



Ronald Mason, Jr., J.D.
President

November 6, 2018

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Suite 504
Washington, D.C. 20004

Reference: University of the District of Columbia Proposed Contract for the Exclusive Pouring Rights Agreement Contract No. GF-2019-C-0021

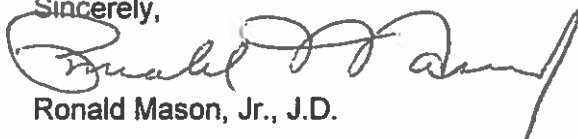
Chairman Mendelson:

Pursuant to D.C. Official Code § 1-204.51(b)(2)(A), enclosed for consideration by the Council of the District of Columbia is a proposed University of the District of Columbia Exclusive Pouring Rights Agreement with the Bottling Group LLC Emergency Declaration Resolution of 2018 along with the accompanying University of the District of Columbia Exclusive Pouring Rights Agreement with the Bottling Group LLC Emergency Approval Resolution of 2018".

As required by D.C. Official Code § 1-204.51, the University is seeking Council approval on an emergency basis of proposed Contract. This Pouring Rights Agreement between the University and Bottling Group, LLC, the parent company of PepsiCo and related branded beverage products, requires Bottling Group, LLC to create an integrated beverage program providing quality products and state-of -the art equipment, along with initial support funds of \$60,000, and annual guaranteed minimum payments to the University of \$91,000 per year for ten years, to encompass general support, athletics support and student scholarships.

As always, I am available to discuss any questions you may have regarding the proposed contract. In order to facilitate a response to any questions you may have regarding this proposed contract, please have your staff contact Ms. Mary Ann Harris, Chief Contracting Officer, at (202) 274-5426. I look forward to a favorable consideration of this contract.

Sincerely,



Ronald Mason, Jr., J.D.

Enclosures

1
2 Chairman Phil Mendelson at the request of the
3 University of the District of Columbia
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10 A PROPOSED RESOLUTION
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13 _____
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15 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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20 To declare the existence of an emergency with respect to the need to approve a multi-year
21 Agreement for Exclusive Pouring Rights at the University of the District of Columbia
22 between the University of the District of Columbia and Bottling Group, LLC.
23

24 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this
25 resolution may be cited as the “University of the District of Columbia Exclusive Pouring Rights
26 Agreement with the Bottling Group LLC Emergency Declaration Resolution of 2018”.

27 Sec. 2. (a) There exists a need to approve a ten-year Pouring Rights Agreement with
28 Bottling Group, LLC to be the exclusive supplier of carbonated and non-carbonated, non-
29 alcoholic beverages at the University. The University initiated the contract through a RFP
30 process to “help find alternative financing sources in financial support amounting to roughly \$2
31 million over the next ten years.” This is the first effort by the University to enter into a pouring
32 rights contract, although universities, specifically, have engaged in the process since at least the
33 early 1990s. Currently, some 3,039 four-year colleges have pouring rights contracts.

34 (b) This Pouring Rights Agreement between the University and Bottling Group, LLC,
35 the parent company of PepsiCo and related branded beverage products, requires Bottling Group,
36 LLC to create an integrated beverage program providing quality products and state-of-the-art
37 equipment, along with initial support funds of \$60,000, and annual guaranteed minimum
38 payments to the University of \$91,000 per year for ten years, to encompass general support,
39 athletics support and student scholarships. The University began the RFP process in March 2018
40 and a UDC panel selected PepsiCo's proposal. The University committed to implementation of
41 the proposal by October 1, 2018 during the negotiations with PepsiCo.

42 (c) Without Council approval on an emergency basis to address student concerns about
43 the non-availability of beverages on campus and the slippage past October 1, 2018, the
44 University risks PepsiCo withdrawing from the contractual process.

45 Sec. 3. The Council of the District of Columbia determines that the circumstances
46 enumerated in Section 2 constitute emergency circumstances making it necessary that the
47 "University of the District of Columbia Exclusive Pouring Rights Agreement with the Bottling
48 Group LLC Emergency Approval Resolution of 2018" be adopted after a single reading.

49 Sec. 4. This resolution shall take effect immediately.

1
2 Chairman Phil Mendelson
3 at the request of the University of the District of
4 Columbia
5

6
7 A PROPOSED RESOLUTION
8

9
10 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
11
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15 To approve on an emergency basis, a multi-year Agreement for Exclusive Pouring Rights at the
16 University of the District of Columbia between the University of the District of
17 Columbia and the Bottling Group, LLC.
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19

20 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this
21 resolution may be cited as the “University of the District of Columbia Exclusive Pouring Rights
22 Agreement with the Bottling Group LLC Emergency Approval Resolution of 2018”.

23 Sec. 2. Pursuant to section §451 of the District of Columbia Home Rule Act, approved
24 December 24, 1973 (87 stat. 803; D.C. Official Code §1-204.51) and D.C. Code §2-
25 352.02, the Council approves the multi-year Agreement for Exclusive Pouring Rights at
26 the University of the District of Columbia between the University of District of Columbia
27 and the Bottling Group, LLC.

28 Sec.3. The proposed multi-year contract approved in Section 2 of the resolution shall
29 become effective immediately.

30 Sec.4. Fiscal Impact Statement.

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32 The Council adopts the fiscal impact statement provided by the Chief Financial Officer as
33 the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule
34 Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).
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36 Sec. 5. The Secretary to the Council shall transmit a copy of this resolution, upon its
37 adoption, each to the University of the District of Columbia Board of Trustees and the President.

38 Sec. 6. This Resolution shall take effect immediately.

SPONSORSHIP AGREEMENT

This sets forth the agreement ("*Agreement*") between **Bottling Group, LLC** a Delaware limited liability company and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 200 Pepsi Way, Wytheville, VA 24382 ("*Pepsi*") and **The Board of Trustees of the University of the District of Columbia**, with its principal place of business at 4200 Connecticut Avenue NW, Washington, DC 20008 (the "*Customer*").

WHEREAS, Pepsi desires the right to be the exclusive supplier of Beverages (as defined below) to the Customer; and

WHEREAS, Pepsi has submitted a bid in response to a request for proposals issued by the Customer for the exclusive right to develop and carry out a program for the sale of its beverage products in all facilities owned or operated by the Customer; and

WHEREAS, Pepsi is experienced in installing, operating, servicing and maintaining equipment for dispensing beverage products and the Customer has determined that it is in the best interests of the Customer to contract with Pepsi to provide services for the sale of beverage products; and

WHEREAS, Pepsi wishes to identify itself with the Customer and to have its products promoted and sold at the Facilities (as defined below) and further wishes to receive the other promotional benefits provided for by the Customer in this Agreement; and

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and the other mutual promises set forth herein, the parties agree as follows:

AGREEMENT

1. DEFINITIONS.

"*Approved Cups*" means the disposable cups approved by Pepsi from time to time as its standard trademark cups and other containers approved by Pepsi from time to time and bearing the trademark(s) of Pepsi and/or other Products. In addition, Pepsi agrees that the Customer shall have the right to produce limited-run commemorative plastic cups reasonably acceptable to Pepsi for use at the Facilities and that such cups shall also be considered to be Approved Cups, provided that Pepsi's trademark(s) for Pepsi® shall be included on such commemorative cups. The use and size of Pepsi's trademark(s) on such commemorative cups shall be subject to the prior approval of Pepsi.

"*Beverage*" or "*Beverages*" means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) packaged carbonated or still water (including spring, mineral or purified), (viii) liquid concentrate teas ("*LCT*"), (ix) frozen carbonated and non-carbonated beverages ("*FB*"), and (x) any future categories of nonalcoholic cold beverage products that may be distributed by Pepsi. "Beverages" does

NOT include smoothies that are made fresh from frozen fruit products and blended with fruit, vegetables or yogurt at any Facility.

“Competitive Products” shall mean any and all Beverages other than the Products.

“Container Deposits” shall mean fees that Pepsi as a retailer, bottler or distributor of Products is required to collect on sales of beverages in individual portion beverage containers by container deposit laws in effect to ensure a high rate of recycling or reuse. By way of illustration only, this fee is most typically five or ten cents per container and as of the date of this Agreement, such laws were in effect in the states of California, Connecticut, Hawai’i, Iowa, Maine, Massachusetts, Michigan, New York, Oregon and Vermont.

“Customer Marks” shall mean (i) the Designations (as defined below) and (ii) the Customer’s characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the Customer and which relate to the Facilities and which are in existence at the beginning of the Term or which will be created during the Term. For clarity purposes, Customer Marks shall include, without limitation, characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations associated with or related to all intercollegiate athletic teams associated with the Customer, at the beginning of the Term or which will be created during the Term, if any.

“Designations” shall include, but not be limited to, the following: “A Proud Sponsor of The University of the District of Columbia,” “Official Water and Soft Drink of The University of the District of Columbia” and “Official Sponsor of The University of the District of Columbia.”

“Equipment” means the following types of equipment owned and operated by Pepsi and used to sell or dispense the Products: (i) full service Beverage vending machines (**“Vending Machines”**); (ii) retail single-serve food service equipment and (iii) fountain service equipment. For clarity purposes, snack vending machines are not included as “Equipment”.

“Facilities” shall mean the entire premises of 801 North Capital Street Campus, Van Ness Campus, Bertie Backus Campus and every foodservice operating area controlled by the Customer (either directly, or indirectly through its Food Service Provider) now or in the future, including all buildings, the grounds, parking lots, dining facilities, snack bars, book stores, athletic facilities and concession stands, and, for each building, the grounds, parking, lots, dining facilities, unbranded and branded food service outlets and vending areas. This definition shall not be construed so as to impose any continuing obligations on the Customer as to any Facility, or portion of a Facility, no longer controlled by the Customer, directly or indirectly.

“Food Service Provider” shall mean **Perkins** or any food service provider which may serve at the Facilities at any point during the Term. The Customer acknowledges and agrees that this Agreement, including the pricing, funding and other consideration provided for herein is based on the Customer’s current operating model/use of third party Food Service Providers. Thus, in the event that:

(i) if the Customer is currently self-operated, the Customer switches to a Food Service Provider, or (ii) if the Customer currently uses a Food Service Provider to operate its concessions, such agreement between the Customer and the current Food Service Provider expires or is terminated, and the Customer enters into a new arrangement with a Food Service Provider; then any such new or subsequent agreement between the Customer and any Food Service Provider (pursuant to either (i) or (ii) above) shall require such Food Service provider to abide by the applicable pricing and other terms set forth in this Agreement.

“**Government Imposed Taxes**” shall mean local, state, federal or judicially imposed taxes which are imposed specifically on the sale of Products through Vending Machines at the Facilities. For purposes of illustration only, so-called “sugar taxes” or “soft drink taxes” are two common examples of Government Imposed Taxes.

“**Packaged Products**” shall mean Beverages that are distributed in pre-packaged form (*i.e.*, Bottles & Cans). A current list of Pepsi’s Packaged Products is found in attached Exhibit A which may be amended by Pepsi from time to time.

“**Postmix Products**” shall mean beverage products used to create and dispense fountain beverages. A current list of Pepsi’s Postmix Products is found in attached Exhibit A which may be amended by Pepsi from time to time.

“**Products**” shall mean Postmix Products and Packaged Products manufactured, bottled, sold and/or distributed by Pepsi.

“**Year**” shall mean each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

2. **TERM.**

The term of this Agreement shall be for a ten (10) year period beginning on December 1, 2018 (“**Effective Date**”) and expiring on November 30, 2028, unless sooner terminated as provided herein (“**Term**”). When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination.

3. **GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS.**

During the Term, Customer hereby grants to Pepsi the following exclusive Beverage availability and exclusive Beverage merchandising right as set forth and described below:

A. **Beverage Availability at the Facilities.**

(1) **Grant of Rights.**

(a) Except for the Permitted Exceptions set forth in Section 6(A), Pepsi shall have the exclusive right to make Beverages available for sale and distribution throughout

the Facilities, including the right to provide all Beverages sold at athletic contests (*i.e.*, concession stands, sales in stands (hawking) or other means), booster club activities, and all other special events conducted at any location on the Facilities ("**Special Events**"). Except for the Permitted Exceptions, the Products shall be the only Beverages sold, dispensed or served at the Facilities (*i.e.*, at concession stands, sales in stands (hawking) or other means), and the Products shall be sold at all food service concession or vending locations located within the Facilities; and

(b) Pepsi shall have the right to install the Equipment throughout the Facilities, at such locations which are convenient to existing electrical outlets and which are previously agreed to by Customer. Pepsi shall install the Equipment at its sole expense. Pepsi shall have the right to place full trademark panels on all sides of its Equipment. Pepsi, or one of its affiliates, shall retain title to all Equipment.

(2) Purchasing of Postmix Products.

The Postmix Products shall be purchased by Customer or the Food Service Provider from Pepsi at the prices established by Pepsi from time to time. The pricing for Postmix Product shall be the then published pricing for National Accounts.

(3) Purchasing of Packaged Products.

The Packaged Products may be purchased by Customer and shall be purchased by the Food Service Provider (or by Customer, if Customer operates food service directly) from Pepsi at prices established by Pepsi from time to time. Current pricing for Packaged Products is as set forth in **Exhibit A** attached hereto. Thereafter, the prices may be increased once each Year not to exceed 4% per annum. Pepsi shall provide thirty (30) days' notice of any price increases during the Term.

(4) Food Service.

During the Term, Pepsi shall work directly with Customer and the Food Service Provider for the Facilities, to provide all of its requirements for the Products. Customer shall cause its Food Service Provider to purchase the Product from Pepsi at pricing established by this Agreement. The Customer shall cause its Food Service Provider to purchase Products from Pepsi in sufficient quantities to ensure the regular and continuous distribution of the Products at the Facilities. Pepsi shall work directly with Customer and its Food Service Provider to promote sales of the Products through appropriate point-of-sale and other advertising materials bearing the trademarks of the Products at Pepsi's expense.

(5) Vending.

Pepsi shall have the right to place Vending Machines at the Facilities for dispensing the Products; *provided, however*, that Customer shall have final approval on the location of

Vending Machines at any identified optimal locations for such equipment. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to Vending Machines.

B. Product Merchandising Rights.

During the Term and subject to the terms and conditions contained in this Agreement, Customer grants Pepsi the exclusive right to merchandise Beverages at the Facilities as set forth and described below:

(1) Menu Board Advertising.

Customer will not permit any menu boards it installs, or has installed, at concession locations in which Products are served to customers at the Facilities to display branding or trademarks of any company which is a direct competitor of Pepsi. Pepsi will provide to Customer for no charge a reasonable number of appliques or other displays of Pepsi's trademarks which Customer may affix to the menu boards. The parties may also agree to use the funds described in Section 7.E below.

(2) Approved Cups; Product Hawking and Catering.

Customer agrees that all Products served, sold or dispensed at concession locations in which Products are served to customers at the Facilities shall be served in Approved Cups, provided that Customer has sufficient supplies of same on hand, and all other Beverages served, sold or dispensed within the Facilities shall be served in either Approved Cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of Competitive Products ("**Permitted Unbranded Cups**"). Pepsi agrees to make Approved Cups available for purchase and the Customer may purchase, and subject to Permitted Exceptions Customer shall require that all concessionaires, Food Service Providers, booster clubs and other third parties selling Beverages at the Facilities purchase, all Products, Approved Cups, lids and carbon dioxide directly from Pepsi at prices determined by Pepsi; current pricing for these items is as set forth in **Exhibit A** attached hereto and thereafter, the prices may be increased once each Year not to exceed 4% per annum. Pepsi will provide 30 days' notice of any price increases during the Term. Customer, its concessionaires, Food Service Providers, booster clubs and other third parties may purchase Permitted Unbranded Cups, if it prefers them to the Approved Cups, from any vendor it chooses. If Customer determines to allow "**hawking**" at the Facilities, then Customer shall cause Products to be "**hawked**" at the Facilities at all events taking place at the Facilities (including, without limitation, at all home games of all intercollegiate athletic teams associated with the Customer, if any), and served as part of the catering selection in private boxes, suite, backstage areas, locker rooms and press areas. Customer further agrees that Products to be "**hawked**" in the stands shall be sold only in Approved Cups. As used herein, "**hawking**" shall refer to the sale of single servings of a product in the seating areas of the Facilities through the use of vendors circulating through such seating areas.

