

BEVERAGE AGREEMENT 83730N

THIS BEVERAGE AGREEMENT ("Agreement") is made and entered into as of this 01<sup>st</sup> day of August, 2013 by and BOTTLING GROUP, LLC and its affiliated companies doing business as Pepsi Beverages Company, 1 Pepsi Way, Somers, NY 10589-2201 (herein "Pepsi"); and the UNIVERSITY OF MARYLAND, COLLEGE PARK, an agency of the State of Maryland ("University").

WITNESSETH:

WHEREAS, the University wishes to provide certain services for the benefit of the main College Park campus (the "Campus") community, including the sale, marketing and promotion of certain beverages on Campus; and

WHEREAS, related to the University's desire to provide such services, Pepsi offered an alternative proposal to the University in response to a call for revised proposals issued on June 04 2012, with specific terms, conditions and language as mutually agreed through subsequent discussions consistent with Code of Maryland Regulations, State Procurement Regulations 21.05.03.03; and:

WHEREAS, Snack Food Products are not included within the scope of this Agreement.

WHEREAS, this Agreement is the written articulation of that alternative proposal updated through clarifying discussions and negotiations and the University's and Pepsi's acceptance of same.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. **SCOPE OF WORK** As a general matter, Pepsi shall provide the following services under the Agreement: Pepsi shall sell the Pepsi Products (listed on Exhibit E and described in Section 4.A.1, and any additional products as mutually agreed upon between the parties "Products") to the University at the prices set forth herein, and Pepsi shall furnish all equipment as defined in this Agreement (the "Equipment") to the University and shall service and maintain the same, all in accordance with the provisions hereof. Pepsi shall use diligent efforts to assure that the services described above and elsewhere herein, are provided on a continuous and timely basis throughout the Term (except to the extent that its performance may be excused pursuant to the terms set forth in this Agreement).

2. **TERM** The term of this Agreement shall be for a period of ten (10) years beginning upon the date this agreement is executed by Pepsi and the University ("Execution Date") and continuing through the tenth (10<sup>th</sup>) anniversary of the execution date (the "Term"), unless terminated earlier in accordance with this Agreement. Each twelve month period beginning on the anniversary of the Execution Date shall be considered a "Year" for purposes of this Agreement.

3. **CONSIDERATION.** For the rights granted to Pepsi herein throughout the Term, the following sums shall be paid to, allocated or accrued on behalf of, the University upon the terms in accordance with Pepsi Best and Final R004 (Exhibit C) as amended and as set forth below. If the parties mutually agree that unforeseen events or circumstances have occurred during the Term which significantly reduce the benefits to Pepsi hereunder, the funds payable by Pepsi under this Section 3 may be reduced directly proportionate with any such reduction in benefits for the duration of same, and Pepsi and the University will negotiate in good faith to agree to the amount of the reduction.

**3.A. Unrestricted Cash Compensation**

3.A.1 A Year one (1) payment of [REDACTED] Dollars payable in full to the University as unrestricted cash funding, within forty-five (45) days of the Execution Date, with such funding to be earned by the University in equal monthly increments over the first Year of the Agreement.

3.A.2 Subsequent annual payments for Years two (2) through ten (10) of the Term of [REDACTED] Dollars payable in full to the University as unrestricted cash compensation, payable within forty-five (45) days of the anniversary of the Execution Date of each Year, with each annual payment to be earned by the University in equal monthly increments over each Year of the Agreement for Years two through ten.

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3.B. Targeted Cash Contributions and Value Allocations

3.B.1 Pepsi Enhancement Fund

An annual cash payment of [REDACTED] representing the Pepsi Enhancement Fund as hereinafter defined in Exhibit C. Pepsi and the University will award amounts to mutually agreed upon student organizations and programs, and voted on by the Pepsi Student Enhancement Committee. Annually, Pepsi shall make the Enhancement Funds payment to the University in two equal payments of [REDACTED], with the first portion to be paid on or before the anniversary of the Execution Date of each Year of the Term and the second portion to be paid on or prior to November 30<sup>th</sup> of each Year of the Term. All of such annual payments of Enhancement Funds shall be earned by the University in 1/12 increments monthly over each Year of the Term.

3.B.2 Gatorade Sideline Support

An annual allocated value of [REDACTED] representing Gatorade Sideline Support as hereinafter defined in Exhibit C. No cash payment. The Gatorade Sideline Support components shall be as follows: (i) [REDACTED], (ii) [REDACTED] value in Gatorade product donation offered through Team Zone; (iii) [REDACTED] in cups, coolers, towels and other equipment; and (iv) [REDACTED] in summer camp in kind support. Should the law or PepsiCo policy change regarding execution of these camps, the parties shall discuss a mutually agreed-upon replacement. Should University lose the ability to place Gatorade Products in the Players' Areas during the Term, Pepsi shall have the right to reduce or eliminate the credit fund. "Gatorade Products" shall mean products manufactured or distributed by The Gatorade Company ("Gatorade"), an affiliate of Pepsi, that are advertised or marketed as enhancing sports performance. For the purposes of clarification and not limitation, "Products" shall include Gatorade's energy chews in addition to its beverage products. "Gatorade Merchandise" shall mean Gatorade-identified cups, coolers, ice chests, squeeze bottles, sideline carts, towels and other innovated equipment later developed by Gatorade for purposes of storing, distribution and using Gatorade Products in Players' Areas providing visibility presence in the Players' Areas to Gatorade Products. "Players' Areas" shall mean the courtside areas, sidelines, bench areas, dugouts, locker rooms, pre/post-game interview areas and other areas immediately contiguous with the non-fan accessible playing surfaces.

3.B.3 Sustainability Support Programs

An annual allocated value of [REDACTED] representing Pepsi Sustainability Support Programs as mutually agreed upon by Pepsi and the University. No cash payment.

3.B.4 Price Subsidies

3.B.4.1 Annual Fountain Subsidy

3.B.4.1.1

An annual subsidy amount equal to [REDACTED] Dollars representing the Price Subsidy Fountain as hereinafter defined in Exhibit C. No cash payment.

3.B.4.1.2 Annual Fountain Subsidy Elements include the following net price-per-gallon/product at the start of the Term:

- 3.B.4.2.1 [REDACTED] Carbonated Soft Drinks + Lipton Brisk + Gatorade (BIB)
- 3.B.4.2.2 [REDACTED] Lipton Concentrated Tea (BIB)
- 3.B.4.2.3 [REDACTED] Orange Juice (BIB 3-pack)
- 3.B.4.2.4 [REDACTED] Apple Juice (BIB 3-pack)
- 3.B.4.2.5 [REDACTED] Cranberry Cocktail Juice (BIB 3-pack)

3.B.4.2 Annual Bottle and Can Subsidy

An annual subsidy amount equal to [REDACTED] representing the Price Subsidy Bottle and Can, as hereinafter defined in Exhibit C. No cash payment.

3.B.5 Vending Internship Program

For each Year of the Term, Pepsi shall hire and directly compensate University of Maryland student interns to work at the Department of Business Services ("DBS") and other areas supporting the University program on terms consistent with intern programs run by Pepsi in the past with the University. The parties estimate that approximately 80% of an

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intern's time will be focused on DBS and the remaining 20% on other activities pertaining to the University. Interns shall be paid by Pepsi in accordance with Pepsi's usual practices. The Pepsi intern program shall have a Pepsi allocated value of [REDACTED] per Year, and the program shall have a minimum of 1,000 intern hours performed annually. No cash payments will be made directly to the University.

### 3.B.6 In-Kind Product

During each Year of the Term Pepsi shall donate a minimum of [REDACTED] of Product at no charge to the University for Campus and events, and programs. All requests to Pepsi for Product donations under this paragraph shall be made only by the authorized representative of ICA, Dining Services, or the Department of Business Services. Nothing in this agreement shall prohibit Pepsi from making additional product donations to other campus groups, events, or organizations.

