

SPONSORSHIP AGREEMENT

This sets forth the agreement (“*Agreement*”) between Bottling Group, LLC and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 2351 Edison Blvd., Twinsburg, OH 44087 (“*Pepsi*”) and Youngstown State University, with its principal place of business at One University Plaza, Youngstown, OH 44555 (the “*Customer*”).

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

WHEREAS, on January 22, 2014, Customer issued Request for Proposal No. 012214 CMD for Exclusive Pouring Rights and Sponsorship Program (“RFP”), a copy of which is attached hereto as Exhibit C and incorporated herein as if fully rewritten; and

WHEREAS, on March 27, 2014, Pepsi submitted a proposal signed by Dan Hungerman, and subsequently amended by a letter dated April 21, 2014 from Kathy Krieger (collectively referred to as “Proposal”), a copy of which is attached hereto as Exhibit D and incorporated herein as if fully rewritten, in response to the RFP issued by the Customer; and

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

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

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

AGREEMENT

1. DEFINITIONS.

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

“*Beverage*” or “*Beverages*” means all carbonated and noncarbonated, nonalcoholic beverages, whether distributed in bottle and can packages (“Packaged Products”), through fountain dispensing units (“Postmix Products”), or other dispenses (e.g., LCT Towers or FB units) including but not limited to: (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored

drinks; (iii) ready-to-drink chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks, energy and fluid replacements); (vi) frozen beverages (“FB”) not including juice; (vii) non-tap regular, sweetened, flavored or enhanced waters (whether carbonated, still, spring, mineral or purified); (viii) value-added protein drinks; (ix) Liquid Concentrate Teas (“LCT”); and (x) any future categories of nonalcoholic beverage products that may be distributed by Pepsi. Beverages shall not include beer, alcoholic beverages, milk, milkshakes, non-alcoholic beer, fruit infused tap water and tap water; freshly prepared smoothies, hot coffee/freshly prepared iced coffee, hot tea/freshly prepared iced tea, and hot/iced chocolate.

“**Cases**” shall mean the number of cases of Packaged Products purchased by the Customer from Pepsi, initially delivered in quantities of 24, 15, and 12 bottle/can units, and thereafter in such other size, quantity and type of containers as determined by Pepsi, from time to time.

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

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

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

“**Equipment**” means the following types of equipment owned and operated by Pepsi and used to sell or dispense the Products: (i) vending machines (“**Vending Machines**”), (ii) retail single-serve food service equipment and (iii) fountain service equipment.

“**Facilities**” shall mean the entire premises of every facility owned, leased, occupied or operated by the Customer or its Food Service Provider at the Customer’s campus located in Youngstown, Ohio, now or in the future, including all buildings, the grounds, parking lots, dining facilities, snack bars, food carts, book stores, athletic facilities and concession stands, and, for each building, the grounds, parking, lots, dining facilities, unbranded and branded food service outlets and vending areas. “**Facilities**” shall also be deemed to include convenience store operations and restaurants initiated during the Term of this Agreement in space leased to third-party commercial tenants within Customer-owned buildings principally utilized for educational purposes or student activities. Facilities shall not include Customer’s property located at 315 Elm Street, Youngstown, Ohio, Youngstown City Lots No. 4662 and No. 55261, the Pollock House, and Customer’s Metro College presently located at Southwoods Commons, 100 DeBartolo Place, Youngstown, Ohio 44512.

“**Food Service Provider**” shall mean Chartwells and other food service providers which may serve at the Facilities at any point during the Term. The Customer acknowledges and agrees that this Agreement, including the pricing, funding and other consideration provided for herein is based on the Customer’s current operating model/use of third party Food Service Providers. Thus, in the event that: (i) if the Customer is currently self-operated, the Customer switches to a Food Service Provider, or (ii) if the Customer currently uses a Food Service Provider to operate its concessions, such agreement between the Customer and the current Food Service Provider expires or is terminated, and the Customer enters into a new arrangement with a Food Service Provider; then any such new or subsequent agreement between the Customer and any Food Service Provider (pursuant to either (i) or (ii) above) shall require such Food Service provider to abide by the applicable pricing and other terms set forth in this Agreement to the exclusion of all other benefits, and shall specifically require such Food Service Provider to affirm that it will not be entitled or seek to receive any funding or other benefits/consideration in connection with any agreement such Food Service Provider may separately have with Pepsi or Pepsi’s affiliates. In the event that the Customer fails to adhere to this requirement (or the Food Service Provider refuses to abide accordingly), then Customer hereby authorizes Pepsi, and Pepsi shall be entitled to adjust its pricing, funding or other consideration provided to the Customer by an amount equal to the incremental costs incurred by Pepsi as a result of the Customer’s change in Food Service Providers.

“**Gallons**” shall mean the number of gallons of the Postmix Products purchased by the Customer from Pepsi.

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

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

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

“**Third Party Vending Operator**” shall mean AVI or such other third party engaged by Customer to provide vending services at the Facilities.

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

2. TERM.

The term of this Agreement shall be for a ten (10) year period beginning on July 1, 2014 and expiring on June 30, 2024, unless sooner terminated as provided herein (“**Term**”). The Term may be renewed by mutual written consent of the parties upon terms and conditions agreed to by the parties.

3. GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS.

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

A. Beverage Availability at the Facilities.

(1) Grant of Rights.

