

FEB 25 2009

PURCHASING

CONTRACTUAL MODIFICATION TO PEPSI AGREEMENTS

THIS CONTRACTUAL MODIFICATION made as of this 9th day of Feb, 2009, by and among Pepsi-Cola Bottling Co. Of Marysville, Inc., a Kansas Corporation with its principal place of business at 602-604 Center Street, P.O. Box 535 Marysville, Kansas 66506 ("Bottler"), Pepsi-Cola Company of Purchase, New York ("Company"), Kansas State University, a Kansas state governmental agency with campuses located in Manhattan and Salina, Kansas ("KSU"), and K-State Student Union Corporation ("KSSU"). This Modification is supplemental to the following agreements, each dated July 18, 2000: Sponsorship Agreement; Licensing Agreement; and Concession and Exclusivity Agreement (collectively known herein as "the Pepsi Agreements"). This Modification supersedes any inconsistent terms in the Pepsi Agreements.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Contractual Modification, the parties hereby agree to the following as though it were included in the original Pepsi Agreements:

1. The term of each agreement shall end on June 30, 2015, unless sooner terminated as provided within each agreement.
2. The Contractual Provisions Attachment in each agreement shall be modified to reflect the most recent revision, Form DA-146a, Rev. 1-01.
3. In the Sponsorship Agreement, paragraph 2.2, the total amount payable to IAC shall be modified as follows: \$175,000 in 2010-2011; \$185,000 in 2011-2012; \$195,000 in 2012-2013; \$205,000 in 2013-2014; and \$215,000 in 2014-2015.

In addition, the current year and remaining year base amounts payable to IAC (listed above) shall increase by an additional \$20,000 if KSU football is ranked in a final poll (i.e., Associated Press Top 25, USA Today Coaches' Top 25, or Bowl Championship Series Top 25) in any contract year. Once such ranking occurs in any contract year, if KSU football is ranked in a final poll in any subsequent years, IAC shall receive an additional lump sum payment of \$20,000 for each such final ranking.

4. In the Concession and Exclusivity Agreement, paragraph 10.3, the "guaranteed" commission payment structure shall be discontinued. But the commission payments required by the Concession and Exclusivity Agreement and set forth in Exhibit B shall continue, and shall be payable on a monthly basis.

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Contractual Modification as of the date first written above.

KANSAS STATE UNIVERSITY

BY: _____

Jon Wefald
President

Date: APR. 25, 2009

BY: _____

Bruce Shubert
Vice President for Administration and Finance

Date: 2-9, 2009

STATE OF KANSAS

BY: _____

Chris Howe
Director of Purchases

Date: 2/9, 2009

PEPSI-COLA BOTTLING CO. OF MARYSVILLE, INC.

BY: _____

Dan Wassenberg
President

Date: 3-6, 2009

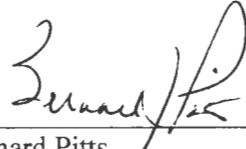
PEPSI-COLA COMPANY OF PURCHASE, NEW YORK


BY: _____

Scott Loeffler
National Sales Manager


Date: 3-17, 2009

K-STATE STUDENT UNION CORPORATION

BY: 
Bernard Pitts
Directors, KSSU
Date: 2-10-09, 2009


2-9-09

INTERCOLLEGIATE ATHLETIC COUNCIL OF KANSAS STATE UNIVERSITY, INC.

BY: 
Robert Krause
Director, Intercollegiate Athletics
Date: 2/24/09, 2009

COPY

SPONSORSHIP AGREEMENT

This Sponsorship Agreement is entered into on this 18th day of July 2000 by and among Pepsi-Cola Bottling Co. Of Marysville, Inc., a Kansas Corporation with its principal place of business at 602-604 Center Street, P.O. Box 535 Marysville, Kansas 66508 ("Bottler"), Pepsi-Cola Company of Purchase, New York ("Company"), and Kansas State University, with campuses located in Manhattan, Kansas and Salina, Kansas ("KSU"). Bottler and Company are sometimes referred to jointly herein as Sponsor.