### 3.B.7 Vending Machine Commissions

Throughout the Term, Pepsi shall pay to University a [REDACTED] commission on all Gross Revenues actually collected by Pepsi from the Pepsi Vending Machines placed on the Campus hereunder. "Gross Revenues" is defined as vend price less any applicable deposits required, and less any consumer refunds paid on all Products sold through the Pepsi Vending Machines from which Pepsi received revenues. Throughout the Term, Pepsi shall pay the University commission payments following the Pepsi fiscal year calendar consisting of thirteen (13) periods, with twenty-eight (28) days per period. Commissions for the applicable period are paid in the fourth week of the following period. With each payment, Pepsi agrees to send a report for the preceding period, showing the commissions due and the dollar amount of sales. Pepsi guarantees no minimum commission nor will it pay late fees or interest on late payments. Pepsi agrees that it is responsible to cover the cost of the cashless, electronic payment devices fees on the Pepsi Vending Machines, excluding the Campus Dining Vending Machines containing dining card readers.

### 3.B.8 Marketing Fund Value Support

During each Year of the Term, Pepsi agrees that it will allocate amounts toward mutually agreed upon marketing programs for the benefit of the University. The amount of Marketing Fund Value Support for each Year of the Term is set forth in **Exhibit C**, as calculated using Pepsi's measures of marketing value. No cash payment.

Any requests for deviation from **Exhibit C** must be received annually within thirty (30) days from the subsequent Year contract renewal period.

**4. SPONSORSHIP RIGHTS.** In consideration of the amounts paid or allocated by Pepsi pursuant to Section 3 above, the University grants to Pepsi the following rights during the Term.

### 4.A Exclusive Rights

**4.A.1** The University agrees that, during the Term, subject to the exceptions noted in Sections 4.A.3, 4.A.4 and 4.A.5, Pepsi's Products shall have 100% exclusivity, solely on the University of Maryland College Park Campus (including all athletic facilities, but excluding the University Campus at Shady Grove), to distribute carbonated soft drinks, non-carbonated soft drinks (including but not limited to juice and juice based products, ready-to-drink tea, ready-to-drink coffee, bottled water, isotonic, frozen dispensed beverages, protein beverages and energy drinks), and other beverage products (the Pepsi "Products") of their respective types sold, dispensed or otherwise made available or authorized by the University and/or its Concessionaires through fountain dispensers, bottle and cans, vending machines or otherwise distributed at all facilities and venues, including, but not limited to restaurants, catering, concessions, dining halls, and convenience stores currently or in the future operated by or on behalf of the University as a part of the University of Maryland College Park Campus. This clause also includes all University operated non-adjacent properties which are considered by the University to be part of such Campuses (the "Facilities"). The Pepsi Products shall include products listed on **Exhibit E** and shall include such other products as Pepsi may offer for sale during the Term and the University accepts within its reasonable discretion.

The University shall use its best efforts to ensure Campus wide compliance with this exclusive agreement and it will use its best efforts to enforce the University Policy Concerning Beverages (**Exhibit B**). The University agrees that in the event that it modifies, alters or changes the University Policy Concerning Beverages, such modifications, alterations or changes shall be applicable to this Agreement and Pepsi to the extent that such modifications, alterations or changes do not conflict with or change any term or provision of this Agreement or any exhibit or attachment hereto.

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4.A.2 During the Term and except as otherwise permitted herein, the University agrees that no beverages in the types as defined in Section 4.A.1 other than the Pepsi Products shall be sold, dispensed, provided, sampled or displayed in the Facilities or permitted upon any advertising placed or authorized by the University with the Facilities or in any way advertised, displayed, represented or promoted by the University by any method or through any medium whatsoever (including without limitation print, broadcast, direct mail, coupons, handbills, displays and signage to the extent that such things are within the control of the University, its agents, suppliers, licensees and/or contractors. In addition, the University agrees that bottle and can Products shall be made available for sale in all dining halls and food court locations on Campus.

4.A.3 [REDACTED]

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]  
(a) [REDACTED]  
(b) [REDACTED]

4.A.4 [REDACTED]

4.A.5 Intercollegiate Athletics; Sideline Exclusivity  
Pepsi shall have the exclusive right for Intercollegiate Athletics and Sideline Product advertisement and distribution, except as provided in this Section 4.A.5. Stokley-Van Camp Inc. ("SVC"), a subsidiary of Pepsi, for its Gatorade Products is hereby granted the designation "Exclusive sports beverage/ sports drink/ thirst quencher of the University of Maryland and its University of Maryland Intercollegiate Athletics Department". Such exclusivity and designation and product categories include: carbonated and non-carbonated sports drinks, sports beverages, isotonic, oxygenated, and electrolyte and fluid replacement beverages. Pepsi and the University acknowledge that SVC shall have the right to market, advertise, promote, sell and provide samples of its product line in connection with Pepsi's sponsorship of the University and University Athletics, including the right to promote its G Series product line in bundled format in connection with its sponsorship of University. Pepsi acknowledges that the University's Athletic Department has an exclusive agreement with Muscle Milk, and as such, the Muscle Milk products are to be the exclusive performance protein beverages sold, provided or advertised in the athletic facilities and Players' Areas, provided that the University agrees that no Muscle Milk products are to appear in athletic sideline areas.

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Except as provided in the foregoing paragraph, University agrees to the following: University shall exclusively place Gatorade Products and Gatorade Merchandise in the Players' Areas at all of University's intercollegiate home and away athletic events, including all pre-season games, regular-season games, and exhibitions (the "Games") in the manner specified in **Exhibit L**. No other beverage container or sports performance product shall be permitted to be placed or used in any Players' Areas. Water and any other beverage can be placed in or near Players' Areas as long as it is placed in Gatorade Merchandise. Further, University shall not grant promotional rights of any kind, for any other beverage or sports performance product, advertising or merchandising to appear in or near the Players' Areas (including, but not limited to, on chairbacks, equipment, towels, tables, equipment cases and apparel, but specifically excluding rotating courtside and/or baseline signage, matrix board signage, or permanent lighted signage). In the event a future opponent or bowl or event organizer interferes with University's obligation to exclusively place Gatorade Products and Gatorade Merchandise in the Players' Areas, University shall demand the use of generic, non-brand-identified merchandise for use for that event. If University's demand to place generic merchandise is denied by the opponent or coordinator, University will notify Pepsi of this interference and Pepsi and University will negotiate, in good faith, a remedy. In the event University is subject to on-going adverse publicity or public opinion, or Pepsi's association with the University subjects Pepsi to adverse publicity or public opinion, which in the sole judgment of Pepsi is or may be detrimental to the company's or brand's image, then Pepsi shall have the right to request in writing that University use non-branded generic merchandise in its Players' Areas.

### 4.A.6 Off-Campus Housing

4.A.6.a Pepsi understands that the University cannot mandate Pepsi exclusivity to privately owned residence complexes which house primarily University students. The University shall inform these properties that Pepsi is the preferred University beverage supplier, and in the event these complexes select Pepsi products as their exclusive machine vending beverages, the housing complex will receive the same vending commission on all Product sold in such vending machines as the University as stated herein.

4.A.6.b University owned Fraternity and Sorority houses will distribute exclusively Pepsi Products. Pepsi shall supply, install and maintain dispensing equipment at no charge to the University or the Chapter. For such Fraternity and Sorority houses, the initial BIB price in Year one shall be [REDACTED] per gallon, subject to annual price increases as stated herein. Pepsi shall extend this service and pricing to Fraternity and Sorority Houses recognized by the University but not owned by the University at the Fraternity and Sorority's option, subject to annual price increases as stated herein.

4.A.7 During the Term, Pepsi shall provide the University, its food vendors and concessionaires which may now or hereafter service the Facilities ("Concessionaires") with their respective requirements of the Pepsi Products. The University and the Concessionaires shall purchase the Pepsi Products from Pepsi's approved bottlers and distributors, in sufficient quantities to ensure the regular and continuous distributions of the Pepsi Products at all of the Facilities. If the University determines that sufficient quantities are not being so provided, it shall notify the Pepsi Market Unit Manager who shall use best efforts to provide the needed quantities within 48 hours of such notice. If the University does not receive appropriate quantities within such period, it shall so notify the Market Unit Manager and the University may obtain the same Products at the same price which would otherwise be offered under this Agreement from another Pepsi-owned bottler.