(a) Except with regard to the *Permitted Exception* set forth herein, Pepsi shall have the exclusive right to make Beverages available for sale and distribution throughout the Facilities, including the right to provide all Beverages sold at athletic contests (*i.e.*, concession stands, sales in stands (hawking) or other means), booster club activities, and all other special events conducted at or any location on the Facilities (“*Special Events*”). The Products shall be the only Beverages sold, dispensed or served at the Facilities (*i.e.*, at concession stands, sales in stands (hawking) or other means), and the Products shall be sold at all food service concession or vending locations located within the Facilities. The only *Permitted Exceptions* to Pepsi’s exclusive Beverage rights at the Facilities is that the Chick-fil-A store located at the Facilities may sell lemonade and tea products through its “bubbler” equipment, and West Coast Chill products and their brands, including West Coast Chill, West Coast Chill Self Chill and Student Athlete, may be sold, dispensed, sampled or served at Customer’s athletic facilities and athletic events, Customer’s tailgate lots, and Youngstown State University Penguin Club booster events. Further, West Coast Chill is permitted to promote, market and advertise its products and their brands through the Customer’s Department of Athletics, including at Customer’s athletic facilities and athletic events.

(b) Pepsi shall have the exclusive right to install the Equipment throughout the Facilities. Pepsi shall have the further right to install additional Equipment in buildings and facilities acquired and/or constructed by the Customer after the date of this Agreement. Pepsi shall install the Equipment at its sole expense; *provided, however*, that the Customer will be responsible for all electrical hook-ups and charges related thereto. Pepsi shall have the right to place full trademark panels on all sides of its Equipment. Pepsi, or one of its affiliates, shall retain title to all Equipment.

(2) Purchasing of Postmix Products.

The Postmix Products shall be purchased by Customer, the Food Service Provider and other third parties operating at the Facilities directly from Pepsi at the prices established by Pepsi from time to time. Current pricing for Postmix Products is as set forth in Exhibit A attached hereto.

(3) Purchasing of Packaged Products.

The Packaged Products shall be purchased by Customer, the Food Service Provider, the Third Party Vending Operator and other third parties operating at the Facilities directly

from Pepsi at prices established by Pepsi from time to time. Current pricing for Packaged Products is as set forth in Exhibit A attached hereto.

(4) Food Service.

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

(5) Vending.

Customer will require the Third Party Vending Operator to sell only those Products purchased directly from Pepsi through Vending Machines placed at the Facilities during the Term.

B. Product Merchandising Rights.

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

(1) Menu Board Advertising.

Customer agrees that Pepsi's trademarks for products shall be listed on the menu boards at concession locations in which Products are served to customers at the Facilities. All brand identification containing Pepsi trademarks and/or service marks for menu boards set forth herein will be prepared and installed by Customer at Customer's sole cost and expense.

(2) Approved Cups; Product Hawking and Catering.

Customer agrees that all Products served, sold or dispensed at concession locations in which Products are served to customers at the Facilities shall be served in Approved Cups and all other Beverages served, sold or dispensed within the Facilities shall be served in either Approved Cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of Competitive Products. Pepsi agrees to make Approved Cups available for purchase and the Customer shall purchase, and shall require that all concessionaires, Food Service Providers, booster clubs and other third parties selling Beverages at the Facilities purchase all Products, cups, lids and carbon dioxide directly from Pepsi at prices determined by Pepsi. Customer shall cause Products to be "*hawked*" at the Facilities at all events taking place at the Facilities (including,

without limitation, at all home games of all intercollegiate athletic teams associated with the Customer, if any), and served as part of the catering selection in private boxes, suite, backstage areas, lockerooms and press areas. Customer further agrees that Products to be “*hawked*” in the stands shall be sold only in Approved Cups. As used herein, “*hawking*” shall refer to the sale of single servings of a product in the seating areas of the Facilities through the use of vendors circulating through such seating areas.

4. GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS.

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

A. Advertising

(1) Facilities and Print Advertising.

Pepsi shall have the right to Facilities and print advertising as mutually agreed between the parties and as further outlined in Exhibit B.

(2) Design and Installation of Customer Advertising.

Pepsi agrees, at its own cost, to provide Customer with the general design of all Customer Advertising. The Customer Advertising shall be constructed and installed by Customer (or an agent thereof) at Customer’s sole cost and expense. All Customer Advertising shall be in conformity with the general scheme and plan of the Customer and the surrounding areas.

(3) Advertising/Signage Changes/Removal.

Customer recognizes Pepsi’s right to change, modify, alter or remove its advertising for, or identification of, any of the Products or to discontinue the manufacture of any of the Products. Pepsi shall reimburse Customer for all reasonable costs and expenses incurred by Customer in changing, modifying, altering or removing any Facilities Advertising, menu boards and other Pepsi identification or references to any of the Products necessitated by Pepsi’s changes to or removal of the advertising, trademarks or trade names, designations or identification thereof. Pepsi shall have the right to modify, change, alter or remove the promotional messages appearing thereon and all such modifications, changes, alterations and/or removals shall be at Pepsi’s sole cost and expense. Customer shall use reasonable efforts to minimize the cost to Pepsi for changing, modifying, altering and/or removing Pepsi’s advertising.

(4) Maintenance of Signage.

Customer shall maintain all Facility Advertising and other signs and advertising for Products in good order. Customer shall effect any necessary repairs reasonably determined by Customer at Customer’s sole cost and expense. Where practical,

Customer shall consult with Pepsi prior to incurring any material signage or other related maintenance expenses.

B. Promotional Rights.

(1) General Sponsorship Designation.

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

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

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

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

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

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

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

5. GRANT OF OTHER RIGHTS.

A. Sampling.

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

B. Additional Rights.

Customer agrees to provide Pepsi with the additional rights set forth on Exhibit B.

