

CLEVELAND STATE UNIVERSITY BEVERAGE AND SPONSORSHIP AGREEMENT

This Beverage and Sponsorship Agreement ("Agreement"), effective as of January 1, 2008, is made by and between Cleveland State University, a state funded university and instrumentality of the State of Ohio ("University") and Pepsi-Cola General Bottlers of Ohio, Inc., a Delaware Corporation, dba PepsiAmericas ("Pepsi").

The University selected Pepsi through a competitive Request for Proposals process as RFP#4307WE or Exhibit A which is incorporated herein by reference (hereinafter "RFP") based upon Pepsi's commitment to memorialize its response to the University's RFP, which is incorporated by reference in this Agreement as Exhibit B (hereinafter "Response to RFP"); University desires to grant Pepsi the exclusive rights to sell dispense or otherwise provide Acceptable Beverages (as defined in Section 1.1 below) to the University and to the public on the University's campus. In consideration for the granting of such rights, Pepsi has agreed to make various payments and provide certain support to the University.

By entering into this Agreement, the Parties intend to develop a meaningful commercial relationship so as to enhance the quality of the student experience at the University and to further the University's educational mission and goals.

In that spirit, this relationship between the Parties will provide the University with significant revenue streams and payments to support its programs and will provide Pepsi with regular opportunities to interact with University students and the University community by participating in and gaining recognition from various student life and University community initiatives.

NOW, THEREFORE, the Parties agree that:

1. Definitions

- 1.1 Defined Terms. As used in this Agreement, the following terms shall have the meanings assigned to them in this Section 1. 1.

"Acceptable Beverage(s)" shall mean all canned, bottled, fountain, powder and syrup versions of carbonated and non-carbonated drinks included in this Agreement by product name (Exhibit D) that is sold now or of new Pepsi products to which the University agrees in writing from time to time.

"Acceptable Beverages" does not include any products used for academic research, medically related patient care or not expressly included in this Agreement in Exhibit D.

"Acceptable Equipment" shall mean new or Like New Equipment which is provided by Pepsi under this Agreement for vending, catering, concessions and retail.

"Ambush Marketing" shall mean an attempt by a third party without Pepsi's consent, to associate Competitive Beverages with the Campus, University or University Marks, or to suggest that Competitive Beverages are endorsed by or associated with the University or the University Marks, by referring directly or indirectly to the University, the Campus or the University Marks. Both Parties acknowledge and agree the University may not be aware of all actions of students, student organizations and university departments with regard to marketing.

"Approved Vending Locations" shall mean the current and future vending locations on the Campus the Parties approved pursuant to Section 7 and are listed on Exhibit E and such other locations to which the University and Pepsi shall agree upon from time to time and reduce to writing.

"Competitive Beverages" shall mean any and all beverages sold by others that are the same as or similar to those beverages sold, supplied, manufactured and/or distributed by Pepsi and included in the scope of this Agreement.

"Event of Force Majeure" shall mean an event outside the reasonable control of a Party which substantially impairs the Party's ability to perform its material obligations under the terms of this Agreement, including, without limitation, acts of God, war, insurrection, and work stoppage.

"Fiscal Year" shall mean the University's operating year from July 1 to June 30 annually.

"General Campus" means the current and future land and buildings owned and/or operated by the University with the following exceptions: the CSU Bookstore, the retail restaurant operated in the Parker Hannifin Administration Center, and the President's home.

"Like New Equipment" shall be mean equipment purchased new from the manufacturer which complies with all applicable laws, rules and regulations, including but not limited to those concerning sanitation, and shall be free from defects in workmanship or design.

"Vending Commission" shall mean the commissions payable to University pursuant to Section 7.4.

"Net Sales" shall mean gross sales minus any applicable sales tax.

"Party" shall mean University or Pepsi, and "Parties" shall mean University and Pepsi collectively.

"Pepsi Provided Non-Vending Equipment" and "Pepsi Provided Retail Equipment" shall mean the equipment Pepsi will provide University pursuant to Section 7.6 and is described in Exhibit E.

“Sponsorship Funds” shall mean payments received by the University under Section 4 of this Agreement.

“Third Party Operator (TPO)” shall mean any concessionaire, caterer or food service corporation(s) responsible for providing all food services at the Campus.

"University Sponsorship" shall mean the consideration described in Section 5.3.

"University Marks" shall mean the trade and service marks of the University as they may exist from time to time.

“Wolstein Center” shall mean the facility owned by Cleveland State University; located at 2000 Prospect Avenue, Cleveland, Ohio; and operated under a management services agreement between SMG and the University.

"Year" shall mean the period commencing January 1 of a calendar year and ending December 31 annually.

2. Term

- 2.1 Initial Term. This Agreement will commence on January 1, 2008 except where Pepsi's performance under this Agreement is expressly identified to commence after said date, and shall continue through December 31, 2012 (“Initial Term”).
- 2.2 Renewal Period. The Agreement includes three (3), two (2) year renewal periods that shall be exercised by mutual agreement of the University and Pepsi in writing 180 days prior to the expiration of the then current contract year (each a “Renewal Period”). The terms governing a Renewal Period shall be the same as those governing this Agreement unless changed in writing by amendment to this Agreement and agreed to by both Parties. The Initial Term and any exercised Renewal Period shall hereinafter collectively be referred to as the “Term.”

3. Termination

- 3.1 By University. University may terminate this Agreement upon thirty (30) days prior written notice to Pepsi upon the occurrence of one or more of the following events:
- (a) if any representation or warranty made by Pepsi in this Agreement is or proves to be untrue such as to cause a material adverse effect on Pepsi's performance or the realization by University of its anticipated benefits under this Agreement;
 - (b) if Pepsi fails to perform or observe any of its covenants or obligations under this Agreement after University has notified Pepsi in writing of such

failure(s) to perform and granted it thirty (30) days to cure by performing the duty or duties, unless a shorter cure period is otherwise specified in this Agreement; or

- (c) if Pepsi shall be unable to pay its liabilities when due; shall make an assignment for the benefit of creditors or shall file a voluntary petition in bankruptcy or be adjudicated bankrupt or insolvent; or if a receiver is appointed for the Pepsi's business or property; or if a trustee in bankruptcy or insolvency shall be appointed under the laws of the United States of America or any state.