4. **GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS.**

During the Term, Customer hereby grants to Pepsi the right to advertise and promote Products in and with respect to the Customer and the Customer Marks upon the terms and conditions contained in this Agreement and as set forth and described below.

A. Promotional Rights.

(1) General Sponsorship Designation.

Customer hereby agrees that Pepsi shall have the right to promote the fact that Pepsi is an official sponsor of the Customer and its intercollegiate athletic teams, if any, and that the Products are available at the Facilities, including the right of Pepsi to refer to itself using the Designations. Such promotion may be conducted through the distribution channels of television, radio and print media, on the packaging of (including cups and vessels) and at the point-of-sale of any and all Products wherever they may be sold or served.

(2) Grant of License to Use the Customer Marks for Promotional Activities.

Customer hereby grants to Pepsi a nonexclusive license to use the name of the Facilities and the Customer Marks for the limited purposes of promoting Products within the context of promotional activities. Customer acknowledges that, in order to make full use of the rights granted in this Agreement, Pepsi may conduct the promotional activities through its primary distribution channels in which Pepsi sells Products to the ultimate consumer, such as at the retail level, within drug stores and other retail outlets, by and through mass merchandise campaigns and together with Pepsi's food service accounts and customers. All Pepsi use of Customer Marks shall be in compliance with the Customer's Brand Guide, a copy of which has been provided to Pepsi. All uses of Customer Marks must be previously approved in writing by the Customer.

B. Representations, Warranties and Covenants regarding the Ownership and Protection of the Customer Marks and Related Proprietary Rights.

Customer represents and warrants that it is the sole and exclusive owner of all right, title and interests in and to the Customer Marks (including without limitation, all goodwill associated therewith) and Pepsi's use of the Customer Marks pursuant to this Agreement will not infringe the rights of any third parties. Pepsi acknowledges that nothing contained in this Agreement shall provide Pepsi with any right, title or interest to the Customer Marks other than the right to use such Customer Marks granted under this Agreement. Pepsi (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of Customer and its affiliates and cooperate with Customer and its affiliates to procure any protection or to protect any of the rights of Customer and its affiliates in and to the Customer Marks. Pepsi shall cause to appear on all materials incorporating the Customer Marks such legends, markings and notices as Customer or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Customer Marks. Pepsi shall not make

any alterations or changes to the design or type of the Customer Marks without the prior written consent of Customer.

C. Representations, Warranties and Covenants regarding the Ownership and Protection of Proprietary Rights of Pepsi.

Pepsi represents and warrants that Pepsi is authorized to use certain names, logos, service marks and trademarks of PepsiCo, Inc. (including without limitation, all goodwill associated therewith) (the "**Pepsi Marks**") under a license from PepsiCo, Inc. Customer acknowledges that nothing contained in this Agreement shall provide Customer with any right, title or interest to the names, logos, service marks and trademarks of PepsiCo, Inc. without the prior written approval of PepsiCo, Inc. Customer (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of PepsiCo, Inc., Pepsi and its affiliates and cooperate with PepsiCo, Inc., Pepsi and its affiliates to procure any protection or to protect any of the rights of PepsiCo, Inc., Pepsi and its affiliates in and to the Pepsi Marks. Customer shall cause to appear on all materials incorporating the Pepsi Marks such legends, markings and notices as Pepsi or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Pepsi Marks. Customer shall not make any alterations or changes to the design or type of the Pepsi Marks without the prior written consent of PepsiCo, Inc.

5. **GRANT OF OTHER RIGHTS.**

A. Sampling.

Customer agrees to permit Pepsi to conduct, at Pepsi's sole cost and expense, limited sampling of Pepsi products at the Facilities in a form and manner as specifically authorized and approved by Customer and in accordance with rules and procedures established by Customer, in its sole discretion, as may be amended or supplemented from time to time by Customer.

B. Right of First Negotiation.

Commencing six (6) months prior to the expiration of the Term, Customer and Pepsi agree to enter into negotiations to extend the Term of this Agreement. In the event the parties cannot agree to the terms under which this Agreement will be continued 30 days prior to the end of the Term, Customer shall be free to enter into negotiations with third parties.

6. **EXCLUSIVITY.**

A. During the Term, except with regard to the Permitted Exceptions set forth below, Customer, its agents, representatives, intercollegiate athletic teams coaches and players, and staff (1) shall not themselves nor shall they permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products at the Facilities and (2) shall ensure that the Products are the only Beverages sold, served, promoted, marketed, advertised, merchandised,

sponsored or endorsed, at the Facilities. Customer agrees to undertake reasonable efforts to work with the third parties described in the Permitted Exceptions (defined below) to promote the use of the Products and minimize the use or promotion of Competitive Products.

Customer and Pepsi agree that certain specific activities and goods will be excluded from the requirement set forth in the first sentence of this Section 6, namely:

- (i) advertising in Customer's college student newspapers and publications, or sponsorship of programs on any student-run college radio station;
- (ii) NCAA, East Coast Conference, other members participant tournaments, or other groups hosted by Customer, unless Pepsi has separately been granted exclusive beverage sponsor status or Customer has the sole and exclusive authority to select an exclusive beverage provider;
- (iii) the supply of Beverages at facilities and premises that are not Customer Facilities;
- (iv) on-campus consumption by students, faculty, staff or their guests of Competitive Products purchased outside of a Customer Facility for personal consumption or for consumption by their group, office or organization and not for resale or distribution;
- (v) private events, such as private parties, gatherings and meetings, hosted or co-hosted by outside parties. Customer agrees to review the extent of its reliance on this Permitted Exception during the quarterly business review meetings contemplated by this Agreement. In addition, Customer will notify the third parties that Pepsi and Customer have an exclusive pouring relationship and Customer will use reasonable efforts to encourage the third parties to offer equivalent Pepsi Products at its event or, in the alternative, to minimize its use of Competitive Products. This exception shall only allow for the temporary provision of Competitive Products during the third party's rental of a portion of the Facilities and shall only allow for Competitive Products to be provided in the portion of the Facilities that is being rented by such a third party. If such portion is visible from other locations within the Premises, Customer will use reasonable efforts to ensure the Competitive Products are served in Permitted Unbranded Cups, a glass or similar unmarked container;
- (vi) milk and fresh-prepared smoothies, coffee, and tea; and
- (vii) chilled fruit juices which are delivered by an affiliate of Pepsi; and
- (viii) Sales, promotional and other activity conducted by businesses which are independent of the Customer, but which operate a restaurant, catering, or other retail beverage or food service business whose customers consist primarily of the general public on leased or licensed premises within Facilities currently or hereinafter owned, operated or controlled by Customer; and
- (ix) Sales in the Micro Market, a self-checkout vending market located in the Lower Level Break Room of the David A. Clarke School of Law at the Van Ness Campus of Customer; Pepsi agrees and acknowledges that, pursuant to a Short-Term Use of Space Agreement for the Establishment of a Vending Facility on Federal Property between Customer and the D.C. Department on Disability

Services, and as required by the Randolph-Sheppard Act, Customer has agreed to allow a vendor, currently Monumental Vending, to operate the Micro Market.

(collectively items i-ix above are the “*Permitted Exceptions*”).

B. Customer recognizes that Pepsi has paid valuable consideration to ensure an exclusive associational relationship with the Facilities, Customer, and/or Customer Marks with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Pepsi’s valuable rights. Accordingly, the Customer will promptly oppose Ambush Marketing (as defined below) and take all reasonable steps to stop Ambush Marketing and to protect the exclusive associational rights granted to Pepsi pursuant to this Agreement. In the event any such Ambush Marketing occurs during the Term, each party will notify the other party of such activity upon learning thereof. As used herein, “*Ambush Marketing*” shall mean an attempt by any third party, without Pepsi’s consent, to associate Competitive Products with the Facilities, Customer and/or Customer Marks, or to suggest that Competitive Products are endorsed by or associated with the Facilities, Customer and/or Customer Marks by referring directly or indirectly to the Facilities, Customer and/or Customer Marks.

7. **CONSIDERATION.**

In consideration for the advertising, merchandising, promotional rights, and the other related rights and benefits provided to Pepsi by Customer as described herein, and provided Customer is not in material breach of this Agreement, Pepsi agrees to pay to Customer:

A. **Initial Support Funds.**

Initial Support Funds in the total amount of Sixty Thousand US Dollars (\$60,000), payable in two equal installments, the first of which is due to the Customer within forty-five (45) days after November 30, 2023, the completion of Year 5, and the second of which is payable within forty-five (45) days after November 30, 2028, the completion of Year 10 (the “*Initial Support Funds*”). The Initial Support Funds are deemed earned at a rate of \$500.00 per month (\$6,000.00 per Year) during the Term, with the consequence that, should this Agreement be terminated prior to its natural expiration for any reason whatsoever, Pepsi shall pay to Customer, within 45 days following the effective date of such earlier termination a prorated amount of Initial Support Funds equal to \$60,000 times a fraction, the numerator of which is the number of full or partial calendar months already transpiring in the Term and the denominator of which is 120. Any Initial Support Funds already actually paid to Customer shall be credited against any amount owing in accordance with the immediately prior sentence.

B. **Annual Sponsorship Fees.**

An Annual Sponsorship Fee (the “*Annual Sponsorship Fee*”), payable annually pursuant to the following:

Year	Applicable Time Period	Amount	Due Date: within 45 days after:
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Year	Applicable Time Period	Amount	Due Date: within 45 days after:
1	December 1, 2018 – November 30, 2019	\$55,000	The execution of this Agreement by both parties.
2	December 1, 2019 – November 30, 2020	\$55,000	December 1, 2019
3	December 1, 2020 – November 30, 2021	\$55,000	December 1, 2020
4	December 1, 2021 – November 30, 2022	\$55,000	December 1, 2021
5	December 1, 2022 – November 30, 2023	\$55,000	December 1, 2022
6	December 1, 2023 – November 30, 2024	\$55,000	December 1, 2023
7	December 1, 2024 – November 30, 2025	\$55,000	December 1, 2024
8	December 1, 2025 – November 30, 2026	\$55,000	December 1, 2025
9	December 1, 2026 – November 30, 2027	\$55,000	December 1, 2026
10	December 1, 2027 – November 30, 2028	\$55,000	December 1, 2027

* The Customer acknowledges and agrees that each Annual Sponsorship Fee payable to the Customer is based on the information provided by the Customer in the RFP, which estimated that 13,000 gallons and cases of Products (including cases sold through Vending Machines) were sold at the Facilities in the year immediately preceding the RFP. If during any Year the number of gallons and cases of Products falls below 11,700, the parties agree to meet in good faith to determine the cause of the declining volume and determine if adjustments to the Annual Sponsorship Fee are equitable under the circumstances.

Each Annual Sponsorship Fee is earned throughout the Year in which it is paid, except that, if more than 14,300 gallons and cases of Products (including cases sold through Vending Machines) are sold during any Year, the Annual Sponsorship Fee for the next successive Year shall be deemed to have been fully earned, and not subject to repayment, as of the first day of that next successive Year. In the event Pepsi terminates this Agreement due to the Customer's failure to cure a breach hereof (as contemplated by Section 10.B(ii)) the unearned Annual Sponsorship Fees will be repaid to Pepsi pursuant to the terms of Section 10.D (Sponsorship Fees in the Event of Termination.) herein.

C. Annual Scholarship Funds.

In each of Years one through ten, Pepsi shall provide Customer with annual scholarship funds in the amount of Ten Thousand US Dollars (\$10,000) (the "**Annual Scholarship Funds**"). The Annual Scholarship Funds will be paid to Customer within forty-five (45) days after the commencement of each applicable Year, except that in Year One, such payment will be made within forty five (45) days of the later of the Effective Date or the signing of this Agreement by both parties.

D. Annual Athletic Support Funds.

In each of Years one through ten, Pepsi shall provide Customer with annual athletic support funds in the amount of Five Thousand US Dollars (\$5,000) (the "**Annual Athletic Support Funds**"). The Annual Athletic Support Funds will be paid to Customer within forty five

(45) days after the commencement of each applicable Year, except that in Year One, such payment will be made within forty five (45) days of the later of the Effective Date or the signing of this Agreement by both parties.

E. Annual Marketing Support.

In each of Years one through ten, Pepsi shall provide Customer with marketing support that has a value of up to Eighteen Thousand US Dollars (\$18,000) (the "**Annual Marketing Support**"). The Annual Marketing Support will be held by Pepsi, and accessed by Pepsi for point-of-sale materials provided by Pepsi in support of sale of the Products at the Facilities. Utilization of the Annual Marketing Support will be mutually agreed to by the parties. Customer acknowledges and agrees that unused Annual Marketing Support in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.

F. Annual Sustainability Funds.

In each of Years one through ten, Pepsi shall provide Customer with annual sustainability funds with a value of up to One Thousand US Dollars (\$1,000), not to exceed ten (10) consecutive Years (the "**Annual Sustainability Funds**"). The Annual Sustainability Funds will be used and spent by Pepsi on mutually agreed to sustainability opportunities for the benefit of Pepsi and Customer. Customer acknowledges and agrees that any value of the Annual Sustainability Funds that remains unused at the end of a given Year will not carry forward to the subsequent Year and is not redeemable for cash.

G. Campus Ambassador Funds.

In each of Years one through ten, Pepsi shall provide Customer with campus ambassador funds in the amount of Two Thousand US Dollars (\$2,000) to be used and spent on mutually agreed to marketing and promotional opportunities for the benefit of Pepsi and Customer (the "**Campus Ambassador Funds**"). The Campus Ambassador Funds will be paid to Customer within forty-five (45) days after the commencement of each applicable Year, except that in Year One, such payment will be made within forty five (45) days of the later of the Effective Date or the signing of this Agreement by both parties. Pepsi and University will work together with the University's designated student Campus Ambassador in coordinating events at which the Parties may promote Pepsi Products or for which donated Products can be utilized.

H. Commissions.

Commissions, as a percentage of the actual cash ("**cash in bag**" or "**CIB**") collected by Pepsi from the Vending Machines placed at the Facilities, plus actual amounts received by Pepsi in connection with credit card or debit card sales (collectively with CIB, "**Revenue**"), less any applicable Government Imposed Taxes or Container Deposits ("**Commissions**"). Such Commissions shall be at the rate(s) set forth below (the "**Commission Rate**") and shall be calculated as follows:

**(Revenue – applicable Government Imposed Taxes and Container Deposits) * Commission Rate =
Commission Due**

Product	Minimum Vend Price*	Commission Rate**
20oz Carbonated Soft Drinks, Gatorade, Aquafina, Lipton Iced Team, and Lipton Brisk	\$1.75	45%
9.5oz Starbucks Frappuccino	\$2.50	45%
12oz Mountain Dew Kickstart	\$2.50	45%
18.5oz Lipton Pure Leaf	\$1.75	45%
* Pepsi shall have the right to increase vend prices by \$0.25 in each of Years 3, 6, and 9.		
** If Pepsi proposes any new Products not on the attached Product list or otherwise available to the consuming public as of the date of this Agreement to the Customer during the Term, then Pepsi shall have the right to apply a different Commission Rate (but in no event less than 45%) and/or Minimum Vend Price for such new Product.		

