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Scarborough, ON M1B 5K7
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Chairman
Councillor Raymond Cho
Chief Executive Officer
John Tracogna
Chief Operating Officer
Robin D. Hale

2009-07-23

**REQUEST FOR PROPOSAL
BEVERAGE SUPPLY AND SPONSORSHIP OPPORTUNITY
RFP #117 (2010-07)**

This Request for Proposal is been issued to inform interested and qualified beverage suppliers with sufficient information to submit a proposal for the supply of beverages including sponsorship. The Toronto Zoo evaluation team will evaluate proposals submitted by qualified Proponents using the evaluation criteria herein for the purpose of entering a five (5) year term, to be the official and exclusive soft drink provider for the Toronto Zoo.

Proposal: A detailed written proposal five (5) copies, one (1) original signed copy and four (4) copies of the original proposal, marked as copy, must be received by Purchasing & Supply, Toronto Zoo, Administrative-Support Centre, 361A Old Finch Ave., Scarborough, ON M1B 5K7 by

Due Date: **Friday, 2010-08-13, 1200 hours (noon, local time)**

Proposals shall remain in effect for a period of ninety (90) days from the Proposal due date.

The Board of Management of the Toronto Zoo reserves the right to reject any or all Proposals or to accept any Proposal, should it deem such action to be in its interests.

If you have any queries regarding this request for proposal, please contact Mr. Peter Vasilopoulos, Supervisor of Purchasing & Supply at pvasilopoulos@torontozoo.ca.

Yours truly,

Robin D. Hale
Chief Operating Officer

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1.0 INSTRUCTIONS

- 1.1 Review the Request for Proposal (RFP) issued and requirements within and return your complete proposal with the enclosed SUBMISSION FORMS by the due date and time.
 - 1.2 Your sealed proposal must be completed, and received by Purchasing & Supply, Toronto Zoo, Administrative-Support Centre, 361A Old Finch Ave., Scarborough, Ontario, M1B 5K7 by **Friday, 2010-08-13, 1200 hours (noon, local time)**:
 - 1.3 Proposals must not be submitted by facsimile or email.
 - 1.4 Use the attached submission label when you submit your response in a sealed envelope or package and deliver to the Toronto Zoo.
 - 1.5 The person(s) authorized to sign on behalf of the Proponent and to bind the Proponent to statements made in response to this Request for Proposal must sign the proposal.
 - 1.6 Provide **four (4)** copies of your proposal, **one (1)** unbound signed and clearly marked as ORIGINAL and **three (3)** copies of the original proposal clearly marked as COPY in a sealed package or envelope. The original and all copies should be identical (excluding any obvious differences in labeling as noted above).
 - 1.7 All copies of all pages of the Proposal should be printed in duplex (i.e. on both sides of the pages) and 11 point font.
 - 1.8 All proposals will be irrevocable for a period of ninety (90) days from the date of the proposal submission deadline.
 - 1.9 Unless otherwise indicated herein, the prices stated are payable in Canadian Funds, PST and GST excluded.
 - 1.10 The exchange rate for any foreign currency will be determined using the Bank of Canada daily rate.
 - 1.11 Include product literature, information, samples, and pictures, as necessary.
 - 1.12 Quote discounts or quantity price breaks separately on FORMS.
- If you have any other inquiries about the proposal or contract inquiries, please contact

Peter Vasilopoulos,
Supervisor, Purchasing & Supply,
(416) 392-5916
pvasilopoulos@torontozoo.ca

If you have any technical inquiries, please contact
Paul Whittam,
Manager, Financial Services
(416) 392-5914
pwhittam@torontozoo.ca

2.0 DEFINITIONS

2.1 Definitions:

In this RFP the following terms have ascribed to them the following meanings:

- (a) **The Board of Management of the Toronto Zoo** and its designated representative hereinafter called “the Toronto Zoo”, with whom the Proponent has contracted to perform the required services;
- (b) **“Contract”** means the purchase order issued or written contract agreement resulting from this RFP executed by the Toronto Zoo and the Contractor, substantially in the form of the sample contract agreement attached;
- (c) **“Contractor”** means the Preferred Proponent if any, who enters into the Contract;
- (d) **“Preferred Proponent”** means the Proponent whose Proposal, as determined through the evaluation analysis described in the RFP, provides the best overall value in meeting the Toronto Zoo’s requirements, and with whom a Contract will be considered;
- (e) **“Proposal”** means a proposal submitted in response to this RFP;
- (f) **“Proponent”** means the person, Proponent, firm or partnership, consortium or joint venture that submits, or intends to submit, a proposal in response to this RFP;
- (g) **“RFP”** means the Request for Proposals document in its entirety, inclusive of any addenda that may be issued by the Toronto Zoo;
- (h) **“Sponsor”** means the successful Beverage Supplier, the Proponent with whom the Toronto Zoo enters into an Agreement;
- (i) **“Submission”** and /or **“Proposal”** means the Proponent’s written reply or submission in response to this RFP;
- (j) **“Work” and “Services”** means all work and services required under these documents, and in accordance with the Contract Requirements, General Requirements, and Specifications;

3.0 SCOPE OF REQUEST

The purpose of this RFP is to select a Beverage Supplier / Sponsor for a five (5) year term, to be the official and exclusive soft drink provider for the Toronto Zoo. The RFP is been issued through an open, transparent and competitive process for interested Proponents. Proponents submitting a proposal will receive fair and equitable treatment in the solicitation, receipt and evaluation of their Proposals received.

Proposals must address the RFP content requirements as outlined herein, must be well ordered, detailed and comprehensive. Clarity of language, adherence to suggested structuring, and adequate accessible documentation is essential to the Toronto Zoo’s ability to conduct a thorough evaluation. The Toronto Zoo is interested in proposals that demonstrate efficiency and value for money. General marketing and promotional material will not be reviewed or considered.

For purposes of preparing a submission, Proponents may use approximate volume amounts of 17,000 equivalent cases for over-the-counter (OTC) sales and 3,100 equivalent cases in full service vending through approximately 30 vending machines.

Proponents shall comply with the provisions of the RFP Process Terms and Conditions contained herein.

4.0 COMMUNICATIONS

If you have any other inquiries about the proposal or contract inquiries, please contact Peter Vasilopoulos, Supervisor, Purchasing & Supply Unit, at (416) 392-5916.

If you have any technical inquiries, please contact Paul Whittam, Manager, Financial Services at (416) 392-5914

5.0 PROPOSAL CONTENT

Proposals submitted in response to this RFP should be detailed sufficiently and demonstrate attention to the scope of the request as outlined in Section 3.0 of the RFP and included the following:

- 5.1 All copies of all pages of the Proposal should be printed in duplex (i.e. on both sides of the pages) where possible and 11 point font.

The Proposal should contain the following items:

5.2 **Letter of Introduction**

Introducing the Proponent and signed by the person(s) authorized to sign on behalf of and to bind the Proponent to statements made in response to this RFP, and Signed Proposal Submission Forms, Section 10.0.

5.3 **Table of Contents**

Include page numbers and identify all included materials in the proposal submission.

5.4 **Section 1 – Executive Summary**

Proponent should clearly articulate how their proposal will, in addition to the base financial elements, satisfy the zoo's beverage needs.