4.A.8 Pricing of Products. Pepsi agrees to sell the non-vended Pepsi Products to the University at the prices for fountain and bottle and can products, respectively, set forth on **Exhibit E** hereto for the first Year of the Agreement. Thereafter Pepsi reserves the right to review its pricing once a year and to adjust its prices, but shall not adjust the prices by more than [REDACTED] each Year of the Term. Pepsi shall give the University prior written notice of any price adjustments it plans to implement and the planned implementation date. The University agrees to use only Pepsi identified cups in the Facilities during the Term, except that the University reserves the right to use any cups it has in stock or on order until such supplies are exhausted and replaced by the Pepsi identified cups.

4.A.9 Pepsi shall install (where needed), maintain, and/or provide 20lb tanks of CO2 for use in dispensing fountain soft drinks hereunder to the University Fraternity and Sorority houses (subject to deposit requirements and charges for CO2 usage) where requested by the Fraternity or Sorority. The price in year one of the Term shall be [REDACTED] for a twenty pound cylinder of CO2 plus standard refundable deposits.

**5. PEPSI VENDING MACHINE SERVICES: EQUIPMENT**

**5.A. Pepsi Vending Machine Equipment**

5.A.1 Pepsi shall maintain the existing [REDACTED] Vending Machines on campus as of the Execution Date, or it will furnish and/or install where necessary new or like new, fully-operational Pepsi branded soft drink vending machines the "Pepsi Vending Machines") with dollar bill validators and cashless, electronic payment devices on no less than [REDACTED] of such machines in existence on the Execution Date, to dispense the Pepsi Products at the Facilities. Pepsi agrees to work with the Department of Business Services (DBS) in advance and acknowledges that DBS and Pepsi must agree to all proposed new placements of Vending Machines or Vending Machine equipment moves on University property (i.e. the machine type proposed, locations for new machine placements; determination to remove machines, etc.). Pepsi is exempt from such DBS approval for emergency requirements, safety issues, equipment upgrades and to avoid damage to University property.

In addition, Pepsi agrees that by November 1, 2013, it will replace at least [REDACTED] of then existing Vending Machines with glass-front Vending Machines or other social networking/interactive equipped machines as determined by Pepsi.

**5.A.2 Resident Dining Facility Lobbies**

Pepsi shall furnish and install [REDACTED] new or like new, fully operational glass-front Pepsi branded soft drink vending machines in the lobbies of University Resident Dining Facilities, which [REDACTED] machines are included in the [REDACTED] machines references in Section 5.A.1 above. These vending machines will accept cash and be installed with cashless, electronic payment devices supplied by Dining Services, offering beverages not offered in the Resident Dining Rooms. These Pepsi Vending Machines will contain point-of sale materials that clearly communicate the ability to use University Student-ID meal plan cards or cash. These Vending Machines will be accessible year-round for students and summer camps. The University shall pay Pepsi for all dining plan payments processed through the University-supplied cashless payment devices on a monthly basis within 45 days following the end of each month. The Commission on the sales tax exempt dining plan transactions in these vending machines shall be [REDACTED]. If during the term of this agreement, University dining plans shall become subject to sales tax, the commission on these sales shall revert to [REDACTED].

5.A.3 Pepsi shall ensure that by the end of Year 1 of the Term, at least [REDACTED] of the Vending Machines on Campus have received the designation of "Energy Star" equipment. See Exhibit C.

**5.B. Vending Machine Fronts**

Pepsi will develop a mutually agreeable Vending Machine front for the Pepsi Vending Machines which will incorporate reference to the University and its trademarks. The customized Vending Machine fronts will be installed at a mutually agreed upon time after the Execution Date on a mutually agreed upon number of Vending Machines from which twenty ounce bottles are vended. Pepsi will cover the costs of the Vending Machine fronts solely with the Marketing Fund Value Support as described in Section 3.B.8.

**5.C. Cashless, Electronic Payment Devices**

At the University's discretion, Pepsi will provide and install, at its expense, on a mutually agreeable schedule, cashless, electronic payment devices for a portion of the Pepsi Vending Machines, with a minimum of [REDACTED] Vending Machines on Campus as of the Execution Date. Pepsi will be responsible for any transaction or maintenance fees relating to the cashless, electronic payment devices. Pepsi will retain title to cashless, electronic payment devices installed, and will have full responsibility for the maintenance and functioning thereof. Pepsi will make appropriate arrangements for servicing the cashless, electronic payment devices, such as shipping them to service providers at the University's reasonable request. This section shall not apply to the cashless, electronic payment devices, accepting University dining plans installed on the vending machines in the Resident Dining Rooms.

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### 5.D. Fountain/Cold Drink Equipment

5.D.1 Pepsi shall furnish to and/or install at the University, free of charge, such fountain dispensing and cold drink equipment (e.g., visi-coolers) ("Equipment") as may be available and necessary, in the University's reasonable discretion in consultation of Pepsi, to service the Facilities during the Term. The University agrees that solely Pepsi Products will be made available through the Equipment. Pepsi will not provide or maintain ice making equipment.

5.D.2 Pepsi shall be responsible for all service, repairs, replacement and maintenance of the Pepsi Vending Machines and Equipment (excluding the cashless, electronic payment devices on the Dining Plan Card readers) and shall perform the same during the Term in a timely manner without additional charge. Notwithstanding the foregoing, University personnel may provide minor service to the Pepsi Vending machine and Equipment to the extent that they have been trained and are competent to do so. The University and its respective representatives and employees agree to exercise prudent care with respect to the handling and/or service of the Pepsi Vending machine. Title to the Pepsi Vending Machines and other Equipment shall remain vested in Pepsi and Pepsi shall have the obligation to remove the Pepsi Vending Machines and Equipment upon expiration or other termination of this Agreement. The parties agree that such removal must be scheduled in advance and coordinated with the University, and with Pepsi's removal efforts. After termination, if Pepsi fails to remove the Pepsi Vending Machines or Equipment within forty-five (45) days after written notice to do so, the University may dispose of such items as it sees fit, and Pepsi shall be liable for all reasonable costs of such removal and storage, if any. The University agrees to provide lighting and electrical power and hookups for use in connection with the Pepsi Vending Machines and Equipment and to promptly notify Pepsi of any need for repair or service and to cooperate fully with Pepsi in effecting such necessary repairs or service. The University agrees to cooperate to keep the Pepsi Vending Machines and Equipment free from any non-Pepsi advertising at all times.

### 6. VENDING MACHINE PRODUCT PRICING

6.1 As of the Execution Date, the prices for 20-ounce Pepsi Products vended from the Pepsi Vending Machines shall be [REDACTED], and the vending price per bottle shall increase to [REDACTED] bottle as credit card readers are installed by Pepsi on the Vending Machines on Campus, provided that such [REDACTED] vend price shall remain on the Vending Machines (for the first Year of the Term) only if the following conditions are satisfied on or prior to September 1, 2013: (a) at least [REDACTED] percent [REDACTED] machines) of the [REDACTED] Vending Machines in place on the Execution Date have cashless, electronic payment devices installed and operational, and (b) the required number of Vending Machines set forth in Section 5A.3 above have been certified as Energy Star compliant. If the conditions in subsections (a) and (b) are not met by September 1, 2013, the vending prices on all Vending Machines on Campus shall revert back to [REDACTED] and Pepsi may raise 20-ounce vend prices no earlier than January 1, 2014 and only if such (a) and (b) conditions are satisfied on or prior to January 1, 2014.

6.2 Notwithstanding the foregoing, the University reserves the right to have separate and different pricing for items sold through the PepsiCo Vending Machines located at the University Golf Course and its related facilities and Resident Dining Room Lobbies. Such pricing shall not be less than the product pricing charged at other Vending Machines on campus and will be equivalent to the pricing for the same products at retail outlets adjacent to these vending machines.