3.2 Material Breach by University. Pepsi shall have the right to terminate this agreement upon thirty (30) days prior written notice to University upon the occurrence of one or more of the following events:

- (a) if any representation or warranty made by University in this Agreement is or proves to be untrue such as to cause a material adverse effect on Pepsi or its performance under this Agreement; or
- (b) if University fails to perform one or more of its material obligations under this Agreement after Pepsi had notified University in writing of its failure(s) to perform and granted it thirty (30) days to cure by performing such obligation.

3.3 Limitation of Damages. In no event shall a Party be liable to another Party for any consequential, special, or incidental damages, including lost profits, lost business opportunity, or similar expectancy damages arising from the transactions which are the subject of this Agreement.

3.4 Pro-rata Refund. In the event this Agreement is terminated for any reason, University shall pay Pepsi a pro-rated amount of all Sponsorship Funds paid to University less commission accrued but unpaid by Pepsi and any other funds owed to the University by Pepsi. Any Sponsorship Funds paid to University shall be deemed earned at an equal rate per month, notwithstanding the date of actual payment. The amount due to Pepsi shall be calculated by the number of full months remaining on the Agreement.

3.5 Debit Card Reader Reimbursement. In the event of termination by either Party prior to the end of the Initial Term or any exercised Renewal Period, University will reimburse Pepsi for the purchase and installation of debit card readers installed during the then current term and any then remaining balance due by University to Pepsi under Paragraph 7.6(f) hereof, after which the readers shall become the sole property of the University.

4. Payments

4.1 Certain Payments.

- (a) Upon full execution of this Agreement, Pepsi shall pay to University the sum of One Hundred Thirty Thousand (\$130,000.00) Dollars as corporate Sponsorship Funds for the First Year of the Initial Term for promotion of Pepsi's approved Beverages (as listed in Exhibit D) on the Campus and at the Wolstein Center in consideration of University's Sponsorship Initiatives described in Section 5.1 below.
- (b) On the anniversary date of the Agreement, beginning in the second year of the Initial Term and during each succeeding of the Initial Term or Renewal Period year of the Agreement, Pepsi shall pay University the sum of Eighty Thousand (\$80,000.00) Dollars as annual corporate Sponsorship Funds for that year in consideration of University's sponsorship initiatives described in Section 5.1 below.

4.2 Use of Funds. Except with respect to the funds described in Section 4.1(a) and 4.1(b) above, which are to be used in connection with the initiatives described in Section 5.1 below, University, in its sole discretion, will determine 1) the manner in which such funds are, or are not, used and/or invested, and 2) how much, if any, of the principal or interest on such funds will be spent in a given year.

5. University Sponsorship Initiatives

5.1 Initiatives. University and Pepsi have agreed upon the terms and conditions of this Agreement for the promotion of the Accepted Beverages. From time to time during each year, the University and Pepsi may jointly agree in writing to revise or amend this Agreement. University and Pepsi have agreed that at a minimum, University will provide the sponsorship and signage opportunities on all items delineated in Sections 5.2 and 5.3 below.

5.2 Additional Support Provided by Pepsi. In addition to the items described elsewhere in this Agreement, Pepsi, at its sole expense, will provide University with the following certain marketing and promotional support:

- (a) Up to Two Thousand (\$2,000.00) Dollars per year in dining/vending promotions;
- (b) Up to Ten Thousand (\$10,000.00) Dollars per year in product donations. Donated product values are listed in Exhibit F.
- (c) Up to Ten Thousand (\$10,000.00) Dollars per year in Marketing Support.
- (d) Pepsi will work with Athletics, Wolstein Center and Campus Support Services keeping them abreast of available marketing materials and the cost, if any, for promoting and encouraging sales, by providing Point-of-

Sale Material, Specialty Cups for purchase, and a year-long marketing calendar.

5.3 Additional Items Provided by University. In addition to the items described elsewhere in this Agreement, University will annually provide Pepsi with the following items:

- (a) Sponsorship Package for Wolstein Center. Pepsi shall be acknowledged in the following manner: on the four (4) main arena scoreboard signs; on ten (10) concourse signs; within four (4) twenty-second Message Center message per event when Message Center is used, on one panel on the scorer's table (arena floor) for event(s) other than those sponsored by Athletics; and on one (1) panel on the media table (arena floor) for event(s) other than those sponsored by Athletics. Signs may not include a call for action. Pepsi is responsible for the design, manufacture and delivery of signs, subject to prior written University approval.
- (b) Sponsorship Package for Athletics. Pepsi will be acknowledged in the following manner:
 - i. Acknowledgement Sponsorship of one (1) men's basketball game per year, including the following: Promotional item giveaway (provided by sponsor); Logo on game scorecard distributed to all fans in attendance; Name and logo included on press releases and pre-game marketing of sponsored game such as print advertising and radio mentions in previous games; Public address and electronic message board announcements; and one hundred fifty (150) tickets to sponsored game.
 - ii. Four (4) thirty-second radio spots in all men's basketball radio broadcasts.
 - iii. Receive Title sponsorship of one (1) feature segment (e.g. Opening Line-Ups) in all men's basketball radio broadcasts.
 - iv. Courtside rotating signage – Two (2) 3' x 8' courtside rotating sign for all men's and women's basketball home games.
 - v. Two (2) public address announcements at all men's and women's basketball games.
 - vi. Twelve (12) Big Green Memberships – each includes premium seating at all men's basketball games, pre-game and half-time receptions and complimentary parking.