5.5 **Section 2 – Proponent Profile**

Proponents should have the staff, organization, culture and financial resources adequate to ensure their ongoing ability to deliver and support the Project throughout the period of the Agreement. As well, a profile and summary of corporate history including major clients and full description of business partners. A comprehensive description of the proponent's sustainability initiatives should be included, with particular focus on how the proponent can extend these initiatives into the execution of the contract.

5.6 **Section 3 – Sponsorship Fee being offered annually over the 5 (five) years of the contract**

Specify the cash value of the sponsorship in each of the five (5) years of the contract. Proponent should outline how they will contribute to the Toronto Zoo's guest experience, offsite activation, and list any specific event-oriented initiatives that might positively impact visitor attendance. Any other sponsorship benefits should also be outlined in this section with related details on their contribution to the Toronto Zoo.

5.7 **Section 4 – Commission Vending Machine on site:**

Proponents should specify the commission percentage for the consideration by the Toronto Zoo.

5.8 **Section 5 – Sponsor's ability to meet the needs of all outlets covered in this contract from a servicing point of view.**

Specify and quantify how proponent plans to execute and fully satisfy the service needs of all food and beverage outlets.

5.9 **Section 6 – Sponsor's ability to meet the needs of all outlets covered in this contract from an equipment point of view.**

Specify and quantify how proponent plans to execute and fully satisfy the equipment needs of all

food and beverage outlets. Specify Sponsor's ability to include Themed Fascias for all, or the majority of the vending machines – include # of machines and panels.

5.10 **Section 7 – Assignment Understanding**

Provide a statement of the Proponent's understanding of the goals and objectives of the Request for Proposal and how those goals and objectives will be achieved. The following points illustrate the type of information that the Evaluation Committee will be looking for as a demonstration of the Proponent's understanding of the assignment.

- a) The Proposal should demonstrate the Proponent's understanding of the objectives in the request;
- b) The Proposal should indicate specifically what products, services, and activities the Proponent will be providing;
- c) The Proposal should also indicate specifically what products, services, and activities the Proponent will **not** be providing;
- d) The Proposal should define what the Proponent will require from the Board.

5.11 **Section 8 – Pricing of product to concessionaire**

Complete Schedule A (Prices of Soft Drink Beverages) to Appendix A Soft Drink Sponsor Draft Agreement

5.12 **Section 9 – Value of Marketing Programs being offered**

Describe in detail any marketing programs being offered in the marketplace and what value they would bring to the agreement – include both on and off grounds initiatives. Included in this programs description should be (but is not limited to):

- point of sale advertising;
- promotional cups and other unique product elements – ability to provide some kind of “collectors” series over the length of the contract;
- Event support – degree of participation proposed in the support of the Toronto Zoo's fundraising/private events initiatives;
- Any online advertising support – links, banners, direct connects to Toronto Zoo's primary website – www.torontozoo.com.

5.13 **Section 10 – Value of Promotional Programs being offered**

Describe in detail any promotional programs being offered in the marketplace and what value they would bring to the agreement - include both on and off grounds initiatives. Included in this programs description should be (but is not limited to):

- Level of support for seasonal events (e.g.. Boo at the Zoo, Earth Day/Party for the Planet, World Animal Day, etc.) – please include # of events the proponent is willing to co-sponsor and to what level
- In-market promotion – proponent should list any level of unique cross-promotional or partner support, including return to gate, third party brand exposure for the Toronto Zoo, package promotions etc.

Proponent should differentiate between cash activation, in-kind activities, celebrity endorsement or event opportunities.

5.14 Section 11 – Environmental Benefits and Sustainability

As a leader in environmental conservation, education and research, the Toronto Zoo is very interested in current sustainability and waste diversion initiatives underway in the beverage supply industry. As such, Proponents are expected to indicate in their proposals products and/or services with environmental benefits, and any products and/or services with environmental benefits outside of the specifications called for in the RFP. In particular, Proponents are expected to outline plans on the use of biodegradable beverage containers and their introduction in the Greater Toronto Area and Ontario. Accordingly, the applicability of these plans to the proposal submitted by the Proponent, and the impact on the Toronto Zoo, will be considered in the evaluation of submissions.

6.0 TIME PERIOD FOR IMPLEMENTATION

- 6.1 Intended start date for the Beverage Supply and Sponsorship is 2010-10-01.
- 6.2 Based on this date, provide work schedule detailing the timing of tasks and significant activities or milestones.

7.0 PROPOSAL EVALUATION CRITERIA

Proposals will be evaluated through a comprehensive review and analysis by the Evaluation Committee.

The aim of the Evaluation Committee will be to select the Proposal which in its opinion meets the Toronto Zoo’s requirements under this RFP and provides the best overall value to the Toronto Zoo.

By responding to this RFP, Proponents will be deemed to have agreed that the decision of the Evaluation Committee will be final and binding.

7.1 Selection Criteria

The Evaluation Committee will utilize the evaluation and selection process to establish a Total Score for each Proposal as noted in 6.2 below. Based on this scoring, high-scoring proponents may be asked to attend an interview, and a final selection made on the basis of proposal and interview evaluation.

7.2 Selection Process

The Evaluation Committee will score the proposals using the Evaluation Criteria Table below.

Evaluation Criteria Table

Criteria	Points available to be awarded
Sponsorship Fee being offered annually over the 5 (five) years of the contract	25
Sponsor’s ability to meet the needs of all outlets from an equipment and servicing point of view	20
Environmental and Sustainability Plans of Proponent	15
Pricing of product to Board and Foodservice Operator	20
Value of Marketing Programs being offered	10
Value of Promotional Programs being offered	10
TOTAL	100
Interview: At the discretion of the Toronto Zoo, proponents who have received a high ranking may be invited to an interview with the Evaluation Committee, the results of which will be used by the Committee as a mechanism to revisit, revise, confirm and finalize the score and select the Preferred Proponent.	
Proponent’s Presentation & ability to answer questions during the Interview	50

Based on the paper submission proposal scoring, high-scoring Proponents may be asked to attend an interview. A Total Score (Interviewed Proponents) will be determined, including the Proponent's interview score. This Total Score (Interviewed Proponents) will be used for the final ranking of Proponents.

7.3 Clarifications

As part of the evaluation process, the Evaluation Committee may make requests for further information with respect to the content of any Proposal in order to clarify the understanding of the Proponent's response. The clarification process shall not be used to obtain required information that was not submitted at time of close or to promote the Proponent's company.

The Evaluation Committee may request this further information from one or more Proponents and not from others.

7.4 Interviews

The Toronto Zoo reserves the right to interview one or more high-scoring Proponents. Proponents will be short-listed for an interview based on the scoring of their written proposals using the above Evaluation Table.

The representative of a Proponent at any interview scheduled is expected to be thoroughly versed and knowledgeable with respect to the requirements of this RFP and the contents of its Proposal, and must have the authority to make decisions and commitments with respect to matters discussed at the interview, which may be included in any resulting Agreement.

The staff team proposed by the Proponent is an important element in the selection criteria and should be present for the interviews.

The Evaluation Committee may interview any Proponent(s) without interviewing others, and the Board will be under no obligation to advise those not receiving an invitation until completion of the evaluation and selection process.

7.5 Evaluation Results

Upon conclusion of the evaluation process, a final recommendation will be made by the Evaluation Committee.