6.3 After the price increase described in Section 6.1 above, Pepsi may adjust the Vending Machine prices for Pepsi Products at its sole discretion during the Term, provided, however, that Pepsi (a) may only adjust its prices once during any school year (September through June) and (b) may not adjust its prices by more than [REDACTED] per Year of the Term, with the ability to accumulate percentages over multiple years so that Pepsi can execute its plan to raise vending pricing by [REDACTED] in year four of the Term and by an additional [REDACTED] in year ten of the Agreement.

6.3 Upon the University's request, Pepsi shall make all pertinent revenue and sales records respecting the Pepsi Vendors and cashless, electronic payment devices, where applicable, available to University for its review. In addition, if an on-line cashless, electronic payment device reader system is installed, upon Pepsi's reasonable request, the University shall make all pertinent revenue and sales records, if available, respecting the Pepsi Vendors and cashless, electronic payment devices, where applicable, available to Pepsi for its review.

## 7. BEVERAGE COOPERATIVE SPONSORSHIP RIGHTS

Set forth below in this Section 7, and also in Exhibit D, Pepsi is granted the right to promote its status as the "Exclusive Beverage Vendor and Partner" on the University of Maryland College Park Campus (including all athletic facilities), and to develop relevant marketing fixtures, tools, programs and campaigns for the purpose of enhancing Pepsi's "Brand" to the end of increased sales and exposure.

### 7.A. Signage

7.A.1 Throughout the Term, Pepsi will have the right to retain such existing signage in the stadia, fields, arenas, and other athletic facilities of the University as was in place on the Execution Date ("Athletic Facilities").

7.1.2 In the event that new athletic facilities are built or operated on Campus during the Term and the University decides to include signage at such athletic facilities, Pepsi shall also be granted signage of the same proportion to its signage in the other University Athletic Facilities on Campus, and commensurate with its roles as a major sponsor of the University.

7.A.3 Pepsi shall use the Marketing Fund Value Support (described in Section 3.B.8) to pay for the physical elements of such signage, and there shall be no additional charge for placement of such signage. If the Marketing Fund Value Support is at any time exhausted, Pepsi may elect to pay for the physical elements of such signage.

7.A.4 Notwithstanding anything to the contrary herein and except for mandated Athletic Conference requirements as communicated in advance by the University to Pepsi, the University grants to Pepsi [REDACTED] of percentage sponsorship granted to any corporate partner or individual, whichever is greater, of all Signs and Electronic Sign Media time in Stadiums, on Score-Boards, and any digital Marquees within the perimeter of the University Campus existing at the Execution Date, or placed during the Term of this contract.

7.A.5 All signage on Campus, whether current or future installation, shall be the property of the University, except for Pepsi-owned intellectual property thereon.

7.A.6 The installation, repair and maintenance of all Pepsi's signage shall be the sole responsibility of the University. The University agrees to maintain such signage as generally necessary to ensure that such signage is in good general condition at all times during the Term.

7.A.7 Pepsi shall provide all artwork for signage on Campus, subject to the approval of the University, which shall not be unreasonably withheld.

### 7.B. Print Materials

Subject to the University's prior approval in each instance obtained, the University expressly grants to Pepsi the right to use the University's logos and trademarks during the term on print advertising, point-of-sale materials, free-standing inserts, coupons or other promotional materials in connection with any University related game, sweepstakes, contest or promotion which may be devised by Pepsi and approved in advance by the University (the "Print Materials").

### 7.C. Radio Commercials

Subject to the University's prior approval, in each instance obtained, Pepsi shall have the right to produce, at their own expense, radio commercials and/or tags featuring the University and/or their respective trademarks and/or promotions conducted by Pepsi hereunder (the "Radio Commercials"). The Radio Commercials may be of a length of up to sixty seconds and may be edited and aired in such other lengths as may facilitate Pepsi's advertising campaign(s). Pepsi shall have the right to broadcast each Radio Commercial for a period of two years from the first broadcast thereof, provided, however that in no event shall such right of broadcast extend beyond expiration or other termination of this Agreement. Radio Commercials shall also be in accordance with Exhibit D.



7.D. Production of Print Materials: Radio Commercials

Pepsi will produce any Printed Materials and Radio Commercials permitted pursuant to this Agreement at their own expense using Marketing Fund Value Support (described in Section 3.B.8), provided however, that the University will cooperate as reasonably requested in connection with the production of these items.

7.E. Radio Commercial Time: Promotional Announcements

Pepsi shall have the right to air Radio Spots in accordance with Exhibit D and other such occurrences as are approved by the University.

7.F. Publications

During the Term, Pepsi shall have the right to develop mutually agreeable publication materials subject to prior approval by the University, which at a minimum will include such materials as set forth on Exhibit D/UM Beverage Corporate Partnership Overview.

7.G. [REDACTED]

7.G.1 [REDACTED]  
[REDACTED]  
[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

7.H. Marketing/Promotions

7.H.1. During the Term, Pepsi shall have the right to develop mutually agreeable marketing programs and/or promotions, many of which are defined in Exhibit D. The parties agree that events and/or promotions may be conducted and/or at least one per Year, provided that the event and specific dates and details of such events shall be subject to the prior mutual agreement of the parties in each instance.

7.H.2. Marketing Financial Commitment:

7.H.2.a. Pepsi commits to [REDACTED] (Thousand) dollars in Marketing/Promotion Support to include vendor fronts and athletic concession menu boards and signage during the first contract Year

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7.H.2.b Pepsi commits to [REDACTED] dollars in Marketing/Promotion Support for years two (2) through ten (10)

### 7.I Premium Merchandise

Subject to the University's prior written consent of the item and its proposed usage in each instance obtained, Pepsi has the royalty-free right to produce or have produced premium items such as t-shirts, jackets, cups or other items of its choice bearing the University logo and/or trademarks for use in any promotion. The University shall give reasonable consideration to Pepsi's requests to offer premium items to consumers on a self-liquidating basis. Pepsi understands that it may be required to use only University authorized suppliers for any such premiums.

## 8. TRADEMARKS/ADVERTISING APPROVAL

### 8.A. Use of Trademarks

In connection with this Agreement and subject to the prior written consent of the other party in each instance obtained, each party shall have the right to use the other's trade names, trademarks, service marks (including stylized and proprietary marks), team names, as well as any word, name, logo, color, design, emblem, insignia, symbol, mascot and any other distinctive indicia or combination thereof, now or hereafter used, applied for and/or registered by any of them during the Term. Such use of the University's logo may be employed (subject to prior approval) in connection with Pepsi Products, and/or its packaging, point-of-sale materials, premium items, cups, apparel, print ads and other advertising materials and promotional activity developed by Pepsi pursuant to this Agreement.

### 8.B. Trademark Approval

Each party acknowledges and agrees that the other has an interest in maintaining and protecting the image and reputation of their respective trademarks, and that in order to accomplish this purpose, each party must in all cases assure itself that its trademarks are at all times used in a manner consistent with the standards and guidelines heretofore established by it. Each party agrees that the other must have the right to examine and to approve or disapprove in advance of use the contents, appearance and presentation of any and all advertising, promotional or other similar, materials proposed to be used in connection with any advertising or promotion hereunder. Each party will submit to the other for its examination and approval or disapproval, in advance of use, samples of such materials together with the script, text, coloring, storyboards and a copy of any photograph proposed to be used. Each party agrees it will promptly examine and either approve or disapprove such submissions, and promptly notify the other of its approval or disapproval. Each agrees that it will not unreasonably disapprove any such submission and, if any is disapproved, that it will advise the other of the specific reasons for disapproval in each case.

8.C. Each party agrees that nothing contained in this Agreement shall give the other party any right, title or interest in any trademarks, and that such trademarks are, and are to be, the sole property of the owner thereof, and that any and all use by the others of trademarks hereunder, and shall the goodwill arising therefrom, and shall insure to the benefit of the respective trademark owner.