6. EXCLUSIVITY.

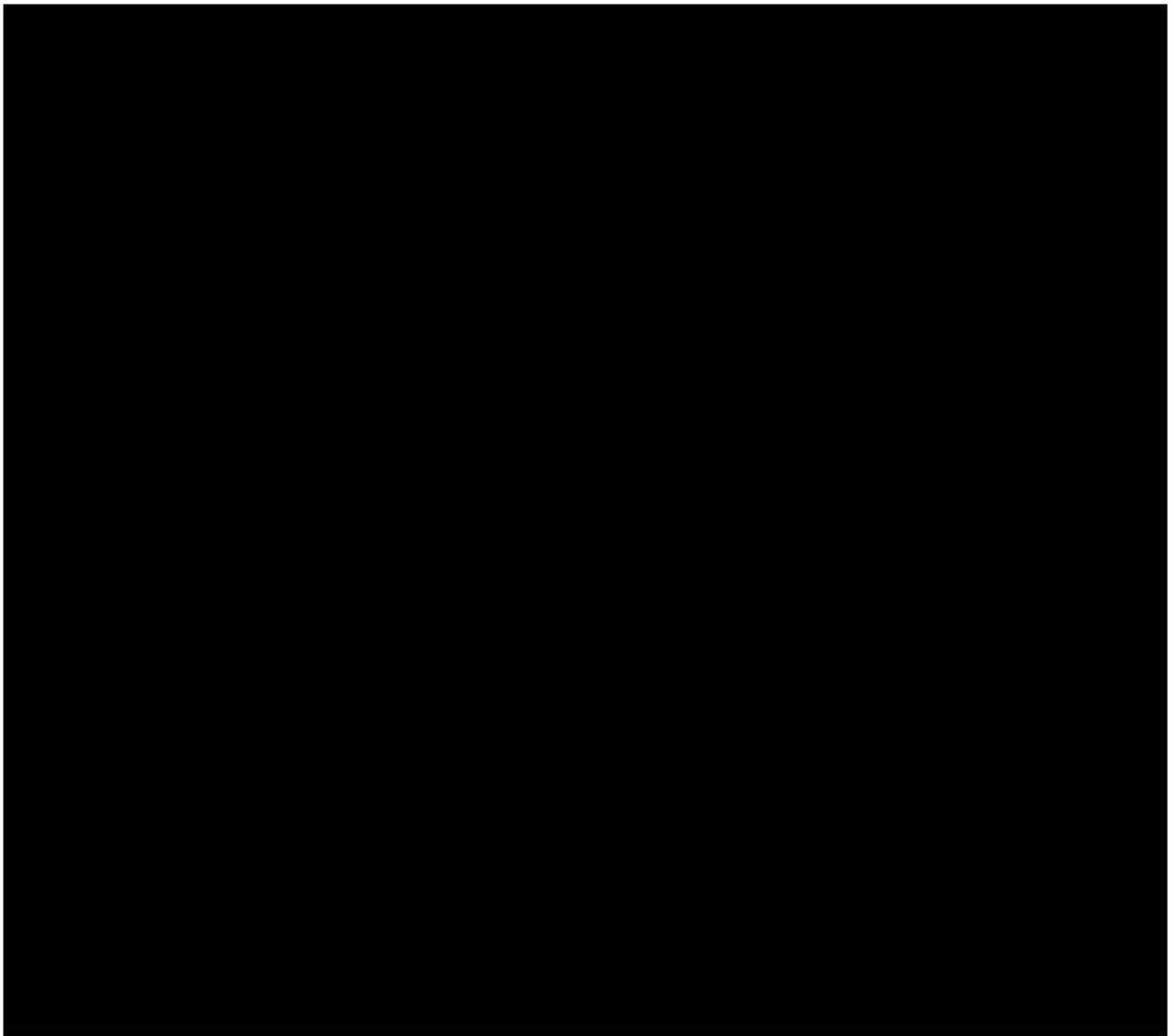
A. Except with regard to the *Permitted Exception* set forth in Section 3(A) herein, during the Term, Customer, its agents, representatives, intercollegiate athletic teams coaches and players, and staff (i) shall not themselves nor shall they permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products at the Facilities or in connection with the Customer, its intercollegiate athletic teams coaches and players, and its staff and (ii) shall ensure that the Products are the only Beverages sold, served, promoted, marketed, advertised, merchandised, sponsored or endorsed, at the Facilities or in connection with the Customer, intercollegiate athletic teams coaches and players, and its staff.