Proposal evaluation results shall be the property of the Toronto Zoo and are subject to MFIPPA. Evaluation results may be made available to members of the Board/City Council on a confidential basis and may be subject to public release pursuant to MFIPPA.

7.6 Negotiations and Agreement

The award of any Agreement will be at the absolute discretion of the Toronto Zoo. The selection of the Preferred Proponent will not oblige the Toronto Zoo to negotiate or execute an Agreement with that Preferred Proponent.

The Toronto Zoo shall have the right to negotiate on such matter(s) as it chooses with the Preferred Proponent without obligation to communicate, negotiate or review similar modifications with other Proponents. The Toronto Zoo shall incur no liability to any other Proponent as a result of such negotiation or alternative arrangements.

During negotiations, the scope of the services may be refined, issues may be prioritized, responsibilities among the Proponent, all staff and sub-consultants provided by it and the Board may be settled and the issues concerning implementation may be clarified.

The Preferred Proponent, shall be required to enter into an agreement (the “Agreement”) in the form of the Beverage Supply and Sponsorship Draft Agreement attached as Appendix “A” to this RFP. The terms and conditions of the draft Agreement in Appendix A may be subject to such amendments as may be negotiated by the Toronto Zoo, in its sole discretion, with the successful Proponent.

If any Agreement cannot be negotiated within thirty (30) business days of notification to the Preferred Proponent, the Toronto Zoo may, at its sole discretion, choose to continue negotiations for a period of time, terminate negotiations with that Proponent and negotiate an Agreement with another Proponent or abort the RFP process and not enter into any Agreement with any of the Proponents.

8.0 PROPOSAL SUBMISSION REQUIREMENTS

Your sealed proposal must be completed, and received by Purchasing & Supply, Toronto Zoo, Administrative Support Centre, 361A Old Finch Ave., Scarborough, Ontario, M1B 5K7 by:

Friday, 2010-08-13, 1200 hours (noon, local time)

Provide **four (4)** copies of your proposal, **one (1)** unbound signed and clearly marked as ORIGINAL and **three (3)** copies of the original proposal clearly marked as COPY in a sealed package or envelope.

The original and all copies should be identical (excluding any obvious differences in labeling as noted above).

All copies of all pages of the Proposal should be printed in duplex (i.e. on both sides of the pages) where possible and 11 point font.

9.0 GENERAL TERMS

9.1 Proponent Assurance:

Unless otherwise stated, the goods, material, articles, equipment, work or services, specified or called for in or under this Proposal, shall be delivered or completely performed, as the case may be, by the Proponent as soon as possible and in any event within the period set out herein as the guaranteed period of delivery or completion.

9.2 Country of Origin:

Whenever possible, the goods, materials, articles or equipment, specified or called for in or under this Proposal, shall be of Canadian origin and manufacture.

9.3 Invoicing:

Unless otherwise indicated herein, the prices stated are payable in Canadian Funds at the head office of the Toronto Zoo. The impact of the Harmonized Sales Tax (HST) where applicable shall each be shown as a separate item. The Proponent’s GST registration number must be indicated on the invoice.

The Proponent shall clearly show any special charges as separate items on the invoice.

Payments to non-resident Proponents may be subject to withholding taxes under the Income Tax Act (Canada). Unless a non-resident Proponent provides the Toronto Zoo with a letter from Revenue Canada Taxation waiving the withholding requirements, the Toronto Zoo will withhold the taxes it determines are required under the Income Tax Act (Canada). Further information is available at the [CRA website, www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)

9.4 Right to Cancel:

The Toronto Zoo shall have the right to cancel at any time this Proposal or any contract or any part of any contract resulting from this Proposal in respect of the goods, material, articles, equipment, work or services set out in this Proposal or any such contract or part of such contract, not delivered or performed at the time of such cancellation, and the Toronto Zoo will not be responsible to make any payments in respect of any such goods, materials, articles, equipment, work or services and shall not incur any liability whatsoever in respect thereto.

In the event that the Proponent fails or neglects by any act or omission to comply with any of the conditions set out herein, this Proposal or any contract resulting from this Proposal may be unconditionally cancelled by the Toronto Zoo without notice to the Proponent.

9.5 Interest:

The Bidder/Proponent shall not be entitled to any interest upon any bill on account of delay in its approval by the Toronto Zoo.

9.6 Official Agreement:

No verbal arrangement or agreement, relating to the goods, material, articles, equipment, work or services, specified or called for under this Proposal, will be considered binding, and every notice advice or other communication pertaining thereto, must be in writing and signed by a duly authorized person.

9.7 Insurance and Policies

Provide minimum \$5,000,000 Commercial Liability Insurance in respect of injury or death to a single person or for property damage in a manner satisfactory to the Chief Operating Officer must be maintained through the Project and included in the Fee Proposal.

All insurance policies shall be endorsed to provide a minimum advance written notice of not less than thirty (30) days, in the event of cancellation, termination or reduction in coverage or limits, such notice to be made to the Chief Operating Officer.

The Proponent shall, as applicable, conform to and enforce strict compliance with the Occupational Health and Safety Act and for purposes of the Act be designated as the "constructor" for the Service.

The Proponent must adhere to all relevant Zoo policies, including, but not limited to, the Contractor Safety Policy, Working in the Vicinity of Animal Containments Policy and the Vehicles on Site Policy, copies of which the Chief Operating Officer, Toronto Zoo, shall supply to the Preferred Proponent.

9.8 Indemnity:

The Proponent shall at all times well and truly save, defend, keep harmless and fully indemnify the Toronto Zoo, the Board of Management of the Toronto Zoo, the City of Toronto, the Toronto & Region Conservation Authority, and their servants, employees, officers, agents and invitees, from and against all actions, suits, claims, demands, losses, costs, charges, damages, and expenses, brought or made against or incurred by their servants, officers, employees, agents or invitees in any way relating, directly or indirectly, to goods, material, articles or equipment supplied or to be supplied, or to the supplying of goods or services, pursuant to this Proposal, or any other claim, action, suit, demand, loss, cost, charge, damage or expense relating to copyright, trademark or patent

with regard directly or indirectly with any such goods, services, material, articles or equipment or the supply or performance thereof.

9.9 **Governing Law**

This RFP and any Proposal submitted in response to it and the process contemplated by this RFP including any ensuing Agreement shall be governed by the laws of the Province of Ontario. Any dispute arising out of this RFP or this RFP process will be determined by a court of competent jurisdiction in the Province of Ontario

9.10 **Guaranty of Proposal:**

All goods, material, articles, equipment, work or services, specified or called for in or under this Proposal, shall be supplied or performed at the price or process and on the basis set forth or referred to in and in accordance with the offer and this Proposal. The basis on which this Proposal is given shall include any specifications, plans, price schedules, samples, addenda or other details pertaining thereto, or provided in connection therewith.

9.11 **Formal Contract:**

The Proponent will be required to execute and enter into a formal contract (sample form of agreement is attached) that is satisfactory to the solicitor for the Toronto Zoo, in order to document the contract resulting from this RFP Process and to embody indemnity and related provisions that in the opinion of such solicitor are required to protect the Toronto Zoo.