- vii. One (1) year-round website banner advertisement on the home page of www.csu vikings.com.
 - viii. One (1) full-page black and white advertisement in the Men's Basketball Yearbook.
 - ix. Prominent banner signage at all other CSU Athletics facilities.
 - x. Prominent sponsorship of a mutually developed Community Relations program, promotion or special event, including tie-ins with CSU Athletics co-sponsors in the grocery and restaurant categories.
 - xi. Logo/messaging on one color and full-color electronic Message Board at the Wolstein Center during men's basketball games. Pepsi is responsible for the design, manufacture and delivery of signs, subject to prior written University approval.
- (c) Sponsorship Package for General Campus. The University will identify campus events for which Pepsi will be recognized as a sponsor or co-sponsor in a manner consistent with other sponsors for the event. Minimally, such sponsorship will be acknowledged by a verbal announcement during the event. Pepsi is responsible for the design, manufacture and delivery of signs, subject to prior written University approval.

6. Grant of Beverage Rights

- 6.1 Vending. Subject to the terms of this Agreement, University hereby grants Pepsi, and Pepsi hereby accepts, a license to install and operate vending machines as approved by the University on the General Campus to sell Accepted Beverages (Exhibit D) during the Term. Throughout the Term, University shall not grant any other person the right or license to install or operate any piece of equipment on the General Campus to offer or sell any Competitive Beverage(s).
- 6.2 Catering, Concessions and Retail. Subject to the terms of this Agreement, University hereby grants Pepsi, and Pepsi hereby accepts, a license to serve and/or sell Accepted Beverages at events in the Wolstein Center; and on General Campus at all Athletic events and at dining and retail locations as well as catered events operated or served by CSU Dining, except in the restaurant to be operated in the Parker Hannifin Administration Center, the CSU Bookstore and the President's residence.
- 6.3 Third Party Operator(s). During the Term, Pepsi shall work directly with University and the University's Third Party Operator ("TPO"), for the General Campus and the Wolstein Center, if different, to fulfill all of its requirements for the Accepted Beverages. University shall cause its TPO to purchase the Accepted

Beverages from Pepsi. Pepsi shall work directly with University and its TPO to promote sales through appropriate point-of-sale and other advertising materials within the Campus. University agrees to inform, require and cause any future TPO contracted for the management of Wolstein Center and/or the provision of dining services on General Campus to be bound by the terms and conditions of this Agreement and to honor the exclusivity extended to Accepted Beverages.

- 6.4 Changes to Acceptable Beverages. During the Term, Pepsi may submit written proposal(s) to the University regarding additional beverage selections for possible inclusion in and/or beverages for possible removal from the list of Acceptable Beverages. The University will respond to each proposal in writing. Both Parties agree the University will retain final authority with regard to the beverages which are served and sold under this Agreement.

7. Vending Services, Equipment and Commissions

- 7.1 Installation. Pepsi shall install and operate Acceptable Equipment to vend/sell Acceptable Beverages in campus buildings and, collectively, such buildings are the "Approved Vending Locations" as included as Exhibit E. At any time during the Term, University and Pepsi, by mutual written agreement, may change the Approved Vending Location of a vending machine. Upon the University's request, Pepsi shall promptly move a vending machine within or remove a vending machine from an Approved Vending Location, but nothing herein shall permit University to require Pepsi to move over ten percent (10%) of the total number of such equipment used in vending, in any Year.
- 7.2 Duty to Service and Operate Acceptable Equipment. Unless Pepsi receives University's prior written consent, which shall not be unreasonably withheld, Pepsi shall not cease to operate a vending machine at an Approved Vending Location. Pepsi, at its sole expense, shall fill, maintain, and service all vending machines. Pepsi shall use reasonable efforts to ensure that each vending machine is kept well stocked with Acceptable Beverages of good quality. No beverages other than Acceptable Beverages shall or may be dispensed by or made available through vending machines owned by Pepsi.
- 7.3 Maintenance, Repair and Refunds. Throughout the Term, among other services, Pepsi, at its sole expense:
- (a) shall provide repair, maintenance and technical services for the Acceptable Equipment within twenty-four hours after a service call is properly placed by a University representative, provided such call is made between 8:00 a.m. and 10:00 p.m., or within 24 hours if such call is made after such hours and depending on accessibility to the equipment;
 - (b) shall maintain a 24 hour per day, seven days a week continuously operating telephone answering service at **1-800-356-3212**; and

- (c) shall perform preventive maintenance, and regular service audits on all such equipment. In the event a fountain unit is out of order and results in loss of sales for more than 24 hours, Pepsi will reimburse University by providing free of charge post-mix product. Pepsi agrees to provide training to all University personnel with regards to necessary daily cleaning needs of fountain equipment.
- (d) Pepsi shall establish and maintain one central refund bank at a location identified by the University as best suited for optimum accessibility for the campus community; and
 - (i) the refund bank will consist of \$50.00 in cash;
 - (ii) each person requesting a refund will need to complete and submit a form;
 - (iii) the refund bank will be checked weekly by Pepsi; at such time all refund forms will be submitted to Pepsi for record-keeping; and Pepsi will replenish the refund bank, as needed.

7.4 Beverage Vending Commission.

- (a) Commission Payments. No later than the fifteenth (15th) day of each calendar month, Pepsi shall pay the University for commissions earned from the previous calendar month. The University shall earn a commission from Net Sales from all vending equipment at the following rates:
 - (i) Carbonated vended product and Aquafina branded products
55% commission.
 - (ii) Non-Carbonated vended product
40% commission.
- (b) Commission Reports. No later than the fifteenth (15th) day of each calendar month, Pepsi shall provide a monthly vending commission statement, setting forth, among other information, the number of cases and dollar value of Acceptable Beverages sold in the applicable month by machine and the amount of such commission. Pepsi shall not deduct from the commission any costs or expenses incurred by Pepsi in connection with the sale of Acceptable Beverages, except sales taxes.
- (c) Annual Commission Report. Annually, Pepsi shall provide the University with a written summary of vending sales, vending sales by product category, vending sales by location, commissions owed to the University

by product category and commissions paid to the University by product category.