(1) **Commissions Payment.** Commissions shall be remitted by Pepsi to the Customer within thirty (30) days of the end of each 4-week accounting period established by Pepsi and shall be accompanied by documentation in sufficient detail to enable Customer to understand Pepsi's calculation of revenue and Commissions owed. Pepsi shall also make all pertinent revenue and sales records respecting the Vending Machines available to Customer. Customer agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by Customer in writing within three (3) years of the date such Commissions payment is due. Customer further acknowledges and agrees that it shall not receive any Commissions payment from Pepsi for a particular 4-week accounting period if Commissions fail to reach a certain threshold amount for that period. The applicable threshold amount is \$75 per 4-week accounting period. Each 4-week accounting period during the Term shall be wholly distinct from every other 4-week accounting period (i.e. there will be no overlap of any two accounting periods) and accounting periods (except for the first and last, which may be partial periods) will continuously and successively occupy the Term, beginning on the Effective Date of this Agreement.

(2) [deleted by agreement of the parties].

(3) **Change to Commission Formula.** Customer agrees that Pepsi shall have the right to change its formula/method for calculating Commissions at any time in its reasonable discretion provided that any such formula adjustments shall not result in any change to the Commissions due with respect to the same sales of Products under the Commissions terms set forth herein.

(4) **Vend Price.** Pepsi shall have the absolute right, at its sole discretion, to change vend prices as it deems appropriate in light of cost of goods increases or to otherwise stay reasonably consistent with applicable vending prices for similar accounts operating in the

relative geography, provided that any such change in minimum vend price shall not result in any change to the Commissions due with respect to the same sales of Products.

8. **ADDITIONAL CONSIDERATION.**

In addition to the consideration specified above, and provided Customer is not in material breach of this Agreement, Pepsi shall provide the following further consideration to the Customer:

A. Upon request of customer, Pepsi will provide up to a total value of One Thousand US Dollars (\$1,000) per Year in donated Products across the Facilities at no additional charge to Customer; *provided, however*, that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer acknowledges and agrees that donated Product requests not used/made in any Year shall not be carried over to the subsequent Year, or be redeemable for cash payment.

B. Pepsi shall provide the Customer with sufficient recycling containers to accommodate the anticipated number of empty Beverage containers to be generated from the sale of Products on the Facilities. The Customer shall have the right to redeem the bottles returned from the Facilities.

C. **Student & Alumni Career Support.** (1) Pepsi will provide support to Customer in the form of an annual commitment to hire qualified University of the District of Columbia graduates into Pepsi's Management Training Program, with an annual value of Sixty Thousand US Dollars (\$60,000). The student and alumni hire program will include commercially reasonable and good faith efforts to hire or supervise a target of one student or alumni of Customer each Year for the course of the Term. The parties will mutually agree on the framework to measure Pepsi's performance in this regard. (2) Pepsi's obligations pursuant to this provision shall be subject to applicable law, including, without limitation, equal employment opportunity laws. Pepsi shall not discriminate, in connection with any of its obligations set forth in this Agreement, against any employee, applicant for employment, or recipient of services on the basis of veteran status, race, religion, color, sex, sexual orientation, age, disability, or national origin.

9. **EQUIPMENT AND SERVICE.**

A. **Beverage Dispensing and Other Equipment.**

(1) Pepsi shall, based upon Pepsi's survey of the Facilities' needs, provide and install all Equipment at the Facilities for the dispensing of Product during the Term. Title to all Equipment shall be with Pepsi or its affiliates.

(2) During the Term Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. Pepsi will service and stock, if necessary, (i) the Equipment (including any parts or consumables required in order to keep the Equipment functioning normally) and (ii) any additional Equipment determined by the parties to be installed at new locations on the Facilities.

(3) The Equipment may not be removed from the Facilities without Pepsi's written consent, and the Customer agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by Pepsi, provided however that Customer may move or relocate the Equipment if necessary in the event of an emergency. At the end of the Term, Pepsi shall have the right to, and shall upon request of the Customer, remove all Equipment from the Facilities at no expense to the Customer.

(4) Pepsi shall be responsible for collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for all cash monies collected therefrom.

(5) Pepsi, upon mutual agreement between the parties, may agree to install magnetic strip card, online or chip card offline readers on Vending Machines placed at the Facilities. If agreed to by Pepsi, Vending Machines in mutually agreed upon locations will be fitted with magnetic stripe card on-line or chip card off-line readers in accordance with a mutually agreed to conversion schedule, terms, and conditions.

(6) Pepsi reserves the absolute right to remove any glass front Vending Machine that sells less than eight (8) cases of Product per week or any other Vending Machine that sells less than two (2) cases of Product per week provided that any removal of a Vending Machine shall not result in any change to the Commissions due to Customer with respect to the sales of Products. Pepsi agrees to have installed and in good working order at least 20 Vending Machines at all times during the Term.

B. Service to Equipment.

Pepsi or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. Nothing in this paragraph shall be construed so as to require Customer to modify or materially diminish its ordinary and customary provision of routine janitorial maintenance and other custodial or cleaning services in the Facilities. Pepsi shall provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. Pepsi shall respond to each Customer request and use reasonable efforts to remedy the related Equipment problem based on the timelines set forth in section D below.

Pepsi will provide, at no charge to Customer, preventative maintenance and service, including any necessary repairs, to all Equipment. Pepsi will also provide University with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours. In over 90% of instances, requests for repairs or service that are called in to Pepsi prior to 12:00 noon are to be fulfilled on the same day, repairs or service requested after 12:00 noon are to be completed no later than 12:00 noon on the following day, and all service calls must be addressed and mitigated within 24 hours. Service call response time must be commensurate with the operating environment to which it corresponds. Pepsi's service record

shall be measured in the aggregate; an isolated failure to respond within time frames above hours shall not constitute a material breach of the Agreement.

C. Dedicated Pepsi Representatives

Pepsi will designate employees who are responsible for the day to day and long term management of the account as set forth on pages 12 and 13 of Attachment 1.

D. Joint Business Planning and Reviews.

Pepsi agrees to coordinate regular planning business reviews with Customer on at least a quarterly basis. During such reviews, Pepsi will share the latest available data related to the sale of the Products at the Facilities and status of payments, budgets and performance of consideration described in Section 7 and 8 above and the parties will plan mutually agreeable marketing programs.

10. **REMEDIES FOR LOSS OF RIGHTS - TERMINATION.**

A. Customer's Termination Rights.

Without prejudice to any other remedy available to Customer at law or in equity in respect of any event described below, this Agreement may be terminated by Customer at any time effective thirty (30) days following written notice to Pepsi from Customer if:

- (1) Pepsi fails to make any payment due hereunder, and such default shall continue for fourteen (14) days after written notice of such default is received by Pepsi; or
- (2) Pepsi breaches or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect and Pepsi fails to cure such breach within thirty (30) days after written notice of default is delivered to Pepsi. If such cure cannot reasonably be accomplished within such thirty (30) day period, this provision shall not apply where Pepsi shall have, in good faith, commenced such cure and thereafter shall diligently proceed to completion; *provided, however*, that such cure is completed to the reasonable satisfaction of Customer within ninety (90) days from the date of Pepsi's receipt of such written notice of default.

Customer shall have the right to terminate this Agreement for convenience by sending written notice to Pepsi specifying such termination date, which date shall not be less than ninety (90) days after the date of such notice (the "Early Termination Date"). At or before the Early Termination Date, University shall pay an early termination fee to Pepsi equal to ONE HUNDRED SEVENTY-THREE THOUSAND FIVE HUNDRED DOLLARS (\$173,500.00) (the "Early Termination Fee"). The parties acknowledge and agree that the calculation of the Early Termination Fee includes a reimbursement to Pepsi of the unearned portion of any upfront

funds and related equipment costs, and that upon payment of the Early Termination Fee, Pepsi shall not have any other rights to reimbursement of any other funds.

B. Pepsi's Termination Rights.

Without prejudice to any other remedy available to Pepsi at law or in equity in respect of any event described below, this Agreement may be terminated in whole or in part by Pepsi at any time, effective thirty (30) days following written notice to the Customer if (i) a final judicial opinion or governmental regulation prohibits, or materially impacts or impairs (e.g., beverage tax or size restriction) the availability or cost of Beverages, whether or not due to a cause beyond the reasonable control of the Customer; or (ii) Customer breaches any, or fails to perform any, other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect. In connection with the foregoing, Pepsi shall give Customer notice of the event and where applicable (for events within Customer's control), shall provide Customer forty-five (45) days to cure such breach. If the identified breach/event is not remedied with the applicable notice period, then Pepsi may terminate this Agreement and recover from the Customer a limited, pro rata reimbursement in accordance with Section D below (Sponsorship Fees in the Event of Certain Termination.).

C. Additional Termination Rights Available to Pepsi and Customer.

Without prejudice to any other right or remedy available to either party at law or in equity of any event described below, this Agreement may be terminated by either party if the other party, or any parent of such other party, shall: (i) have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within sixty (60) days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e)(2)(A) of Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Agreement; or (ii) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affair in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within 60 days thereafter); or (iii) admit in writing its inability to pay its debts as such debts become due.

D. Sponsorship Fees in the Event of Certain Termination.

If Pepsi terminates this Agreement pursuant to Section .B(ii), then Pepsi shall be entitled to receive from Customer, without prejudice to any other right or remedy available to Pepsi, and Customer shall pay to Pepsi, all Annual Sponsorship Fee funding paid by Pepsi to the Customer which remains unearned as of the time of termination. With regard to the Annual Sponsorship Fee, the amount of such reimbursement shall be determined by multiplying Annual Sponsorship Fee by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is twelve (12).

11. **TAXES.**

Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any income taxes payable by the Customer in connection with any fees payable by Pepsi to Customer under this Agreement. In addition, Pepsi shall be responsible only for the payment of taxes on the sales of Products through Vending Machines. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment. Customer acknowledges and agrees that in the event that Pepsi incurs Government Imposed Taxes or Container Deposits, it may incorporate them into the prices of the Products and, to the extent that the revised price would cause Pepsi to violate any limitation imposed by this Agreement on pricing or price increases, then such pricing or increase shall not be construed so as to give rise to such a violation.

12. **CONFIDENTIALITY.**

A. Except as otherwise required by law or the rules or regulations of any national securities exchange or the rules or regulation of the Customer, the Customer and Pepsi agree not to disclose Confidential Information (as hereinafter defined) to any third party other than to their respective directors, officers, employees and agents (and directors, officers, employees and agents of their respective affiliates and, in Customer's case, members of its Board of Trustees or any Committee thereof) and advisors (including legal, financial and accounting advisors) (collectively, "***Representatives***"), as needed.

B. "***Confidential Information***" shall include all non-public, confidential or proprietary information that Customer or its Representatives make available to Pepsi or its Representatives or that Pepsi or its Representatives make available to Customer or its Representatives in connection with this Agreement. "***Confidential Information***" shall not include the terms and conditions of this Agreement, except that any specific financial undertaking set forth herein, and the contents of Section 8.C hereof, shall collectively be referred to as "***Pepsi Protected Contract Information***".

C. Each party agrees to protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind. The parties agree to notify each other of any unauthorized use or disclosure of Confidential Information and to take all actions reasonably necessary to prevent further unauthorized use or disclosure thereof.

D. Pepsi acknowledges that the Customer is subject to the District of Columbia's version of the Freedom of Information Act and that this Agreement, including all attachments hereto, is a public contract, subject to disclosure pursuant to an appropriate request under DC FOIA. To the extent permitted by DC FOIA and other applicable law, Customer will use reasonable efforts to redact or otherwise obscure from public disclosure the Pepsi Protected Contract Information.

E. These Confidentiality provisions and the obligations of the parties hereunder will survive the expiration or sooner termination of this Agreement

13. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

A. Each party represents and warrants to the other: (1) it has full power and authority to enter into this Agreement and to grant and convey to the other the rights set forth herein; and (2) all necessary approvals for the execution, delivery and performance of this Agreement have been obtained and this Agreement has been duly executed and delivered by the parties and constitutes the legal, valid and binding obligation, enforceable in accordance with its terms, and nothing contained in this Agreement violates, interferes with or infringes upon the rights of any third party; (3) the respective signatory of this Agreement is duly authorized and empowered to bind the party to the terms and conditions of this Agreement for the duration of the Term; and (4) the parties have complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

B. Each of the parties hereto agree that: (1) the representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement, and (2) except as expressly set forth herein, neither party has made, and neither party is relying on, any representation or warranty, express or implied, with respect to the subject matter hereof.

C. To the extent that the any intercollegiate athletic team is relocated to a venue which is not within the Facilities as its home venue, Pepsi agrees that the exclusivity rights described in this Agreement shall be waived as to such alternate venue and the Customer shall have no affirmative obligation under this Agreement with respect to such venue.

14. **INDEMNIFICATION; ANTI-DEFICIENCY.**

A. Except for matters involving gross negligence or willful misconduct of the Customer, Pepsi will indemnify, protect, defend, and hold the Customer, its trustees, officers, employees, students, representatives and agents harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of or connected with: (i) any alleged or actual breach of any term or condition of this Agreement; (ii) any claim that the Equipment is defective; (iii) any act or omission by Pepsi to the extent such claim arises out of Pepsi's negligence or willful misconduct or as may be allowed under applicable law; and (iv) product liability suits resulting from the use or consumption of Products purchased from Pepsi. Monies due or to become due to Pepsi under this Agreement may be retained by the Customer as necessary to satisfy any outstanding claim which the Customer may have against Pepsi.

B. The parties acknowledge and agree that Customer's obligations to fulfill financial obligations of any kind under this Agreement shall remain subject to the provisions of (a) the federal Anti-Deficiency Act, 31 U.S.C. 1341, 1342, 1349, and 1351; (b) the District of Columbia Anti-Deficiency Act, D.C. Official Code; (c) D.C. Official Code 47-105; and (d) D.C. Official

Code 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.

C. The provisions of this Section shall survive the termination of this Agreement.

15. **INSURANCE.**

A. Pepsi shall procure and maintain, all at times during the Term and for a period of three (3) years thereafter, the types of insurance coverage specified below, which (i) shall be issued by insurance companies authorized to do business in the District of Columbia that have received an A or better (and be in a financial size category of class VII or higher) rating by the latest edition of A.M. Best's Insurance Rating Service and that are otherwise reasonably satisfactory to Licensor; (ii) designate as additional insureds, Customer, Customer's current trustees, officers, directors, employees, or agents, and any other parties in interest from time to time designated in writing by notice from Customer to Pepsi (collectively, the "Additional Insureds"); (iii) be written as primary policy coverage and not contributing with or in excess of any coverage which Customer may carry; (iv) provide for thirty (30) days' prior written notice to Customer of any cancellation or other expiration or material modification of such policy or any defaults thereunder; and (v) contain an express waiver of any right of subrogation by the insurance company against the Additional Insureds. Neither the issuance of any insurance policy required hereunder nor the minimum limits specified herein with respect to Pepsi's insurance coverage shall be deemed to limit or restrict in any way Pepsi's liability arising under or out of this Agreement. Prior to Pepsi's installation of any Equipment to the Facilities, and as may be requested by Customer during the Term, Pepsi shall deliver to Customer a certificate evidencing the policies required to be carried by Pepsi.

1. Commercial General Liability Insurance. Pepsi shall provide evidence that it carries \$2,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors. Pepsi shall maintain Completed Operations coverage for two (2) years following final acceptance of the work performed under this Agreement. The policy shall not contain any sexual/physical abuse or molestation exclusions.
2. Automobile Liability Insurance. Pepsi shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this Agreement. The policy shall provide a \$5,000,000 combined single limit for bodily injury and property damage.
3. Workers' Compensation Insurance. Pepsi shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia.
4. Employer's Liability Insurance. Pepsi shall provide employer's liability insurance as follows: \$5,000,000 per accident for injury; \$5,000,000 per employee for disease; and \$5,000,000 for policy disease limit.
5. Umbrella or Excess Liability Insurance. Pepsi shall provide umbrella or excess liability (which is excess over employer's liability, general liability and automobile liability) insurance as follows: \$2,000,000 per occurrence.