9.12 **Warranty of Product:**

The Proponent warrants any goods, material, articles or equipment, to be supplied under or pursuant to this Proposal, that is or are to be made or used for particular purpose, will be fit and suitable for that purpose.

9.13 **Environmental Commitment – G.I.P.P.E.R.**

G.I.P.P.E.R. Statement of Principle – The Toronto Zoo in 1990-07-23, adopted the following G.I.P.P.E.R. (Governments Incorporating Procurement Policies to Eliminate Refuse Committee) Statement of Principle in order to contribute to waste reduction and to further the development and awareness of Environmentally Sound Purchasing.

“In order to contribute to waste reduction and to increase the development and awareness of Environmentally Sound Purchasing, acquisitions of goods and services will ensure that wherever possible specifications are amended to provide for the expanded use of durable products, reusable products and products (including those used in services) that contain the maximum level of post-consumer waste and/or recyclable content, without significantly affecting the intended use of the products or service. It is recognized that cost analysis is required in order to ensure that the products are made available at competitive prices”

All Proponents are encouraged to be pro-active in assisting the Toronto Zoo in achieving this principle. Alternative goods & services, suggested by the Proponent, addressing the above principle will be considered by the Toronto Zoo, within a reasonable price range.

9.14 **Proposal/Quotation Costs:**

The proponent shall bear all costs and expenses with respect to the preparation and submission of its proposal/quotation costs and the bidder participation in the proposal/quotation/proposal costs process, including, but not limited to: site visits and inspections, all information gathering processes, interviews, preparing responses to questions or requests for clarification from the Toronto Zoo, preparation of questions for the Toronto Zoo, and contract discussions and negotiations.

The Toronto Zoo shall not be responsible for or liable to pay any proposal/quotation costs of any proponent regardless of the conduct or outcome of the proposal/quotation Request, Purchase Order process or Contract process.

9.15 Copyright:

All final custom designs, artwork, etc. shall become the property of the Toronto Zoo. The Toronto Zoo shall retain sole copyright of all work that is developed or created at the request of the Toronto Zoo and the Proponent shall have no rights of sale or production other than the use for personal promotion of the author.

9.16 Addenda

If the Proponent finds discrepancies in or omissions from these Specifications or if he/she is in doubt as to their meaning, he/she shall notify the Toronto Zoo, who may issue a written addendum. The Toronto Zoo will make oral interpretations of the meaning of these documents and drawings.

If an addendum(s) is issued by the Toronto Zoo during the proposal period, such addendum(s) must be acknowledged by the Proponent in writing in their pricing submission.

9.17 Toronto Zoo Rights and Options Reserved:

The Toronto Zoo reserves the right to award the contract to any proponent who will best serve the interest of the Toronto Zoo. The Toronto Zoo reserves the right, in its sole discretion, to exercise the following rights and options with respect to the proposal submission, evaluation and selection process under this RFP:

- (a) To reject any or all proposals;
- (b) To re-issue this RFP at any time prior to award of work;
- (c) To cancel this RFP with or without issuing another RFP;
- (d) To supplement, amend, substitute or otherwise modify this RFP at any time prior to the selection of one or more proponents for negotiation;
- (e) To accept or reject any or all of the items in any proposal and award the work in whole or in part;
- (f) To waive any informality, defect, non-responsiveness and/or deviation from this RFP and its requirements;
- (g) To permit or reject at the Toronto Zoo's sole discretion, amendments (including information inadvertently omitted), modifications, alterations and/or corrections of proposals by some or all of the proponents following proposal submission;
- (h) To request that some or all of the proponents modify proposals based upon the Toronto Zoo's review and evaluation;
- (i) To request additional or clarifying information or more detailed information from any Proponent at any time, before or after proposal submission, including information inadvertently omitted by the proponent.

9.18 Performance:

All work to be done under the Contract shall be done to the satisfaction of the Toronto Zoo or their representative authorized to act for them, and the materials and process of preparation and manufacture shall at all times be subject to their examination and inspection and rejection in any stage of the preparation or manufacture.

9.19 Termination of Contract

The Toronto Zoo reserves the right to terminate any contract for any reason of:

- (a) Non-conformance to the terms of the contract
- (b) Inability to supply or deficiencies in the standard of service or products being supplied

- (c) In the event the Contractor shall fail to maintain or keep in force any terms and conditions of the contract, the Toronto Zoo may notify the Contractor in writing of such failure and demand that the same be remedied within thirty (30) days. Should the Contractor fail to remedy the same within the same period, the Toronto Zoo shall then have the right to terminate the contract by giving the Contractor thirty (30) days written notice.

The Toronto Zoo shall be the sole judge what constitutes unacceptable service.

9.20 **Co-ordination of Work:**

The proponent shall co-ordinate all work with the Toronto Zoo or their representative authorized to act for them, to ensure co-ordination and timely execution of service.

9.21 **Assignment**

The Contractor shall not assign or subcontract any of its obligations except as contained in the contract without the prior written approval of the Toronto Zoo.

9.22 **Records**

The Contractor shall maintain proper records of all sales to the Toronto Zoo and sales through the Contractor's vending equipment. These records shall be available for examination and/or audit by the college during the term of the contract and up to two (2) years beyond the termination of the contract.

9.23 **Reports**

The Contractor shall provide sales reports upon the request of the Chief Operating Officer. These reports shall be for standard time periods and broken down by product SKU#. Vending machine sales reports of sales by machine and product within each machine together with meter readings shall be provided monthly to the Chief Operating Officer.

10.0 SUBMISSION FORMS

10.1 PROPOSAL FORM:

I hereby submit the Proposal and will comply with all terms, conditions, specifications and drawings (when provided) as set out herein.

COMPANY INFORMATION	
Company Name:	
Contact Name:	Title:
Signature:	Date:
Address:	
Telephone #:	Fax #:
Email:	Web Site:
GST #:	

This form must be completed, properly signed and received on or before the date and time specified or your Proposal will not be considered. Proposal prices shall remain in effect for a period of ninety (90) days from the Proposal due date.

Right To Accept Or Reject Proposals

The Board of Management of the Toronto Zoo reserves the right to reject any or all Proposals or to accept any Proposal, should it deem such action to be in its interests.

Release of Proposal Information

By signing and submitting this quotation, you are agreeing to the release of your quotation information, as deemed necessary by the Toronto Zoo, in order to conduct business associated with this quotation or project.

10.2 REFERENCE FORM
REFERENCES

Provide the name, location, client reference and brief description of three (3) projects under the direct responsibility of the proponent.

Name and Location	Brief Description	Contact

10.3 LIST OF SUBCONTRACTORS
LIST OF SUBCONTRACTORS

The Bidder proposes to sublet the following portions of the Work to the persons, firms, or corporations indicated below:

SERVICE	NAME/ADDRESS	TELEPHONE

- Insert “Own Forces” for every portion of the **Work** which the contractor will be performing without a subcontractor.
 - Bidder shall specify nature of work for each “Other” sub-contract.

SUBMISSION LABEL

This address label should be printed and affixed to the front of your sealed tender, quotation and proposal envelope/package submission. Toronto Zoo will not be held responsible for envelopes and packages that are not properly labelled or submitted to an address other than the one listed on this label.