## 9. REPRESENTATIONS AND WARRANTIES

### 9.A. The University represents and warrants that:

- (i) The University has full right, power and authority to enter into and perform its obligations and grant to Pepsi the rights granted under this Agreement for the duration of the Term; and
- (ii) The signatory of this Agreement has been duly authorized and empowered to bind the University to the terms and conditions of this Agreement for the duration of the Term;
- (iii) It is the sole and exclusive owner of the trademarks used in connection with the University, and has the right to use any non-owned trademarks, and that use of all University-provided marks pursuant to this Agreement will not infringe the rights of any third parties.

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**9.B. Pepsi represents and warrants that:**

(i) it is the sole and exclusive owner of the trademarks used in connection with the businesses of Pepsi now or hereafter during the term, and/or has the right to use any non-owned trademarks, such as Lipton Tea, and that use of such marks pursuant to this Agreement will not infringe the rights of any third parties; and

(ii) it has the full right and authority to enter into this Agreement and the terms and conditions do not and will not conflict with or violate any rights granted to any other parties by Pepsi.

**9.C. Exhibit A** provides Pepsi's completed University's Proposal/Contract Affidavits as accepted by Pepsi.

**10. Terms and Conditions**

University of Maryland RFP 83730N Terms and Conditions as accepted by Pepsi:

**10.1. Scope of Work**

The Scope of Work is defined in Section 1 of this Agreement.

**10.2. Compensation and Method of Payment**

Total compensation shall be as defined herein, and shall be conveyed as stated in this Agreement.

**10.3. Contract Term**

The contract "Term" is defined in Section 2 of this Agreement.

**10.4. University Work Rules**

Employees and agents of Pepsi shall, while on the premises of the University, comply with all University rules and regulations provided to Pepsi by the University. Pepsi shall acquaint itself with conditions governing the delivery, receiving and storage of materials at the work site if applicable to this work, as not to interfere with University operations. Pepsi shall not stop, delay, or interfere with University work schedule without the prior approval of the University's specified representative.

**10.5. Harmony**

Pepsi shall be entirely responsible for working in harmony with all others on the work site when Pepsi is working on University premises.

**10.6. Clean Up**

Pepsi agrees to provide services or cover the reasonable costs to remove trash surrounding the high-traffic Vending Machines, which trash consists of Pepsi products or other waste generated from Pepsi Products. Pepsi shall not be obligated to clean up sites daily, but shall clean up the sites when the Vending Machines are stocked, repaired or otherwise serviced. If Pepsi fails to clean up and remove such dirt, trash and debris from sites as required herein, the University may arrange for same at Pepsi's expense. Upon the completion of work on the Vending Machines, Pepsi agrees to remove promptly all implements, surplus materials and debris if applicable when it is working on the University premises.

**10.7. Independent Contractor/Pepsi**

It is understood and agreed that Pepsi is an independent Pepsi of the University and not an employee. The University shall not withhold income taxes, social security, or any other sums from the payments made to Pepsi hereafter. If Pepsi employs additional persons in the performance of this contract, those persons shall in no way be considered employees of the University, but rather they shall be employees or contractors of Pepsi, and the Pepsi bears full responsibility for compensating those persons.

**10.8. Vending Machine Risk of Loss**

Pepsi shall retain the risk of loss on its Equipment, but the University agrees to provide reasonable assistance to Pepsi in apprehending and prosecuting thieves and/or vandals. The University shall not be responsible for loss or damage to the Equipment, unless caused by the University's negligence or willful misconduct. Pepsi shall not be obligated to pay any commissions to the University resulting from vandalism or theft of Product or monies with to any Vending Machines.

Lost, stolen or damaged Equipment shall be replaced or repaired at no cost to the University, provided, however, that in the event of repeated or significant theft, vandalism or destruction, without limitation, Pepsi has the right to remove or move any piece of Equipment.

**10.9. Multi-Year Contracts Contingent Upon Appropriations**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the University's rights or Pepsi's rights under any termination section in this Contract. The effect of termination of the Contract hereunder will be to discharge both Pepsi and the University from future performance of the Contract, but not from their rights and obligations existing at the time of termination. Pepsi shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The University shall notify Pepsi as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first. In the event of any such termination, the University will reimburse Pepsi for any funds paid to it that remain unearned at the date of termination.

**10.10. Variations in Estimated Quantities**

The pricing shall remain firm and fixed at the dollar amounts or discount levels indicated in Exhibit E, subject to Section 4.A.8. Quantity estimates are provided for informational purposes only and the University shall not be held to them. Any variation between actual quantities purchased hereunder and estimated quantities provided shall not entitle Pepsi to any type of equitable adjustment.

**10.11. Reserved**

**10.12. Specifications**

All materials, equipment, supplies or services shall conform to Federal and State laws and regulations, and to the specifications contained herein.

**10.13. Cost and Price Certification**

By submitting cost or price information Pepsi certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- a. A negotiated contract, if the total contract price is expected to exceed \$100,000 or a smaller amount set by the Procurement Officer; or
- b. A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.

The price under this contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because Pepsi furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

**10.14. Delays and Extensions of Time**

(1) Pepsi agrees to perform the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever (except for willful delay by the University) during the progress of any portion of the work specified in this contract.

(2) Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of Pepsi, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either Pepsi or the subcontractors or suppliers.

**10.15. Suspension of Work**

The Procurement Officer unilaterally may order PepsiCo in writing to suspend, delay or interrupt all or any part of the work for such period of time as he or she may determine to be appropriate for the convenience of the University.

**10.16. Payment of University Obligations**

In the event payments are due and owing to Pepsi pursuant to this Agreement, such payments shall be made no later than thirty (30) days after the University's receipt of a proper invoice from Pepsi. Charges for late payment of invoices, other than

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as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Electronic funds transfer (EFT) will be used by the State to pay Contractor(s) for Contracts with a value over \$200,000 and any other State payments due Contractor(s) unless the State Comptroller's Office grants Contractor(s) an exemption.

### **10.17. Delivery and Acceptance**

Delivery shall be made in accordance with the solicitation specifications. The University, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond Pepsi's control. The University unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The University reserves the right to test any materials, equipment, supplies or services delivered to determine if the specifications have been met. The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to, or on the date specified in the bid or proposal. Any material or service that is defective or fails to meet the terms of the solicitation specifications will be rejected. Rejected materials or services shall be promptly replaced or re-performed, at the direction of the University. The University reserves the right to purchase replacement materials (in the form of Pepsi products only) or services in the open market if Pepsi fails to perform hereunder. Contractors failing to promptly replace materials or re-perform services lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

### **10.18. Non-Hiring of Officials and Employees**

No official or employee of the State of Maryland whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall, during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of Pepsi or any entity that is a subcontractor on this contract.

### **10.19 Nondiscrimination in Employment**

Pepsi agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation (added effective October 1, 2001) or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw material; and (c) to post in conspicuous places accessible to employees and applicants for employment, notices setting forth the substance of this section.

### **10.20. Financial Disclosure**

Pepsi shall comply with State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

*NOTE: The financial disclosure form is available under "Public Disclosures" on the following web site:*

[www.sos.state.md.us](http://www.sos.state.md.us)

### **10.21. Political Contribution Disclosure**

Pepsi shall comply with the provisions of Article 33, Sections 14-101 through 14-108, Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State, a county, a municipal corporation or other political subdivision of the State, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws:

(1) prior to purchase, completion or execution of any sale or any lease or contract by the University, and shall cover the preceding two calendar years; and

(2) if the contribution is made after the completion of a sale or purchase, or execution of a lease or contract, then, twice a year, throughout the contract term, on (1) February 5, to cover the 6-month period ending January 31; and (2) August 5, to cover the 6 month period ending July 31.