6. Property Insurance. Pepsi shall maintain an all-risk property policy insuring the Equipment and all other items of personal property of Pepsi's located on or about the Facilities, against loss or damage from vandalism and malicious mischief, in an amount equal to the full replacement costs thereof.
7. Crime Insurance. Pepsi shall maintain a third party crime policy to cover the dishonest acts of Pepsi's employees, representatives, or agents, that result in a loss to the Customer. The policy shall provide a limit of \$50,000 per occurrence.
8. Sexual/Physical Abuse & Molestation. Pepsi shall provide evidence that it carries insurance coverage with \$1,000,000 per occurrence limits; \$2,000,000 aggregate. This insurance coverage requirement shall be considered met if the general liability policy includes sexual abuse and molestation coverage for the required amounts.

16. **DELETED.**

17. **NOTICES.**

Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or by telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company
200 Pepsi Way
Wytheville, VA 24382
Attn: Director, Food Service

With a copy to (which shall not constitute notice):

Pepsi Beverages Company
1111 Westchester Avenue
White Plains, NY 10604
Attn: Legal Department

If to Customer:

The University of the District of Columbia
4200 Connecticut Avenue NW

Washington, DC 20008
Attn: Chief Operations Officer

With a copy to (which shall not constitute notice):

The University of the District of Columbia
4200 Connecticut Avenue NW
Washington, DC 20008
Attn: General Counsel

(xi) CUSTOMER'S CONTRACT TEAM

- a. Contract Administrator. The Contract Administrator ("CA") The CA is responsible for general administration of the Agreement and advising the Contracting Officer ("CO") as to Pepsi's compliance or noncompliance with the Agreement. The CA has the responsibility of ensuring the work conforms to the requirements of the Agreement and such other responsibilities and authorities as may be specified in the Agreement. These include:
- i. Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the Agreement;
 - ii. Coordinating site entry for Pepsi personnel, if applicable;
 - iii. Maintaining a file that includes all contract correspondence, modifications, and records of inspections (site, data, and equipment).
 - iv. The address and telephone number of the CA is:
David Franklin
Deputy Chief Operating Officer, Auxiliary Enterprises
University of the District of Columbia
4200 Connecticut Ave, NW, Bldg. 38
Washington, DC 20008
Voice: (202) 274-
Email: David.Franklin@udc.edu
Website: www.udc.edu
- v. The CA shall NOT have the authority to:
- a. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
 - b. Grant deviations from or waive any of the terms and conditions of the Agreement;
 - c. Increase the dollar limit of the Agreement or authorize work beyond the dollar limit of the Agreement,
 - d. Authorize the expenditure of funds by Pepsi;
 - e. Change the period of performance; or

- f. Authorize the use of Customer's property, except as specified under the Agreement.
- vi. Pepsi shall be fully responsible for any changes not authorized in advance, in writing by the CO and may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the Customer, to take all corrective action necessitated by reason of the unauthorized changes
- b. Contracting Officer ("CO"). Agreements will be entered into and signed on behalf of the Customer only by a contracting officer. The contact information for the Contracting Officer is:

Mary Ann Harris
Chief Contracting Officer (CCO)
University of the District of Columbia
Office of Strategic Sourcing & Procurement (SS&P)
4200 Connecticut Avenue NW
Washington, DC 20008
Phone: (202) 274-5426
Fax: (202) 274-6313
Email: mharris@udc.edu

- c. Authorized Changes by the CO.
 - i. The CO is the only person authorized to approve changes in any of the requirements of this Agreement.
 - ii. Pepsi shall not comply with any order, directive or request that changes or modifies the requirements of this Agreement, unless issued in writing and signed by the CO.
 - iii. In the event Pepsi effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made to cover any cost increase incurred as a result thereof.

18. **ASSIGNMENT.**

This Agreement or any part hereof or interest herein shall not be assigned or otherwise transferred by either party without the prior written consent of the other party nor shall the same be assignable by operation of law, without the prior written consent of the other party; *provided, however*, that Pepsi may assign and transfer this Agreement (in whole and not in part) following Customer's prior written consent to an affiliate except that the consent of Customer will not be required if (x) such affiliate is capable of fully performing all obligations of the assignor hereunder, (y) such affiliate agrees, under a separate agreement acceptable to the other party and signed by such affiliate, to perform all of the obligations and assume all liabilities of the assignor hereunder, and (z) Customer is affirmatively

given the opportunity to review whatever financial records of the transferee it reasonably requests from Pepsi. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Customer represents and warrants to Pepsi that any change in the Food Service Provider at the Facilities shall not affect Pepsi's rights or obligations hereunder.

19. **GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia (without giving effect to its choice of law principles thereof) and the laws of the United States applicable thereto.

20. **FORCE MAJEURE.**

If the performance by either party hereto of its respective obligations under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance only to the extent such performance or obligation is so delayed or prevented by such occurrence without liability of any kind. Nothing contained herein shall be construed as requiring either party hereto to accede to any demands of, or to settle any disputes with, labor or labor unions, suppliers or other parties that such party considers unreasonable.

21. **RELEASE, DISCHARGE OR WAIVER.**

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

22. **PRIOR NEGOTIATIONS; ENTIRE AGREEMENT.**

This Agreement and the exhibits attached hereto, Pepsi's proposal dated September 13, 2017, which is attached hereto as Attachment 1 and hereby incorporated herein ("Pepsi Proposal"), Pepsi's Best and Final Offer dated February 9, 2018, which is attached hereto as Attachment 2 and hereby incorporated herein ("Pepsi BAFO"), and Customer's Request for Proposals #GF-2018-R-0009 dated November 14, 2017, a copy of which has been received by Pepsi, is available on the Customer's procurement website, and is hereby incorporated herein ("Customer RFP"), together set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Agreement shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Pepsi and/or any of its affiliates and any affiliate of Customer.

23. **RELATIONSHIP OF THE PARTIES.**

The parties are independent contractors with respect to each other. Nothing contained in this Agreement will be deemed or construed as creating a relationship of principal and agent, joint venture, partnership or any association between the parties except as specifically stated herein. This Agreement is made for the benefit of the parties hereto and not for the benefit of any third party.

24. **EFFECT OF HEADINGS.**

The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.

25. **CONSTRUCTION.**

This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties. In the event of any conflict between the terms of this Agreement, the Pepsi's BAFO, the Pepsi Proposal or the Customer RFP, the conflict shall be resolved by application of the conflicting terms in the order set forth in this sentence.

26. **SEVERABILITY.**

If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

27. **AMENDMENTS.**

No provision of this Agreement may be modified, waived or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, waivers or amendments shall not require additional consideration to be effective.

28. **COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

29. **FURTHER ASSURANCES.**

Each party hereto shall execute any and all further documents or instruments and take all necessary action that either party hereto may deem reasonably necessary to carry out the proper purposes of this Agreement.

Signature Page Follows

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly entered into as of the date set forth below.

The Board of Trustees of
The University of the District of Columbia

Bottling Group, LLC

By: _____

By: Shelby Outlaw

Name: Ronald Mason, Jr.

Name: Shelby Outlaw

Title: President

Title: KEY ACCOUNT MANAGER

Date: _____

Date: 11/6/18

Exhibit A

Current description & pricing for Postmix Products and Packaged Products

Customer acknowledges and agrees that in the event that Pepsi incurs Government Imposed Taxes or Container Deposits, it may incorporate them into the prices of the Products and, to the extent that the revised price would cause Pepsi to violate any limitation imposed by this Agreement on pricing or price increases, then such pricing or increase shall not be construed so as to give rise to such a violation.

Bottle & Can

Brand Mix	Unit_Case	On-Ticket
Corp_CSD_TOTAL	20oz/591ml Total	\$22.05
Ocean_Spray_Total	15.2oz/450ml Total	\$16.00
Lipton_Pure_Leaf_Total	18.5oz /547ML Total	\$13.42
Aquafina_Base_Total	20oz/591ml Total	\$10.87
Gatorade_Total	20oz/591ml Total	\$20.00
LifeWTR_Total	23.7oz/700ml Total	\$14.89
LifeWTR_Total	1 Liter Total	\$18.07
Frappuccino_Total	9.5oz 12L	\$18.07
Lipton_Iced_Tea_Total	20oz/591ml Total	\$29.17

Fountain Pricing

PACKAGE	CASE PACK	PRICE PER BOX	PRICE PER GALLON
Carbonated Soft Drinks	5	\$ 75.50	\$15.10
Gatorade	3	\$ 47.76	\$15.92
Tropicana/Lipton Brisk	5	\$ 75.50	\$15.10
Dole (Juice Pak) 3/1 Gallon Cartridge	3	\$ 94.41	\$31.47
Flavor Shots	1	\$ 20.00	\$21.57
Lipton Tea Liquid Concentrate Green Tea w Citrus	3	\$ 55.74	\$18.58
Sobe Life Water Zero Cal Yumbery Pomegranate	3	\$ 50.01	\$16.67

CUPS & LIDS	
Cups	Price
12oz	\$40.97
16oz	\$63.88
24oz	\$73.52
Lids	Price
12oz	\$39.77
16oz	\$39.77
24oz	\$33.32
CO2	
20lb	\$29.52
20lb Deposit	\$35.00

Attachment 1

Pepsi Proposal


Attachment 2

Pepsi Best and Final Offer



Office of the Chief Financial Officer

TO: Mary Ann Harris
Chief Contracting Officer

FROM: Munetsi Musara 
Chief Financial Officer
University of the District of Columbia

DATE: November 6, 2018

SUBJECT: Certification of Funds Availability for Pouring Rights contract with PepsiCo

This is to certify that funds in the amount of \$173,500 are available in the FY20 Operating Budget for the University of the District of Columbia (GFO) for the provision of Pouring Rights under proposed Contract No. GF-2019-C-0021.

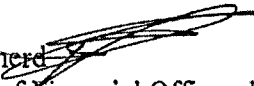
The University has sufficient budget authority to address the early termination fee (\$173,500) in the event that a decision is made to terminate the agreement prior to the end of contract term.


Should you have any questions, please contact Munetsi Musara at 202-274-6410.



Office of the Chief Financial Officer

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

THRU: Deloras Shepherd 
Associate Chief Financial Officer, Education Cluster

FROM: Munetsi Musara 
Chief Financial Officer, University of the District of Columbia

DATE: November 2, 2018

RE: UDC – Pepsi Pouring Rights Agreement

Conclusion:

There is no anticipated financial risk to the University of the District of Columbia in the event that a decision is made to terminate the Pouring Rights agreement entered into with Pepsi Beverages Company and thereby triggering the early termination fee clause.

Background:

In a closed session on September 26, 2018, the Board of Trustees (“Board”) of the University of the District of Columbia approved the attached 10 year sponsorship agreement between the University and Bottling Group, LLC / Pepsi Beverages Company (Pepsi), in which Pepsi became the exclusive supplier of beverages within University Facilities beginning October 1, 2018 through September 30, 2028. The Board did not ratify the resolution as no public announcement was made. Per the attached memo from the Assistant General Counsel, the University intends to submit the attached resolution and agreement for ratification at the next Board session.

The agreement was entered into, subject to the review and approval by the Council of the District of Columbia occurring, if required, or if not required, providing authority to the University President to take the actions necessary to finalize the agreement.

Per the agreement, Pepsi will be the exclusive supplier of beverages, as well as have the right to advertise and promote products in and with respect to the University and the University marks. In consideration for the advertising, merchandising, promotional rights, and other related rights and benefits provided to Pepsi by the University, Pepsi agreed to provide the University multiple forms of payments. The aggregate financial benefit to the University through September 2028 is

estimated at \$2,000,000. Below is a chart detailing the financial terms of the agreement and related revenue sources:

Financial Proposal Summary - 10 Year												
	1	2	3	4	5	6	7	8	9	10	Total	Comments
Initial Support Funds					\$30,000					\$30,000	\$60,000	Cash
Annual Sponsorship	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$550,000	Cash
Scholarship Fund	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$100,000	Cash
Athletic Support	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$50,000	Cash
Marketing support Value	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$180,000	Non-Cash
Donated Product	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$10,000	Non-Cash
Campus Ambassador	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$20,000	Cash
Sustainability	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$10,000	Non-Cash
Pepsi Management Program	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$600,000	Non-Cash
Vending Commission @ 45%	\$41,700	\$41,700	\$47,500	\$47,500	\$53,000	\$53,300	\$53,300	\$53,300	\$59,200	\$59,200	\$509,700	Cash
	\$193,700	\$193,700	\$199,500	\$199,500	\$235,000	\$205,300	\$205,300	\$205,300	\$211,200	\$241,200	\$2,089,700	

Cash	\$ 113,700	\$ 113,700	\$ 119,500	\$ 119,500	\$ 155,000	\$ 125,300	\$ 125,300	\$ 125,300	\$ 131,200	\$ 161,200	\$1,289,700
Non-Cash	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$800,000
Total	\$ 193,700	\$ 193,700	\$ 199,500	\$ 199,500	\$ 235,000	\$ 205,300	\$ 205,300	\$ 205,300	\$ 211,200	\$ 241,200	\$2,089,700

The University has the right to terminate the Agreement for convenience, anytime during the term, however doing so will require the University to pay an early termination fee within 90 days of the notice of termination.

Financial Impact:

While this agreement gives Pepsi exclusive Pouring Rights, subject to certain limited exceptions, nothing in it requires the University itself to purchase any quantity of beverages or any other products directly from Pepsi. The agreement does, however includes a clause requiring the payment of an early termination fee in the amount of \$173,500 in the event that the University submits a termination notification at any time prior to September 30, 2028, the end of the agreement term.

The University has sufficient budget authority to address the early termination fee in the event that a decision is made to terminate the agreement prior to the end of the contract term.

Attachments:

1. Board of Trustees UDC Resolution No. 2018-30 and related Pouring Rights Agreement.

BOARD OF TRUSTEES
UNIVERSITY OF THE DISTRICT OF COLUMBIA
UDC RESOLUTION No. 2018-30

SUBJECT: Approval of Proposed Multi-Year Agreement for Exclusive Pouring Rights at the University of the District of Columbia

WHEREAS, pursuant to D.C. Official Code §38-1202.01(a), the Board of Trustees (“Board”) has the power to make contracts and procure and contract for goods and services; and

WHEREAS, pursuant to 8B DCMR §205.4(a), specific authorization of the Board is required for any commitment by the University of the District of Columbia (“University”) for more than seven (7) years; and

WHEREAS, Bottling Group, LLC, and its affiliates and/or subsidiaries comprising Pepsi Beverages Company (“Pepsi”) and the University desire to enter into a proposed ten (10) year Sponsorship Agreement, whereby Pepsi will be the exclusive supplier of beverages within University Facilities (as such term is defined in the Pouring Rights Agreement) in exchange for providing, among other things, certain cash and in-kind payments to the University, substantially in the form attached hereto as Appendix A (“Pouring Rights Agreement”); and

WHEREAS, Pepsi and the University have completed negotiation of the key business terms of the Pouring Rights Agreement; and

WHEREAS, pursuant to D.C. Code § 1-204.51, the Board of Trustees shall cause to be submitted to the Council of the District of Columbia (“Council”) all contracts having a term of more than five (5) years and involving expenditures out of an appropriation which is available for more than one year; and

WHEREAS, the University is currently exploring through contact with the Council whether the Pouring Rights Agreement is considered by the Council to involve expenditures out of an appropriation which is available for more than one year and is therefore required to be submitted by the University for review and approval by the Council.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees of the University hereby approves the proposed Pouring Rights Agreement subject to review and approval by the Council of the District of Columbia, should it be determined that such review and approval is required; and

BE IT FURTHER RESOLVED, that if it is determined that the Pouring Rights Agreement is required to be submitted to Council for review and approval, the University is hereby authorized to forward to the Council of the District of Columbia the Pouring Rights Agreement for its review and approval; and

BE IT FURTHER RESOLVED, that if Council review of the Pouring Rights Agreement is determined not to be required, or if Council does review and approve the Pouring Rights Agreement, then the President is hereby authorized to take all necessary actions to finalize and execute the Pouring Rights Agreement.