Recitals and General Provisions

Sponsor wishes to be a major sponsor of KSU by making substantial payments of money to KSU that will support KSU in carrying out its educational mission. KSU wishes to receive and acknowledge such payments. The parties are entering into this Agreement in order to facilitate their respective desires with respect to such sponsorship. In consideration of these recitals and the mutual promises contained in this Agreement, the parties agree as follows.

1. **Term of Agreement.** The term of this Agreement shall commence on the date hereof (the "Effective Date") and shall end on June 30, 2010, unless sooner terminated as provided herein. This Agreement may be modified upon mutual written agreement of the parties. The provisions found in Contractual Provisions attachment (Form DA 146a, revised 12-98) are hereby incorporated into this contract and made a part thereof.

Sponsorship of KSU in Support of Educational Mission

2. **Sponsorship Payments.**
 - 2.1 Company agrees to pay, and Bottler hereby guarantees the payment of \$2,400,000, to KSU, in unrestricted support of its education mission. Of this amount, \$480,000 shall be paid on the Effective Date of this Agreement and \$192,000 shall be paid on January 10 of each of the years 2001 through 2010. The payments made pursuant to this section 2.1 shall be paid to Kansas State University Foundation, acting on behalf of KSU, which amounts shall thereafter be maintained and expended by Kansas State University Foundation in and from an account designated and controlled by KSU pursuant to arrangements made between Kansas State University Foundation and KSU.
 - 2.2 In addition to \$112,500 that Bottler is required to pay to Intercollegiate Athletic Council of Kansas State University, Inc. ("IAC") for signage pursuant to a contract between such parties that expires in 2006, Bottler shall pay, and Company hereby guarantees the payment, to IAC of an additional \$25,000 per

year hereunder, with the first payment in June of 2000 and the last payment in June of 2010. This signage contract is hereby amended by (and only by) extending the term thereof for an additional four years so that the contract will expire in the year 2010. During the remaining term of this signage contract, as it is hereby extended, the athletic sponsorship components will in all likelihood change due to additional opportunities and changes in market value. Those changes may include additions or improvements to venues and technological enhancements in signage. The parties agree to renegotiate the sponsorship signage and payment of sponsorship amounts if and when such changes occur.

- 2.3 The payments made pursuant to this section 2 are made in order to support KSU in carrying out its educational mission and not in exchange for any substantial return benefit. Neither KSU nor IAC shall provide any advertising, property, or other products or services to Sponsor in exchange for such payments.

3. Acknowledgment of Bottler's and Company's Roles as Sponsors.

- 3.1 KSU shall acknowledge Bottler's and Company's roles as major sponsors of KSU by displaying any or all (as KSU and Bottler shall from time to time mutually agree) of the following information on signs in the KSU Football Stadium and Bramlage Coliseum: Bottler's and Company's names including brand and trade names, addresses (including internet address), and telephone numbers; Bottler's and Company's logos and slogans; and descriptions (including visual depictions) of Bottler's and Company's products. Notwithstanding the preceding sentence, KSU's acknowledgement of Sponsor's role as a major sponsor of KSU shall not include qualitative or comparative descriptions of Sponsor or its products and shall not include price information, endorsements, or inducements to purchase Sponsor's products, but rather any such descriptions shall be value-neutral; provided, KSU's acknowledgement may include logos and slogans that are an established part of Bottler's or Company's identity.
- 3.2 The signs outside of and within the KSU Football Stadium and Bramlage Coliseum on which KSU shall acknowledge Bottler's and Company's roles as major sponsors of KSU shall be as follows:

- One front illuminated permanent panel on west side of Sony Jumbotron in KSU Football Stadium
- One front illuminated tri-vision panel on scoring system on southwest corner in KSU Football Stadium
- One rear illuminated panel on scoring system on southeast corner of KSU Football Stadium
- Two front illuminated tri-vision panels measuring 4'6" x 7'6" on the marquee on Kimball Avenue
- Three 30-second video messages on the Sony Jumbotron in KSU Football Stadium during each event