7.5 Vending Expenses and Taxes.

- (a) Pepsi shall pay when due all costs and expenses incurred to own and operate the Acceptable Equipment in Approved Vending Locations. The University, at its expense, shall provide all water, sewer, electricity service and wiring to support the Approved Vending Locations.
- (b) Pepsi shall (i) pay when due all taxes, assessments, and permit and license fees which are now or may be imposed in the future by any governmental authority arising out of the conduct of its business (including, without limitation, the ownership and operation of the Acceptable Equipment or the selling of Acceptable Beverages at the Approved Vending Locations); (ii) charge, collect, and pay all applicable sales, use, and/or excise taxes that may be imposed upon Acceptable Beverages or Acceptable Equipment; and (iii) in its own name remit to and file with the proper governmental authorities all the foregoing taxes, assessments, fees, and necessary returns and comply with all regulations and rules by such governmental authorities; provided, however, that Pepsi shall have no obligation under this Agreement to pay any taxes levied on the income earned by University under this Agreement.
- (c) University is responsible for any taxes levied on the income earned by the University under this Agreement.

7.6 Vending Equipment.

- (a) After full execution of this Agreement, Pepsi shall, at its sole expense, deliver and install the Acceptable Equipment (Exhibit E) at the Approved Vending Locations under the timeline developed with and approved in writing by the University.
- (b) Pepsi represents and warrants that during the Term each piece of Acceptable Equipment for use in vending: shall be new or Like New Equipment and state-of-the-art; shall include a dollar bill validator/changer; shall comply with all applicable laws, rules and regulations, including but not limited to those concerning sanitation; and shall be free from defects in workmanship or design. Pepsi and the University agree that all Like New Equipment will be proposed in writing prior to installation to the University. University reserves the right to accept or reject the installation of Like New Equipment in writing at its discretion.

- (c) Pepsi will purchase for University, and equip those specific vendors identified on the list of Approved Vending Locations, with debit card readers. University agrees to notify Pepsi one (1) year prior to University's plan to change card systems. University shall be responsible for installing and maintaining the approved wiring and infrastructure to activate and operate the charge and debit card system for each vendor location, reimbursements to Pepsi following receipt of the monthly recaps, and any transaction costs incurred if University selects an outside agency to administer the card transactions. If either Party terminates this Agreement prior to the end of the Initial Term, University will reimburse Pepsi for the installation of debit card readers installed during the Initial Term based on a pro-rata depreciation schedule as agreed to by both parties in writing.
- (d) Except as otherwise provided in this Agreement, University shall have no obligation or responsibility to protect, maintain, repair, or otherwise care for any vending machine; provided, however, the University shall use reasonable care to reduce the risk of loss (including from theft and vandalism) to the vending machines while such equipment is in Approved Vending Locations. Pepsi hereby releases University from all claims, liabilities or expenses arising out of the installation or operation of a piece of Acceptable Equipment in an Approved Vending Location.
- (e) Pepsi, at its sole expense, shall provide University professional quality product selection labels for each of the Acceptable Beverages.
- (f) In 2003 under an amendment to a prior agreement, Pepsi purchased and installed debit card readers for an investment of \$28,000. The University agreed to repay the investment to Pepsi over a ten(10) year schedule. Both parties agreed to continue the schedule for repayment as presented in Exhibit C as a condition of this Agreement.

7.7 Maintenance of Acceptable Equipment. Pepsi, at its sole expense, shall maintain each vending machine in good working order; shall supply and install replacement Acceptable Equipment or components thereof as required to maintain full operability; and shall promptly repair or replace any damaged, defective, or inoperative vending machine.

7.8 Use of Approved Vending Locations. The University grants Pepsi access to the Approved Vending Locations (Exhibit E) during regular business hours as posted on the University's web site for the purpose of fulfilling its obligations under this Agreement. The access granted to Pepsi does not include any waiver of established parking and security policies or procedures. Without the University's prior written consent, Pepsi shall not use space in the Approved Vending Locations in any manner or for any purpose except to offer for sale and sell Acceptable Beverages in vending machines, and for no other use. Pepsi shall not

change or alter the electrical, plumbing, or structural components of the Approved Vending Locations without University's prior written consent. At the termination of this Agreement, Pepsi shall return possession of each Approved Vending Location to University in its condition on the date first above written, with reasonable wear and tear excepted.

- 7.9 Cleanliness and Sanitation. Pepsi shall adhere to standards of cleanliness and sanitary practices to ensure the continual sanitation in all functions and matters related to its execution of the terms of this Agreement. Pepsi will notify the University immediately, in writing about any situation which may adversely impact the health and safety of the campus community and its guests related to beverage pouring rights.