Approved by the Executive Committee

October 30, 2018



Christopher Bell
Chairperson of the Board

Ratified by the Board of Trustees

November 7, 2018

Christopher Bell
Chairperson of the Board

SPONSORSHIP AGREEMENT

This sets forth the agreement ("*Agreement*") between **Bottling Group, LLC** a Delaware limited liability company and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 200 Pepsi Way, Wytheville, VA 24382 ("*Pepsi*") and **The Board of Trustees of the University of the District of Columbia**, with its principal place of business at 4200 Connecticut Avenue NW, Washington, DC 20008 (the "*Customer*").

WHEREAS, Pepsi desires the right to be the exclusive supplier of Beverages (as defined below) to the Customer; and

WHEREAS, Pepsi has submitted a bid in response to a request for proposals issued by the Customer for the exclusive right to develop and carry out a program for the sale of its beverage products in all facilities owned or operated by the Customer; and

WHEREAS, Pepsi is experienced in installing, operating, servicing and maintaining equipment for dispensing beverage products and the Customer has determined that it is in the best interests of the Customer to contract with Pepsi to provide services for the sale of beverage products; and

WHEREAS, Pepsi wishes to identify itself with the Customer and to have its products promoted and sold at the Facilities (as defined below) and further wishes to receive the other promotional benefits provided for by the Customer in this Agreement; and

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and the other mutual promises set forth herein, the parties agree as follows:

AGREEMENT

1. **DEFINITIONS.**

"Approved Cups" means the disposable cups approved by Pepsi from time to time as its standard trademark cups and other containers approved by Pepsi from time to time and bearing the trademark(s) of Pepsi and/or other Products. In addition, Pepsi agrees that the Customer shall have the right to produce limited-run commemorative plastic cups reasonably acceptable to Pepsi for use at the Facilities and that such cups shall also be considered to be Approved Cups, provided that Pepsi's trademark(s) for Pepsi® shall be included on such commemorative cups. The use and size of Pepsi's trademark(s) on such commemorative cups shall be subject to the prior approval of Pepsi.

"Beverage" or **"Beverages"** means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) packaged carbonated or still water (including spring, mineral or purified), (viii) liquid concentrate

**DO NOT CIRCULATE OR FORWARD/Subject to Confidentiality Agreement/Attorney-Client Privilege/Exempt from
Open Meetings, D.C. Code 2-575(b)(2)(3)(4A) and (11)/
Exempt from FOIA, D.C. Code 2-534(a)(1) and (e)**

teas (“*LCT*”), (ix) frozen carbonated and non-carbonated beverages (“*FB*”), and (x) any future categories of nonalcoholic cold beverage products that may be distributed by Pepsi. “Beverages” does NOT include smoothies that are made fresh from frozen fruit products and blended with fruit, vegetables or yogurt at any Facility.

“*Competitive Products*” shall mean any and all Beverages other than the Products.

“*Container Deposits*” shall mean fees that Pepsi as a retailer, bottler or distributor of Products is required to collect on sales of beverages in individual portion beverage containers by container deposit laws in effect to ensure a high rate of recycling or reuse. By way of illustration only, this fee is most typically five or ten cents per container and as of the date of this Agreement, such laws were in effect in the states of California, Connecticut, Hawai’i, Iowa, Maine, Massachusetts, Michigan, New York, Oregon and Vermont.

“*Customer Marks*” shall mean (i) the Designations (as defined below) and (ii) the Customer’s characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the Customer and which relate to the Facilities and which are in existence at the beginning of the Term or which will be created during the Term. For clarity purposes, Customer Marks shall include, without limitation, characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations associated with or related to all intercollegiate athletic teams associated with the Customer, at the beginning of the Term or which will be created during the Term, if any.

“*Designations*” shall include, but not be limited to, the following: “A Proud Sponsor of The University of the District of Columbia,” “Official Water and Soft Drink of The University of the District of Columbia” and “Official Sponsor of The University of the District of Columbia.”

“*Equipment*” means the following types of equipment owned and operated by Pepsi and used to sell or dispense the Products: (i) full service Beverage vending machines (“*Vending Machines*”); (ii) retail single-serve food service equipment and (iii) fountain service equipment. For clarity purposes, snack vending machines are not included as “Equipment”.

“*Facilities*” shall mean the entire premises of 801 North Capital Street Campus, Van Ness Campus, Bertie Backus Campus and every foodservice operating area controlled by the Customer (either directly, or indirectly through its Food Service Provider) now or in the future, including all buildings, the grounds, parking lots, dining facilities, snack bars, book stores, athletic facilities and concession stands, and, for each building, the grounds, parking, lots, dining facilities, unbranded and branded food service outlets and vending areas. This definition shall not be construed so as to impose any continuing obligations on the Customer as to any Facility, or portion of a Facility, no longer controlled by the Customer, directly or indirectly.

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“Food Service Provider” shall mean **Perkins** or any food service provider which may serve at the Facilities at any point during the Term. The Customer acknowledges and agrees that this Agreement, including the pricing, funding and other consideration provided for herein is based on the Customer’s current operating model/use of third party Food Service Providers. Thus, in the event that: (i) if the Customer is currently self-operated, the Customer switches to a Food Service Provider, or (ii) if the Customer currently uses a Food Service Provider to operate its concessions, such agreement between the Customer and the current Food Service Provider expires or is terminated, and the Customer enters into a new arrangement with a Food Service Provider; then any such new or subsequent agreement between the Customer and any Food Service Provider (pursuant to either (i) or (ii) above) shall require such Food Service provider to abide by the applicable pricing and other terms set forth in this Agreement.

“Government Imposed Taxes” shall mean local, state, federal or judicially imposed taxes which are imposed specifically on the sale of Products through Vending Machines at the Facilities. For purposes of illustration only, so-called “sugar taxes” or “soft drink taxes” are two common examples of Government Imposed Taxes.

“Packaged Products” shall mean Beverages that are distributed in pre-packaged form (*i.e.*, Bottles & Cans). A current list of Pepsi’s Packaged Products is found in attached Exhibit A which may be amended by Pepsi from time to time.

“Postmix Products” shall mean beverage products used to create and dispense fountain beverages. A current list of Pepsi’s Postmix Products is found in attached Exhibit A which may be amended by Pepsi from time to time.

“Products” shall mean Postmix Products and Packaged Products manufactured, bottled, sold and/or distributed by Pepsi.

“Year” shall mean each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

2. **TERM.**

The term of this Agreement shall be for a ten (10) year period beginning on October 1, 2018 (“*Effective Date*”) and expiring on September 30, 2028, unless sooner terminated as provided herein (“*Term*”). When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination.

3. **GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS.**

During the Term, Customer hereby grants to Pepsi the following exclusive Beverage availability and exclusive Beverage merchandising right as set forth and described below:

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A. Beverage Availability at the Facilities.

(1) Grant of Rights.

(a) Except for the Permitted Exceptions set forth in Section 6(A), Pepsi shall have the exclusive right to make Beverages available for sale and distribution throughout the Facilities, including the right to provide all Beverages sold at athletic contests (*i.e.*, concession stands, sales in stands (hawking) or other means), booster club activities, and all other special events conducted at any location on the Facilities ("*Special Events*"). Except for the Permitted Exceptions, the Products shall be the only Beverages sold, dispensed or served at the Facilities (*i.e.*, at concession stands, sales in stands (hawking) or other means), and the Products shall be sold at all food service concession or vending locations located within the Facilities; and

(b) Pepsi shall have the right to install the Equipment throughout the Facilities, at such locations which are convenient to existing electrical outlets and which are previously agreed to by Customer. Pepsi shall install the Equipment at its sole expense. Pepsi shall have the right to place full trademark panels on all sides of its Equipment. Pepsi, or one of its affiliates, shall retain title to all Equipment.

(2) Purchasing of Postmix Products.

The Postmix Products shall be purchased by Customer or the Food Service Provider from Pepsi at the prices established by Pepsi from time to time. The pricing for Postmix Product shall be the then published pricing for National Accounts.

(3) Purchasing of Packaged Products.

The Packaged Products may be purchased by Customer and shall be purchased by the Food Service Provider (or by Customer, if Customer operates food service directly) from Pepsi at prices established by Pepsi from time to time. Current pricing for Packaged Products is as set forth in Exhibit A attached hereto. Thereafter, the prices may be increased once each Year not to exceed 4% per annum. Pepsi shall provide thirty (30) days' notice of any price increases during the Term.

(4) Food Service.

During the Term, Pepsi shall work directly with Customer and the Food Service Provider for the Facilities, to provide all of its requirements for the Products. Customer shall cause its Food Service Provider to purchase the Product from Pepsi at pricing established by this Agreement. The Customer shall cause its Food Service Provider to purchase Products from Pepsi in sufficient quantities to ensure the regular and continuous distribution of the Products at the Facilities. Pepsi shall work directly with Customer and its Food Service

Provider to promote sales of the Products through appropriate point-of-sale and other advertising materials bearing the trademarks of the Products at Pepsi's expense.

(5) Vending.

Pepsi shall have the right to place Vending Machines at the Facilities for dispensing the Products; *provided, however*, that Customer shall have final approval on the location of Vending Machines at any identified optimal locations for such equipment. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to Vending Machines.

B. Product Merchandising Rights.

During the Term and subject to the terms and conditions contained in this Agreement, Customer grants Pepsi the exclusive right to merchandise Beverages at the Facilities as set forth and described below:

(1) Menu Board Advertising.

Customer will not permit any menu boards it installs, or has installed, at concession locations in which Products are served to customers at the Facilities to display branding or trademarks of any company which is a direct competitor of Pepsi. Pepsi will provide to Customer for no charge a reasonable number of appliques or other displays of Pepsi's trademarks which Customer may affix to the menu boards. The parties may also agree to use the funds described in Section 7.E below.

(2) Approved Cups; Product Hawking and Catering.

Customer agrees that all Products served, sold or dispensed at concession locations in which Products are served to customers at the Facilities shall be served in Approved Cups, provided that Customer has sufficient supplies of same on hand, and all other Beverages served, sold or dispensed within the Facilities shall be served in either Approved Cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of Competitive Products ("***Permitted Unbranded Cups***"). Pepsi agrees to make Approved Cups available for purchase and the Customer may purchase, and subject to Permitted Exceptions Customer shall require that all concessionaires, Food Service Providers, booster clubs and other third parties selling Beverages at the Facilities purchase, all Products, Approved Cups, lids and carbon dioxide directly from Pepsi at prices determined by Pepsi; current pricing for these items is as set forth in Exhibit A attached hereto and thereafter, the prices may be increased once each Year not to exceed 4% per annum. Pepsi will provide 30 days' notice of any price increases during the Term. Customer, its concessionaires, Food Service Providers, booster clubs and other third parties may purchase Permitted Unbranded Cups, if it prefers them to the Approved Cups, from

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any vendor it chooses. If Customer determines to allow “hawking” at the Facilities, then Customer shall cause Products to be “hawked” at the Facilities at all events taking place at the Facilities (including, without limitation, at all home games of all intercollegiate athletic teams associated with the Customer, if any), and served as part of the catering selection in private boxes, suite, backstage areas, locker rooms and press areas. Customer further agrees that Products to be “hawked” in the stands shall be sold only in Approved Cups. As used herein, “hawking” shall refer to the sale of single servings of a product in the seating areas of the Facilities through the use of vendors circulating through such seating areas.

4. **GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS.**

During the Term, Customer hereby grants to Pepsi the right to advertise and promote Products in and with respect to the Customer and the Customer Marks upon the terms and conditions contained in this Agreement and as set forth and described below.

A. **Promotional Rights.**

(1) **General Sponsorship Designation.**

Customer hereby agrees that Pepsi shall have the right to promote the fact that Pepsi is an official sponsor of the Customer and its intercollegiate athletic teams, if any, and that the Products are available at the Facilities, including the right of Pepsi to refer to itself using the Designations. Such promotion may be conducted through the distribution channels of television, radio and print media, on the packaging of (including cups and vessels) and at the point-of-sale of any and all Products wherever they may be sold or served.

(2) **Grant of License to Use the Customer Marks for Promotional Activities.**

Customer hereby grants to Pepsi a nonexclusive license to use the name of the Facilities and the Customer Marks for the limited purposes of promoting Products within the context of promotional activities. Customer acknowledges that, in order to make full use of the rights granted in this Agreement, Pepsi may conduct the promotional activities through its primary distribution channels in which Pepsi sells Products to the ultimate consumer, such as at the retail level, within drug stores and other retail outlets, by and through mass merchandise campaigns and together with Pepsi’s food service accounts and customers. All Pepsi use of Customer Marks shall be in compliance with the Customer’s Brand Guide, a copy of which has been provided to Pepsi. All uses of Customer Marks must be previously approved in writing by the Customer.

B. **Representations, Warranties and Covenants regarding the Ownership and Protection of the Customer Marks and Related Proprietary Rights.**

Customer represents and warrants that it is the sole and exclusive owner of all right, title and interests in and to the Customer Marks (including without limitation, all goodwill associated

DO NOT CIRCULATE OR FORWARD/Subject to Confidentiality Agreement/Attorney-Client Privilege/Exempt from Open Meetings, D.C. Code 2-575(b)(2)(3)(4A) and (11)/ Exempt from FOIA, D.C. Code 2-534(a)(1) and (e)

therewith) and Pepsi's use of the Customer Marks pursuant to this Agreement will not infringe the rights of any third parties. Pepsi acknowledges that nothing contained in this Agreement shall provide Pepsi with any right, title or interest to the Customer Marks other than the right to use such Customer Marks granted under this Agreement. Pepsi (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of Customer and its affiliates and cooperate with Customer and its affiliates to procure any protection or to protect any of the rights of Customer and its affiliates in and to the Customer Marks. Pepsi shall cause to appear on all materials incorporating the Customer Marks such legends, markings and notices as Customer or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Customer Marks. Pepsi shall not make any alterations or changes to the design or type of the Customer Marks without the prior written consent of Customer.

C. Representations, Warranties and Covenants regarding the Ownership and Protection of Proprietary Rights of Pepsi.

Pepsi represents and warrants that Pepsi is authorized to use certain names, logos, service marks and trademarks of PepsiCo, Inc. (including without limitation, all goodwill associated therewith) (the "**Pepsi Marks**") under a license from PepsiCo, Inc. Customer acknowledges that nothing contained in this Agreement shall provide Customer with any right, title or interest to the names, logos, service marks and trademarks of PepsiCo, Inc. without the prior written approval of PepsiCo, Inc. Customer (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of PepsiCo, Inc., Pepsi and its affiliates and cooperate with PepsiCo, Inc., Pepsi and its affiliates to procure any protection or to protect any of the rights of PepsiCo, Inc., Pepsi and its affiliates in and to the Pepsi Marks. Customer shall cause to appear on all materials incorporating the Pepsi Marks such legends, markings and notices as Pepsi or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Pepsi Marks. Customer shall not make any alterations or changes to the design or type of the Pepsi Marks without the prior written consent of PepsiCo, Inc.

5. GRANT OF OTHER RIGHTS.

A. Sampling.

Customer agrees to permit Pepsi to conduct, at Pepsi's sole cost and expense, limited sampling of Pepsi products at the Facilities in a form and manner as specifically authorized and approved by Customer and in accordance with rules and procedures established by Customer, in its sole discretion, as may be amended or supplemented from time to time by Customer.

B. Right of First Negotiation.

Commencing six (6) months prior to the expiration of the Term, Customer and Pepsi agree to enter into negotiations to extend the Term of this Agreement. In the event the parties cannot

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agree to the terms under which this Agreement will be continued 30 days prior to the end of the Term, Customer shall be free to enter into negotiations with third parties.