- Three 15-second messages on the black and white message display (KSU Football Stadium) during each event
 - Four fixed panels on basketball scoreboard
 - Three tri-vision panels on basketball scorer's table
4. **Exclusivity.** KSU shall not acknowledge as a sponsor of KSU (or any facility, program, or other divisible part thereof), on any signs outside of or within the KSU Football Stadium or Bramlage Coliseum, Coca-Cola Company or any other company that competes with Sponsor in the areas of beverages or snack foods (or both).
5. **Future Changes.** KSU is in the process of remodeling Bramlage Coliseum, which remodeling includes replacing all scoreboards with state of the art technology. This project includes enhancements to the arena bowl and concourse area. KSU will offer Sponsor, prior to the 2000-2001 basketball season, an opportunity to have an expanded presence in Bramlage Coliseum. Any expanded presence will involve and require increases in the amounts of the sponsorship fees provided for herein.

Further Provisions

6. **Requirements of Associations.** It shall not be a violation of this Agreement for the University to comply with bylaws, rules, or regulations of the National Collegiate Athletic Association or the Big Twelve Conference, even if such bylaws, rules or regulations should require that KSU remove some or all of the signs on which KSU's acknowledgement of Sponsor's sponsorship payments is temporarily required.
7. **Remedies for Loss of Rights.**
- 7.1. The State of Kansas, Director of Purchases will have the right to terminate this Agreement at any time, if:
- 7.1.1. Either Company or Bottler fails to make any payment due under this Agreement, and such default continues for a period of 30 days after KSU provides written notice to Company and Bottler of such default; or
 - 7.1.2. Sponsor breaches any material term or condition of this Agreement, and such breach continues uncured for a period of 45 days after KSU provided written notice to Sponsor of such breach.
- 7.2. Sponsor will have the right to terminate the Agreement upon 90 days written notice to KSU any time, if:

- 7.2.1 KSU breaches any material term or condition of this Agreement, and if such breach continues uncured for the 45-day period referenced in Section 7.1.2.

8. Disclosure of Agreement.

- 8.1. Contract documents in the possession of KSU are subject to the provisions of the Kansas Open Records Act, K.S.A. 45-201 et seq., as amended from time to time.
- 8.2. KSU takes the position that this Agreement is a public record under the above referenced statutes. Therefore, if KSU receives a written request for a copy of the Agreement, it will comply and disclose a copy of this Agreement unless Sponsor exercises any rights it may have under the above-referenced statutes to prevent such disclosure. Upon receiving a written request for disclosure of the Agreement, KSU will fax the request to Sponsor on the same day the request is received.

9. Representations, Warranties, and Covenants.

- 9.1. Each party has full power and authority to enter into this Agreement, and KSU has full power and authority to grant and convey to Sponsor the rights granted by it as set forth herein.
- 9.2. 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 KSU and constitutes the legal and binding obligation of KSU.

10. Miscellaneous

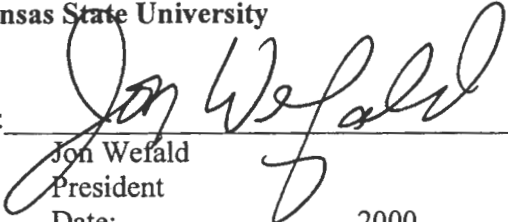
- 10.1. This Agreement or any part hereof will not be assigned or otherwise transferred by any party without the prior written consent of the other party; except that if all or substantially all of the assets of Bottler are transferred, Bottler may assign this Agreement to the person acquiring all or substantially all of its assets without the prior written consent of KSU as long as, following such assignment, such person continues Bottler's business and Company guarantees the payment by such person of the payments that are to be made by Bottler hereunder.
- 10.2. No party will obtain, by this Agreement, any right, title, or interest in the names, logos, trademarks, copyrights, or other intellectual property of the other parties, nor, except as provided herein, will this Agreement give any party the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks, copyrights or other intellectual property of the other parties.

10.3. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before and resorting to arbitration, litigation, or some other dispute resolution procedure.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed.

Kansas State University

By: _____


Jon Wefald
President

Date: _____, 2000

State of Kansas

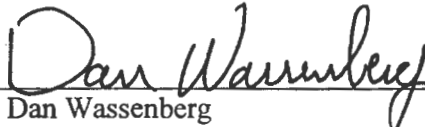
By: _____

John Houlihan
Director of Purchases

Date: _____, 2000

Pepsi-Cola Bottling Co. of Marysville, Inc.

