor without the prior consent of College. Notice pursuant to this Section must be sent by certified mail or overnight courier and addressed to College at the address listed at the beginning of this Contract, with a copy to the Fashion Institute of Technology's, Purchasing Department Office, 227 West 27 Street, New York, NY 10001. No cancellation provision in any Required Insurance policy may be construed in derogation of the continuous duty of Contractor to furnish insurance during the term of this Contract.

9.5 Each Required Insurance policy (except Workers’ Compensation and Employers Liability) must be endorsed to include the Fashion Institute of Technology, its auxiliary Contractors, The State University of New York, the New York City Department of Education and the City and State of New York shall be named as Additional Insured’s. The Required Insurance must apply separately to each Additional Insured against whom a claim is made or suit is brought, subject to each policy's limit of liability. Additional Insureds must be covered as respects: (i) liability arising out of activities performed by or on behalf of Contractor, (ii) products and completed operations of Contractor, (iii) premises owned, leased or used by Contractor, and (iv) automobiles owned, leased, hired or borrowed by Contractor.

9.6 All deductibles or self-insured retentions must be declared to and approved by College.

9.7 The Commercial General Liability policy must not contain any exclusions or endorsements that are not acceptable to College.

9.8 Contractor must ensure that each Required Insurance policy (except Workers’ Compensation and Employers Liability) includes a waiver of all rights of subrogation against the Additional Insureds for losses arising from Campus-wide Vending Machine Services.

9.9 Contractor must furnish certificates to College evidencing all Required Insurance and endorsements naming the Additional Insureds, before commencing Campus-wide Vending Machine Services. Contractor must supply certified complete copies of Required Insurance policies to College at College’s request.

9.10 Contractor is solely responsible for payment of all premiums for the Required Insurance, and is solely responsible for payment of any deductibles to which such policies are subject.

9.11 Contractor must promptly notify College of any accidents arising in the course of performance of Campus-wide Vending Machine Services causing bodily injury or property damage.
9.12 Notwithstanding the limits of Required Insurance, Contractor is liable for any and all personal injury (including death) or property damage caused by the negligence of Contractor, its directors, officers or Staff.

9.13 Contractor must ensure that its subcontractors and agents comply with this Section. Contractor must include all subcontractors and agents as insureds under the Required Insurance policies, or furnish separate certificates for such subcontractors and agents indicating compliance with the Required Insurance.

9.14 Failure on the part of Contractor to procure or maintain Required Insurance constitutes a material breach of this Contract. Upon such breach, College may immediately terminate this Contract, or, in its sole discretion, procure or renew such insurance, and pay any and all premiums in connection therewith. College may charge the costs thereof to money due or that may become due to Contractor, or if there is no money due, Contractor agrees to promptly pay College such costs.

Section 10 – INFORMATION SECURITY

10.1 With regards to information security, Contractor agrees to the following:

(A) Contractor shall comply with all relevant data governance standards including, but not limited to, PCI, HIPAA and The Family Educational Rights and Privacy Act as discussed in Section 20.

(B) Contractor shall protect College data consistent with prevailing industry standards, but no less rigorously than protect its own data.

(C) Contractor shall allow College to review its third party information technology security policies.

(D) Contractor shall allow College to review public security assertions such as SOC, if applicable.

(E) Upon termination, cancellation, expiration or other conclusion of the Contract, Contractor shall return all data to College, or if return is not feasible, destroy any and all data. If the Contractor destroys the information, the Contractor shall provide College with a certificate confirmation the date of destruction of the data.

(F) Contractors shall limit its staff’s access to the College’s data on a need-to-know basis.

(G) Contractor shall require background checks for all Contractor’s staff who have access to College’s data.
(H) Contractor shall quickly remove access to College’s systems any staff who leaves Contractor’s employment.

(I) Contractor shall keep the server that is attached to the College network patched and current with Anti-virus software.

(J) Contractor must log its access to College data.

(K) Contractor shall reimburse College for any hardware or software that College needs to purchase in order to make Contractor’s product or service work with College’s system.

(L) Contractor shall hold its subcontractors to requirements of this Section 10.1.

10.2 If Contractor provides third parties with access to the College’s systems:

(A) Contractor shall require a unique ID for each third party who accesses the College’s data.

(B) Contractor shall require that the third party use unique and strong passwords.

(C) Contractor shall require that third party have a two factor authentication process.

10.3 Contractor agrees to defend, indemnify and hold harmless College, City and the State, and each trustee, director, officer, employee, agent, successor and assign of any or all of them, from any and all claims, demands, liabilities, expenses, losses of every nature and kind, including but not limited to reasonable outside attorney’s fees and costs, as a result of any and all claims related to unauthorized access or use of the College’s systems or data due to Contractor’s negligence or failure to meet its obligations under this Section 10.