6. **EXCLUSIVITY.**

A. During the Term, except with regard to the Permitted Exceptions set forth below, Customer, its agents, representatives, intercollegiate athletic teams coaches and players, and staff (1) shall not themselves nor shall they permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products at the Facilities and (2) shall ensure that the Products are the only Beverages sold, served, promoted, marketed, advertised, merchandised, sponsored or endorsed, at the Facilities. Customer agrees to undertake reasonable efforts to work with the third parties described in the Permitted Exceptions (defined below) to promote the use of the Products and minimize the use or promotion of Competitive Products.

Customer and Pepsi agree that certain specific activities and goods will be excluded from the requirement set forth in the first sentence of this Section 6, namely:

- (i) advertising in Customer's college student newspapers and publications, or sponsorship of programs on any student-run college radio station;
- (ii) NCAA, East Coast Conference, other members participant tournaments, or other groups hosted by Customer, unless Pepsi has separately been granted exclusive beverage sponsor status or Customer has the sole and exclusive authority to select an exclusive beverage provider;
- (iii) the supply of Beverages at facilities and premises that are not Customer Facilities;
- (iv) on-campus consumption by students, faculty, staff or their guests of Competitive Products purchased outside of a Customer Facility for personal consumption or for consumption by their group, office or organization and not for resale or distribution;
- (v) private events, such as private parties, gatherings and meetings, hosted or co-hosted by outside parties. Customer agrees to review the extent of its reliance on this Permitted Exception during the quarterly business review meetings contemplated by this Agreement. In addition, Customer will notify the third parties that Pepsi and Customer have an exclusive pouring relationship and Customer will use reasonable efforts to encourage the third parties to offer equivalent Pepsi Products at its event or, in the alternative, to minimize its use of Competitive Products. This exception shall only allow for the temporary provision of Competitive Products during the third party's rental of a portion of the Facilities and shall only allow for Competitive Products to be provided in the portion of the Facilities that is being rented by such a third party. If such portion is visible from other locations within the Premises, Customer will use reasonable efforts to ensure the Competitive Products are served in Permitted Unbranded Cups, a glass or similar unmarked container;
- (vi) milk and fresh-prepared smoothies, coffee, and tea; and

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- (vii) chilled fruit juices which are delivered by an affiliate of Pepsi; and
- (viii) Sales, promotional and other activity conducted by businesses which are independent of the Customer, but which operate a restaurant, catering, or other retail beverage or food service business whose customers consist primarily of the general public on leased or licensed premises within Facilities currently or hereinafter owned, operated or controlled by Customer; and
- (ix) Sales in the Micro Market, a self-checkout vending market located in the Lower Level Break Room of the David A. Clarke School of Law at the Van Ness Campus of Customer; Pepsi agrees and acknowledges that, pursuant to a Short-Term Use of Space Agreement for the Establishment of a Vending Facility on Federal Property between Customer and the D.C. Department on Disability Services, and as required by the Randolph-Sheppard Act, Customer has agreed to allow a vendor, currently Monumental Vending, to operate the Micro Market.

(collectively items i-ix above are the "***Permitted Exceptions***").

B. Customer recognizes that Pepsi has paid valuable consideration to ensure an exclusive associational relationship with the Facilities, Customer, and/or Customer Marks with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Pepsi's valuable rights. Accordingly, the Customer will promptly oppose Ambush Marketing (as defined below) and take all reasonable steps to stop Ambush Marketing and to protect the exclusive associational rights granted to Pepsi pursuant to this Agreement. In the event any such Ambush Marketing occurs during the Term, each party will notify the other party of such activity upon learning thereof. As used herein, "***Ambush Marketing***" shall mean an attempt by any third party, without Pepsi's consent, to associate Competitive Products with the Facilities, Customer and/or Customer Marks, or to suggest that Competitive Products are endorsed by or associated with the Facilities, Customer and/or Customer Marks by referring directly or indirectly to the Facilities, Customer and/or Customer Marks.

7. **CONSIDERATION.**

In consideration for the advertising, merchandising, promotional rights, and the other related rights and benefits provided to Pepsi by Customer as described herein, and provided Customer is not in material breach of this Agreement, Pepsi agrees to pay to Customer:

A. **Initial Support Funds.**

Initial Support Funds in the total amount of Sixty Thousand US Dollars (\$60,000), payable in two equal installments, the first of which is due to the Customer within forty-five (45) days after September 30, 2023, the completion of Year 5, and the second of which is payable within forty-five (45) days after September 30, 2028, the completion of Year 10 (the "***Initial Support Funds***"). The Initial Support Funds are deemed earned at a rate of \$500.00 per month (\$6,000.00 per Year) during the Term, with the consequence that, should this Agreement be terminated prior to its

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natural expiration for any reason whatsoever, Pepsi shall pay to Customer, within 45 days following the effective date of such earlier termination a prorated amount of Initial Support Funds equal to \$60,000 times a fraction, the numerator of which is the number of full or partial calendar months already transpiring in the Term and the denominator of which is 120. Any Initial Support Funds already actually paid to Customer shall be credited against any amount owing in accordance with the immediately prior sentence.

B. Annual Sponsorship Fees.

An Annual Sponsorship Fee (the “*Annual Sponsorship Fee*”), payable annually pursuant to the following:

Year	Applicable Time Period	Amount	Due Date: within 45 days after:
1	October 1, 2018 – September 30, 2019	\$55,000	The execution of this Agreement by both parties.
2	October 1, 2019 – September 30, 2020	\$55,000	October 1, 2019
3	October 1, 2020 – September 30, 2021	\$55,000	October 1, 2020
4	October 1, 2021 – September 30, 2022	\$55,000	October 1, 2021
5	October 1, 2022 – September 30, 2023	\$55,000	October 1, 2022
6	October 1, 2023 – September 30, 2024	\$55,000	October 1, 2023
7	October 1, 2024 – September 30, 2025	\$55,000	October 1, 2024
8	October 1, 2025 – September 30, 2026	\$55,000	October 1, 2025
9	October 1, 2026 – September 30, 2027	\$55,000	October 1, 2026
10	October 1, 2027 – September 30, 2028	\$55,000	October 1, 2027

* The Customer acknowledges and agrees that each Annual Sponsorship Fee payable to the Customer is based on the information provided by the Customer in the RFP, which estimated that 13,000 gallons and cases of Products (including cases sold through Vending Machines) were sold at the Facilities in the year immediately preceding the RFP. If during any Year the number of gallons and cases of Products falls below 11,700, the parties agree to meet in good faith to determine the cause of the declining volume and determine if adjustments to the Annual Sponsorship Fee are equitable under the circumstances.

Each Annual Sponsorship Fee is earned throughout the Year in which it is paid, except that, if more than 14,300 gallons and cases of Products (including cases sold through Vending Machines) are sold during any Year, the Annual Sponsorship Fee for the next successive Year shall be deemed to have been fully earned, and not subject to repayment, as of the first day of that next successive Year. In the event Pepsi terminates this Agreement due to the Customer’s failure to cure a breach hereof (as contemplated by Section 10.B(ii)) the unearned Annual Sponsorship Fees will be repaid to Pepsi pursuant to the terms of Section 10.D (Sponsorship Fees in the Event of Termination) herein.

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C. Annual Scholarship Funds.

In each of Years one through ten, Pepsi shall provide Customer with annual scholarship funds in the amount of Ten Thousand US Dollars (\$10,000) (the "*Annual Scholarship Funds*"). The Annual Scholarship Funds will be paid to Customer within forty-five (45) days after the commencement of each applicable Year, except that in Year One, such payment will be made within forty five (45) days of the later of the Effective Date or the signing of this Agreement by both parties.

D. Annual Athletic Support Funds.

In each of Years one through ten, Pepsi shall provide Customer with annual athletic support funds in the amount of Five Thousand US Dollars (\$5,000) (the "*Annual Athletic Support Funds*"). The Annual Athletic Support Funds will be paid to Customer within forty five (45) days after the commencement of each applicable Year, except that in Year One, such payment will be made within forty five (45) days of the later of the Effective Date or the signing of this Agreement by both parties.

E. Annual Marketing Support.

In each of Years one through ten, Pepsi shall provide Customer with marketing support that has a value of up to Eighteen Thousand US Dollars (\$18,000) (the "*Annual Marketing Support*"). The Annual Marketing Support will be held by Pepsi, and accessed by Pepsi for point-of-sale materials provided by Pepsi in support of sale of the Products at the Facilities. Utilization of the Annual Marketing Support will be mutually agreed to by the parties. Customer acknowledges and agrees that unused Annual Marketing Support in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.

F. Annual Sustainability Funds.

In each of Years one through ten, Pepsi shall provide Customer with annual sustainability funds with a value of up to One Thousand US Dollars (\$1,000), not to exceed ten (10) consecutive Years (the "*Annual Sustainability Funds*"). The Annual Sustainability Funds will be used and spent by Pepsi on mutually agreed to sustainability opportunities for the benefit of Pepsi and Customer. Customer acknowledges and agrees that any value of the Annual Sustainability Funds that remains unused at the end of a given Year will not carry forward to the subsequent Year and is not redeemable for cash.

G. Campus Ambassador Funds.

In each of Years one through ten, Pepsi shall provide Customer with campus ambassador funds in the amount of Two Thousand US Dollars (\$2,000) to be used and spent on mutually agreed to marketing and promotional opportunities for the benefit of Pepsi and Customer (the

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"Campus Ambassador Funds"). The Campus Ambassador Funds will be paid to Customer within forty-five (45) days after the commencement of each applicable Year, except that in Year One, such payment will be made within forty five (45) days of the later of the Effective Date or the signing of this Agreement by both parties. Pepsi and University will work together with the University's designated student Campus Ambassador in coordinating events at which the Parties may promote Pepsi Products or for which donated Products can be utilized.

H. Commissions.

Commissions, as a percentage of the actual cash ("**cash in bag**" or "**GIB**") collected by Pepsi from the Vending Machines placed at the Facilities, plus actual amounts received by Pepsi in connection with credit card or debit card sales (collectively with GIB, "**Revenue**"), less any applicable Government Imposed Taxes or Container Deposits ("**Commissions**"). Such Commissions shall be at the rate(s) set forth below (the "**Commission Rate**") and shall be calculated as follows:

$$\text{(Revenue - applicable Government Imposed Taxes and Container Deposits) * Commission Rate = Commission Due}$$

Product	Minimum Vend Price*	Commission Rate**
20oz Carbonated Soft Drinks, Gatorade, Aquafina, Lipton Iced Tea, and Lipton Brisk	\$1.75	45%
9.5oz Starbucks Frappuccino	\$2.50	45%
12oz Mountain Dew Kickstart	\$2.50	45%
18.5oz Lipton Pure Leaf	\$1.75	45%

* Pepsi shall have the right to increase vend prices by \$0.25 in each of Years 3, 6, and 9.
 ** If Pepsi proposes any new Products not on the attached Product list or otherwise available to the consuming public as of the date of this Agreement to the Customer during the Term, then Pepsi shall have the right to apply a different Commission Rate (but in no event less than 45%) and/or Minimum Vend Price for such new Product.

(1) **Commissions Payment.** Commissions shall be remitted by Pepsi to the Customer within thirty (30) days of the end of each 4-week accounting period established by Pepsi and shall be accompanied by documentation in sufficient detail to enable Customer to understand Pepsi's calculation of revenue and Commissions owed. Pepsi shall also make all pertinent revenue and sales records respecting the Vending Machines available to Customer. Customer agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by Customer in writing within three (3) years of the date such Commissions payment is due. Customer further acknowledges and agrees that it shall not receive any Commissions payment from Pepsi for a particular 4-week accounting period if Commissions fail to reach a certain threshold amount for that period. The applicable threshold amount is \$75 per 4-week accounting period. Each 4-week accounting period during the Term shall be wholly distinct

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from every other 4-week accounting period (i.e. there will be no overlap of any two accounting periods) and accounting periods (except for the first and last, which may be partial periods) will continuously and successively occupy the Term, beginning on the Effective Date of this Agreement.

(2) [deleted by agreement of the parties].

(3) **Change to Commission Formula.** Customer agrees that Pepsi shall have the right to change its formula/method for calculating Commissions at any time in its reasonable discretion provided that any such formula adjustments shall not result in any change to the Commissions due with respect to the same sales of Products under the Commissions terms set forth herein.

(4) **Vend Price.** Pepsi shall have the absolute right, at its sole discretion, to change vend prices as it deems appropriate in light of cost of goods increases or to otherwise stay reasonably consistent with applicable vending prices for similar accounts operating in the relative geography, provided that any such change in minimum vend price shall not result in any change to the Commissions due with respect to the same sales of Products.

8. **ADDITIONAL CONSIDERATION.**

In addition to the consideration specified above, and provided Customer is not in material breach of this Agreement, Pepsi shall provide the following further consideration to the Customer:

A. Upon request of customer, Pepsi will provide up to a total value of One Thousand US Dollars (\$1,000) per Year in donated Products across the Facilities at no additional charge to Customer; *provided; however,* that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer acknowledges and agrees that donated Product requests not used/made in any Year shall not be carried over to the subsequent Year, or be redeemable for cash payment.

B. Pepsi shall provide the Customer with sufficient recycling containers to accommodate the anticipated number of empty Beverage containers to be generated from the sale of Products on the Facilities. The Customer shall have the right to redeem the bottles returned from the Facilities.

C. **Student & Alumni Career Support.** (1) Pepsi will provide support to Customer in the form of an annual commitment to hire qualified University of the District of Columbia graduates into Pepsi's Management Training Program, with an annual value of Sixty Thousand US Dollars (\$60,000). The student and alumni hire program will include commercially reasonable and good faith efforts to hire or supervise a target of one student or alumni of Customer each Year for the course of the Term. The parties will mutually agree on the framework to measure Pepsi's performance in this regard. (2) Pepsi's obligations pursuant to this provision shall be subject to applicable law, including, without limitation, equal employment opportunity laws. Pepsi shall not discriminate, in connection with any of its obligations set forth in this Agreement, against

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any employee, applicant for employment, or recipient of services on the basis of veteran status, race, religion, color, sex, sexual orientation, age, disability, or national origin.

9. **EQUIPMENT AND SERVICE.**

A. **Beverage Dispensing and Other Equipment.**

(1) Pepsi shall, based upon Pepsi's survey of the Facilities' needs, provide and install all Equipment at the Facilities for the dispensing of Product during the Term. Title to all Equipment shall be with Pepsi or its affiliates.

(2) During the Term Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. Pepsi will service and stock, if necessary, (i) the Equipment (including any parts or consumables required in order to keep the Equipment functioning normally) and (ii) any additional Equipment determined by the parties to be installed at new locations on the Facilities.

(3) The Equipment may not be removed from the Facilities without Pepsi's written consent, and the Customer agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by Pepsi, provided however that Customer may move or relocate the Equipment if necessary in the event of an emergency. At the end of the Term, Pepsi shall have the right to, and shall upon request of the Customer, remove all Equipment from the Facilities at no expense to the Customer.

(4) Pepsi shall be responsible for collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for all cash monies collected therefrom.

(5) Pepsi, upon mutual agreement between the parties, may agree to install magnetic stripe card, online or chip card offline readers on Vending Machines placed at the Facilities. If agreed to by Pepsi, Vending Machines in mutually agreed upon locations will be fitted with magnetic stripe card on-line or chip card off-line readers in accordance with a mutually agreed to conversion schedule, terms, and conditions.

(6) Pepsi reserves the absolute right to remove any glass front Vending Machine that sells less than eight (8) cases of Product per week or any other Vending Machine that sells less than two (2) cases of Product per week provided that any removal of a Vending Machine shall not result in any change to the Commissions due to Customer with respect to the sales of Products. Pepsi agrees to have installed and in good working order at least 20 Vending Machines at all times during the Term.

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B. Service to Equipment.

Pepsi or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. Nothing in this paragraph shall be construed so as to require Customer to modify or materially diminish its ordinary and customary provision of routine janitorial maintenance and other custodial or cleaning services in the Facilities. Pepsi shall provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. Pepsi shall respond to each Customer request and use reasonable efforts to remedy the related Equipment problem based on the timelines set forth in section D below.