8. Grant of Shared Beverage Sales Rights

- 8.1 Pepsi's Commitment to Supply. The Parties acknowledge that the University shall offer to sell or dispense, either in fountains, bottles, or cans, Acceptable Beverages on the General Campus. Pepsi shall provide and the University shall exclusively purchase from Pepsi, Acceptable Beverages adequate to meet all University's requirements, at the times and locations and in the quantities and types requested by University, for the General Campus and the Wolstein Center. Without limiting the generality of the foregoing, University may sell or dispense the Acceptable Beverages at the locations set forth in Section 6.2 of this Agreement.
- 8.2 University's Commitment to Purchase/Sell. Subject to the terms of this Agreement, at prices referred to in Exhibit D, and as adjusted and published as provided herein, University shall purchase, on payment terms of net thirty (30) days, Acceptable Beverages in bottles, cans, and for fountain distribution in sufficient quantities to meet anticipated demand.
- 8.3 Access to Non-Vended Locations. Pepsi will have no access to non-vended locations under this Agreement except as granted by the entity responsible for the location as a supplier of products and services to the locations.
- 8.4 Price of Designated Non-Vending Beverages.
- (a) Bottles/Cans Price Adjustments. Pepsi may annually increase the prices of the bottles and cans it offers and sells to University for use in catering, residential dining and retail dining by amounts as shown in Exhibit D. Pepsi shall deliver to University written notice of the amount of any price increases permitted under this subsection. Any such increase shall be effective no sooner than thirty (30) days after University's receipt of such notice. Pepsi shall use commercially reasonable marketing efforts to ensure that price adjustments do not negatively impact University's revenue.

- (b) Fountain Price Adjustments. Pepsi may annually increase the prices of the fountain products it offers and sells to University for use on General Campus and in the Wolstein Center at the same rate Pepsi publishes as national accounts concentrate pricing. Pepsi shall deliver to University written notice of the amount of any price increases permitted under this subsection. Any such increase shall be effective no sooner than thirty (30) days after University's receipt of such notice. Pepsi shall use commercially reasonable marketing efforts to ensure that any adjustments do not negatively impact University's revenue.
- 8.5 Beverage Warranties. Pepsi warrants that all the Acceptable Beverages it will provide and deliver to University under the terms of this Agreement will be unadulterated and in compliance with all applicable federal, state, and local food and health laws, rules, and regulations.
- 8.6 Non-Vending Beverage Equipment.
- (a) Except as provided in this Agreement, at no cost or expense to the University, Pepsi shall deliver to the University all equipment ("Pepsi's Provided Non-Vending Beverage Equipment") reasonably necessary to dispense Acceptable Beverages, a list of which is set forth in Exhibit D, and Pepsi shall provide and deliver certain retail equipment and professional product selection labels for the Acceptable Beverages. Pepsi warrants that each item of Pepsi Provided Acceptable Equipment (Exhibit E) shall be new or Like New Equipment, and Pepsi represents that to the best of its knowledge, after due examination, each such item is free from defects in workmanship or design. Throughout the Term, all items of equipment Pepsi will provide under this Agreement shall be state-of-the-art. All Pepsi Provided Acceptable Equipment for non-vended and retail locations shall be equipped with locks and/or shut-off devices at no cost to University. All such equipment that has a waterline connection must be equipped with a stainless steel, vented double-check valve backflow device and water filtering equipment to be used in connection with Pepsi supplied equipment. All dispensers shall be equipped with separate water supply shutoff devices. All such equipment shall meet UL safety standards. Pepsi and University agree that all Like New Equipment will be proposed in writing prior to installation to the University. University reserves the right to accept or reject the installation of Like New Equipment in writing at its discretion.
- (b) After full execution of this Agreement, Pepsi shall at its sole expense deliver and install all Pepsi provided Acceptable Equipment in the locations in the Wolstein Center and on the General Campus as are set forth in Exhibit E under the timeline developed with and approved in writing by the University.

8.7 Maintenance of Acceptable Equipment for Non-Vended and Retail Locations.

- (a) Pepsi, at its sole expense, shall maintain each piece Acceptable Equipment in good working order. The costs of repair of such equipment are the sole responsibility of Pepsi.
- (b) University shall not misuse, intentionally damage, or knowingly permit any damage to any piece of Acceptable Equipment in non-vended and retail locations. Upon termination of this Agreement, such equipment shall remain the property of Pepsi and be found in good working condition, except for reasonable wear and tear and for any damage caused by unavoidable accidents or the maintenance or lack of maintenance thereof. Upon termination of this Agreement, Pepsi shall at its sole expense remove all such equipment from the General Campus and repair any damage to such facilities it caused in removing such equipment, except for reasonable damage necessitated by the removal, such as holes in countertops, on a schedule to which the University has granted prior written approval.
- (c) Pepsi releases University from all claims, liabilities, and expenses arising out of the operation of such equipment (including any loss or damage to such equipment), except for claims arising out of University's negligence.
- (d) University acknowledges that Pepsi may from time to time during the Term develop new packaging and dispensing equipment. University further acknowledges that this Agreement was entered into, and the financial consideration based on, the packaging and dispensing equipment used as of the date of this Agreement. If University desires to obtain different packaging or dispensing equipment for Approved Beverages, the Parties shall mutually agree upon the terms under which such packaging and dispensing will be provided to University; and this Agreement will be amended to reflect the changes.
- (e) University agrees that:
 - (i) Acceptable Equipment provided by Pepsi under this Agreement will remain the property of Pepsi;
 - (ii) Acceptable Equipment provide by Pepsi under this Agreement will not be removed from or relocated the on the General Campus or at the Wolstein Center without prior written notification to University; and
 - (iii) University will not encumber Acceptable Equipment provided by Pepsi under this Agreement in any manner or permit any

attachment thereto except as authorized in advance in writing by Pepsi.

- (iv) Debit Card Readers will become University property upon reimbursement by the University to Pepsi for the cost of installation on a pro-rata depreciation schedule as agreed by both Parties or upon a final payment of unamortized value at a time of the University's selection or the time of termination, whichever is sooner.
- (v) The University is responsible for maintenance, repair and replacement of card readers due to normal use, vandalism or the documented actions by a University representative. If repair or replacement is due to negligent acts by a Pepsi representative, Pepsi shall be responsible for said repair or replacement costs.