Section 11 - ASSUMPTION OF RISK AND INDEMNIFICATION; WAIVER

11.1 Contractor is solely responsible for any and all injuries to persons (including death), damage to property, and loss, expense, inconvenience and delay, arising out of or in connection with the performance of Campus-wide Vending Machine Services, or from any act, omission or neglect of Contractor, Contractor’s directors, officers or Staff.

11.2 Contractor agrees to indemnify, defend and hold harmless the Fashion Institute of Technology, its auxiliary Contractors, The State University of New York, the New York City Department of Education and the City and State of New York from
any and all actions, claims, demands, damages, fines, losses, liabilities, judgments, liens, and expenses of any kind (including, without limitation, court costs, attorneys' fees and related disbursements), arising out of or in connection with (i) the breach by Contractor of any of its agreements or covenants under this Contract, (ii) the untruth of any of Contractor's representations and warranties under this Contract, (iii) the actual or alleged infringement or violation of any patent, copyright, trademark, service mark, trade secret, or proprietary right, (iv) bodily injury sustained by any employee of Contractor or of Contractor's subcontractor, franchisee or agent arising out of and in the course of employment by Contractor or by Contractor's subcontractor, franchisee or agent, (v) the performance of Vending Operations by Contractor and Contractor's Staff, or (vi) any claim by the Internal Revenue Service that monies, services or other support received by Contractor pursuant to this Contract constitute taxable unrelated business income.

11.3 Contractor hereby releases the Fashion Institute of Technology, its auxiliary Contractors, The State University of New York, the New York City Department of Education and the City and State of New York from any and all liability hereunder.

11.4 The provisions of this Section will survive the expiration of this Contract.

Section 12 - CONTRACTOR'S INDEPENDENT STATUS

12.1 The status of Contractor is that of an independent entity. Nothing contained in this Contract, nor any act of the parties, will be construed as creating a partnership, joint venture, agency or association of any kind, between College and Contractor, nor as making College in any way responsible for the debts or losses of Contractor.

12.2 All personnel furnished by Contractor as required under this Contract are Staff of Contractor, and not of College, SUNY, City or State, nor of any affiliated entity, agency, department, board, authority or instrumentality of any of them and Contractor alone is responsible for their work, their personal conduct while performing this Contract and their direction and compensation. Nothing included in this Contract imposes any liability or duty upon the Fashion Institute of Technology, SUNY, City or State to Contractor's Staff, nor makes College, SUNY, City or State liable to any other Person or government for the acts, omissions, liabilities, debts, liens, obligations or taxes of whatever nature, including but not limited to unemployment insurance and Social Security taxes, of Contractor or Contractor's Staff.

12.3 Contractor acknowledges that for the purposes of the Immigration Reform and Control Act of 1986 (the "Act"), Contractor is an "independent contractor" as defined in the Act and its regulations, and that College is not an "employer" under the terms of the Act and its regulations with regard to Campus-wide Vending
Machine Services. As a result, the responsibility of complying with the provisions of the Act lie solely with Contractor.

12.3.1 Contractor expressly represents that it is aware of the requirements of the Act with regard to the employer’s responsibility for ensuring compliance with the Act and its regulations, and for maintaining the proper forms showing that the verification process was completed.

12.3.2 Contractor expressly represents to College Contractor’s intention to abide by the provisions of the Act.

12.3.3 At College’s request, Contractor shall produce for inspection its records evidencing Contractor’s compliance with the Act.

12.3.4 Contractor agrees that to the extent permitted by Law, Contractor will defend, indemnify and hold harmless College, SUNY, City and the State, and each trustee, director, officer, employee, agent, successor and assign of any or all of them, for any penalty which may be applied to any one or all of them as the result of the hiring by Contractor of an unauthorized alien during the term of this Contract.

12.4 Contractor will permit no liens whatsoever to be placed against the property of College and, should such liens attach, Contractor will take all steps necessary to accomplish the prompt removal of them.

Section 13 - USE OF NAME; ADVERTISING

13.1 Contractor may not use the name, or any logo, mascot, seal, trademark, trade name or other proprietary mark of College, SUNY or any constituent college of SUNY, for brand or product endorsement. Any other use is subject to College’s prior written approval.

13.2 Contractor may not post any signs or posters on, or visible from, the exterior or in common areas of College buildings or grounds, or distribute any fliers or brochures outside the Vending Locations, without advance approval of the College. The replacement, maintenance, safety, and removal of such materials are Contractor’s responsibility.

13.3 In all purchase orders, and in commitments to vendors, suppliers, building contractors, in banking and in similar relations of Contractor in connection with the Campus-wide Vending Machine Services, Contractor must use its full corporate name and address, in prominent association with any College address, in order to make it clear that any undertaking is Contractor’s and not that of College or SUNY.

13.4 Contractor must make prompt and timely payments to its franchisors, suppliers and subcontractors.
13.5 Contractor must obtain the prior written approval of College before Contractor or any of its officers, Staff, or agents makes any statement to the press or issues any communication or publication bearing on the Campus-wide Vending Machine Services.