Pepsi will provide, at no charge to Customer, preventative maintenance and service, including any necessary repairs, to all Equipment. Pepsi will also provide University with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours. In over 90% of instances, requests for repairs or service that are called in to Pepsi prior to 12:00 noon are to be fulfilled on the same day, repairs or service requested after 12:00 noon are to be completed no later than 12:00 noon on the following day, and all service calls must be addressed and mitigated within 24 hours. Service call response time must be commensurate with the operating environment to which it corresponds. Pepsi's service record shall be measured in the aggregate; an isolated failure to respond within time frames above hours shall not constitute a material breach of the Agreement.

C. Dedicated Pepsi Representatives

Pepsi will designate employees who are responsible for the day to day and long term management of the account as set forth on pages 12 and 13 of Attachment 1.

D. Joint Business Planning and Reviews.

Pepsi agrees to coordinate regular planning business reviews with Customer on at least a quarterly basis. During such reviews, Pepsi will share the latest available data related to the sale of the Products at the Facilities and status of payments, budgets and performance of consideration described in Section 7 and 8 above and the parties will plan mutually agreeable marketing programs.

10. REMEDIES FOR LOSS OF RIGHTS - TERMINATION.

A. Customer's Termination Rights.

Without prejudice to any other remedy available to Customer at law or in equity in respect of any event described below, this Agreement may be terminated by Customer at any time effective thirty (30) days following written notice to Pepsi from Customer if:

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(1) Pepsi fails to make any payment due hereunder, and such default shall continue for fourteen (14) days after written notice of such default is received by Pepsi; or

(2) Pepsi breaches or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect and Pepsi fails to cure such breach within thirty (30) days after written notice of default is delivered to Pepsi. If such cure cannot reasonably be accomplished within such thirty (30) day period, this provision shall not apply where Pepsi shall have, in good faith, commenced such cure and thereafter shall diligently proceed to completion; *provided, however*, that such cure is completed to the reasonable satisfaction of Customer within ninety (90) days from the date of Pepsi's receipt of such written notice of default.

Customer shall have the right to terminate this Agreement for convenience by sending written notice to Pepsi specifying such termination date, which date shall not be less than ninety (90) days after the date of such notice (the "Early Termination Date"). At or before the Early Termination Date, University shall pay an early termination fee to Pepsi equal to ONE HUNDRED SEVENTY-THREE THOUSAND FIVE HUNDRED DOLLARS (\$173,500.00) (the "Early Termination Fee"). The parties acknowledge and agree that the calculation of the Early Termination Fee includes a reimbursement to Pepsi of the unearned portion of any upfront funds and related equipment costs, and that upon payment of the Early Termination Fee, Pepsi shall not have any other rights to reimbursement of any other funds.

B. Pepsi's Termination Rights.

Without prejudice to any other remedy available to Pepsi at law or in equity in respect of any event described below, this Agreement may be terminated in whole or in part by Pepsi at any time, effective thirty (30) days following written notice to the Customer if (i) a final judicial opinion or governmental regulation prohibits, or materially impacts or impairs (e.g., beverage tax or size restriction) the availability or cost of Beverages, whether or not due to a cause beyond the reasonable control of the Customer; or (ii) Customer breaches any, or fails to perform any, other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect. In connection with the foregoing, Pepsi shall give Customer notice of the event and where applicable (for events within Customer's control), shall provide Customer forty-five (45) days to cure such breach. If the identified breach/event is not remedied with the applicable notice period, then Pepsi may terminate this Agreement and recover from the Customer a limited, pro rata reimbursement in accordance with Section D below (Sponsorship Fees in the Event of Certain Termination).

C. Additional Termination Rights Available to Pepsi and Customer.

Without prejudice to any other right or remedy available to either party at law or in equity of any event described below, this Agreement may be terminated by either party if the other party,

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or any parent of such other party, shall: (i) have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within sixty (60) days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e)(2)(A) of Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Agreement; or (ii) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affair in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within 60 days thereafter); or (iii) admit in writing its inability to pay its debts as such debts become due.

D. Sponsorship Fees in the Event of Certain Termination.

If Pepsi terminates this Agreement pursuant to Section .B(ii), then Pepsi shall be entitled to receive from Customer, without prejudice to any other right or remedy available to Pepsi, and Customer shall pay to Pepsi, all Annual Sponsorship Fee funding paid by Pepsi to the Customer which remains unearned as of the time of termination. With regard to the Annual Sponsorship Fee, the amount of such reimbursement shall be determined by multiplying Annual Sponsorship Fee by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is twelve (12).

11. TAXES.

Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any income taxes payable by the Customer in connection with any fees payable by Pepsi to Customer under this Agreement. In addition, Pepsi shall be responsible only for the payment of taxes on the sales of Products through Vending Machines. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment. Customer acknowledges and agrees that in the event that Pepsi incurs Government Imposed Taxes or Container Deposits, it may incorporate them into the prices of the Products and, to the extent that the revised price would cause Pepsi to violate any limitation imposed by this Agreement on pricing or price increases, then such pricing or increase shall not be construed so as to give rise to such a violation.

12. CONFIDENTIALITY.

A. Except as otherwise required by law or the rules or regulations of any national securities exchange or the rules or regulation of the Customer, the Customer and Pepsi agree not to disclose Confidential Information (as hereinafter defined) to any third party other than to their respective directors, officers, employees and agents (and directors, officers, employees and agents of their respective affiliates and, in Customer's case, members of its Board of Trustees or any

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Committee thereof) and advisors (including legal, financial and accounting advisors) (collectively, "Representatives"), as needed.

B. "**Confidential Information**" shall include all non-public, confidential or proprietary information that Customer or its Representatives make available to Pepsi or its Representatives or that Pepsi or its Representatives make available to Customer or its Representatives in connection with this Agreement. "**Confidential Information**" shall not include the terms and conditions of this Agreement, except that any specific financial undertaking set forth herein, and the contents of Section 8.C hereof, shall collectively be referred to as "**Pepsi Protected Contract Information**".

C. Each party agrees to protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind. The parties agree to notify each other of any unauthorized use or disclosure of Confidential Information and to take all actions reasonably necessary to prevent further unauthorized use or disclosure thereof.

D. Pepsi acknowledges that the Customer is subject to the District of Columbia's version of the Freedom of Information Act and that this Agreement, including all attachments hereto, is a public contract, subject to disclosure pursuant to an appropriate request under DC FOIA. To the extent permitted by DC FOIA and other applicable law, Customer will use reasonable efforts to redact or otherwise obscure from public disclosure the Pepsi Protected Contract Information.

E. These Confidentiality provisions and the obligations of the parties hereunder will survive the expiration or sooner termination of this Agreement

13. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

A. Each party represents and warrants to the other: (1) it has full power and authority to enter into this Agreement and to grant and convey to the other the rights set forth herein; and (2) all necessary approvals for the execution, delivery and performance of this Agreement have been obtained and this Agreement has been duly executed and delivered by the parties and constitutes the legal, valid and binding obligation, enforceable in accordance with its terms, and nothing contained in this Agreement violates, interferes with or infringes upon the rights of any third party; (3) the respective signatory of this Agreement is duly authorized and empowered to bind the party to the terms and conditions of this Agreement for the duration of the Term; and (4) the parties have complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

B. Each of the parties hereto agree that: (1) the representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement, and

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Exempt from FOIA, D.C. Code 2-534(a)(1) and (e)**

(2) except as expressly set forth herein, neither party has made, and neither party is relying on, any representation or warranty, express or implied, with respect to the subject matter hereof.

C. To the extent that the any intercollegiate athletic team is relocated to a venue which is not within the Facilities as its home venue, Pepsi agrees that the exclusivity rights described in this Agreement shall be waived as to such alternate venue and the Customer shall have no affirmative obligation under this Agreement with respect to such venue.

14. **INDEMNIFICATION; ANTI-DEFICIENCY.**

A. Except for matters involving gross negligence or willful misconduct of the Customer, Pepsi will indemnify, protect, defend, and hold the Customer, its trustees, officers, employees, students, representatives and agents harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of or connected with: (i) any alleged or actual breach of any term or condition of this Agreement; (ii) any claim that the Equipment is defective; (iii) any act or omission by Pepsi to the extent such claim arises out of Pepsi's negligence or willful misconduct or as may be allowed under applicable law; and (iv) product liability suits resulting from the use or consumption of Products purchased from Pepsi. Monies due or to become due to Pepsi under this Agreement may be retained by the Customer as necessary to satisfy any outstanding claim which the Customer may have against Pepsi.

B. The parties acknowledge and agree that Customer's obligations to fulfill financial obligations of any kind under this Agreement shall remain subject to the provisions of (a) the federal Anti-Deficiency Act, 31 U.S.C. 1341, 1342, 1349, and 1351; (b) the District of Columbia Anti-Deficiency Act, D.C. Official Code; (c) D.C. Official Code 47-105; and (d) D.C. Official Code 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.

C. The provisions of this Section shall survive the termination of this Agreement.

15. **INSURANCE.**

A. Pepsi shall procure and maintain, all at times during the Term and for a period of three (3) years thereafter, the types of insurance coverage specified below, which (i) shall be issued by insurance companies authorized to do business in the District of Columbia that have received an A or better (and be in a financial size category of class VII or higher) rating by the latest edition of A.M. Best's Insurance Rating Service and that are otherwise reasonably satisfactory to Licensor; (ii) designate as additional insureds, Customer, Customer's current trustees, officers, directors, employees, or agents, and any other parties in interest from time to time designated in writing by notice from Customer to Pepsi (collectively, the "Additional Insureds"); (iii) be written as primary policy coverage and not contributing with or in excess of any coverage which Customer may carry; (iv) provide for thirty (30) days' prior written notice to Customer of any cancellation or other

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expiration or material modification of such policy or any defaults thereunder; and (v) contain an express waiver of any right of subrogation by the insurance company against the Additional Insureds. Neither the issuance of any insurance policy required hereunder nor the minimum limits specified herein with respect to Pepsi's insurance coverage shall be deemed to limit or restrict in any way Pepsi's liability arising under or out of this Agreement. Prior to Pepsi's installation of any Equipment to the Facilities, and as may be requested by Customer during the Term, Pepsi shall deliver to Customer a certificate evidencing the policies required to be carried by Pepsi.

1. Commercial General Liability Insurance. Pepsi shall provide evidence that it carries \$2,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors. Pepsi shall maintain Completed Operations coverage for two (2) years following final acceptance of the work performed under this Agreement. The policy shall not contain any sexual/physical abuse or molestation exclusions.
2. Automobile Liability Insurance. Pepsi shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this Agreement. The policy shall provide a \$5,000,000 combined single limit for bodily injury and property damage.
3. Workers' Compensation Insurance. Pepsi shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia.
4. Employer's Liability Insurance. Pepsi shall provide employer's liability insurance as follows: \$5,000,000 per accident for injury; \$5,000,000 per employee for disease; and \$5,000,000 for policy disease limit.
5. Umbrella or Excess Liability Insurance. Pepsi shall provide umbrella or excess liability (which is excess over employer's liability, general liability and automobile liability) insurance as follows: \$2,000,000 per occurrence.
6. Property Insurance. Pepsi shall maintain an all-risk property policy insuring the Equipment and all other items of personal property of Pepsi's located on or about the Facilities, against loss or damage from vandalism and malicious mischief, in an amount equal to the full replacement costs thereof.
7. Crime Insurance. Pepsi shall maintain a third party crime policy to cover the dishonest acts of Pepsi's employees, representatives, or agents, that result in a loss to the Customer. The policy shall provide a limit of \$50,000 per occurrence.
8. Sexual/Physical Abuse & Molestation. Pepsi shall provide evidence that it carries insurance coverage with \$1,000,000 per occurrence limits; \$2,000,000 aggregate. This insurance coverage requirement shall be considered met if the general liability policy includes sexual abuse and molestation coverage for the required amounts.

16. **DELETED.**

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17. **NOTICES.**

Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or by telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company
200 Pepsi Way
Wytheville, VA 24382
Attn: Director, Food Service

With a copy to (which shall not constitute notice):

Pepsi Beverages Company
1111 Westchester Avenue
White Plains, NY 10604
Attn: Legal Department

If to Customer:

The University of the District of Columbia
4200 Connecticut Avenue NW
Washington, DC 20008
Attn: Chief Operations Officer

With a copy to (which shall not constitute notice):

The University of the District of Columbia
4200 Connecticut Avenue NW
Washington, DC 20008
Attn: General Counsel

(xi) **CUSTOMER'S CONTRACT TEAM**

- a. Contract Administrator. The Contract Administrator ("CA") The CA is responsible for general administration of the Agreement and advising the

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Contracting Officer ("CO") as to Pepsi's compliance or noncompliance with the Agreement. The CA has the responsibility of ensuring the work conforms to the requirements of the Agreement and such other responsibilities and authorities as may be specified in the Agreement. These include:

- i. Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the Agreement;
- ii. Coordinating site entry for Pepsi personnel, if applicable;
- iii. Maintaining a file that includes all contract correspondence, modifications, and records of inspections (site, data, and equipment).

iv. The address and telephone number of the CA is:

David Franklin

Deputy Chief Operating Officer, Auxiliary Enterprises

University of the District of Columbia

4200 Connecticut Ave, NW, Bldg. 38

Washington, DC 20008

Voice: (202) 274-

Email: David.Franklin@udc.edu

Website: www.udc.edu

v. The CA shall NOT have the authority to:

- a. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
- b. Grant deviations from or waive any of the terms and conditions of the Agreement;
- c. Increase the dollar limit of the Agreement or authorize work beyond the dollar limit of the Agreement,
- d. Authorize the expenditure of funds by Pepsi;
- e. Change the period of performance; or
- f. Authorize the use of Customer's property, except as specified under the Agreement.

vi. Pepsi shall be fully responsible for any changes not authorized in advance, in writing by the CO and may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the Customer, to take all corrective action necessitated by reason of the unauthorized changes

b. Contracting Officer ("CO"). Agreements will be entered into and signed on behalf of the Customer only by a contracting officer. The contact information for the Contracting Officer is:

Mary Ann Harris

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Chief Contracting Officer (CCO)
University of the District of Columbia
Office of Strategic Sourcing & Procurement (SS&P)
4200 Connecticut Avenue NW
Washington, DC 20008
Phone: (202) 274-5426
Fax: (202) 274-6313
Email: mharris@udc.edu

- c. Authorized Changes by the CO.
 - i. The CO is the only person authorized to approve changes in any of the requirements of this Agreement.
 - ii. Pepsi shall not comply with any order, directive or request that changes or modifies the requirements of this Agreement, unless issued in writing and signed by the CO.
 - iii. In the event Pepsi effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made to cover any cost increase incurred as a result thereof.

18. **ASSIGNMENT.**

This Agreement or any part hereof or interest herein shall not be assigned or otherwise transferred by either party without the prior written consent of the other party nor shall the same be assignable by operation of law, without the prior written consent of the other party; *provided, however*, that Pepsi may assign and transfer this Agreement (in whole and not in part) following Customer's prior written consent to an affiliate except that the consent of Customer will not be required if (x) such affiliate is capable of fully performing all obligations of the assignor hereunder, (y) such affiliate agrees, under a separate agreement acceptable to the other party and signed by such affiliate, to perform all of the obligations and assume all liabilities of the assignor hereunder, and (z) Customer is affirmatively given the opportunity to review whatever financial records of the transferee it reasonably requests from Pepsi. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Customer represents and warrants to Pepsi that any change in the Food Service Provider at the Facilities shall not affect Pepsi's rights or obligations hereunder.

19. **GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia (without giving effect to its choice of law principles thereof) and the laws of the United States applicable thereto.

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20. **FORCE MAJEURE.**

If the performance by either party hereto of its respective obligations under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance only to the extent such performance or obligation is so delayed or prevented by such occurrence without liability of any kind. Nothing contained herein shall be construed as requiring either party hereto to accede to any demands of, or to settle any disputes with, labor or labor unions, suppliers or other parties that such party considers unreasonable.