9. Additional Covenants

9.1 Insurance and Responsibility

Within ninety (30) days of the execution of this Agreement, Pepsi will provide insurance certificates to the University's Risk Management Department evidencing Pepsi's activities under the terms of this Agreement are insured as required below. Coverage shall be purchased and maintained with the carrier or carriers licensed to do business in the State of Ohio and rated "A-/VII" or better by the then current edition of Best's Insurance Reports published by A.M. Best Company and authorized to transact business in Ohio. Certificates of insurance will show evidence of coverage for the items listed below, and will state that the insurer will endeavor to provide thirty (30) days prior written notice of cancellation, material change or non-renewal in coverage to Cleveland State University's Department of Risk Management. At all times during the duration of this Agreement, Pepsi shall maintain at its own expense the following insurance coverage:

- (a) Commercial General Liability Insurance including coverage for: products, liability, and completed operations liability, personal injury and advertising liability, and contractual liability. Such coverage must be written with combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage
- (b) Business Automobile Liability Insurance covering all owned, hired, and non-owned vehicles: Such coverage must be written in limits of not less than \$1,000,000.combined single limits for bodily injury and property damage.

- (c) Employers' Liability with limits of not less than \$1,000,000 (per occurrence)
- (d) Umbrella/Excess Liability Coverage in limits of not less than \$5,000,000 per occurrence/aggregate to cover liability exposure in excess of the primary liability policies listed above.
- (e) Comprehensive Crime Insurance or Blanket Fidelity Bond covering all of Pepsi's employees with minimum limits of \$500,000.

All liability insurance policies shall name Cleveland State University, its trustees, officers and employees as additional insureds and shall include a severability of interest clause with respect to claims, demands, suits, judgments, costs, charges and expenses arising out of, or in connection with, any loss, damage, or injury resulting from operations of Pepsi, Pepsi's agents, representatives, employees and subcontractors.

A Certificate of Insurance verifying coverage specifically in this section and its subsections must be on file with the Director of Risk Management by the effective date of this Agreement. The maintenance of such insurance as outlined herein shall in no way constitute a waiver of legal liability.

During the Term, Pepsi and any subcontractors shall be required to subscribe to and comply with the Workers' Compensation Laws of the State of Ohio and pay such premiums as may be required. Pepsi and any subcontractors shall be responsible for providing Workers' Compensation coverage for all employees. Pepsi shall hold the University harmless from any and all liability related to Workers' Compensation, it being understood that this provision applies solely to Workers' Compensation claims filed by Pepsi's employees, and not to claims asserted against the University as a result of University's negligence or other fault. No later than thirty (30) days of the effective date of this Agreement, Pepsi shall furnish the University with a copy of the official certificate or receipt showing aforementioned payments.

10. Use of University's Marks

- 10.1 The University's Grant of License. On the terms set forth in this Agreement, University grants Pepsi, during the Term, a royalty free, non-exclusive, non-assignable license to use, reproduce, and otherwise exploit the University Marks in connection with written, radio, and television advertising of Approved Beverages, in each case only as approved by the University in writing prior to such use, otherwise said license will be automatically revoked. Pepsi shall not alter, modify, dilute, or otherwise misuse a University Mark. Pepsi shall not grant sublicenses or other rights of use of any University Mark without University's prior written consent and without an agreement with University as to the terms of an applicable royalty or commission rights. Throughout the Term, University

shall not grant any person a license to use, reproduce, or otherwise exploit the University Marks to promote or sell any Competitive Beverage. This license shall terminate upon the termination of this Agreement for any reason. Upon the termination of this license, Pepsi shall cease using the trademarks in any capacity. In no event shall Pepsi claim or assert any ownership interest in or contest the validity of the University Marks.

- 10.2 Pepsi's Grant of License. On the terms set forth in this Agreement, Pepsi grants University during the Term, a royalty free, non-exclusive, non-assignable license to use, reproduce, and otherwise exploit in the states in which Pepsi is authorized to supply Beverages from time to time, the Pepsi Marks in connection with written, radio, and television advertising of Approved Beverages, in each case only as approved by Pepsi in writing prior to such use, otherwise said license will be automatically revoked. University shall not alter, modify, dilute, or otherwise misuse a Pepsi Mark. University shall not grant sublicenses or other rights of use of any Pepsi Mark without the Pepsi's prior written consent and without an agreement with Pepsi as to the terms of an applicable royalty or commission rights. This license shall terminate upon the termination of this Agreement for any reason. Upon the termination of this license, University shall cease using the trademarks in any capacity. In no event shall University claim or assert any ownership interest in or contest the validity of the Pepsi Marks.

11. Competitive Beverages

- 11.1 Grant of Rights. Except for any beverage products used for academic research or medically related patient care, University shall request permission in writing from Pepsi if it wishes to do the following:
- (a) purchase, sell, distribute, dispense (for free sampling or otherwise), vend, or otherwise serve any Competitive Beverage on the General Campus;
 - (b) advertise or otherwise promote a Competitive Beverage on the General Campus;
 - (c) grant any person the right, or permit any person, to advertise or otherwise promote a Competitive Beverage on the General Campus;
 - (d) grant any person the right to associate a Competitive Beverage with the General Campus or the University Marks, in an advertising or promotional activity, including, without limitation, the right to display at any University sponsored event any trademark or advertisement identifying or promoting Competitive Beverages.

12. Indemnification and Responsibility

- 12.1 Indemnification of University. Pepsi shall defend, hold harmless, and indemnify University and each of its trustees, 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' and investigative 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 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 University Indemnitee's negligent acts or failure to act. The obligations under this Section shall survive the termination of this Agreement.
- 12.2 Responsibility for Negligence. The University, to the fullest extent permitted by State of Ohio law and decisions thereunder, shall be responsible for any and all personal injury and property damage (excluding attorney's fees) which is attributable to the negligent actions or omissions of the University, or its trustees, officers or 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 University and/or the State of Ohio beyond the waiver provided in Ohio Revised Code Section 2743.02.