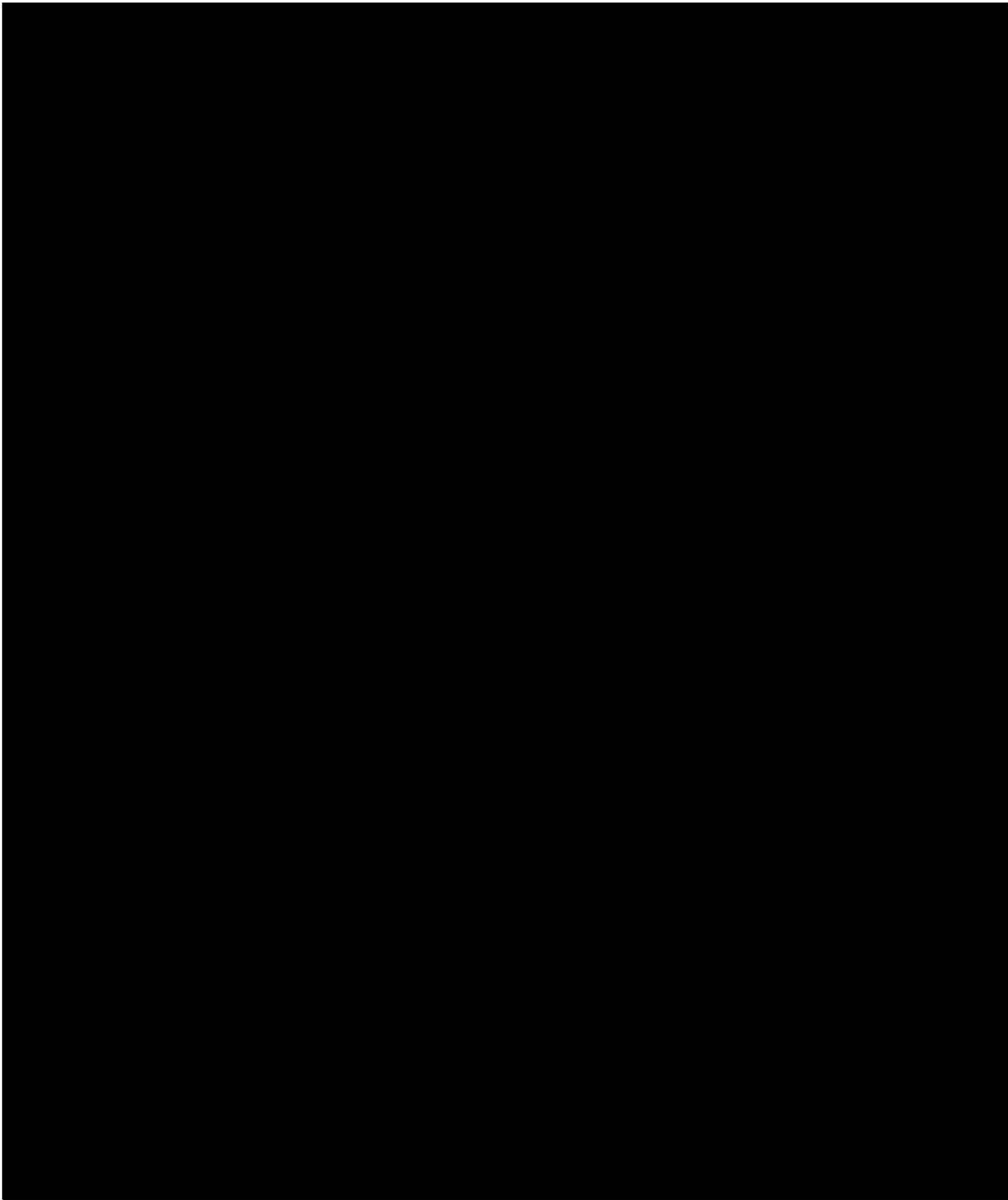
B. Customer recognizes that Pepsi has paid valuable consideration to ensure an exclusive associational relationship with the Facilities, Customer, and/or Customer Marks with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Pepsi’s valuable rights. Accordingly, the Customer will promptly oppose Ambush Marketing (as defined below) and take all reasonable steps to stop Ambush Marketing and to protect the

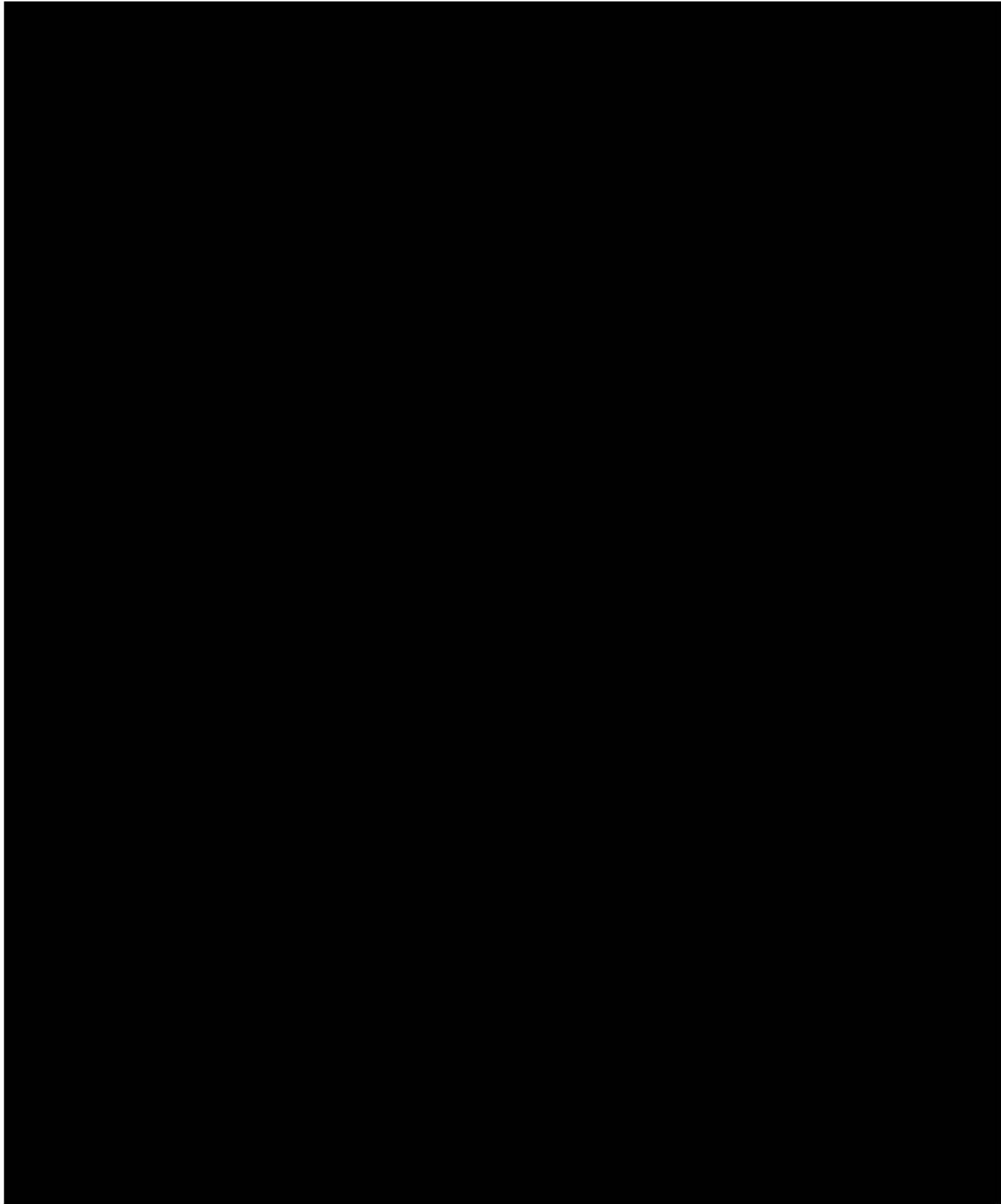
exclusive associational rights granted to Pepsi pursuant to this Agreement. In the event any such Ambush Marketing occurs during the Term, each party will notify the other party of such activity immediately upon learning thereof. As used herein, “*Ambush Marketing*” shall mean an attempt by any third party, without Pepsi’s consent, to associate Competitive Products with the Facilities, Customer and/or Customer Marks, or to suggest that Competitive Products are endorsed by or associated with the Facilities, Customer and/or Customer Marks by referring directly or indirectly to the Facilities, Customer and/or Customer Marks.