Proponent Name

RFP 117 (2010-07) Beverage Supply and Sponsorship
Closing: Friday, 2010-08-13, 1200 hours (noon) local time

TO BE RETURNED TO

TORONTO ZOO
C/O SUPERVISOR, PURCHASING & SUPPLY
ADMINISTRATIVE SUPPORT CENTRE
361A OLD FINCH AVE.
SCARBOROUGH, ONTARIO
M1B 5K7

NOTICE OF NO BID

INSTRUCTIONS:

It is important to the Toronto Zoo to receive a reply from all invited bidders. If you are unable, or do not wish to submit a bid, please complete the following portions of this form. State your reason for not bidding by checking the applicable box(es) or by explaining briefly in the space provided. It is not necessary to return any other Request for Proposal/Quotation/Tender documents or forms. Please just return this completed form by fax or by mail prior to the official closing date. Purchasing and Supply Fax Number: (416) 392-6711.

A Proposal/Quotation/Tender is not submitted for the following reason(s):	
<input type="checkbox"/> Project/quantity too large.	<input type="checkbox"/> Project/quantity too small.
<input type="checkbox"/> We do not offer services or commodities to these requirements	<input type="checkbox"/> Cannot meet delivery or completion requirement
<input type="checkbox"/> We do not offer this service or commodity.	<input type="checkbox"/> Agreements with other company do not permit us to sell directly.
<input type="checkbox"/> Cannot handle due to present commitments.	<input type="checkbox"/> Licensing restrictions
<input type="checkbox"/> Unable to bid competitively.	<input type="checkbox"/> We do not wish to bid on this service or commodity in the future.
<input type="checkbox"/> Insufficient information to prepare quote/proposal/tender	<input type="checkbox"/> Specifications are not sufficiently defined
<input type="checkbox"/> We are unable to meet bonding or insurance requirements.	

<u>Other reasons or additional comments (please explain):</u>

Company Name:	
Address	
Contact Person:	
Signature of Company Representative:	
Date:	
Phone Number:	
Email address	
Fax Number:	

THIS AGREEMENT made in triplicate this th day of , 2010 and effective on from the th day of
, 2010

BETWEEN:

BOARD OF MANAGEMENT OF THE TORONTO ZOO
(Hereinafter called the "Board")

OF THE FIRST PART

-and-

(hereinafter called "Supplier")

OF THE SECOND PART

WHEREAS the Board is responsible for the operation and administration of the lands, buildings and premises known as the Toronto Zoo, (hereinafter referred to as the "Premises");

AND WHEREAS the Board has entered into a food service agreement granting certain rights (the "Foodservice Agreement") to Compass Group Canada Limited ("Compass") and may enter into similar agreements from time to time with other parties;

NOW THEREFORE, for good and valuable consideration, the parties agree as follows (the "Agreement"):

1. Definitions

In this Agreement the following terms shall have the meanings ascribed to them below“:

"Agreement Year" shall mean each twelve-month (12) period from 1st to 31st during the Term;

“Foodservice Rights” means the rights granted to any person by the Board to provide Foodservice services, including the service and sale of Soft Drink Beverages, on the Premises;

“Commission” shall mean the commission payable to the Board on the Net FSV Machine Revenues as defined in section 7 of this Agreement;

“FSV Machines” shall mean automatic vending machines operated and located on the Premises on a permanent or temporary basis at any time during the Term;

“Net FSV Machine Revenues” shall mean all revenues collected from the sale of Soft Drink Beverages through FSV Machines less all applicable taxes now or hereafter imposed on such sales and bottle rebates if any. [Sample calculation: Vending Price, Less Taxes (xx%) = Net FSV Machine Revenue].

“Foodservice Provider” includes Compass (Compass Group Canada Limited) and any other person subsequently granted Foodservice Rights on the Premises during the Term;

"Outlet" shall mean any present or future concession, restaurant, cafeteria, bar, and any other location or Outlet which is situated on the Premises, where food and beverages that are prepared on the Premises are consumed, where Soft Drink Beverages are sold, distributed or otherwise supplied **INCLUDING**, without limitation,

- (i) Outlets operated by the Board for the sale of food and beverages,
- (ii) Outlets which the Board permits others to operate for the sale of food and beverages,
- (iii) Outlets and areas operated by the Foodservice Provider, and

but **EXCLUDING**:

- (iv) The operators, operations and events which are excluded or partially excluded under subsection 2(2),
- (v) Operators, operations and events selling Soft Drink Beverages obtained from alternative suppliers as permitted under subsection 9(b), and
- (vi) Mobile vendors and concessionaires authorized by the Board to sell food and beverages anywhere outside of the buildings on the Premise“;

"Premises" means the lands, buildings and premises known as the Toronto Zoo;

“Soft Drink Beverages” shall mean all non-alcoholic, carbonated and non-carbonated beverages, including sodas, colas, fruit juices, fruit drinks, regular and fruit flavoured iced teas, carbonated and non-carbonated waters, and "sports drinks" in any package or container in which such products are sold or served, but **EXCLUDING** “slushies” or other flavoured ice drinks, milk, freshly squeezed juice products, hot chocolate, hot tea and hot and cold coffees; bottled water for catered events;

"Soft Drink Beverages of SUPPLIER" shall mean those Soft Drink Beverages which are manufactured, distributed or sold by SUPPLIER in such flavours, brands, packaging and dispensing forms as Supplier may from time to time make available as required herein during the Term;

"Special Promotional Event" shall mean a local, regional and/or national event Supplied by the manufacturer, supplier or distributor of Soft Drink Beverages that are not Soft Drink Beverages of the SUPPLIER;

"Term" shall mean the -year period from 1, 2010, to 31, 20 inclusive; and

"Trademarks" shall mean the trademarks, design marks, certification marks, brand names or any other intellectual property right which SUPPLIER is currently authorized by its licensors, including to use from time to time in connection with the Soft Drink Beverages of the SUPPLIER.

2. Grant of Supplier Rights to SUPPLIER

(1) The Board covenants and agrees with SUPPLIER as follows:

- (a) During and throughout the Term, the SUPPLIER shall, subject to the terms and conditions of subsection 2(2), be the sole and exclusive Soft Drink Beverage SUPPLIER, supplier and advertiser of Soft Drink Beverages on the Premises.
- (b) The Soft Drink Beverages of SUPPLIER shall, except as set out herein, be the only Soft Drink Beverages supplied, sold or distributed at the Premises.