13. Representations, Warranties, and Covenants

- 13.1 By University. University represents, warrants, and covenants to Pepsi that:
- (a) University has full power and authority to enter into this Agreement and to grant and convey to Pepsi the rights set forth herein, and, subject to applicable law, the exclusive right and power to grant the right(s) to sell, distribute, and vend Beverages and to the right(s) to advertise or promote Beverages on the General Campus.
 - (b) All necessary approvals for the execution, delivery, and performance of this Agreement by University have been obtained, and this Agreement has been duly executed and delivered by University and constitutes the legal and binding obligation of University enforceable in accordance with its terms.
 - (c) University has not entered into, and during the Term, will not enter into:
 - (i) any agreement which would prevent it from complying with the provisions of this Agreement; or
 - (ii) any agreement granting Beverage availability and merchandising or promotional and/or advertising rights involving Approved

Beverages covered in this Agreement that are in conflict with the rights granted to Pepsi pursuant to the terms of this Agreement, including any agreements with Third Party Operators which intend to sell or distribute Approved Beverages.

- (d) Ambush Marketing. University recognizes that Pepsi has paid valuable consideration to ensure the associational relationship with University created by this Agreement with respect to its Beverage supply and distribution program, and that any dilution or diminution of such associational relationship would seriously impair Pepsi's valuable rights. Accordingly, in the event another person or entity attempts, without Pepsi's prior written consent, to engage in Ambush Marketing, University will:
- (i) promptly notify Pepsi of such association or suggestion,
 - (ii) take reasonable steps to end any such association or suggestion which is then continuing, and
 - (iii) cooperate and not interfere with any actions undertaken by Pepsi to enforce its rights under this Agreement.

13.2 By Pepsi. Pepsi hereby represents, warrants, and covenants to University that:

- (a) Pepsi has full power and authority to enter into and perform this Agreement.
- (b) All necessary approvals for the execution, delivery, and performance of this Agreement by Pepsi have been obtained, and this Agreement has been fully executed and delivered by Pepsi and constitutes the legal and binding obligation of Pepsi enforceable in accordance with its terms.
- (c) Pepsi has not entered into and during the Term, will not enter into, any other agreements which would prevent it from fully complying with the provisions of this Agreement.
- (d) Pepsi agrees that Pepsi and any subcontractor, supplier, or any person acting on its behalf, will not discriminate, by reason of race, creed, color, religion, sex, age, handicap, national origin, or ancestry, against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement. Pepsi further agrees that Pepsi, any subcontractor, and any person acting on behalf of Pepsi or its subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, creed, color, religion, sex, age, handicap, national origin, or ancestry, Pepsi represents that it has a written Affirmative Action program, for the employment and effective utilization

of economically disadvantaged persons, that meets the state of Ohio requirements.

- 13.3 Unforeseen Events. The parties agree that should an unforeseen event occur regarding the University which is beyond the control of Pepsi and the University, which causes a material adverse effect on the operations covered in this Agreement, the parties shall attempt to renegotiate in good faith to an appropriate adjustment in terms.

14. General Provisions

- 14.1 Amendment and Waiver. This Agreement may be amended from time to time only by a written instrument signed by all of the Parties hereto. No waiver by any Party of any default or nonperformance hereunder shall be deemed a waiver of any subsequent default or nonperformance.
- 14.2 Assignment. Pepsi shall have the right to assign this Agreement in the event that it sells or otherwise transfers substantially all of its assets or stock. Except as permitted, neither Party shall have the right or power to assign its interest or delegate its duties under this Agreement, unless all the other Parties consent to the assignment or delegation. Any delegation or assignment attempted to be made in violation of this Section shall be void. Absent the consent of all the Parties to this Agreement, an assignment or delegation shall not release the assigning or delegating Party from its obligations to the other Parties under this Agreement.
- 14.3 Governing Law, Entire Agreement and Amendments. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Any action or proceeding against any of the parties relating in any way to this Agreement or the subject matter hereof shall be brought and enforced exclusively in the competent courts of Ohio.
- 14.4 Audit Rights; Records Retention. University shall have the right (exercisable upon reasonable notice to Pepsi, or its agents or assignees, as the case may be) to inspect and photocopy or otherwise reproduce the accounting books and records relating to the performance of this Agreement by Pepsi. Pepsi shall make available such books and records to University or its representatives (including legal or accounting advisors) during normal business hours at Pepsi's principal place of business, provided that such audits do not cause disruption to Pepsi's operations.

For a period of seven (7) years commencing on the date of termination of this Agreement, Pepsi shall retain all summary accounting records and books of account related to this Agreement. Pepsi shall retain all records relating to any litigation or claim arising out of the performance of this Agreement, or to costs and expenses of this Agreement to which exception has been taken as a result of

audit and/or inspection, until such litigation, claim or exception has been resolved.

- 14.5 Confidentiality. The Parties acknowledge in connection with the performance of this Agreement that Pepsi has and will deliver to University certain information with regards to pricing and other marketing and sales information ("Confidential Information") which it deems as proprietary and confidential. In the event University receives a request for the dissemination of any Confidential Information, University shall promptly notify Pepsi of such request and shall refuse, to the extent permitted by law, to disclose the Confidential Information without the written consent of Pepsi. The Parties acknowledge that University is a state funded institution of higher education and is subject to the Ohio Public Records Act, Ohio Revised Code Chapter 149 et seq., and that any record deemed public and subject to disclosure will be released if a proper request is made.
- 14.6 Consent and Approvals. All consents or approvals required under the terms of this Agreement shall be in writing in order to be enforceable and shall be signed by the party to be charged with such consent or approval.
- 14.7 Construction. The headings preceding and labeling the paragraphs of this Agreement are for the purpose of identification only and shall not in any event be employed or used for the purpose of construction or interpretation of any portion of this Agreement. As used herein and where necessary, the singular shall include the plural and vice versa, and masculine, feminine and neuter expressions shall be interchangeable.
- 14.8 Enforceability. If a court of competent jurisdiction adjudges a provision of this Agreement unenforceable, invalid or void, such determination shall not impair the enforceability of any of the remaining provisions hereof and such provisions shall remain in full force and effect.
- 14.9 Entire Agreement, No Third Party Beneficiaries. This Agreement (including all attachments, exhibits and amendments hereto) is intended by the Parties as the final and binding expression of their contract and agreement and as the complete and exclusive statement of the terms thereof. The terms of University's Request for Proposal dated September 7, 2007, a copy of which is attached by reference as Exhibit A , and Pepsi's Proposal dated September 7, 2007, a copy of which is attached as Exhibit B, are incorporated by reference into this Agreement, and to the extent they are not inconsistent with the terms set forth above in this Agreement, shall survive the execution and delivery of this Agreement. The terms of this Agreement shall govern if there is an inconsistency between the terms of this Agreement and the terms of Exhibits A and B. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements among the Parties, whether oral or written, relating to the subject matter of this Agreement. No provision of this Agreement, express or implied, is intended to