Section 14 - CONTRACTOR’S ADDITIONAL RIGHTS

14.1 College has the right to establish rules, regulations and policies regarding the use of Vending Locations.

14.2 At the time College exercises any Contract renewal or extension, College reserves the right to require that Contractor replace some or all Machines with unused factory new current production models at Contractor’s expense.

Section 15 - TERMINATION

15.1 Termination for Cause. This Contract may be terminated for cause by College on immediate notice to Contractor as follows:

15.1.1 if Contractor fails to make any payment due under this Contract, and this default remains unremedied for a period of ten Days after notice or demand from College to Contractor and its surety (if there is a performance bond);

15.1.2 if Contractor defaults in the performance or observation of any material term or condition of this Contract (other than a default as described in subsection 15.1.1), or persistently or repeatedly defaults in the performance or observance of any other term or condition of this Contract, and in each case such default remains unremedied for a period of 15 Days after notice from College to Contractor and its surety (if there is a performance bond), or in the case of a default which cannot reasonably be remedied within such period, the Contractor fails to immediately and diligently carry out steps to remedy such default in accordance with instructions of College; or

15.1.3 if Contractor becomes insolvent or otherwise discontinues business.

15.2 Other Termination.

15.2.1 College may terminate this Contract in its best interests upon 90 Days’ written notice to Contractor.

15.2.2 Contractor may terminate this Contract in its best interests upon 180 Days’ written notice to College.
15.2.3 College may suspend or terminate this Contract upon immediate notice to Contractor should any Vending Location be destroyed or damaged, either in whole or in part, or rendered unusable. Contractor will not be relieved of any obligations hereunder which have accrued on or prior to the effective date of the suspension or termination. Should this Contract be so suspended or terminated, Contractor hereby expressly waives any claim for damages or compensation, including but not limited to loss of use, lost profits or actual, special, incidental, indirect or consequential damages of any kind or nature.

15.3 Removal of Equipment.

15.3.1 Upon expiration or termination of this Contract, Contractor must remove the Machines from the College premises within ten (10) Days of the date of expiration or notice of termination, as the case may be. Contractor must restore the Vending Locations to the condition prior to use thereof by Contractor, normal wear and tear excluded. Contractor must repair all damage caused by the installation or removal of the Machines. Machines not removed from College campus will be deemed abandoned.

15.3.2 Upon expiration or termination of this Contract, commissions will continue to be due and payable to College on Machine sales until all of the Machines have been removed. The removal date for each Machine must be indicated on the management report for the period in which the Machine was removed.

15.4 College's Rights. On the effective date of any notice of termination received from College, Contractor must stop performance of Campus-wide Vending Machine Services. Upon termination, College has the right to contract with another party for performance of Campus-wide Vending Machine Services for the unexpired term of this Contract. In the event of a termination for cause, College has the right to charge to Contractor any and all expenses incurred by reason of such termination, including but not limited to the cost of reletting this Contract and any difference in guaranteed annual commissions between this Contract and any substituted agreement. Nothing in this Section will be deemed to limit or waive any other rights or remedies of the College under either Law or contract.

15.5 Non-exclusive Rights. The rights of termination referred to in this Contract are not intended to be exclusive and are in addition to any other rights available to College in Law or in equity.

Section 16 - COMPLIANCE WITH LAW

16.1 Contractor and Contractor's Staff must comply with all federal, state and local Laws governing Campus-wide Vending Machine Services as well as all applicable College and SUNY rules and regulations, and must timely secure, maintain and pay for all federal, state and local licenses, permits, certificates or...
other authorizations required for the proper and lawful conduct of Campus-wide Vending Machine Services.

16.2 Contractor is solely responsible for taxes, assessments and fees required or assessed in connection with Vending Machine Services, including, but not limited to, sales, use, excise and payroll taxes, and federal, state and local income taxes and must make timely applications, reports and returns required in connection therewith.

Section 17 - PERIOD OF LIMITATION

Contractor may not bring any action against College based upon any claim arising out of this Contract unless it commences the action within six months from the date when the cause of action accrued.

Section 18 - CONTRACT DOCUMENTS

Contractor’s Proposal is attached to this Contract as Appendix F and made a part of the Contract. In the event of any inconsistency in, or conflict between, Contractor’s Proposal and any other part of this Contract, such other part of the Contract shall control.

Section 19 - SUNY RELATED ENTITY REQUIREMENTS

Contractor acknowledges that this Contract is subject to the Standard Contract Clauses set forth in Appendix E to this Contract.

Section 20 – PROTECTION OF CONFIDENTIAL DATA

20.1 Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2) and with the terms set forth below, that it receives or accesses any such records in performing the services hereunder. 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from College may use the information, but only for the purposes for which the disclosure was made.

20.2 Definition. Covered data and information ("CDI") means paper and electronic student education record information supplied by College, as well as any personally identifiable information provided by College’s students to the Contractor, if any.