- (c) Outlet operators shall, subject to subsection 2(2), not be permitted to sell or distribute Soft Drink Beverages that are not the Soft Drink Beverages of the SUPPLIER or that have not been purchased from the SUPPLIER, its designate or authorized commissary pursuant to the terms of this Agreement.
- (d) The Board shall not permit the use of postmix and premix dispensing equipment other than the postmix and premix dispensing equipment supplied by SUPPLIER.
- (e) The Board shall fully utilize the cooling and dispensing equipment supplied by SUPPLIER pursuant to section 9 (g) by requiring the Foodservice Provider and Outlet operators to use such equipment. All such equipment shall bear one or more Trademarks at the discretion of the SUPPLIER.
- (f) Foodservice operator shall not be permitted to use cooling and dispensing equipment in the sale and distribution of Soft Drink Beverages which displays any trademark, design mark, certification mark, brand name or other mark associated with a direct competitor of the SUPPLIER.
- (g) The Board agrees that SUPPLIER may undertake promotions for the sale and distribution of the Soft Drink Beverages of the SUPPLIER on the Premises provided such promotions have been first approved by the Board and such approval shall not be unreasonably withheld or delayed.
- (h) The Board grants to the SUPPLIER the right to use throughout the Term the trademarks, names, logos and other indicia owned and used by it in association with the Premises, for use by SUPPLIER in promotions, advertising and marketing materials of the SUPPLIER, provided such promotions, advertising and marketing materials have been first approved by the Board, such approval not to be unreasonably withheld.
- (i) The SUPPLIER is hereby granted the right to place a minimum of additional FSV Machines in such locations on the Premises as may be mutually agreed upon by the parties so as to not impact adversely on the operational requirements of the Board. SUPPLIER shall be solely responsible for all costs associated with the installation, maintenance, repair, replacement and removal of all existing and new vending machines. SUPPLIER agrees that the Board shall, acting reasonably, have the right to require the relocation of any existing or new vending machine, including as a result of event requirements or construction/development on the Premises.
- (j) The Board shall not permit any operator of an Outlet to sell or distribute Soft Drink Beverages which are sold in a cup or vessel to be consumed on the Premises to be any Soft Drink Beverage other than the Soft Drink Beverages of the SUPPLIER or to be sold in cups or vessels other than cups or vessels bearing a Trademark. The Board shall require that all Outlet operators purchase the cups and vessels they require from SUPPLIER or its designate or authorized commissary. SUPPLIER shall make best efforts to ensure that an adequate supply of cups or vessels is available to allow the Board and Outlet operators to fulfil their obligations hereunder. SUPPLIER shall also make best efforts to ensure all cups are recyclable. Notwithstanding the foregoing:
- (k) The Board agrees to allow the SUPPLIER, its agents, employees, designates or authorized commissary, reasonable ingress to and egress from the Premises during those hours and

times permitted by the Board's rules and regulations as applicable to all contracting parties and service suppliers so that it can fulfil its obligations herein.

- (2) The parties agree that the rights granted to SUPPLIER under this Agreement shall not extend to:
- (a) Water service provided for catered events and meetings
 - (b) Drinks brought onto the Premises by the public, or third party catered events held on the Premises

3. Official Sponsor Status

The Board and the Association agree that SUPPLIER shall have the right to promote the fact that SUPPLIER is a major corporate Sponsor of the Toronto Zoo and such promotion may occur in all advertising, including television, radio, print media, packaging (including cups and vessels) and at any point-of-sale of Soft Drink Beverages of SUPPLIER wherever they are sold or served on the Premises, subject to the prior approval of the Board, not to be unreasonably withheld.

The Board acknowledges that SUPPLIER shall be designated as The Official Soft Drink SUPPLIER of the Toronto Zoo” and such designation shall appear on any promotion and advertising materials developed by and for the Board which are to be presented in conjunction with advertisements or promotions for the Soft Drink Beverages of SUPPLIER.

4. Menu Boards

The SUPPLIER and the Board agree that SUPPLIER shall lend illuminated and/or non-illuminated menu board signs displaying the Trademarks as determined by SUPPLIER to the Board at no cost to the Board except as herein provided. All costs related to providing electric current to illuminated menu board signs shall be borne by the Board. The Board shall be responsible for any loss or damage to or destruction of the illuminated and non-illuminated menu board signs caused by the Board’s neglect or negligence while on loan to the Board. The Board shall keep the menu boards in good repair and condition (normal wear and tear excepted), attractive appearance and efficient working order and shall furnish any and all parts, mechanisms, devices and servicing required therefore at its sole expense.

5. Grant of Marketing Rights

In furtherance of the exclusive rights of supply granted by the Board to SUPPLIER, the Board hereby grants, subject to the terms and conditions of this section, to SUPPLIER the following:

- (a) SUPPLIER shall pay to the Board, once in each Agreement Year, a sponsorship fee of _____ per year payable on _____;
- (b) SUPPLIER shall develop marketing programs to promote the Soft Drink Beverages of SUPPLIER and the Premises during each Agreement Year in the nature of on-pack coupon promotions, on-site promotions and third party tie-ins with SUPPLIERS customers as agreed to by SUPPLIER and the Board;
- (c) The Board shall include reference to SUPPLIER on the Board’s website (year round) provided that SUPPLIER shall be responsible for producing and providing the reference copy to be used on the website;

- (d) The Board will provide SUPPLIER with corporate recognition in related Board literature, including, but not limited to the Zoo Guide;
- (e) **OTHER BENEFITS TO / FROM THE BOARD TO BE INSERTED LATER BASED ON PROPOSAL AND NEGOTIATION.**

6. Board's Foodservice Provider

SUPPLIER acknowledges that the Board has entered into an agreement with Compass as its Foodservice Provider ("Foodservice Agreement"), and that it will enter into future agreements from time to time, which provide exclusive Foodservice rights to a Foodservice Provider. Notwithstanding any other provisions in this Agreement, SUPPLIER acknowledges that the obligations of the Food Service Operator to use the Suppliers products are subject the SUPPLIER supplying sufficient Soft Drink Beverages at the Premises on a timely basis at prices no higher than those charged by SUPPLIER to similar customers purchasing similar volumes of such Soft Drink Beverages from SUPPLIER, together with any volume discounts extended to, and without any minimum quantities other than those normally stipulated to similar customers purchasing similar volumes of such Soft Drink Beverages from SUPPLIER for resale to the general public within Canada.

7. Commission on FSV Vending Machine Revenues

The Board and SUPPLIER agree that SUPPLIER shall collect and be entitled to all Net FSV Machine Revenues, provided that SUPPLIER will pay in arrears on the first day of February, May, August and November (or on the last day of the Term) of each Agreement Year during the Term, a commission on the Net FSV Machine Revenues (the "Commission") of _____ percent (____%) of all Net FSV Machines Revenues collected from FSV Machines.

8. Pricing

- (1) The prices to be paid by the Board and the Foodservice operator for the Soft Drink Beverages of SUPPLIER for consumption or sale on the Premises shall be as set out in Schedule "-" (collectively referred to as "the "Prices").
- (2) Despite subsection 8(1), in the event that there is at any time during the Term a significant ingredient change, new formulation or a significant decrease in the applicable prevailing sweetener costs, concentrate costs or other direct or indirect production or packaging costs which results in a decrease in costs to SUPPLIER or the prices that it charges to similar purchasers purchasing similar volumes under similar circumstances as the Board, the Foodservice Provider and other purchasers, SUPPLIER shall decrease the Prices during the Term by the amount of any decreases and such decreases in Prices shall take effect immediately upon notice by SUPPLIER to the Board and the Foodservice Provider.
- (3) Prices for the Soft Drink Beverages of SUPPLIER shall exclude all government taxes, levies (environmental or otherwise) and any refundable deposit charged for pallets, CO₂ containers, shells and pre-mix tanks.
- (4) Prices for the Soft Drink Beverages of SUPPLIER sold in automatic vending machines shall at all times be no less than the prices for Soft Drink Beverages of SUPPLIER sold from the Foodservice

locations and Outlets.

- (5) The Foodservice Provider shall be required to pay for the Soft Drink Beverages of SUPPLIER in accordance with SUPPLIERS standard trade terms in effect from time to time.