*NOTE: The political contribution disclosure form is available as "Title 14" under "Campaign Finance and Campaign Fund Reporting" under the "Forms" heading of the following web site:*

[www.elections.state.md.us](http://www.elections.state.md.us)

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**10.22. Disputes**

- (1) This contract is subject to the University System of Maryland (USM) Procurement Policies and Procedures, and the University of Maryland Procurement Policies and Procedures, all as attached as **Exhibit K** hereto.
- (2) Except as otherwise provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this paragraph.
- (3) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this paragraph. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this paragraph.
- (4) Within thirty days of when the basis of the claim is known or should have been known, whichever is earlier, the claim shall be made in writing and submitted to the Procurement Officer for decision in consultation with the Office of the Attorney General, as appropriate.
- (5) When a claim cannot be resolved by mutual agreement, Pepsi shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.
- (6) Pepsi, at the discretion of the Procurement Officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.
- (7) The Procurement Officer shall render a written decision on all claims within 180 days of receipt of Pepsi's written claim, unless the Procurement Officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the Procurement Officer shall notify Pepsi of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to Pepsi, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Procurement Officer's decision shall be deemed the final action of the University.
- (8) The Procurement Officer's decision shall be final and conclusive unless Pepsi mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.
- (9) Pending resolution of a claim, the parties shall proceed diligently with the performance of the contract in accordance with its terms.

**10.23. Termination for Convenience**

- (1) The performance of work under this contract may be terminated by the University in whole or in part, in accordance with this section, whenever the University shall determine that such termination is in the best interest of the University or the State. Any such termination shall be effected by delivery to PepsiCo of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.
- (2) After receipt of a Notice of Termination, and except as otherwise directed by the Procurement Officer, PepsiCo shall:
  - (a) stop work as specified in the Notice of Termination;
  - (b) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the contract as is not terminated;
  - (c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
  - (d) assign to the University, in the manner, at times, and to the extent directed by the Procurement Officer, all of the right, title, and interest of PepsiCo under the orders and subcontracts so terminated, in which case the University shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
  - (e) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Procurement Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this section;
  - (f) transfer title and deliver to the University, in the manner, at the times, and to the extent, if any, directed by the Procurement Officer,
    - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and
    - (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the University;
  - (g) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Procurement Officer, any property of the types referred to in (f) above; provided, however, that PepsiCo
    - (i) may not be required to extend credit to any purchaser, and
    - (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the

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Procurement Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the University to PepsiCo under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Procurement Officer may direct;

- (h) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
  - (i) take any action that may be necessary, or as the Procurement Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of PepsiCo and in which the University has or may acquire an interest. PepsiCo shall submit to the Procurement Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Procurement Officer, and may request the University to remove them or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the University shall accept title to these items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Procurement Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made before final settlement.
- (3) After receipt of a Notice of Termination, the Contractor shall submit to the Procurement Officer his termination claim, in the form and with certification prescribed by the Procurement Officer. This claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Procurement Officer, upon request of PepsiCo made in writing within the one-year period or authorized extension thereof. However, if the Procurement Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after the one-year period or any extension thereof. Upon failure of PepsiCo to submit his termination claim within the time allowed, the Procurement Officer may determine the claim at any time after the one-year period or any extension thereof. Upon failure of PepsiCo to submit his termination claim within the time allowed, the Procurement Officer may determine, on the basis of information available to him, the amount, if any, due to PepsiCo by reason of the termination and shall thereupon pay to PepsiCo the amount so determined.
- (4) Subject to the provisions of paragraph (3), PepsiCo and the Procurement Officer may agree upon the whole or any part of the amount or amounts to be paid to PepsiCo by reason of the total or partial termination of work pursuant to this section, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and PepsiCo shall be paid the agreed amount. Nothing in paragraph (5) of this section, prescribing the amount to be paid to PepsiCo in the event of failure of PepsiCo and the Procurement Officer to agree upon the whole amount to be paid to PepsiCo by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to PepsiCo pursuant to this paragraph.
- (5) In the event of the failure of PepsiCo and the Procurement Officer to agree as provided in paragraph (4) upon the whole amount to be paid to PepsiCo by reason of the termination of work pursuant to this section, the Procurement Officer shall pay to PepsiCo the amounts determined by the Procurement Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (4):
- (a) for completed supplies or services accepted by the University (or sold or acquired as provided in paragraph (2) (g) above) and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;
  - (b) the total of:
    - (i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (5)(a) hereof;
    - (ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (2) (e) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or Contractors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (g) above); and
    - (iii) a sum, as profit on (i) above, determined by the Procurement Officer to be fair and reasonable; provided, however, that if it appears that PepsiCo would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

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- (c) the reasonable cost of settlement accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract. The total sum to be paid to PepsiCo under (a) and (b) of this paragraph shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the University shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to PepsiCo as provided in (5) (a) and (b) (i) above, the fair value, as determined by the Procurement Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the University or to a buyer pursuant to paragraph (2) (g).
- (6) Costs claimed, agreed to, or determined pursuant to (3), (4), (5) and (11) hereof shall be in accordance with USM Procurement Policies and Procedures in effect on the date of this contract.
- (7) PepsiCo shall have the right of appeal, under the section of this contract entitled "Disputes," from any determination made by the Procurement Officer under paragraph (3), (5), or (9) hereof, except that if PepsiCo has failed to submit his claim within the time provided in paragraph (3) or (9) hereof, and has failed to request extension of the time, he shall have no right of appeal. In any case where the Procurement Officer has made a determination of the amount due under paragraph (3), (5), or (9) hereof, the University shall pay to PepsiCo the following: (a) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Procurement Officer, or (b) if an appeal has been taken, the amount finally determined on such appeal.
- (8) In arriving at the amount due PepsiCo under this section there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to PepsiCo, applicable to the terminated portion of this contract, (b) any claim which the University may have against PepsiCo in connection with this contract, and (c) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by PepsiCo or sold, pursuant to the provisions of this section, and not otherwise recovered by or credited to the University.
- (9) If the termination hereunder be partial, PepsiCo may file with the Procurement Officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by PepsiCo for an equitable adjustment under this section shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Procurement Officer.
- (10) The University may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by PepsiCo in connection with the terminated portion of this contract whenever in the opinion of the Procurement Officer the aggregate of such payments shall be within the amount to which PepsiCo shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this section, such excess shall be payable by PepsiCo to the University upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by PepsiCo to the date on which such excess is repaid to the State; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in PepsiCo's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or a later date as determined by the Procurement Officer by reason of the circumstances.
- (11) Unless otherwise provided for in this contract, or by applicable statute, PepsiCo shall, from the effective date of termination until the expiration of three years after final settlement under this contract, preserve and make available to the University at all reasonable times at the office of PepsiCo but without direct charge to the University, all his books, records, documents and other evidence bearing on the costs and expenses of PepsiCo under this contract and relating to the work terminated hereunder, or, to the extent approved by the Procurement Officer, reproductions thereof.

**10.24. Termination for Default**

- (1) The University may, subject to the provisions of paragraph (3) below, by written notice of default to PepsiCo, terminate the contract in whole or in part in any one of the following circumstances: (a) If PepsiCo fails to perform within the time specified herein or any extension thereof, or (b) If PepsiCo fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Procurement Officer may authorize in writing) after receipt of notice from the Procurement Officer specifying such failure.
- (2) In the event the University terminates this contract in whole or in part as provided in paragraph (1) of this section, the University may procure substitute performance upon terms and in whatever manner the Procurement Officer may deem



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appropriate, and PepsiCo shall be liable to the University for any excess costs for substitute performance; provided, that PepsiCo shall continue the performance of this contract to the extent not terminated under the provisions of this section.

(3) Except with respect to defaults of subcontractors, PepsiCo shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of PepsiCo. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the University in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of PepsiCo. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both PepsiCo and subcontractor, and without the fault or negligence of either of them, PepsiCo shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit PepsiCo to meet the performance schedule.

(4) If, after notice of termination of this contract under the provisions of this section, it is determined for any reason that PepsiCo was not in default under the provisions of this section, or that the default was excusable under the provisions of this section, the rights and obligations of the parties shall, if the contract contains a section providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to such section. If, after notice of termination of this contract under the provisions of this section, it is determined for any reason that PepsiCo was not in default under the provisions of this section, and if this contract does not contain a section providing for termination for convenience of the University, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a claim as defined in the section of this contract entitled "Disputes".

