

Principles and Language for a Healthier Campus Beverage Contract

Advocates seeking to amend their university's contract when it is up for renewal can adapt this template's model contract language to make recommendations to decision-makers. Highlighted fields are intended to be customized, and you can edit the language to reflect your university and its stated values and commitments. This model language can also be adapted for a pre-contract solicitation or request for proposals (RFP) for a beverage vendor.

PRINCIPLES

A healthier campus beverage contract should incorporate the following principles. Model contract language to address each of these principles is provided later in the document.

1. Model Nutrition Standards for beverages marketed and sold throughout the university

The contract should define Nutrition Standards for beverages marketed and sold through the university. The contract should then incorporate requirements regarding these Nutrition Standards, for example, providing for phasing out less healthy beverages in all University locations.

2. Explicitly exclude tap water from definition of "Beverage" or "Beverages"

This change will ensure that any limitations on Beverages and Competitive Products (whose definition includes Beverages) do not apply to tap water, meaning the university may serve and promote tap water in all ways and settings.

3. Product Mix should not require sale and distribution of sugar-sweetened beverages throughout university facilities.

The university should be able to offer only healthy beverages at any campus location.

4. Consider including Permitted Exceptions to Exclusivity for beverages meeting Nutrition Standards that are procured from local businesses.

The university should retain the right to provide locally sourced beverage options. These exceptions should be limited to healthy options from local companies.

5. Limit all Marketing and Promotional Rights and Activities to products meeting Nutrition Standards and tap water.

If your university is committed to promoting health, it should not allow marketing or promotion of any products that do not meet its own standards for healthy beverages on campus or in association with the university name or logo.

- a. **Sponsorship and Promotional Rights should be limited to promotion of products that meet Nutrition Standards.**

- b. Designations should not establish the beverage company as an Official Sponsor and should not establish any beverage company products as the university's Official Water or Official Soft Drink.** Neither Pepsi nor Coca-Cola should be designated as an official university sponsor because the company name is the same as its signature sugar-sweetened beverage. If a university is committed to promoting tap water and eliminating single-use plastics, the school's official water should be tap water. Designating Aquafina as the "Official Bottled Water" as opposed to the "Official Water" would be acceptable.
- c. Marketing Support should only be used to promote healthy beverages and tap water.**
- d. Signage Rights should only allow signage featuring Dasani, Aquafina and Bubly brands, or equivalent unsweetened water products.**
- e. Sampling should be limited to products meeting Nutrition Standards.**

6. Commissions and Rebates should be available only for beverages meeting Nutrition Standards.

This would create an incentive for the university to promote and sell more healthy beverages compared to sugar-sweetened beverages.

7. Integrate funding for sustainability and health initiatives.

It is vital that these funds be "no strings attached," *i.e.*, not be contingent on the university meeting certain obligations or controlled by the beverage company in any way.

8. Require a certain percentage of beverage containers be biobased products.

The USDA maintains a database of biobased products that are entirely or significantly made from biological products including renewable domestic agricultural materials, forestry materials, and renewable chemicals, or intermediate ingredients or feedstock as an alternative to petroleum-derived products. Requiring that a percentage of products procured through beverage contracts be bio-based promotes sustainability.

9. Guarantee that the beverage company does not influence university research.

Beverage companies should not hold any sway over research conducted at the university. Rather than merely refraining from giving the company the rights to influence research activities, contracts should explicitly prohibit beverage companies from influencing university research, through funding or other means.

10. Consider a limited term agreement, such as two years as opposed to 10 years.

This change will allow the campus to reconsider the need for beverage vending machines and other beverage services (in support of a commitment to phase out single-use plastics) as more water refill stations are installed throughout campus. Should stakeholders' ultimate goal be to end the university's partnership with Coca-Cola or Pepsi, a shorter term can also allow the university to continue to collect contract revenue while exploring alternative revenue sources and vendors that could eventually replace contract.

Note that no model contract language is provided to implement the limited term agreement, as this change is straightforward.

CONTRACT LANGUAGE TO AVOID

Avoid the following types of provisions that are found in some pouring rights contracts and interfere with health and environmental sustainability on campus. Examples of contract language for each of these terms to avoid are provided later in the document.

1. No “Volume Threshold.”

A Volume Threshold (sometimes referred to using other terms like “Annual Units Threshold”) is a minimum volume of product that a university is required to purchase or sell to avert a penalty or receive a fee. This kind of provision runs counter to a university’s efforts to reduce consumption of sugar-sweetened beverages and bottled beverages in favor of tap water. And excluding a Volume Threshold denies the beverage company the opportunity to make Annual Support Funds contingent on meeting it. Otherwise, this linkage provides the university with an inappropriate incentive to maintain beverage sales volume.

2. No youth-targeted marketing.

This marketing may include sponsorship and donated merchandise for youth programming hosted by the university, such as youth camps, kids’ sections at university athletic events, and youth sporting events hosted at the university.