20.3 Acknowledgment of Access to CDI. Contractor does not intend to, nor require, access to CDI. However, Contractor acknowledges that, by virtue of its
performance of services on College’s premises, such may allow the Contractor access to CDI. Prohibition on Unauthorized Use or Disclosure of CDI: Contractor agrees to hold CDI in confidence. Contractor shall not use or disclose CDI received from or on behalf of College (or its students) except as permitted or required by the contract, as required by law, or as otherwise authorized in writing by College. Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

20.4 Return or Destruction of CDI. Upon termination, cancellation, expiration or other conclusion of the contract, Contractor shall return all CDI to College, or if return is not feasible, destroy any and all CDI. If the Contractor destroys the information, the Contractor shall provide College with a certificate confirming the date of destruction of the data.

20.5 Remedies. Any provision found elsewhere in this contract to the contrary notwithstanding, if the Contractor has materially breached any of its obligations under this Section 20 of this Contract, College, in its sole discretion, shall have the right to require the Contractor to submit to a plan of monitoring and reporting; provide College with a fifteen (15) day period to cure the breach; or terminate the contract immediately if cure is not possible. Before exercising any of these options, College shall provide written notice to the Contractor describing the violation and the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Contractor improperly disclosed personally identifiable information obtained from College’s education records, College may not allow the Contractor access to its education records for at least five years.

20.6 Maintenance of the Security of Electronic Information. Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of College or its students. These measures will be extended by contract to all subcontractors used by Contractor.

20.7 Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information and Remedies. Contractor shall, immediately upon discovery, report to College any use or disclosure of CDI not authorized by this contract or in writing by College. Contractor’s report shall identify, to the extent known using reasonable diligence (as applicable): (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by College. If College is required by applicable law to provide notice to any individual or government agency as a result of a Security
Breach attributable to Contractor’s breach of the confidentiality terms of this Section pertaining to CDI, Contractor shall reimburse College for its reasonable, out-of-pocket costs in notifying any such affected individual and/or government agency. A “Security Breach” is an unauthorized access to, or unauthorized use or disclosure of, computerized CDI under the control of Contractor that adversely affects the security, confidentiality or integrity of such CDI. In addition, any damages that College may incur as a result of such Security Breach shall not be subject to any limitation of liability set forth in this Contract.

Section 21 - MISCELLANEOUS

21.1 Governing Law; Choice of Forum. This Contract is governed by the laws of the State of New York, except where the Federal supremacy clause requires otherwise. All claims and actions brought under or arising from this Contract must be brought either in the courts of the United States or New York State located in New York City.

21.2 Assignment. Neither this Contract nor any right, title or interest therein, may be assigned, transferred, conveyed, sublet or otherwise disposed of by Contractor without the previous consent, in writing, of College. Any attempt to assign this Contract without College’s written consent will be null and void.

21.3 Severability. The terms, clauses and provisions of this Contract are intended to be severable. Declaration of the unconstitutionality, illegality or unconscionability of any term, clause or provision will in no way defeat the effect or validity of any other term, clause or provision.

21.4 Headings and Language Interpretation. The headings used herein have been inserted for reference only and are not substantive parts of this Contract. The use of the singular or plural form includes the other form.

21.5 Waiver. Waiver by College of a breach of any provision of, or right under, this Contract will not operate nor be construed as a waiver of any other or subsequent breach of the same provision or right nor of any other provision or right of this Contract. All remedies, either under this Contract or by Law or otherwise afforded, will be cumulative and not alternative.

21.6 Merger; Amendment. This Contract supersedes any and all other agreements, written or oral, between the parties hereto, and constitutes the entire agreement between the parties with respect to the subject matter hereof. Accordingly, this Contract may not be altered, amended, modified, or otherwise changed, except by a document in writing signed by each party.

21.7 Notices. All notices or other communications which are required or permitted pursuant to the terms of this Contract must be in writing and must be delivered personally, by overnight courier, or by fax machine or deposited in the United
States mail, postage prepaid, registered or certified mail, to Contractor or College, as the case may be, at their respective addresses as set forth at the beginning of this Contract, or at such other addresses as may have been specified by written notice delivered in accordance with this Section. Such notices and other communications will be deemed to have been given or made when so delivered or deposited. Nothing in this Section may be deemed to be a waiver of any requirements for service as provided by Law.

21.8 **All Lawful Provisions Deemed Included.** It is the intent and understanding of the parties to this Contract that every provision of Law required to be inserted in this Contract be and is inserted in it. If through mistake or otherwise, any required provision is not included, or is not included in correct form, then this Contract will, upon the application of either party, promptly be amended so as to comply strictly with the Law and without prejudice to the rights of either party.