9. Obligations of SUPPLIER

In consideration of the exclusive rights of Sponsorship advertising and supply granted by the Board to SUPPLIER, SUPPLIER shall:

- (a) Pay to the Board in advance on the first day of each Agreement Year the annual amount of [\$ _____ - Amount to be inserted as per successful proposal];
- (b) Supply, at its own expense, the variety, as set out in Schedule “-”, of Soft Drink Beverages in a timely manner, provided that the Board and the Foodservice Provider shall be free to arrange for alternative suppliers of Soft Drink Beverages with respect to types of products not supplied by SUPPLIER, including products listed in Schedule “-” which are not supplied by SUPPLIER in accordance with this section;
- (c) Not set minimum purchase quantities or dollar amounts applicable to Outlet operators, provided that Outlet operators shall be required to purchase Soft Drink Beverages of SUPPLIER in full cases only;
- (d) Accept and credit the return of unused Soft Drink Beverages, provided that such Soft Drink Beverages:
- (i) are unopened (including the case or any packaging);
 - (ii) have been stored properly; and
 - (iii) are saleable;
- (e) Ensure that no packaged goods sold on the Premises during the Term bear any reference to any SUPPLIER promotion, event or attraction which is a competitor of the Toronto Zoo;
- (f) deliver the Soft Drink Beverages of SUPPLIER sold to Foodservice operator and Outlets pursuant to this Agreement by SUPPLIER or its designate or an authorized commissary at no delivery charge to the Foodservice operator and Outlets;
- (g) Supply all FSV, cooling and dispensing equipment used in the sale and distribution of Soft Drink Beverages at locations identified in Schedule “-” with an estimated value of: _____ (Supplier to provide this number), at no cost to the Board or the Foodservice Provider;
- (h) accept and allow the use of other cooling and dispensing equipment by Outlet operators for the Soft Drink Beverages if generic in nature as per subsection 2(f);
- (i) conduct audits of the brands of Soft Drink Beverages sold in the Premises to ensure compliance with the provisions of this Agreement and report any non-compliance to the Board. Notwithstanding the foregoing, the conduct of audits by SUPPLIER shall not relieve the Board of its obligations pursuant to the terms of this Agreement and shall not constitute a waiver by SUPPLIER of any rights that it may have arising from a breach of this Agreement; and

- (j) ensure that Soft Drink Beverages are made available exclusively in bottled package format, with the following exceptions:
 - [1] Fountain product shall be permitted in any permanent serving area that is operated on a year round basis and that does not pose a quality risk ; and
 - [2] Soft Drink Beverages in cans shall be made available for purchase from SUPPLIER; for use by the Board..

- (k) The Board shall, at SUPPLIERS expense, provide any additional electricity connections or other installations required to operate the permanent equipment of SUPPLIER on the Premises.

10. Sales Volume Reporting

The SUPPLIER shall report to the Board on a quarterly basis in each Agreement Year during the Term. The report shall be in a form satisfactory to the Chief Executive Officer and will provide a monthly breakdown of the sales, including vending machines sales, under this Agreement as of the date of report. For greater certainty, the parties agree that the Sponsorship Fee payable under section 9(a) shall not be based on or vary by volume.

11. Audit Rights

SUPPLIER shall, together with the last quarterly payment of Commission in respect of an Agreement Year, provide the Board with an audited annual statement, in a form and content satisfactory to the Chief Executive Officer of the Board. The audited annual statement shall be prepared according to generally accepted accounting principles. The audited annual statement will identify all FSV Machine Revenues earned for the applicable Agreement Year and the Commission owing for the applicable Agreement Year. The Board shall, at its sole discretion, be entitled to audit SUPPLIER's supply and sales records for the Toronto Zoo at any time during the Term and up to three (3) years thereafter. SUPPLIER shall keep the records at a location within the City of Toronto and shall permit the Board to view and copy any or all such records for the purpose of conducting an audit under this section. In the event that an audit shows a discrepancy resulting in an underpayment by SUPPLIER of Commission owed under this Agreement, then SUPPLIER shall promptly pay any such amount to the Board as an amount due and owing under this Agreement. In addition, SUPPLIER shall be responsible for reasonable costs incurred by the Board in conducting the audit, including the retention of an outside auditor.

12. SUPPLIER Trademarks

The Board recognizes the value to SUPPLIER of maintaining the integrity of the Trademarks wherever the Soft Drink Beverages of SUPPLIER are sold, dispensed, promoted or advertised at the Premises. The Board agrees that all such usage of the Trademarks shall be in the format, style and treatment furnished or approved by SUPPLIER and the Board shall have no claim or interest therein.

Upon expiration of this Agreement at the end of the Term or upon its termination prior to the end of the Term, for any reason whatsoever, all advertising materials bearing any of the Trademarks and all other property of SUPPLIER shall be made available to SUPPLIER for removal from the Premises. SUPPLIER shall have the right to remove such advertising materials and other property of SUPPLIER at its own expense and shall restore the Premises to their former condition.

13. Indemnification by SUPPLIER

SUPPLIER agrees to indemnify and hold harmless the Board, the City of Toronto, the Toronto and Region Conservation Authority, Compass, their agents, officers, employees and elected officials (the “Indemnitees”), from judgements or expenses of every nature and description brought or recovered against SUPPLIER and/or the Indemnitees, their agents and employees, for damages resulting in bodily injury, including death, sustained by any or on account of damage to property, caused as a result of SUPPLIERS negligence or a breach of its obligations under this Agreement. Such damages shall not include indirect, special or consequential damages.

14. Indemnification by the Board

The Board agrees to indemnify and hold harmless SUPPLIER, its agents, officers, employees and elected officials, from judgements or expenses of every nature and description brought or recovered against SUPPLIER and/or the Board, its agents, officers, employees or elected officials for damages resulting in bodily injury, including death, sustained by any person or persons, or on account of damage to property, caused as a result of the Board’s negligence or a breach of its obligations under this Agreement. Such damages shall not include indirect, special or consequential damages.

15. Insurance

SUPPLIER shall effect, maintain and keep in force, at its sole cost and expense throughout the duration of this Agreement, comprehensive general liability coverage in a form satisfactory to the Board and in an amount of not less than Ten Million Dollars (\$10,000,000.00) per occurrence, including provisions for blanket contractual liability coverage, cross liability and severability of interests. Such insurance shall include the Board, the City of Toronto, the Toronto and Region Conservation Authority and Compass as additional insureds, and evidence of coverage shall be delivered to the Board upon execution of this Agreement. The insurance coverage shall be primary before any insurance held by the additional insured. All policies must state that the policy may not be cancelled or reduced by the insurance carrier without giving thirty (30) days prior notice in writing to the Board.

The Board shall provide evidence of its insurance to SUPPLIER on request.

16. Default by the Parties

The occurrence of any one or more of the following events shall constitute an event of default by SUPPLIER or the Board, in which case a non-defaulting party may, at its option, terminate this Agreement forthwith by notice without prejudice, except as set out in section 20, to any other rights which it may have at law, in equity or otherwise:

- (a) A failure to pay any fee, charge or Commission, including the commission payable as and when the same becomes due and payable and such failure shall continue for a period of seventy-two (72) hours after notice thereof by the payee to the payor; and
- (b) A failure by any party to perform any of the other covenants, terms or conditions hereof to be performed by that party where such non-performance continues for a period of thirty (30) days after notice of default is received, or if the default is of such a nature as to be incapable of being remedied within the thirty (30) day period, where the defaulting party fails to embark upon a diligent and continuous course of action to address and correct such default.