3. No Gatorade or Powerade “Sideline Kit” or “Sideline Support.”

Sports drinks like Gatorade are sugar-sweetened beverages. One 20-oz Gatorade contains 34g of added sugars (8 teaspoons). Water provides adequate hydration, even for most athletic activities. University athletics should not be used to promote sugary drinks linked to adverse health outcomes.

4. No “Growth Incentive” or “Growth Incentive Funds.”

The concept of an incentive to increase sales of sugar-sweetened and bottled beverages on campus directly interferes with promoting tap water in place of sugar-sweetened and bottled beverages.

MODEL CONTRACT LANGUAGE

Contracts may refer to the beverage company and university using a variety of terms. For simplicity, the model language use “Company” and “University,” but these terms can be adapted as needed.

1. Model Nutrition Standards for beverages marketed and sold throughout the university

Nutrition Standards. The following Beverages sold, served, distributed, sampled, or otherwise made available, or marketed, advertised, or promoted at University meet Nutrition Standards *[If applicable, cite existing university policy on healthy beverages or healthy vending]*:

- **Water:** including carbonated water (no added caloric sweeteners, added non-caloric sweeteners of concern*, or added caffeine)

- **Coffee or tea** with no added caloric sweeteners or non-caloric sweeteners of concern* and only naturally occurring caffeine;
- **Dairy Milk:** non-fat or low-fat (1%), unflavored, no added caloric sweeteners or non-caloric sweeteners of concern*
- **Plant-derived or non-dairy milk (i.e. soy, rice, almond):** Vitamin D and calcium fortified; contain at least 6 grams of protein and no more than 2 grams of added sugar per 8 fluid ounces
- **Juice:** 100% fruit or vegetable juice, juice blends, or juice combined with water, with no added caloric sweeteners or non-caloric sweeteners of concern*; vegetable juices with no more than 200 milligrams of sodium per 12 fluid ounces.
- **Low-calorie beverages:** beverages that contain no more than 40 calories per 12 fluid ounces and that exclude non-caloric sweeteners of concern*.

* Non-caloric sweeteners of concern are based on the Center for Science in the Public Interest's Chemical Cuisine website. These include acesulfame potassium ("ace-K"), aspartame, saccharin, and sucralose.

Phase Out Less Healthy Beverages. In Agreement Year 1, a minimum of 50% of Beverages offered or sold throughout University must meet Nutrition Standards; in Agreement Year 2, a minimum of 75% of Beverages offered or sold throughout University must meet the Nutrition Standards. In Agreement Year 3, 100% of Beverages offered in dining halls must meet Nutrition Standards.

2. Explicitly exclude tap water from definition of "Beverage" or "Beverages"

Add to the definition of "Beverage" or "Beverages"

Company acknowledges and agrees that "Beverages" do not include tap water, water fountains and water refill stations pulling from the public municipal water supply, water supplied in three to five gallon containers, or water dispensed from hydration stations.

3. Product Mix should not require sale and distribution of sugar-sweetened beverages throughout university facilities.

Insert into "Beverage Rights" or "Grant of Rights" section

Company shall allow University to offer exclusively Beverages meeting Nutrition Standards at any single University location. Company shall not have the right to require that sugar-sweetened beverages be served, distributed, sampled, or otherwise made available at any single University location.

4. Consider including Permitted Exceptions to Exclusivity for beverages meeting Nutrition Standards that are procured from local businesses.

Include in "Beverage Rights" or "Grant of Rights" section

Permitted Exceptions to Exclusivity. Company Beverages will be the only Beverages sold, served, distributed, sampled, or otherwise made available at University, however, during the Term, University has conveyed or may convey:

The right to stock up to [X]% Competitive Product provided by locally-owned businesses and meeting Nutrition Standards in Company-provided vending equipment, University-owned

vending equipment, and University-owned self-serve refrigerators located in Dining Services take-out locations. University shall have the right to stock Competitive Product, [including as part of the Healthy Campus Initiative], in the top half of vending equipment.

5. Limit all Marketing and Promotional Rights and Activities to products meeting Nutrition Standards and tap water.

- a. Sponsorship and Promotional Rights should be limited to promotion of products that meet Nutrition Standards.**

General Marketing Rights. Company shall have rights, exclusive with respect to the Beverage Category, to market, advertise, and promote [bottled water brands such as Aquafina and Bubly] in association or connection with University and University Marks (including [Team/Athletic] Marks). Company shall not have rights to market, advertise, or promote Beverages other than [brands named above] in association or connection with University and University Marks (including [Team/Athletic] Marks).

- b. Designations should not establish the beverage company as an Official Sponsor and should not establish any beverage company products as the university's Official Water or Official Soft Drink.**

Designations. In accordance with the Designations defined in Exhibit [X], Company shall not have the right to refer to Company Beverages in any marketing, advertising, or promotional material as a "sponsor of" or the "official" or "exclusive" Beverage of University or University Athletics, except that Company shall have the right to refer to Company Beverages in any marketing, advertising, or promotional materials as the "official Bottled Water" or "exclusive Bottled Water" of University or University Athletics.