By: _____


Dan Wassenberg
President

Date: 7-18, 2000

Pepsi-Cola Company of Purchase, New York

By: _____


Scott Loeffler
President

Date: 7/18, 2000

Intercollegiate Athletic Council of Kansas State University, Inc.

(solely for the purpose of approving and agreeing to the provisions of Sections 2.2 and 2.3 hereof)

By: 

Max Urick

Director, Intercollegiate Athletics

Date: July 19, 2000

COPY

LICENSING AGREEMENT

This Licensing Agreement is entered into on this 18th day of July 2000 by and among Pepsi-Cola Bottling Co. Of Marysville, Inc. a Kansas corporation with its principal place of business at 602-604 Center Street, P.O. Box 535, Marysville, Kansas 66508 ("Bottler"), Pepsi-Cola Company of Purchase, New York ("Company"), and Kansas State University, with campuses located in Manhattan, Kansas and Salina, Kansas ("KSU"). Bottler and Company are sometimes referred to jointly herein as Supplier.

Recitals and General Provisions

Bottler wishes to use and reproduce from time to time some or all of the University Marks in connection with the marketing of Company Beverages. KSU is willing to permit such use and reproduction in exchange for the payment of reasonable and fair licensing fees and subject to certain safeguards respecting such use and reproduction. In consideration of these recitals and the mutual promises contained in this Agreement, the parties agree as follows.

1. **Term of Agreement.** The term of this Agreement shall commence on the date hereof (the "Effective Date") and shall end on June 30, 2010, unless sooner terminated as provided herein (the "Term"). This Agreement may be modified upon mutual written agreement of the parties. The provisions found in Contractual Provisions attachment (Form DA 146a, revised 12-98) are hereby incorporated into this contract and made a part thereof.
2. **Definitions.** All capitalized terms used in this Agreement and not otherwise defined will have the meanings as set forth on Exhibit A.

Licensing Provisions

3. **Use and Reproduction of University Marks.**
 - 3.1 KSU grants to Company and to Bottler an exclusive, non-assignable sub-license to use and reproduce University Marks in connection with the marketing of Company Beverages, as approved by KSU, and subject to the limitations contained in this section 3 and to any other limitations contained elsewhere in this Agreement.
 - 3.2 This license shall not grant Supplier any rights to use or reproduce the University Marks on any merchandise, other than Company Beverage Packaging and advertising or promotional materials related only to the marketing of Company Beverages. Supplier shall have the right to use and reproduce University Marks, subject to the limitations and the approvals required in this section 3, in promotions with Supplier's customers (e.g., grocery stores, fast food chains, mass

merchandisers, and convenience stores), provided that such usage is limited to Company Beverage Packaging and advertising or promotional materials related only to the marketing of Company beverages. The above right to use and reproduce the University Marks in promotions with Supplier's customers shall not grant the right to Supplier or its customers to use or reproduce University Marks to promote products other than Company Beverages. In the event Supplier desires to use or reproduce University Marks on merchandise other than Company Beverage Packaging for advertising or promotional materials related only to the marketing of Company Beverages, Supplier either shall obtain the merchandise from a manufacturer licensed by KSU or shall obtain the merchandise from a manufacturer licensed by KSU or shall obtain a separate license or sub-license from KSU, for which Supplier shall pay KSU's customary royalty (which shall be in addition to the royalty provided for herein). The license granted herein shall terminate upon the termination of this Agreement, except that Company or Bottler shall have a period of no longer than 120 days to liquidate any inventory then on hand bearing University Marks as permitted under the sub-license granted in this section 3. Upon termination of this license, the Company and the Bottler shall cease using the University Marks in any capacity.

- 3.3 The use of University Marks by Supplier hereunder will be done in such a way as to preserve the integrity, character and dignity of KSU and advance the mission of KSU as an institution of higher education. KSU shall have the right, in its sole discretion, to require its pre-approval of the use or reproduction of any University Mark for the purposes permitted in this section 3, and for any other purpose of any nature.