17. Refund of Sponsorship Fee on Termination

Upon the happening of any such event of default as described above, SUPPLIER may terminate this Agreement, in which case SUPPLIER's sole and exclusive remedy against the other party to this Agreement shall, despite anything in section 18, be to require the Board to refund to SUPPLIER a portion of the Sponsorship Fee paid by SUPPLIER to the Board and such portion shall be determined based on proportion of the Sponsorship period left in the contract.

18. Force Majeure

With the exception of an obligation for the payment of money, no party shall be liable hereunder for failure to perform in accordance with the terms of this Agreement to the extent that and so long as such failure occurs for a reason beyond the reasonable control of the non-performing party except for financial inability, including without limiting the generality of the foregoing, an act of war, terrorism, epidemic, violence, strike, act of God or act of any governmental authority.

19. Assignment of this Agreement

Subject to the express provisions of this Agreement, no party hereto may assign or transfer this Agreement or any rights granted herein unless the prior consent of: (a) in the case of SUPPLIER, the Board, which consent shall not be unreasonably withheld; and (b) in the case of the Board, the SUPPLIER, which consent shall not be unreasonably withheld. However, SUPPLIER may assign this Agreement to a company with which it is associated or affiliated, or to a licensed Supplier bottler, without the consent of any other party but upon reasonable prior notice to the Board. The Board may assign this Agreement by operation of law or to the City of Toronto, without the consent of but upon reasonable prior notice to SUPPLIER.

20. Use of Trade Identification

Nothing herein shall be construed to permit any party to use any material containing any trademark, Official Mark, or other trade identification belonging to any other party without prior written consent, or to continue approved use beyond the duration of this Agreement. Nothing in this Agreement shall give either party any interest in any of any other party's trade identification, it being understood that this Agreement extends permission to use such trade identification solely for the advertising and promotion purposes contemplated by this Agreement. Each party agrees to adhere to all laws and practices necessary to preserve the other parties' exclusive rights to their trade identification. Approval of a party's use of any other party's trade identification shall not be unreasonably withheld. If written objection is not given within three (3) business days after receipt, the material is deemed approved.

21. This Agreement

Each of the parties separately represents and warrants to the others that it has full authority and capacity to enter into and comply with the terms, covenants and conditions of this Agreement and that it is not a party to any other contract or contracts (other than those which have already been disclosed by a party to the other party) and does not have any other obligations that would prevent it from fulfilling any other terms, covenants and conditions hereunder or which would in any way impair any rights granted to either party hereunder.

22. Waiver

Failure by any party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement shall not be construed as a waiver or relinquishment in the future of such covenants, agreements, terms, provisions and conditions.

23. Entire Agreement

This Agreement and any schedules hereto constitute the entire Agreement between the parties and it is acknowledged that there are no agreements, warranties, conditions, representations or inducements, express or implied, collateral or otherwise, made by or on behalf of any party. This Agreement shall be governed, construed and interpreted in all respects in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto. In the event of a dispute under this Agreement, such dispute shall be settled in a court of law in Ontario. This Agreement shall not be amended or deemed to be amended save only by further Agreement in writing of equal formality hereto. Time shall be of the essence of this Agreement and each and every part thereof.

24. No Joint Venture

SUPPLIER shall not contract on behalf of the Board and shall not represent that it acts on behalf of the Board. SUPPLIER shall not be an agent of the Board nor shall this Agreement be construed as a joint venture or partnership.

The Board shall not contract on behalf of SUPPLIER nor shall it represent that they act on behalf of SUPPLIER. The Board shall not be an agent of SUPPLIER nor shall this Agreement be construed as a joint venture or partnership.

25. Invalidity

In the event any part of this Agreement is rendered void, invalid or unenforceable by any court or rule of law for any reason, then the remainder of this Agreement shall not be affected thereby in any way but shall remain enforceable.

26. Interest

Interest shall be payable on amounts overdue under this Agreement at the rate charged by the Board's bank to its preferred customers ("Prime Rate") at the date the payment is due plus 2 percent compounded monthly.

27. Union Agreements/Applicable Laws

- (a) SUPPLIER shall conform with and abide by all covenants and agreements in force and in effect from time to time between the Board or the City of Toronto and any union or association, including obtaining any clearance required by any union or trade organization, having any jurisdiction over any part of the Premises.
- (b) SUPPLIER shall conform with and abide by all Municipal, Provincial and Federal laws, by-laws, rules and regulations applicable to any construction work or other activity undertaken by it on the Premises. SUPPLIER agrees that it shall, at its expense, utilize the Board's safety engineer where appropriate to ensure compliance with all applicable safety standards.

28. Taxes

SUPPLIER shall pay or cause to be paid as they fall due all rates, taxes and assessments, of whatsoever description, including but not limited to property and business taxes, that may at any time during the term of this Agreement be lawfully imposed by any taxing authority with respect to SUPPLIERS use of the Premises and the exercise of its rights under this Agreement.

The parties to this Agreement acknowledge that, in addition to the payments made by SUPPLIER hereunder, SUPPLIER shall add and pay to the applicable party the GST/HST/QST and any other taxes eligible in respect of such payments. Upon receipt of such eligible taxes, the applicable party agrees to remit the eligible taxes collected to the appropriate tax authority(ies). The parties represent that their respective GST/HST/QST registration number(s), as applicable, are as follows:

a) For the Board: GST/HST number:

b) For SUPPLIER: GST/HST number:

QST number

29. Notice

Any notice desired or required to be given in accordance with the terms, covenants and conditions to this Agreement shall be in writing and shall be deemed to be effectively given three (3) business days of consecutive postal service after the same has been mailed by prepaid, registered post to the party to whom the notice is described at the addresses as follows or at such other address as advised in writing by one party to the other from time to time:

To SUPPLIER:

Attention:

Fax No.

with a copy to:

Attention:

Fax No.

To the Board:

The Board of Management of the Toronto Zoo
361A Old Finch Avenue
Toronto, Ontario
M1

Attention: Chief Executive Officer

Fax No.

To Compass:

Compass Foods Canada Limited

Attention:

Fax No.

or served personally or by facsimile transmission upon an officer of the party for whom it is intended. Any such notice given as aforesaid shall be conclusively deemed to have been delivered and received if served personally, on the date of such service, or if mailed, on the third business day of consecutive postal service after such mailing (Saturdays, Sundays and postal holidays excluded) or if by facsimile transmission, on the next business day following the date of transmission. Any party may from time to time by notice to the others change the address to which notices are to be given.

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

[SUPPLIER]

THE BOARD OF MANAGEMENT OF
THE TORONTO ZOO

Per: _____

Name:

Title:

I have authority to bind SUPPLIER.

Per: _____

Name:

Title:

I have authority to bind the Board.

Per: _____

Name:

Title:

“SCHEDULE “-”
Variety of Products Offered

Proponents to submit detailed list of all products offered with their Proposal.