(5) If this contract is terminated as provided in paragraph (1) of this section, the University, in addition to any other rights provided in this section, may require PepsiCo to transfer title and deliver to the University, in the manner, at the times, and to the extent, if any, directed by the Procurement Officer, (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the University; and PepsiCo shall, upon direction of the Procurement Officer, protect and preserve property in the possession of PepsiCo in which the University has an interest. Payment for completed supplies delivered to and accepted by the University shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the University and for the protection and preservation of property shall be in an amount agreed upon by PepsiCo and Procurement Officer; failure to agree to such amount shall be a claim as defined in the section of this contract entitled "Disputes". The University may withhold from amounts otherwise due PepsiCo hereunder such sum as the Procurement Officer determines to be necessary to protect the University against loss because of outstanding liens or claims of former lien holders.

(6) The rights and remedies of the University provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(7) As used in paragraph (3) of this section, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

Notwithstanding anything to the contrary herein, in the event of any termination of this Agreement, for any or no reason, Pepsi is entitled to: (1) enter University property and pick up all of its Equipment, and (2) an immediate reimbursement of any funds paid to the University that remain unearned at the date of termination.

### 10.25. Arrearages

By submitting a response to this solicitation, Pepsi represents that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award.

Pepsi is also informed that the Comptroller (per State Finance and Procurement Article §7-222) may not, except under the conditions specified therein, issue a warrant for payment to a person if the person owes \$50 or more to the State, a unit of the State government, or any governmental entity under the control of the State. Therefore, applications for payment submitted by a contractor and approved by the University for payment may not be processed by the Comptroller for payment to Pepsi if an arrearage in excess of \$50 exists.

### 10.26. Compliance with Laws

Pepsi hereby represents and warrants that: **A.** It is qualified to do business in the state of Maryland and that it will take such actions as, from time to time hereafter, may be necessary to remain so qualified; **B.** It shall comply with all federal, State and

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local laws, regulations, and ordinances applicable to its activities and obligations under this contract; and C. it shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this contract.

### **10.27. Retention of Records**

Pepsi shall retain and maintain all records and documents relating to this contract for three (3) years after final payment by the University hereunder or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the University, including the Procurement Officer or designee at all reasonable times.

### **10.28. Tax Exemption**

The State is generally exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Taxes and Transportation Taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, Pepsi shall pay the Maryland Sales Tax and the exemption does not apply.

### **10.29. Registration**

Pursuant to §7-201 et seq. of the Corporation and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201 before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall register with the Department of Assessments and Taxation.

*NOTE: The registration form is available as "Combined Registration Application" under the "Businesses" heading of the following web site: <http://www.dat.state.md.us/sdatweb/sdafforms.html>*

**Questions about this requirement may be sent to the Department of Assessment and Taxation at [Charterhelp@dat.state.md.us](mailto:Charterhelp@dat.state.md.us) and a response should be forthcoming within 24 hours.**

### **10.30. EPA Compliance**

Materials, supplies, equipment or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

### **10.31. Occupational Safety and Health Act**

All materials, supplies, equipment, or services supplied as a result of this contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

### **10.32. Maryland Law Prevails**

The provisions of this contract shall be governed by the laws of Maryland without reference to its conflicts of laws rules.

### **10.33. Reserved**

### **10.34. Reserved**

### **10.35. Applicability of Federal Laws**

Federal contract and/or grant funds are NOT anticipated in the performance of this contract. However, in the event Federal contract and/or grant funds become utilized in any manner in the performance of this contract, then the University reserves the right to bind Contractor to all applicable clauses of the Federal Acquisition Regulation (FAR) and other FAR supplements, as well as all applicable provisions of the Office of Management and Budget (OMB) Circular A-110. Contractor agrees to promptly complete and return to the University any related forms and/or affidavits as may be required.

### **10.36. Protests and Claims**

Any protest regarding the award of this contract or claim arising out of this contract shall be administered in accordance with the University System of Maryland Procurement Policies and Procedures, Section X - Protests and Claims. Detail is available by accessing the following web site: [www.purchase.umd.edu](http://www.purchase.umd.edu). Click on this web site, then select the category "Policies and Procedures", followed by "USM Procurement Policies and Procedures".

**10.37. Intellectual Property**

**10.37.1 Intellectual Property Warranty and Indemnification.**

Pepsi represents and warrants that any materials or deliverables, including all Works, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials or Works provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, University shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the University under law or equity. Contractor further agrees to indemnify and hold harmless the University, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this contract, University shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

**10.38. E-Maryland Marketplace**

All contractors interested in conducting business with the University of Maryland must register at: <https://emaryland.buyspeed.com/bso/>. Registration is free. eMarylandMarketplace™ is the State of Maryland's Internet-based procurement system. Registered contractors can access bid solicitations and receive email notification when new solicitations are posted.

**10.39. Reserved**

**10.40. Warranties**

10.40.1. The University represents and warrants that:

- (i) The University has full right, power and authority to enter into and perform its obligations under this Agreement for the duration of the Term; and
- (ii) The signatory of this Agreement has been duly authorized and empowered to bind the University to the terms and conditions of this Agreement for the duration of the Term.

10.40.2. PepsiCo represents and warrants that:

- (i) it is the sole and exclusive owner of the trademarks used in connection with the businesses of PepsiCo now or hereafter during the term, and/or has the right to use any non-owned trademarks, such as Lipton Tea, and that use of such marks pursuant to this Agreement will not infringe the rights of any third parties; and
- (ii) it has the full right and authority to enter into this Agreement and the terms and conditions do not and will not conflict with or violate any rights granted to any other parties by Pepsi.

**10.41. Proposal Affidavit**

The enclosed Proposal Affidavit shall be completed and submitted to the Procurement Officer as part of Contractor's proposal.

**10.42. Changes**

The Procurement Officer may at any time, by written order, make unilateral changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when any supplies to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

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The Section entitled "Delays and Extensions of Time" prohibits Pepsi from making charges or claims for damages for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. If a change, as allowed above, causes an increase or decrease in the cost of the work which is not time-related, the University shall make an equitable adjustment in the contract price and shall modify the contract.

Pepsi must assert its right to an adjustment under this paragraph within 30 days from the date of receipt of the written order. Any request for an adjustment must be submitted in writing to the Procurement Officer.

Failure to agree to any adjustment shall be a dispute under the Disputes Section. However, nothing in this paragraph shall excuse Pepsi from proceeding with the contract as changed.

### **10.43. Pre-Existing Regulations**

The regulations set forth in USM Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.

### **10.44. INDEMNIFICATION.**

Indemnification of the University by Pepsi:

Pepsi shall defend, hold harmless and indemnify the University and each of its regents and officers, employees, and agents (each of which shall be referred to as a "University Indemnitee") from and against any and all claims, actions, judgments, damages, liabilities, and expenses (including, but not limited to, reasonable attorneys' fees) imposed upon, incurred by or asserted against a University Indemnitee arising from or relating to, directly or indirectly Pepsi's performance or breach of the terms of this agreement and any transaction contemplated hereby, including, but not limited to, the representative acts or omissions of Pepsi's officers, employees or agents; provided however, that Pepsi shall not be liable under such indemnity for any portion of such claims, actions, judgments, damages, liabilities, or expenses resulting from the negligent or intentional acts or failure to act of any University Indemnitee. The obligations under this paragraph shall survive the termination of this Agreement.

### **10.45. INSURANCE**

Pepsi shall secure, pay the premiums for, and keep in force until the expiration of this contract, including any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by Pepsi under this contract. The amounts of insurance coverage specified below shall be the minimum amount of available insurance to satisfy claims; a policy which allows the costs associated with investigating, management or defense of any claim, or any other cost incurred by the insured or the insurance carrier, to be deducted from the policy limits is not acceptable.

a. Commercial General Liability Insurance including all extensions-

- \$2,000,000 each occurrence;
- \$2,000,000 personal injury;
- \$2,000,000 products/completed operations;
- \$2,000,000 general aggregated.

b. Workmen's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland. Contractors that do not maintain an office in Maryland are to provide Workmen's Compensation Insurance and Unemployment Insurance to the levels required by the laws of the State where they conduct their business.

c. Reserved

d. If automotive equipment is used in the operation, automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.

e. Products liability insurance, if not included in the Comprehensive, with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident.