7. **CONSIDERATION.**

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

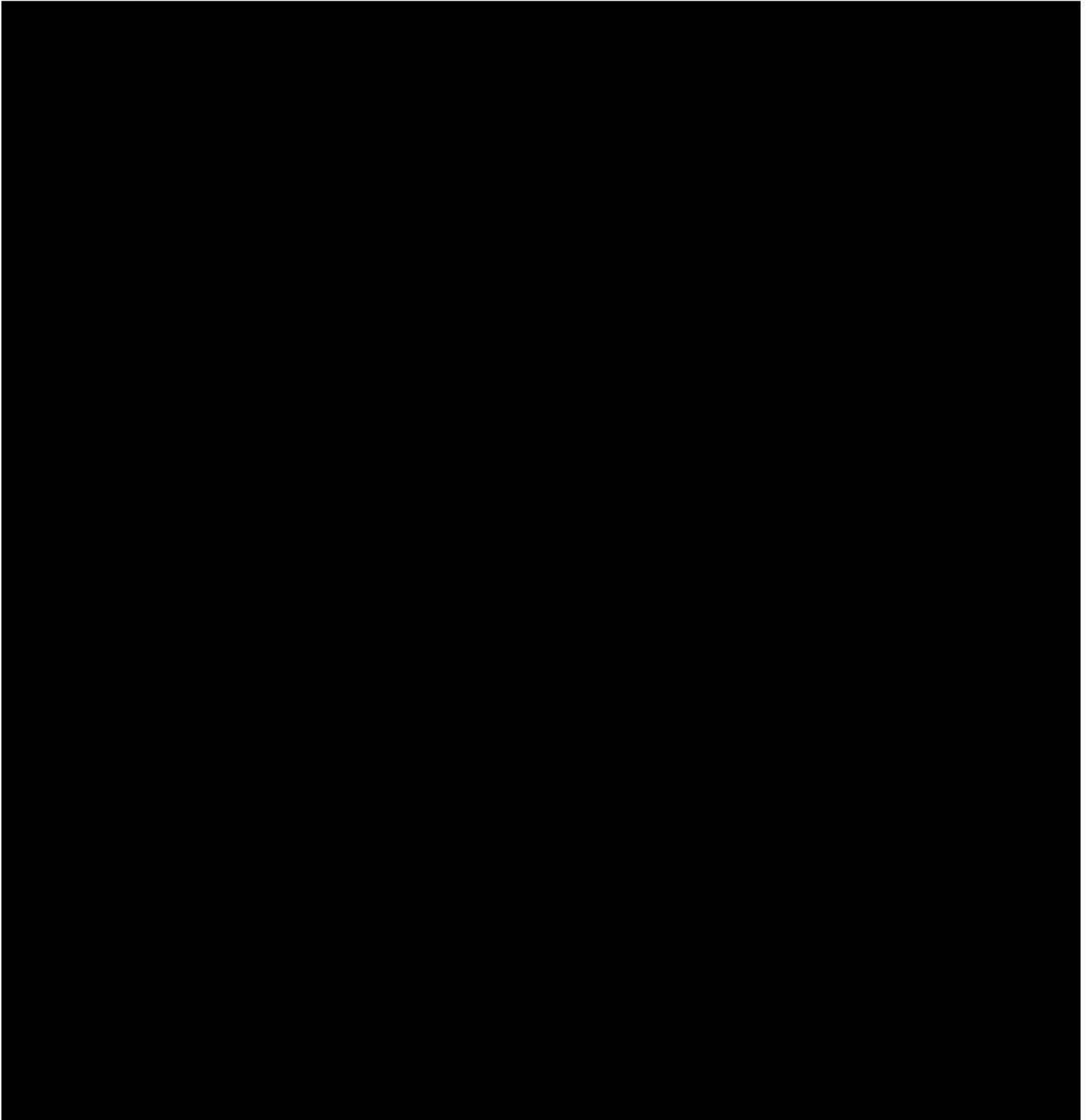






8. ADDITIONAL CONSIDERATION.

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



9. **EQUIPMENT AND SERVICE.**

A. Beverage Dispensing and Other Equipment.

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

(2) Pepsi will provide Customer with new or "like new" equipment. As new equipment technology is released, Pepsi will work with the Customer on campus roll out opportunities. To the extent that future technology enhancements, equipment platforms or products to support these platforms are substantially different in scope or composition compared to existing equipment components and products, Pepsi and Customer will work in good faith to negotiate the economic terms for implementation of the new technology equipment.

(3) During the Term Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. The Equipment will be used exclusively to display and merchandise the Products and shall not be used to display, stock, advertise, sell or maintain any other products or beverages (including on the exterior of the Equipment).

(4) The Equipment may not be removed from the Facilities without Pepsi's written consent, and the Customer agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by Pepsi. Pepsi shall retain ownership to all Equipment, including the Vending Machines, coolers, fountain equipment and any other Equipment placed at the Facilities for dispensing the Products. All Equipment will be returned to Pepsi upon expiration or termination of the Agreement.

(5) Third Party Vending Operator shall be responsible for installing the Vending Machines provided by Pepsi and for providing all services related to the Vending Machines. Third Party Vending Operator will only stock Product purchased directly from Pepsi in the Vending Machines placed at the Facilities.

B. Service to Equipment.

Other than routine maintenance, which shall be the responsibility of and completed by Customer or its designee, Pepsi or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. Pepsi shall provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. Pepsi shall respond to each Customer request and use reasonable efforts to remedy the related Equipment problem as soon as possible.

10. REMEDIES FOR LOSS OF RIGHTS - TERMINATION.

A. Customer's Termination Rights.

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

- (1) Pepsi fails to make any payment due hereunder, and such default shall continue for thirty (30) days after written notice of such default is received by Pepsi; or
- (2) Pepsi breaches or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect and Pepsi fails to cure such breach within forty-five (45) days after written notice of default is delivered to Pepsi. If such cure cannot reasonably be accomplished within such forty-five (45) day period, this provision shall not apply where Pepsi shall have, in good faith, commenced such cure and thereafter shall diligently proceed to completion; *provided, however*, that such cure is completed to the reasonable satisfaction of Customer within ninety (90) days from the date of Pepsi's receipt of such written notice of default; or