21. **RELEASE, DISCHARGE OR WAIVER.**

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

22. **PRIOR NEGOTIATIONS; ENTIRE AGREEMENT.**

This Agreement and the exhibits attached hereto, Pepsi's proposal dated September 13, 2017, which is attached hereto as Attachment 1 and hereby incorporated herein ("Pepsi Proposal"), Pepsi's Best and Final Offer dated February 9, 2018, which is attached hereto as Attachment 2 and hereby incorporated herein ("Pepsi BAFO"), and Customer's Request for Proposals #GF-2018-R-0009 dated November 14, 2017, a copy of which has been received by Pepsi, is available on the Customer's procurement website, and is hereby incorporated herein ("Customer RFP"), together set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Agreement shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Pepsi and/or any of its affiliates and any affiliate of Customer.

23. **RELATIONSHIP OF THE PARTIES.**

The parties are independent contractors with respect to each other. Nothing contained in this Agreement will be deemed or construed as creating a relationship of principal and agent, joint venture, partnership or any association between the parties except as specifically stated herein. This Agreement is made for the benefit of the parties hereto and not for the benefit of any third party.

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Exempt from FOIA, D.C. Code 2-534(a)(1) and (e)**

24. **EFFECT OF HEADINGS.**

The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.

25. **CONSTRUCTION.**

This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties. In the event of any conflict between the terms of this Agreement, the Pepsi's BAFO, the Pepsi Proposal or the Customer RFP, the conflict shall be resolved by application of the conflicting terms in the order set forth in this sentence.

26. **SEVERABILITY.**

If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

27. **AMENDMENTS.**

No provision of this Agreement may be modified, waived or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, waivers or amendments shall not require additional consideration to be effective.

28. **COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

29. **FURTHER ASSURANCES.**

Each party hereto shall execute any and all further documents or instruments and take all necessary action that either party hereto may deem reasonably necessary to carry out the proper purposes of this Agreement.

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Exempt from FOIA, D.C. Code 2-534(a)(1) and (e)**

[signature to appear on the following page]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly entered into as of the date set forth below.

The Board of Trustees of
The University of the District of Columbia

Bottling Group, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CONFIDENTIAL

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Exhibit A

Current description & pricing for Postmix Products and Packaged Products

Customer acknowledges and agrees that in the event that Pepsi incurs Government Imposed Taxes or Container Deposits, it may incorporate them into the prices of the Products and, to the extent that the revised price would cause Pepsi to violate any limitation imposed by this Agreement on pricing or price increases, then such pricing or increase shall not be construed so as to give rise to such a violation.

Bottle & Can

Brand Mix	Unit_Case	On-Ticket
Corp_CSD_TOTAL	20oz/591ml Total	\$22.05
Ocean_Spray_Total	15.2oz/450ml Total	\$16.00
Lipton_Pure_Leaf_Total	18.5oz /547ML Total	\$13.42
Aquafina_Base_Total	20oz/591ml Total	\$10.87
Gatorade_Total	20oz/591ml Total	\$20.00
LifeWTR_Total	23.7oz/700ml Total	\$14.89
LifeWTR_Total	1 Liter Total	\$18.07
Frappuccino_Total	9.5oz 12L	\$18.07
Lipton_Iced_Tea_Total	20oz/591ml Total	\$29.17

Fountain Pricing

PACKAGE	CASE PACK	PRICE PER BOX	PRICE PER GALLON
Carbonated Soft Drinks	5	\$ 75.50	\$15.10
Gatorade	3	\$ 47.76	\$15.92
Tropicana/Lipton Brisk	5	\$ 75.50	\$15.10
Dole (Juice Pak) 3/1 Gallon Cartridge	3	\$ 94.41	\$31.47
Flavor Shots	1	\$ 20.00	\$21.57
Lipton Tea Liquid Concentrate Green Tea w Citrus	3	\$ 55.74	\$18.58
Sobe Life Water Zero Cal Yumberry Pomegranate	3	\$ 50.01	\$16.67

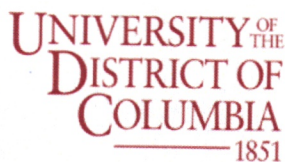
CUPS & LIDS	
Cups	Price
12oz	\$40.97
16oz	\$63.88
24oz	\$73.62
Lids	Price
12oz	\$39.77
16oz	\$39.77
24oz	\$33.32
CO2	
20lb	\$29.52
20lb Deposit	\$36.00

Attachment 1

Pepsi Proposal

Attachment 2

Pepsi Best and Final Offer



FISCAL IMPACT STATEMENT

TO: The Board of Trustees
FROM: Office of the Chief Operating Officer *TALS*
DATE: August 31, 2018
SUBJECT: Pouring Rights - PepsiCo

Conclusion

It is concluded that the proposed Sponsorship Agreement between PepsiCo and the University of the District of Columbia (“University”) will not result in a negative financial impact to the University. Under the contract, the University expends no funds, thus there are no out-of-pocket expenditures. Furthermore, there are standard provisions within the contract that allowing the university termination rights for default or convenience. As such, there are no anticipated risks at this time.

Background

The central benefit of the Sponsorship Agreement to PepsiCo is that it extends to PepsiCo the exclusive Pouring Rights at the University’s various campuses. “Pouring Rights” refers to the exclusive right to supply all Beverages for resale, promotion, and merchandising to and at the University and the right to exclude Beverages which are competitive to PepsiCo’s Beverages from being sold, promoted or merchandised at the University. “Beverages” are defined as carbonated and non-carbonated natural or artificially flavored non-alcoholic sodas, fruit juices, cold teas, bottled water, sports and energy drinks, and cold packaged coffee drinks.

PepsiCo is expected to create a comprehensive, integrated beverage program that will increase customer satisfaction by providing quality products and state-of-the-art equipment, while achieving growth and profitability in beverage sales at the University.

Financial Impact

This request has been approved based upon the information provided. In exchange for the University’s granting to PepsiCo of exclusive pouring rights at the University’s campuses, PepsiCo is committed to providing a variety of financial benefits to the University. The aggregate financial benefit to the University through September 2028 is estimated at \$2,000,000. Below is a chart detailing the financial terms of the agreement. Although this agreement does give PepsiCo exclusive Pouring Rights, subject to certain limited exceptions, nothing in it requires the University itself to purchase any quantity of Beverages or any other products directly from PepsiCo.

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Financial Proposal Summary - 10 Year												
	1	2	3	4	5	6	7	8	9	10	Total	Comments
Initial Support Funds					\$30,000					\$30,000	\$60,000	Cash
Annual Sponsorship	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$550,000	Cash
Scholarship Fund	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$100,000	Cash
Athletic Support	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$50,000	Cash
Marketing support Value	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$180,000	Non-Cash
Donated Product	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$10,000	Non-Cash
Campus Ambassador	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$20,000	Cash
Sustainability	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$10,000	Non-Cash
Pepsi Management Program	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$600,000	Non-Cash
Vending Commission @ 45%	\$41,700	\$41,700	\$47,500	\$47,500	\$53,000	\$53,300	\$53,300	\$53,300	\$59,200	\$59,200	\$509,700	Cash
	\$193,700	\$193,700	\$199,500	\$199,500	\$235,000	\$205,300	\$205,300	\$205,300	\$211,200	\$241,200	\$2,089,700	

Cash	\$ 113,700	\$ 113,700	\$ 119,500	\$ 119,500	\$ 155,000	\$ 125,300	\$ 125,300	\$ 125,300	\$ 131,200	\$ 161,200	\$1,289,700
Non-Cash	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$800,000
Total	\$ 193,700	\$ 193,700	\$ 199,500	\$ 199,500	\$ 235,000	\$ 205,300	\$ 205,300	\$ 205,300	\$ 211,200	\$ 241,200	\$2,089,700

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Exempt from FOIA, D.C. Code 2-534(a)(1) and (e)**

MEMORANDUM

TO: Troy Lemaile-Stovall, Chief Operating Officer

FROM: David Franklin, Deputy Chief Operating Officer *David A. Franklin*

DATE: August 31, 2018

SUBJECT: Pouring Rights

The University of the District of Columbia will be looking to enter into a 10-year Pouring Rights agreement with PepsiCo. The Pouring Rights agreement gives PepsiCo exclusive right to supply all carbonated and non-carbonated beverages to all of the University of the District of Columbia's Campuses and locations. Per the agreement, PepsiCo will be responsible to the University of the District of Columbia with providing beverages for sale at all campus dining, campus store, and vending service locations. As such, the university will undertake reasonable efforts to ensure that PepsiCo products are the only beverages sold, served, promoted, marketed, advertised, merchandised, sponsored or endorsed, throughout campus facilities.

This Pouring Rights agreement between the University of the District of Columbia and PepsiCo will require PepsiCo to create a comprehensive, integrated beverage program that will increase customer satisfaction throughout the University's campuses by providing quality products and state-of-the-art equipment. This agreement will create a positive impact on the University by providing the following:

Key Terms:

- **Initial Support Funds** - An Initial Support Fund in the total amount of Sixty Thousand US Dollars (\$60,000), payable in two equal installments.
- **Annual Sponsorship** - In each of Years one through ten, PepsiCo shall provide the University with annual sponsorship funds in the amount of Fifty-Five Thousand US Dollars (\$55,000). Fee payable to the Customer based on the information provided by the University in the RFP, which estimated that 13,000 gallons and cases of Products (including cases sold through Vending Machines) were sold at the Facilities in the year immediately preceding the RFP. If during any Year the number of gallons and cases of Products falls below 11,700, the parties agree to meet in good faith to determine the cause of the declining volume and determine if adjustments to the Annual Sponsorship Fee are equitable under the circumstances.
- **Annual Scholarship** - In each of Years one through ten, PepsiCo shall provide the University with annual scholarship funds in the amount of Ten Thousand US Dollars (\$10,000).

- **Athletic Support** - In each of Years one through ten, PepsiCo shall provide the University with annual athletic support funds in the amount of Five Thousand US Dollars (\$5,000).
- **Marketing Support** - In each of Years one through ten, PepsiCo shall provide the University with marketing support that has a value of up to Eighteen Thousand US Dollars (\$18,000) (the "*Annual Marketing Support*"). The Annual Marketing Support will be held by PepsiCo and accessed by PepsiCo for point-of-sale materials provided by PepsiCo in support of sale of the Products at the Facilities. Utilization of the Annual Marketing Support will be mutually agreed to by the parties.
- **Donated Product** - In each of Years one through ten, PepsiCo shall provide the University with products to support events such as the back-to-school barbeque, and commencement that has a value of up to One Thousand US Dollars (\$1,000).
- **Campus Ambassador Funds** - In each of Years one through ten, PepsiCo shall provide the University with campus ambassador funds in the amount of Two Thousand US Dollars (\$2,000) to be used and spent on mutually agreed to marketing and promotional opportunities for the benefit of PepsiCo and the University.
- **Annual Sustainability Funds** - In each of Years one through ten, PepsiCo shall provide the University with annual sustainability funds with a value of up to One Thousand US Dollars (\$1,000). The Annual Sustainability Funds will be used and spent by PepsiCo on mutually agreed to sustainability opportunities for the benefit of PepsiCo and University.
- **Student & Alumni Career Support** - PepsiCo will provide support to the University in the form of an annual commitment to hire qualified UDC graduates into PepsiCo's Management Training Program, with an annual value of Sixty Thousand US Dollars (\$60,000). The student and alumni hire program will include commercially reasonable and good faith efforts to hire or supervise a target of one student or alumni of the University each Year for the course of the Term. The parties will mutually agree on the framework to measure PepsiCo's performance in this regard.
- **Vending Commissions** - In each of Years one through ten, PepsiCo will provide the University with commission payment as a percentage (45%) of the actual cash ("*cash in bag*" or "*CIB*") collected by PepsiCo from the Vending Machines placed at the Facilities, plus actual amounts received by PepsiCo in connection with credit card or debit card sales (collectively with CIB, "*Revenue*"), less Government Imposed Taxes or Container Deposits (each term is defined in the agreement). Any enrollment increase will also result in increased general sales and revenues to the University per the agreement.

There are standard provisions within the contract that allow the University to terminate for default. The University was also successful in negotiating a right to terminate for convenience, provided that the University make an early termination payment of \$173,000. The University has been assured that most of Pepsi's other college and university partners have been unsuccessful in negotiating this flexibility. Nevertheless, by entering into a Pouring Rights agreement, the University of the District of Columbia will be taking steps to ensure that we continue to build a strong partnership with our community that maximizes the University's potential, improve work amenities for employees and increase student satisfaction.

The agreement has been fully negotiated in the form included with the package.

BOARD OF TRUSTEES
UNIVERSITY OF THE DISTRICT OF COLUMBIA
UDC RESOLUTION No. 2018-30

SUBJECT: Approval of Proposed Multi-Year Agreement for Exclusive Pouring Rights at the University of the District of Columbia

WHEREAS, pursuant to D.C. Official Code §38-1202.01(a), the Board of Trustees (“Board”) has the power to make contracts and procure and contract for goods and services; and

WHEREAS, pursuant to 8B DCMR §205.4(a), specific authorization of the Board is required for any commitment by the University of the District of Columbia (“University”) for more than seven (7) years; and

WHEREAS, Bottling Group, LLC, and its affiliates and/or subsidiaries comprising Pepsi Beverages Company (“Pepsi”) and the University desire to enter into a proposed ten (10) year Sponsorship Agreement, whereby Pepsi will be the exclusive supplier of beverages within University Facilities (as such term is defined in the Pouring Rights Agreement) in exchange for providing, among other things, certain cash and in-kind payments to the University, substantially in the form attached hereto as Appendix A (“Pouring Rights Agreement”); and

WHEREAS, Pepsi and the University have completed negotiation of the key business terms of the Pouring Rights Agreement; and

WHEREAS, pursuant to D.C. Code § 1-204.51, the Board of Trustees shall cause to be submitted to the Council of the District of Columbia (“Council”) all contracts having a term of more than five (5) years and involving expenditures out of an appropriation which is available for more than one year; and

WHEREAS, the University is currently exploring through contact with the Council whether the Pouring Rights Agreement is considered by the Council to involve expenditures out of an appropriation which is available for more than one year and is therefore required to be submitted by the University for review and approval by the Council.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees of the University hereby approves the proposed Pouring Rights Agreement subject to review and approval by the Council of the District of Columbia, should it be determined that such review and approval is required; and

BE IT FURTHER RESOLVED, that if it is determined that the Pouring Rights Agreement is required to be submitted to Council for review and approval, the University is hereby authorized to forward to the Council of the District of Columbia the Pouring Rights Agreement for its review and approval; and

BE IT FURTHER RESOLVED, that if Council review of the Pouring Rights Agreement is determined not to be required, or if Council does review and approve the Pouring Rights Agreement, then the President is hereby authorized to take all necessary actions to finalize and execute the Pouring Rights Agreement.

Approved by the Executive Committee

October 30, 2018



Christopher Bell
Chairperson of the Board

Ratified by the Board of Trustees

November 7, 2018

Christopher Bell
Chairperson of the Board

October 26, 2018

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
Committee of the Whole
1350 Pennsylvania Ave, NW, Suite 504
Washington, D.C. 20004

Re: Proposed Contract #GF-2019-C-0021, a Sponsorship Agreement for Exclusive Pouring Rights between Bottling Group, LLC and the University of the District of Columbia

Dear Chairman Mendelson:

This is to certify that the University of the District of Columbia Office of the General Counsel has reviewed the above-referenced contract and determined it to be legally sufficient.

This certification also specifies that the University is not aware of any claim(s) by Bottling Group, LLC against the District of Columbia.

If you have any questions in this regard, please contact me at 202.274.5604 or at avis.russell@udc.edu.

Sincerely,



Avis Marie Russell
Associate General Counsel