All policies for liability protection, bodily injury or property damage must specifically and expressly name the University System of Maryland as an insured with respect to operations under the contract and premises occupied by Pepsi. With respect to Pepsi's liability for bodily injury or property damage under the items above, such insurance shall cover and not exclude Contractor's liability for injury to the property of the University System and to the persons or

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property of employees, students, faculty members, agents, officers, regents, invitees or guests of the University System.

Each insurance policy shall contain the following endorsement: "It is understood and agreed that the Insurance Company shall notify the Procurement Officer in writing forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy." A certificate of each policy of insurance shall be furnished to the Procurement Officer. With the exception of Workmen's Compensation, upon the request of the Procurement Officer a certified true copy of each policy of insurance, including the above endorsement manually countersigned by an authorized representative of the insurance company, shall be furnished. A certificate of insurance for Workmen's Compensation together with a properly executed endorsement for cancellation notice must always be furnished. The requested Certificates and Policies shall be delivered as directed by the Procurement Officer. Notices of policy changes shall be furnished to the Procurement Officer.

All required insurance coverages must be acquired from insurers registered to do business in the State of Maryland and acceptable to the University. The insurers must have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest edition of Best's Insurance Reports.

### **10.46. RELATIONSHIP OF THE PARTY**

The parties are independent contractors with respect to each other; nothing contained in this Agreement will be deemed or construed as creating a joint venture or partnership between the parties.

### **10.47. NO WAIVER**

A waiver by either party of any of the terms and conditions of this Agreement at any instance shall not be deemed or construed to be a waiver of such term or condition for the future or of any subsequent breach thereof.

### **10.48. SEVERABILITY**

If any provision or provisions of this Agreement or of any of the documents or instruments delivered pursuant hereto, or any portion of any provision hereof or thereof, shall be deemed invalid or unenforceable pursuant to a final determination of any court of competent jurisdiction or as a result of future legislative action, such determination or action shall be construed so as not to affect the validity or enforceability hereof or thereof and shall not affect the validity or effect of any other portion hereof or thereof.

### **10.49. NO ASSIGNMENT**

Neither the University nor Pepsi will assign any of its rights or obligations hereunder without prior written consent of the other party; any purported assignment without the written consent of the non-assigning party is void. Notwithstanding the foregoing, but without relieving Pepsi of any obligation hereunder, the parties agree that Pepsi may delegate the performance of certain obligations hereunder to Pepsi as appropriate. The University shall, however, be entitled to look to Pepsi to assure performance of any of the obligations of Pepsi, Pepsi, hereunder.

### **10.50. ENTIRE AGREEMENT**

This Agreement sets forth the entire agreement between the parties. Except as otherwise provided herein, this Agreement cannot be modified, altered, or otherwise changed except by means of a writing signed by both parties.

### **10.51. EXCUSED PERFORMANCE**

In the event that either party is prevented or delayed in the performance of any of its obligations under this Agreement due to circumstances beyond the control of the non-performing party, including, but not limited to, strikes, lockouts, earthquakes, fire flood, acts of God, hostilities, civil commotion, governmental acts, or orders or regulations or failure of power, taking of the Facilities by eminent domain, or other reason of a like or similar nature which is not the fault of the party delayed in performing services or doing acts required under the terms of this Agreement, then the performance of such acts shall be excused for the period of the delay. The foregoing shall not be interpreted to extend the term.

### **10.52. CONFIDENTIALITY**

#### **10.52.1 University of Maryland**

Except as required by the State of Maryland under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland as amended from time to time, the University shall not disclose any Pepsi confidential or proprietary information. Such obligation as to confidentiality shall survive the expiration or earlier

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termination of this agreement.

### 10.52.2 Pepsi

Except as required by law or legal process, Pepsi shall not disclose any University confidential or proprietary information. Such obligation as to confidentiality shall survive the expiration or earlier termination of this agreement.

10.52.3 The parties further agree that neither of them shall initiate any press releases or interviews regarding the relationship established by this Agreement without the consent of the other.

### 10.53 RESERVED

### 10.54 NOTICES

All notices, demands, consents or other communications required or permitted hereunder shall be in writing and shall be deemed to have been given when personally delivered or via E-Mail/PDF Attachment with a copy sent by a recognized overnight courier, registered or certified mail, return receipt requested, postage prepaid, addressed as follows: if to the University, to the Procurement Officer, University of Maryland 2113-R Chesapeake Building, College Park, Maryland 20742, if to Pepsi to both Pepsi as follows: Bottling Company LLC c/o The Pepsi Beverages Company, 1 Pepsi Way, Somers NY 10589-2201, or to such other addresses as may hereafter be furnished in writing by the respective parties if given in the manner required above. Any notice, demand or consent or communication given hereunder in the manner required above shall be deemed to have been effected and received as of the date personally delivered or, if mailed, five days after the date so mailed. All notices required to be given hereunder shall be properly given if in writing and sent by certified or registered mail, postage prepaid, or by generally recognized prepaid overnight delivery as set forth above.

### 10.55. COMPLIANCE WITH LAW

Pepsi shall comply with all Federal, State and local laws, ordinances, rules and regulations applicable to its activities and obligations under this Agreement.

### 10.56. NO CONTINGENT FEE

Pepsi warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for Pepsi, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

### 10.57. NONDISCRIMINATION

Pepsi shall comply with all applicable Federal and State laws, rules and regulations involving nondiscrimination on impermissible basis, and agrees not to discriminate in any manner against an employee or applicant for employment because of race, color, creed, religion, national origin, age or sex, marital status, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment.

### 10.58. PRE-EXISTING REGULATIONS

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Agreement are applicable to this Agreement.

### 10.59. DRUG AND ALCOHOL FREE WORKPLACE

Pepsi warrants that it shall comply with COMAR 21.11.08 Drug and Alcohol Free Work Place, and Pepsi shall remain in compliance throughout the term of this Agreement for so long and to the extent that such regulations are by their terms applicable hereto.

### 10.60. ANTI-BRIBERY

Pepsi warrants that neither it nor any officer, director or partner or nor any employee involved in obtaining contracts with the State or any subdivision of the State has been convicted of bribery, attempted bribery or conspiracy to bribe, nor has engaged in conduct since July 1 1977, which would constitute bribery attempted bribery or conspiracy to bribe under the laws of any state or the federal government.

### 10.61. FINANCIAL DISCLOSURE

Pepsi shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated

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Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of the Agreement, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

### **10.62. TAX EXEMPTION**

The State (including the University as an agency thereof) is generally exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Taxes, and Transportation Taxes. Exemption certificates shall be completed-upon request. Where Pepsi is required to furnish and install material in the construction or improvement of real property in performance of this Agreement, Pepsi shall pay the Maryland Sales Tax with respect to any materials purchased by it to perform such construction and the exemption does not apply.

### **10.63. AUDIT AND RECORDS**

Pepsi shall maintain records and documents relating to the performance of this Agreement and the University shall maintain records and documents related to the administration of this Agreement, and each party shall keep all such records and documents for such time as may be required by law; and shall, upon reasonable request and notice, make such records available for inspection and audit by authorized representatives, officers, authorized employees and agents of the other.

### **10.64 UNIVERSITY OF MARYLAND POLICIES AND PROCEDURES**

This agreement is established under, and governed by, the University System of Maryland Policies and Procedures. These procedures are located at, <http://www.usmd.edu/regents/bylaws/SectionVIII/VIII300.html> and such terms that exist as of the Execution Date are incorporated into this agreement with full force and effect.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement 83730N to be executed by an officer being thereunto duly authorized, all as of the day and year first above written and intending to be legally bound hereby.

University of Maryland, College Park

BOTTLING GROUP, LLC

By: [Signature]

By: [Signature]

Title: Procurement Officer

Title: SVP Foodservice

Date: 7/30/2013

Date: 7/29/13

Approved for Legal Sufficiency:

By: [Signature]

Title: Deputy Chief Counsel

Date: 7/13/13