- (3) The Ohio General Assembly fails to appropriate sufficient funding that is necessary for Customer to make payments and/or satisfy any other obligations required under this Agreement.

B. Pepsi's Termination Rights.

Without prejudice to any other remedy available to Pepsi at law or in equity in respect of any event described below, this Agreement may be terminated in whole or in part by Pepsi at any time, effective thirty (30) days following written notice to the Customer if (i) any of the Products are not made available as required in this Agreement by the Customer, their agents or concessionaires; (ii) any of the rights granted to Pepsi herein are materially restricted or limited during the Term of this Agreement; (iii) a final judicial opinion or governmental regulation prohibits, or materially impacts or impairs (*e.g.*, beverage tax or size restriction) the availability or cost of Beverages, whether or not due to a cause beyond the reasonable control of the Customer; or (iv) Customer breaches any or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect. In connection with the foregoing, Pepsi shall give Customer notice of the event and where applicable (for events within Customer's control), shall provide Customer forty-five (45) days to cure such breach. If the identified breach/event is not remedied with the applicable notice period, then Pepsi may terminate this Agreement and recover from the Customer a reimbursement in accordance with Section D below. In addition to the termination rights set forth herein, in the event of any of the occurrences outlined in subsections (i) – (iii) above, Pepsi shall have the right, at its discretion and in lieu of termination, to mandate that the Customer meet and engage in good faith negotiations aimed at modifying the Agreement to reduce Pepsi's ongoing support of the Customer by an amount that is equitable in light of the diminution of right to Pepsi (*e.g.*, equivalent to the percentage volume decline on campus). If

such negotiations fail, then Pepsi shall have the right to terminate the Agreement upon thirty (30) days' notice.

C. Additional Termination Rights Available to Pepsi and Customer.

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

D. Sponsorship Fees in the Event of Termination.



11. TAXES.

Customer is exempt from Ohio sales tax and federal tax and will furnish proof of exemption upon request. Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the Customer in connection with any fees payable by Pepsi under this Agreement. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment.

12. CONFIDENTIALITY.

A. Except as otherwise required by law or the rules or regulations of any national securities exchange or the rules or regulation of the Customer, the Customer and Pepsi agree not to disclose Confidential Information (as hereinafter defined) to any third party other than to their

respective directors, officers, employees and agents (and directors, officers, employees and agents of their respective affiliates) and advisors (including legal, financial and accounting advisors) (collectively, “*Representatives*”), as needed.