(Contracts including this provision should define "Bottled Water.")

- c. Marketing Support should only be used to promote healthy beverages and tap water.**

Marketing funds. Company will budget and spend the following amounts annually for mutually agreed upon University and in-market marketing programs, including social media and digital promotions. The funds shall be used solely to market, advertise, or promote tap water and Beverages meeting Nutrition Standards. The funds will be held in a fund managed by Company for use toward marketing programs designed to promote and increase sales at University of Beverages meeting Nutrition Standards.

- d. Signage Rights should only allow signage featuring Dasani, Aquafina and Bubly brands, or equivalent unsweetened water products.**

Signage and Media / Advertising. Throughout the Term, University will provide Company, free and at no cost to Company, signage and media / advertising rights pertaining solely to [brands], as provided in Exhibit [X].

- e. Sampling should be limited to products meeting Nutrition Standards.**

Sampling. Company shall have the right to sample and survey persons at University solely regarding Company Beverages that meet Nutrition Standards.

Note: some contracts also include "or for other Beverage-related purposes." We recommend against including this language as it is difficult to narrow its application to only beverages that meet the Nutrition Standards.

6. Commissions and Rebates should be available only for beverages meeting Nutrition Standards.

Commissions. Commissions are a percentage of the actual cash ("cash in bag" or "CIB") collected by Company from Company-provided vending equipment placed at University, less any applicable fees or deposits ("Commissions"). Such Commissions shall be at the rate(s) listed below ("Commission Rate") and shall be calculated as follows:

(CIB * Commission Rate) - applicable CRV = Commission due

Product	Minimum Vend Price	Commission Rate
Product meeting Nutrition Standards	\$1.50	50%

7. Integrate funding for sustainability and health initiatives.

Sustainability fund. Company agrees to pay in each Agreement Year [\$XX.XXX] to support sustainability efforts at University. Such funds shall be used at the sole and absolute discretion of University.

Wellness fund. Company agrees to pay in each Agreement Year [\$XX.XXX] to support health initiatives at University. Such funds shall be used at the sole and absolute discretion of University.

8. Require a certain percentage of biobased products.

Biobased products. In Agreement Year 1, [X]% of products provided by Company in connection with this Agreement shall be biobased products that fall within the designated item categories list maintained by the United States Department of Agriculture. In Agreement Year 2, [X-higher than Year 1]% of products provided by Company in connection with this Agreement shall be biobased products that fall within the designated item categories list maintained by the United States Department of Agriculture.

9. Guarantee that the beverage company does not influence university research.

Prohibition on Research Influence. During the Term, neither Company nor its sponsors, sellers, manufacturers, distributors, and/or marketers may sponsor, fund, or otherwise influence research projects conducted by University faculty, students, and/or staff, or acquire services provided by University departments or units. During the Term, no Company brand names shall be granted naming rights to any external physical facilities or building or internal components or areas of any physical facilities or buildings at University.

EXAMPLES OF CONTRACT LANGUAGE TO AVOID

The examples below will help you identify contract terms to remove or avoid in pursuit of a healthier campus beverage agreement.

1. No “Volume Threshold.”

Example of Volume Threshold contract language:

University acknowledges and agrees that each Annual Sponsorship Fee payable to University is based on a minimum number of Units purchased from Company and sold throughout University pursuant to this Agreement during the applicable Agreement Year. The minimum number of Units per Agreement Year is XX,XXX (“Volume Threshold”).

2. No youth-targeted marketing.

Example of youth-targeted marketing contract language:

[Gatorade/Powerade] will provide reasonable quantities of [Gatorade/Powerade] Product and [Gatorade/Powerade] Merchandise in support of University summer camp programs at [Gatorade/Powerade’s] reasonable discretion based on number of camp attendees. In return for this [Gatorade/Powerade] Merchandise and Product commitment, University’s athletics department will communicate to its camp program directors that [Gatorade/Powerade] Products are the exclusive Sports Performance Products for use at sports camps and clinics...

3. No Gatorade or Powerade “Sideline Kit” or “Sideline Support.”

Example of a Gatorade/Powerade Sideline Support contract language:

Gatorade Sideline Support. Company will provide mutually-acceptable annual support in merchandise and [Gatorade/Powerade] Products (the “[Gatorade/Powerade] Support”) in accordance with the following:...

4. No “Growth Incentive” or “Growth Incentive Funds.”

Example of a Growth Incentive contract language:

Growth Incentive. Each Year throughout the Term, Company shall calculate the total applicable Cases of Bottle and Can Packaged Products purchased from Company by University and pursuant to this Agreement, and shall provide University with rebates in the amount of \$[X] for volume growth of [X]% above [X] Cases, and an additional \$[X] for each [X]% volume growth above the initial [X]% threshold (the “Rebates”)...

For more information, please contact the Center for Science in the Public Interest at policy@cspinet.org.