21.9 **Set-off Rights.** College has all of its common law, equitable and statutory rights of set-off. These rights include, but are not be limited to, College’s option to withhold for the purposes of set-off any moneys due to Contractor under this Contract up to any amounts due and owing to College with regard to this Contract, any other contract with College, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to College from Contractor for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

IN WITNESS WHEREOF, the parties have signed this Contract:

**CONTRACTOR:**

_____________________________

The Fashion Institute of Technology

By: _________________________

Name: _________________________

Title: Treasurer and Vice President for Finance and Administration

**COLLEGE:**

_____________________________

The Fashion Institute of Technology

By: _________________________

Name: Sherry F. Brabham

Title: Treasurer and Vice President for Finance and Administration
APPENDIXES

APPENDIX A – Vending Machine Locations
APPENDIX B – Performance Bond
APPENDIX C – Prices and Portions
APPENDIX D – NYS Tax Bulletin ST-280
APPENDIX E – Standard Contract Clauses
APPENDIX F – Contractor's Proposal
APPENDIX A

VENDING MACHINE LOCATIONS

The College has 25 beverage machines, 19 snack machines and 5 Hello Goodness machines.

The Vending Machine Services Contractor will provide Vending Machines at the below locations. You may also propose additional locations.

<table>
<thead>
<tr>
<th>TYPE</th>
<th>LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 GLASS FRONT</td>
<td>ALUMNI HALL</td>
</tr>
<tr>
<td>2 MERCHANT SNACK</td>
<td>ALUMNI HALL</td>
</tr>
<tr>
<td>3 GLASS FRONT</td>
<td>COED BASEMENT</td>
</tr>
<tr>
<td>4 MERCHANT SNACK</td>
<td>COED BASEMENT</td>
</tr>
<tr>
<td>5 HVV</td>
<td>NAGLER LOBBY</td>
</tr>
<tr>
<td>6 MERCHANT SNACK</td>
<td>NAGLER LOBBY</td>
</tr>
<tr>
<td>7 GLASS FRONT</td>
<td>NAGLER LOBBY</td>
</tr>
<tr>
<td>8 MERCHANT SNACK</td>
<td>KAUFMAN BASEMENT</td>
</tr>
<tr>
<td>9 HVV</td>
<td>KAUFMAN BASEMENT</td>
</tr>
<tr>
<td>10 HVV</td>
<td>KAUFMAN BASEMENT</td>
</tr>
<tr>
<td>11 GLASS FRONT</td>
<td>DUBINSKY 7TH FLOOR</td>
</tr>
<tr>
<td>12 MERCHANT SNACK</td>
<td>DUBINSKY 7TH FLOOR</td>
</tr>
<tr>
<td>13 GLASS FRONT</td>
<td>DUBINSKY 6TH FLOOR</td>
</tr>
<tr>
<td>14 HELLO GOODNESS</td>
<td>DUBINSKY 6TH FLOOR</td>
</tr>
<tr>
<td>15 MERCHANT SNACK</td>
<td>DUBINSKY 6TH FLOOR</td>
</tr>
<tr>
<td>16 GLASS FRONT</td>
<td>DUBINSKY 3RD FLOOR</td>
</tr>
<tr>
<td>17 MERCHANT SNACK</td>
<td>DUBINSKY 3RD FLOOR</td>
</tr>
<tr>
<td>18 HVV</td>
<td>DUBINSKY 3RD FLOOR</td>
</tr>
<tr>
<td>19 HELLO GOODNESS</td>
<td>DUBINSKY 3RD FLOOR</td>
</tr>
<tr>
<td>20 GLASS FRONT</td>
<td>DUBINSKY 3RD FLOOR</td>
</tr>
<tr>
<td>21 GLASS FRONT</td>
<td>DUBINSKY 3RD FLOOR</td>
</tr>
<tr>
<td>22 MERCHANT SNACK</td>
<td>DUBINSKY 3RD FLOOR</td>
</tr>
<tr>
<td>23 HELLO GOODNESS</td>
<td>DUBINSKY 3RD FLOOR</td>
</tr>
<tr>
<td>24 MERCHANT SNACK</td>
<td>DUBINSKY BASEMENT</td>
</tr>
<tr>
<td>25 GLASS FRONT</td>
<td>DUBINSKY BASEMENT</td>
</tr>
</tbody>
</table>
26  GLASS FRONT  BUSINESS & LIBERAL ARTS 5TH FLOOR
27  MERCHANT SNACK  BUSINESS & LIBERAL ARTS 5TH FLOOR
28  HVV  BUSINESS & LIBERAL ARTS BASEMENT

29  GLASS FRONT  FELDMAN 5TH FLOOR
30  MERCHANT SNACK  FELDMAN 5TH FLOOR
31  GLASS FRONT  FELDMAN 2ND FLOOR
32  MERCHANT SNACK  FELDMAN 2ND FLOOR