B. “*Confidential Information*” shall include all non-public, confidential or proprietary information that Customer or its Representatives make available to Pepsi or its Representatives or that Pepsi or its Representatives make available to Customer or its Representatives in connection with this Agreement. “*Confidential Information*” shall include, but not be limited to, the terms and conditions of this Agreement. It is expressly understood that the disclosure in or pursuant to this Agreement by Customer, Pepsi or their respective Representatives of Confidential Information is not a public disclosure thereof, nor is a sale or offer for sale of any product, equipment, process or service of Customer or Pepsi. The parties understand and agree that Customer is a state-supported university and instrumentality of the State of Ohio, and is subject to the Ohio Public Records Act, Ohio Revised Code Section 149.43, et seq., and that any record kept by the Customer that is deemed a public record may be subject to release if a proper request is made.

C. These Confidentiality provisions and the obligations of the parties hereunder will survive the expiration or sooner termination of this Agreement for a period of three (3) years following such date of expiration or termination of this Agreement.

13. REPRESENTATIONS, WARRANTIES AND COVENANTS.

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

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

C. To the extent that Customer’s football team or basketball teams are relocated to a venue which is not within the Facilities as its home venue for a period of six months or more and Customer is unable to ensure that all rights of Pepsi hereunder shall be extended to such alternate venue, Customer agrees to meet with Pepsi to discuss changes to funding levels in light of diminished sales volume resulting from change of venue for the football team and basketball teams..

14. INDEMNIFICATION.

A. Pepsi will indemnify and hold the Customer harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; (ii) product liability suits resulting from the use or consumption of Products purchased directly from Pepsi; (iii) the negligence or willful misconduct of Pepsi, (excluding claims arising out of the Customer's negligence or willful misconduct); and/or (iv) Pepsi's noncompliance with any applicable federal, state or local laws, rules, regulations and ordinances.

B. Customer, to the extent permitted by Ohio law and decisions there under, shall be responsible for personal injury and property damage (excluding attorney's fees) which is attributable to the negligent acts or omissions of the Customer, its officers and employees while acting within the scope of their employment, as set forth in Ohio Revised Code Section 2743.02. The parties hereby agree that nothing in this provision shall be construed or interpreted as a waiver of the sovereign immunity of the Customer and/or the State of Ohio beyond the waiver provided in Ohio Revised Code Chapter 2743.

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

15. INSURANCE.

A. Pepsi shall maintain and agrees to maintain, at all times during the Term a comprehensive program of risk retention and insurance that satisfies the insurance requirements contained in Exhibit E. Customer shall maintain, at all times during the Term, a comprehensive program of risk retention and insurance consistent with industry standards for colleges and universities. Pepsi agrees to name Customer and each of its affiliates, and their respective officers, directors, employees, agents, representatives and successors and assigns on a certificate of insurance, as additional insureds.

B. Either party shall have the right, during the Term from time to time, to request copies of such certificates of insurance and/or other evidence of the adequacy of the above insurance coverages.

16. NOTICES.

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

If to Pepsi:

Pepsi Beverages Company
2351 Edison Blvd.
Twinsburg, OH 44087
Attn: Director, Food Service

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

Pepsi Beverages Company
One Pepsi Way
Somers, NY 10589
Attn: Legal Department

If to Customer:

Youngstown State University
One University Plaza
Youngstown, OH 44555
Attn: Executive Director of Student Services

With a copy to:

Youngstown State University
One University Plaza
Youngstown, OH 44555
Attn: Office of General Counsel

17. **ASSIGNMENT.**

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

18. **GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws and jurisdiction of the State of Ohio without regard to conflicts of laws principles. Any legal proceeding of any nature

whatsoever brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be brought and enforced exclusively in appropriate federal or state courts within Ohio.

19. FORCE MAJEURE.

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

20. RELEASE, DISCHARGE OR WAIVER.

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

21. AUDITS

Customer reserves the right to perform audits as often as is deemed necessary by the Customer with 30 days advance notice. Pepsi must provide access to files and information necessary to validate cost data and assist in the performance of each audit, at no cost to Customer. Audit discrepancies must be resolved to the satisfaction of Customer, and Pepsi and Customer agree to work together in good faith to resolve any discrepancies.

22. OHIO REVISED CODE 9.24 REQUIREMENT: FINDING FOR RECOVERY

Ohio Revised Code ("ORC") Section 9.24 prohibits the State from awarding a contract to any offeror(s) against whom the Auditor of the State has issued a finding for recovery if the finding for recovery is deemed "unresolved" at the time of award. Pepsi warrants that it is not now, and will not become subject to an "unresolved" finding for recovery under ORC 9.24, prior to the award of any contract arising out of the RFP, without notifying the Customer of such finding. Furthermore, if the warranty is false on the date Pepsi would sign this Agreement resulting from the RFP, such and any future Agreement is void ab initio, and Pepsi must immediately repay to the State or Customer any funds paid under any such Agreement.

23. CAMPAIGN CONTRIBUTIONS

Pepsi hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of ORC Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of ORC Section 3517.13.

24. CONFLICTS OF INTEREST AND ETHICS COMPLIANCE

No personnel of Pepsi or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work. Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to Customer in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless Customer shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any action would not be contrary to the public interest.

Pepsi represents, warrants, and certifies that it and its employees engaged in the administration or performance of the Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws and Executive Order No. 2011-03K. Pepsi further represents, warrants, and certifies that neither Pepsi nor any of its employees will do any act that is inconsistent with such laws and Executive Order. The Governor's Executive Orders may be found by accessing the following website: <http://governor.ohio.gov/MediaRoom/ExecutiveOrders/ExecutiveOrders2011.aspx>.