confer upon any person other than the Parties any rights, remedies, obligations, or liabilities hereunder.

14.10 Notices/Administration. All notices, requests and other communications that a Party is required or elects to deliver shall be in writing and shall be delivered personally, by facsimile (provided such delivery is confirmed) or by recognized overnight courier service, to the other Party at the addresses set forth below or to such other address as such Party may hereafter designate by notice given pursuant to this Section:

If to the University:

Cleveland State University
Vice President for Business Affairs and Finance
2121 Euclid Avenue AC203
Cleveland, OH 44115
FAX: 216-687-5444

With a copy to:

University Legal Counsel
2121 Euclid Avenue AC 327
Cleveland, OH 44115
Fax: 216-687-3736

If to Pepsi:

Pepsi-Cola General Bottlers of Ohio, Inc.
dba PepsiAmericas
1999 Enterprise Parkway
Twinsburg, OH 44087
Attn: Food Services Sales Manager
Fax: 330-963-5537

With a copy to:

Pepsi-Cola General Bottlers of Ohio, Inc.
dba PepsiAmericas, Inc.
1475 E. Woodfield Road
Suite 1300
Schaumburg, IL 60173
Attn: Legal Department
Fax: 847-598-9510

14.12. Parties In Interest. This Agreement shall bind and inure to the benefit of parties hereto and their respective heirs, legal representatives, successors, assigns, transferees or donees, as the case may be.

- 14.13. Permits. Pepsi certifies that as of the date of this Agreement it possess all governmental licenses, permits, and certificates necessary to perform this Agreement; and will maintain such licenses, permits and certificates throughout the Term.
- 14.14. Relationship of Parties. The Parties are acting herein as independent contractors and independent employers. No provision of this Agreement shall create or be construed as creating a partnership, joint venture, or agency relationship among any of the Parties. No Party shall have the authority to act for or bind another Party in any respect.
- 14.15 Force Majeure. Neither party shall be in default pursuant to the terms of this Agreement or liable to the other party for any failure to perform or for delay in performance with respect to any obligations under or pursuant to the terms thereof, except obligations to make payment of amounts due and owing through the date of cessation of service, due to acts of God, acts of public authorities, wars, insurrections, riots, civil disturbances, strikes, lock-outs or labor disturbances, fires, floods, explosions, earthquakes, breakage or accidents to equipment, or failures or delays of suppliers or carriers, or any other cause, whether the kind enumerated in this section or otherwise, not reasonable within the control of the party claiming inability to perform. Each party agree to endeavor to resume its performance under this Agreement if such performance is interrupted by reason of force majeure.
- 14.16 Ohio Revised Code Section 9.24 Warranty. Pepsi warrants that it is not subject to an “unresolved” finding for recovery under Ohio Revised Code Section 9.24. If the warranty is deemed to be false, the Agreement is void *ab initio* and Pepsi must immediately repay to the University any funds paid under this Agreement.
- 14.17 Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization. Pepsi hereby represents and warrants to the University that it has not provided any material assistance, as that term is defined in Ohio Revised Code Section 2909.33, to any organization identified by and included on the United States Department of State Terrorist Exclusion List and that it has truthfully answered “no” to every question on the “Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization.” Pepsi further represents and warrants that it has provided or will provide such to the University prior to the execution of this Agreement. If these representations and warranties are found to be false, this Agreement is void *ab initio* and Pepsi shall immediately repay to the University any funds paid under this Agreement.
- 14.18 Campaign Contributions. Pepsi hereby certifies that all applicable parties listing in Division (I)(3) or (J)(3) of the Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of Ohio Revised Code Section 3517.13.

14.19 Compliance with Law. The Parties agree to comply with all applicable laws, rules and regulations as they may be amended from time to time. If any part of this Agreement is determined to violate federal, state, or local laws, rules, or regulations, the Parties agree to negotiate, in good faith, revisions to any such provisions. If the Parties fail to agree within a reasonable time but not to exceed thirty (30) days, to revisions required to bring the entire Agreement into compliance, either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the date first above written.

Pepsi-Cola General Bottlers of Ohio, Inc.
dba PepsiAmericas

By: _____
Tim Trant, VP Foodservice

Pepsi-Cola General Bottlers of Ohio, Inc.
dba PepsiAmericas

By: _____
Mike Durkin, EVP U.S. Sales and Marketing

Cleveland State University

By: _____
John J. Boyle III
Vice President for Business Affairs and Finance

EXHIBITS

- A University's Request for Proposal #4307WE
Incorporated by Reference
- B Pepsi's Proposal
Incorporated by Reference
- C Debit Card Reader Location and Amortization Schedule
- D Accepted Beverage Pricing and Product List
- E Accepted Vending and Non Vending Equipment by
Location
- F Donation Product List and Price Schedule