33  GLASS FRONT  LIBRARY
34  HELLO GOODNESS  LIBRARY
35  MERCHANT SNACK  LIBRARY

36  GLASS FRONT  POMERANTZ 6TH FLOOR
37  HELLO GOODNESS  POMERANTZ 6TH FLOOR
38  MERCHANT SNACK  POMERANTZ 6TH FLOOR
39  GLASS FRONT  POMERANTZ 5TH FLOOR
40  MERCHANT SNACK  POMERANTZ 5TH FLOOR
41  GLASS FRONT  POMERANTZ 4TH FLOOR
42  MERCHANT SNACK  POMERANTZ 4TH FLOOR
43  MERCHANT SNACK  POMERANTZ 2ND FLOOR
44  GLASS FRONT  POMERANTZ 2ND FLOOR
45  MERCHANT SNACK  POMERANTZ LOBBY
46  GLASS FRONT  POMERANTZ LOBBY
47  HVV  POMERANTZ BASEMENT
48  GLASS FRONT  POMERANTZ BASEMENT
49  MERCHANT SNACK  POMERANTZ BASEMENT
APPENDIX B

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, ______________, and [name of Surety] as Surety, are held and firmly bound to the Fashion Institute of Technology or to its successors and assigns in the penal sum of [amount of bond in words] ($ number) Dollars, lawful money of the United States, for the payment of which sum of money well and truly to be made, the Principal and Surety do each bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to enter, or has entered, into a Contract in writing with College for Vending Machine Services, which Contract is annexed to and hereby made a part of this bond as though herein set forth in full.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, its executors, administrators, successors or assigns, well and faithfully performs the Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, and fully indemnifies and saves harmless College from all costs and damage which it may suffer by reason of failure so to do, and fully reimburses and repays College for all outlay and expense which College may incur in making good any such default, and protects College against, and pays any and all amounts, damages, costs and judgments which may or will be recovered against said College or its officers, agents or employees or which the said College may be called upon to pay to any person or Contractor by reason of any damages arising or growing out of the performance of the Contract, or the manner of doing the same, or the neglect of the Principal, or its officers, agents or employees, or the improper performance of the Contract by the Principal, or its officers, agents or employees, then this obligation will be null and void, otherwise to remain in full force and effect and the Surety shall fulfill its obligations under the Bond upon notice pursuant to the following paragraph.

The Surety, for value received, hereby stipulates and agrees, if requested so to do by College, to fully perform and complete the Contract, pursuant to the terms, conditions, and covenants thereof (including without limitation the payment of any sums due College by Principal), if for any cause, the Principal fails or neglects to so fully perform and complete the Contract. The Surety further agrees to commence such performance within twenty (20) Days after written notice thereof from College and to complete such performance within such time as College may fix, provided however, that if Contract is a service contract then and until the Surety commences to perform or render the service, College may immediately employ others to perform such service without impairing or affecting the obligation of the Surety and the Bond and the Surety must fully reimburse and repay College for all outlay and expense incurred therefore. Any replacement Contractor engaged by Surety to complete the Contract is subject to approval of College.
The Surety for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety and its Bond will be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any moneys due or to become due thereunder; and the Surety does hereby waive notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees will have the same effect as to the Surety as though done or omitted to be done by or in relation to the Principal.

IN WITNESS WHEREOF, each of the Principal and the Surety have signed this Performance Bond, or caused it to be signed by its duly authorized officer this ___ day of ___________ , 201_.

PRINCIPAL (Seal)
By: __________________________________________
    Signature
    __________________________________________
    Name
    __________________________________________
    Title

SURETY (Seal)
By: __________________________________________
    Signature
    __________________________________________
    Name
    __________________________________________
    Title
ACKNOWLEDGEMENT OF PRINCIPAL

STATE OF__________________ )
COUNTY OF_________________ ) SS:

On this_________________day of____________________, 200_ before me personally came ______________________________ to me known, who, being by me duly sworn did depose and say that s/he resides at ________________________________________________,

that s/he is the ________________________________________ of ___________________________________________,

described in and which executed the foregoing instrument; and that s/he signed her/his name thereto by authority of the board of directors.