25. DRUG FREE WORK PLACE

Pepsi must be enrolled in, and in good standing with, a Drug-Free Workplace Program approved by the Ohio Bureau of Workers' Compensation at the time of execution of this Agreement. Pepsi shall also comply with Ohio Revised Code Section 153.03 regarding Pepsi and any sub-contractor's drug free work place program requirements.

26. NON-DISCRIMINATION

Pepsi agrees not to discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of race, color, creed, religion, sexual orientation, national origin, sex, age, handicap or Vietnam era veteran status to the extent required by law. Pepsi further agrees that every sub-contract or order for parts and/or service for any ensuing order will contain a provision requiring non-discrimination in employment as specified above. This covenant is required pursuant to Executive Orders 11246 and 11375, and any breach thereof may be regarded as a material breach of this Agreement.

27. PROHIBITION OF OFFSHORE OUTSOURCING

Pepsi affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Agreement, and shall perform no services required under this Agreement outside of the United States.

<http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf>.

Pepsi also affirms, understands, and agrees to immediately notify Customer of any change or shift in the location(s) of services performed by Pepsi or its sub-contractors under this Agreement, and no services shall be changed or shifted to a location(s) that are outside of the United States.

Pepsi also agrees to disclose, if requested by YSU, all of the following:

- The location where all services under this Agreement will be performed by Pepsi or any of its subcontractors;
- The location where any Customer data associated with this Agreement will be maintained or made available; and
- The principle location of business for Pepsi and any of its subcontractors who are supplying services under this Agreement.

If Pepsi or any of its subcontractors perform services under this Agreement outside of the United States, the performance of such services shall be treated as a material breach of the Agreement. Customer is not obligated to pay and shall not pay for such services. If Pepsi or any of its subcontractors performs any such services, Pepsi shall immediately return to Customer all funds paid for those services. Customer may also recover from Pepsi all costs associated with any corrective action Customer may undertake, including but not limited to an audit or a risk analysis, as a result of Pepsi performing services outside the United States.

Customer may, at any time after the breach, terminate this Agreement, upon written notice to Pepsi. Customer may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of this Agreement and costs associated with the acquisition of substitute services from a third party.

If Customer determines that actual and direct damages are uncertain or difficult to ascertain, Customer in its sole discretion may recover a payment of liquidated damages amounting to a percentage of the value of the Agreement, such a percentage to be determined.

Customer in its sole discretion may provide written notice to Pepsi of a breach and permit Pepsi to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, Customer may buy substitute services from a third party and recover from Pepsi any costs associated with acquiring those substitute services.

Notwithstanding Customer permitting a period of time to cure the breach or Pepsi's cure of the breach, Customer does not waive any of its rights and remedies provided to it in this Agreement, including but not limited to recovery of funds paid for services Pepsi performed outside of the United States, costs associated with corrective action, or liquidated damages.

Pepsi will not assign any of its rights, nor delegate any of its duties and responsibilities under this Agreement, without prior written consent of Customer. Any assignment or delegation not consented to may be deemed void by Customer.

28. USE OF EDGE VENDORS

Customer encourages Pepsi to purchase goods and services from Encouraging Diversity, Growth and Equity (EDGE) vendors.

29. TITLE AND RISK OF LOSS

Pepsi shall retain title and bear the risk of any loss or damage to the items purchased until they are delivered at the specified F.O.B. point, and upon such delivery, title shall pass and Pepsi's responsibility for loss or damage shall cease except as resulting from Pepsi's negligence or failure to comply. Passing of title upon such delivery shall not constitute acceptance of the items by Customer.

30. PRIOR NEGOTIATIONS; ENTIRE AGREEMENT.

This Agreement and the exhibits attached hereto, set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Agreement shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Pepsi and/or any of its affiliates and any affiliate of Customer. In the event of any conflict between this Agreement, and any of the exhibits attached hereto, the terms of this Agreement shall prevail. Furthermore, the parties agree that the including of the RFP and Pepsi's proposal as Exhibits to this Agreement are not intended to add additional material terms and conditions to the Agreement.

31. RELATIONSHIP OF THE PARTIES.

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

32. EFFECT OF HEADINGS.

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

33. CONSTRUCTION.

This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent

shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties.

34. SEVERABILITY.

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

35. AMENDMENTS.

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

36. COUNTERPARTS.

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


37. FURTHER ASSURANCES.

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

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

BOTTLING GROUP, LLC

YOUNGSTOWN STATE UNIVERSITY

By: 
Name: Dan Hungerman
Title: VP Food Service
Date: 8/18/14

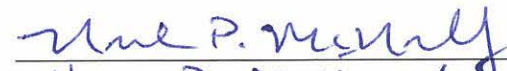
By: 
Name: NEAL P. McNALLY
Title: INTERIM VP FINANCE
Date: 8-20-14

Exhibit A

Current description & pricing for Postmix Products and Packaged Products

Customer acknowledges and agrees (and shall require that any third parties or Food Service Providers purchasing Products through this Agreement agree) that Pepsi shall be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed) and that the pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products shall not be deemed as a price increase subject to any pricing cap or notification restrictions that may be specified in this Agreement.




Exhibit B

Facilities & Printing Advertising and Additional Rights to be Provided to Pepsi

A. Facilities and Print Advertising.

- (1) Facilities Advertising.
Such advertising as may be mutually agreed upon between the parties
- (2) Print Advertising.
Such advertising as may be mutually agreed upon between the parties

B. Additional Rights.

- (1) Tickets and Hospitality.

University will provide Pepsi during the Term with tickets to athletic events as reasonably requested by Pepsi and agreed upon by University.

Exhibit C
RFP

Exhibit D
Pepsi's Proposal