______________________________________    SEAL
Notary Public
### APPENDIX C

**PRICE AND PORTION LIST**  
**(FOR FIRST SEVEN-MONTHS OF CONTRACT)**

<table>
<thead>
<tr>
<th>VENDING</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Portion</td>
<td>Price</td>
<td></td>
</tr>
<tr>
<td>Soda</td>
<td>12 oz. can</td>
<td>$1.25</td>
<td></td>
</tr>
<tr>
<td>Soda</td>
<td>20 oz. bottle</td>
<td>$1.50</td>
<td></td>
</tr>
<tr>
<td>Ocean Spray</td>
<td>16 oz. bottle</td>
<td>$3.25</td>
<td></td>
</tr>
<tr>
<td>Non-Carbonated</td>
<td>20 oz. bottle</td>
<td>$1.50</td>
<td></td>
</tr>
<tr>
<td>Sports Drinks</td>
<td>20 oz. bottle</td>
<td>$2.25</td>
<td></td>
</tr>
<tr>
<td>Starbucks</td>
<td>9.5 oz. bottle</td>
<td>$3.50</td>
<td></td>
</tr>
<tr>
<td>Bottled Water</td>
<td>20 oz. bottle</td>
<td>$1.50</td>
<td></td>
</tr>
<tr>
<td>Izze</td>
<td>8.4 oz. can</td>
<td>$2.00</td>
<td></td>
</tr>
<tr>
<td>Sobe Water</td>
<td>20 oz. bottle</td>
<td>$3.25</td>
<td></td>
</tr>
<tr>
<td>Naked Juice</td>
<td>15.2 oz. bottle</td>
<td>$4.50</td>
<td></td>
</tr>
<tr>
<td>Candy Bar</td>
<td>Single serving</td>
<td>$1.25</td>
<td></td>
</tr>
<tr>
<td>Granola Bar</td>
<td>Single serving</td>
<td>$1.25</td>
<td></td>
</tr>
<tr>
<td>Cookies</td>
<td>Bagged</td>
<td>$1.25</td>
<td></td>
</tr>
<tr>
<td>Premium Brand Cookies</td>
<td>Single</td>
<td>$1.50</td>
<td></td>
</tr>
<tr>
<td>Fruit Snacks</td>
<td>Single</td>
<td>$1.25</td>
<td></td>
</tr>
<tr>
<td>Nuts/Planters/Trail Mix</td>
<td>2 oz. bag</td>
<td>$1.25</td>
<td></td>
</tr>
<tr>
<td>Chips, large size</td>
<td>Large single serving</td>
<td>$1.25</td>
<td></td>
</tr>
<tr>
<td>Chips, premium</td>
<td>Large single serving</td>
<td>$1.75</td>
<td></td>
</tr>
<tr>
<td>Popcorn</td>
<td>Single serving</td>
<td>$1.25</td>
<td></td>
</tr>
<tr>
<td>Pop Tarts &amp; Rice Krispie</td>
<td>Single</td>
<td>$1.25</td>
<td></td>
</tr>
<tr>
<td>Sabra Hummus Pretzels</td>
<td>Individual pack</td>
<td>$4.00</td>
<td></td>
</tr>
<tr>
<td>Cliff Bar</td>
<td>Single</td>
<td>$2.75</td>
<td></td>
</tr>
</tbody>
</table>
Food and Beverages Sold from Vending Machines

Introduction

This bulletin provides information on the application of the sales tax to food and beverages sold from vending machines. It also explains how to compute the sales tax on vending machine sales.

Sales tax on food and beverages

Sales of food and beverages from vending machines are generally taxed in the same manner as sales of the same items in food stores. This means that generally:

• items that are taxable when sold in a food store are taxable when sold from a vending machine;
• items that are exempt from sales tax when sold in a food store are exempt when sold from a vending machine.

However, there are two exceptions to this general rule:

• hot beverages sold from a vending machine are always exempt;
• certain items that are taxable when sold by food stores are exempt when they are sold from a vending machine for 75 cents or less.

To learn more about taxable and exempt food, see Tax Bulletin Food and Food Products Sold by Food Stores and Similar Establishments (TB-ST-283).

Taxable food and beverages sold from vending machines

Examples of taxable food and beverage items include:

• sandwiches,
• food arranged on a plate or prepared and ready to eat,
• bottled water, and
• any food that is heated by or kept warm in the vending machine.
Food and beverages that are exempt when sold from a vending machine for 75 cents or less

Although the following items are taxable when sold by a store, they are exempt when sold for 75 cents or less from a vending machine:

- Candy and confectionery, including chocolate bars; chewing gum; honey-roasted nuts; and candy- or chocolate-coated nuts, popcorn, pretzels, etc. (see Tax Bulletin Candy and Confectionery (TB-ST-103) for a listing of these items); and

- Soda, pop, lemonade, sports drinks, fruit drinks containing less than 70% natural juice, and other soft drinks.

These items are taxable if sold from a vending machine for more than 75 cents. Bottle deposits are not included in the computation of the taxable amount and are not included in determining whether the item is sold for 75 cents or less.

Exempt food and beverages sold from vending machines

These items are exempt from sales tax when sold from a vending machine, regardless of their price (note: any brand name product shown in italics is included as an example and is not to be construed as an endorsement of the product):

- Unheated foods (other than sandwiches and other prepared foods), such as:
  - a whole fruit (apples, pears, bananas, etc.);
  - a cookies, donuts, pastries, cereal bars, granola bars, and diet bars; a pretzels, popcorn, potato chips, plain or salted nuts, and crackers; a ice cream, fruit bars, Fruit Gushers®, and fruit snacks; single-serving cereal packets; and canned foods.

- Unheated beverages, other than soft drinks, such as:
  - a milk, chocolate milk, and diet shakes; a vegetable juices; fruit drinks that contain 70% or more natural juice; and iced tea and iced coffee.

- Hot beverages, including coffee, tea, cocoa, and broth.

To learn more, see Tax Bulletins Food and Food Products Sold by Food Stores and Similar Establishments (TB-ST-283), Sandwiches (TB-ST-835), and Beverages Sold by Food Stores, Beverage Centers, and Similar Establishments (TB-ST-65).
Collecting and remitting the sales tax

If you are selling any taxable food or beverages, you must collect the sales tax. You also must register for sales tax purposes and file sales tax returns to remit the tax you collected.

To learn more, see the following Tax Guidance Bulletins:

- Do I Need to Register for Sales Tax? (TB-ST-175)
- How to Register for New York State Sales Tax (TB-ST-360)
- Filing Requirements for Sales and Use Tax Returns (TB-ST-275)

Computing sales tax on sales made from vending machines

If you are selling taxable food or beverages:

- include the amount of the sales tax in the selling price of the item, and
- use the sales tax rate in the local taxing jurisdiction where the machines are located.

To file your sales tax returns, you'll need to separate the amount of sales you made from the sales tax you collected. To do this, divide the total amount of your sales subject to sales tax (which will include the sales tax collected) by one plus the sales tax rate in the particular jurisdiction, expressed as a decimal.

Example: You operate some vending machines in Albany. Your total sales during the last sales tax period totaled $15,984. Of these sales, $9,624 was for sales subject to sales tax, including the tax collected. The sales tax rate in the local jurisdiction where the machines are located is 8%. Expressed as a decimal, 8% is equal to .08. Add 1 to the rate, equaling 1.08. Use this number as the denominator in a fraction with $9,624 as the numerator.

$$\frac{$9,624 \text{ (taxable sales including sales tax collected)}}{1.08 \text{ (sales tax rate plus 1)}} = $8,911.11 \text{ (taxable sales)}$$

The result of this computation is the amount of your taxable sales, $8,911.11. Report this amount on your sales tax return on the Albany County line in the Taxable sales and services column. To compute the sales tax due, multiply your taxable sales ($8,911.11) by the combined state and local tax rate (8%). In this example, the resulting tax due is $712.89. This is the amount of sales tax that you must report and pay with your periodic sales tax return.

You must repeat the computation for each local taxing jurisdiction where you operate vending machines, using the sales tax rate in that jurisdiction expressed as a decimal plus one, as described above. See Tax Bulletin
Sales Tax Rates, Additional Sales Taxes, and Fees (TB-ST-825) for more information.

For a listing of sales tax rates see Tax Bulletin Sales Tax Rate Publications (TB-ST-820), or use the online Sales Tax Jurisdiction and Rate Lookup.
APPENDIX E

STANDARD CONTRACT CLAUSES

The parties to the attached Contract, license, lease, amendment or other agreement of any kind (hereinafter, “the Contract” or “this Contract”) agree to be bound by the following clauses which are hereby made a part of the Contract (the word “Contractor” herein refers to any party other than College, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. **WORKERS’ COMPENSATION BENEFITS.** This Contract shall be void and of no force and effect unless Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

2. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, Contractor agrees that neither it nor its Subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Article 9 of the Labor Law, then Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of $50.00 per person per day for any violation of the previous two sentences as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

3. **WAGE AND HOURS PROVISIONS.** If this is a contract for the construction, alteration, or repair of any public building or public work, or a building service contract as defined by Article 9 of the Labor Law, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days permitted by the Labor Law. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

4. **NON-COLLUSIVE BIDDING REQUIREMENT.** If this Contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to Contractor a non-collusive bidding certification on Contractor’s behalf.

5. **INTERNATIONAL BOYCOTT PROHIBITION.** If this Contract exceeds $5,000, Contractor agrees, as a material condition of the Contract, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or Contractor has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USCA Section 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract’s execution, such Contract, amendment or modification thereto shall be rendered forfeit and void. Contractor shall so notify Contractor within five (5) business days of such conviction, determination or disposition of appeal.

6. **RECORDS.** Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, “the Records”). The Records shall be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. Contractor or its authorized representative shall have access to the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. Nothing contained herein shall diminish, or in any way adversely affect Contractor’s right to discovery in any pending or future litigation.

Page 38
7. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** If this Contract is: a) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby Contractor is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to Contractor or b) a written agreement in excess of $100,000.00 whereby Contractor is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, then the following shall apply and by signing this Contract Contractor certifies and affirms that it is Contractor’s equal employment opportunity policy that:

i) Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff or termination and rates of pay or other forms of compensation;

ii) at the request of Contractor, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor’s obligations herein; and

iii) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the Contractor contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of “i,” “ii,” and “iii” above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the “Work”) except where the Work is for the beneficial use of Contractor. This obligation does not apply to: a) work, goods or services unrelated to this Contract; or b) employment outside New York State. Contractor shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. Contractor shall determine whether the imposition of the requirements of the provisions hereof duplicates or conflicts with any such federal law and if such duplication or conflict exists, Contractor shall waive the applicability this section to the extent of such duplication or conflict.

8. **CONFLICTING TERMS.** In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix, the terms of this Appendix shall control.

9. **MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), Contractor hereby stipulates that Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

10. **COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

June 2011
CONTRACTOR’S PROPOSAL