3.3.1 In particular, KSU shall have the right, in its sole discretion, to pre-approve the concept of any promotional or marketing activity undertaken by Supplier and artwork or other items created by Supplier that make use of University Marks.

3.3.2 Also in particular, KSU and Bottler will cooperate in the development of a nine-year Wildcat collector can panel series as well as other promotional programs highlighting KSU that make use of University Marks.

4. **Payment of Royalties.** Company agrees to pay, and Bottler hereby guarantees the payment, to KSU of royalties in the amount of \$1,600,000. Of this amount, \$320,000 shall be paid on the Effective Date of this Agreement and \$128,000 shall be paid on January 10 of each of the years 2001 through 2010. The payments made pursuant to this section 4.1 shall be paid to Kansas State University Foundation, acting on behalf of KSU, which amounts shall thereafter be maintained and expended by Kansas State University Foundation in and from an account designated and controlled by KSU pursuant to arrangements made between Kansas State University Foundation and KSU.

5. Exclusivity.

- 5.1 Subject to the remaining provisions of this section 5, KSU shall not permit the use or reproduction of University Marks by Coca-Cola Company or any other company that competes with Supplier in the areas of beverages or snack foods (or both). Further, and also subject to the provisions of this section 5, KSU will not grant to any publisher or broadcaster the right to use University Marks to endorse Competitive Beverages. In the event that a publisher or broadcaster uses University Marks to endorse a Competitive Beverage, KSU will take reasonable steps to stop the appearance of an endorsement of a Competitive Beverage by KSU and to minimize the effects of such unauthorized use of University Marks.
- 5.2 Stokely-Van Camp, Inc. has obtained certain rights with regard to serving and promoting Gatorade in connection with KSU's intercollegiate athletic program and Teams (the "Gatorade Agreement"). KSU will provide Supplier with a true and complete copy of any extensions or amendments to the Agreement. It is agreed that compliance with Gatorade Agreement is not a violation of this Agreement, provided that the scope of rights granted under the Gatorade Agreement shall not be expanded (except as to duration) beyond those set forth in the April 21, 1999 Agreement.
- 5.3 It shall not be a violation of this Agreement for KSU to comply with bylaws, rules or regulations of the National Collegiate Athletic Association, even if such bylaws, rules or regulations may require that University Marks be used in connection with Competitive Beverages under certain circumstances. It shall not be a violation of this Agreement for KSU to permit University Marks to be used by the Big Twelve Conference in connection with Competitive Beverages, provided that such use is part of a design that uses logos or marks from all of the schools in the Big Twelve Conference.

Further Provisions

6. Remedies for Loss of Rights

- 6.1 The State of Kansas, Director of Purchases will have the rights to terminate this Agreement at any time, if:
- 6.1.1 Either Company or Bottler fails to make any payment due under this Agreement, and such default continues for a period of 30 days after KSU provides written notice to Company and Bottler of such default;
or

- 6.1.2 Supplier breaches any material term or condition of this Agreement, and such breach continues uncured for a period of 45 days after KSU provided written notice to Supplier of such breach.
- 6.2 Supplier will have the right to terminate this Agreement upon 90 days notice to KSU at any time, if;
 - 6.2.1 KSU breaches any material term or condition of this Agreement, and if such breach continues uncured for the 45-day period referenced in Section 6.1.2; or
 - 6.2.2 KSU's rights to license any University Marks pursuant to this Agreement expires or are revoked.

7. Disclosure of Agreement.

- 7.1 Contract documents in the possession of KSU are subject to the provisions of the Kansas Open Records Act, K.S.A. 45-201 et seq., as amended from time to time.
- 7.2 KSU takes the position that this Agreement is a public record under the above referenced statutes. Therefore, if KSU receives a written request for a copy of this Agreement it will comply and disclose a copy of this Agreement unless Supplier exercises any rights it may have under the above-referenced statutes to prevent such disclosure. Upon receiving a written request for disclosure of the Agreement, KSU will fax the request to Supplier on the same day the request is received.

8. Representations, Warranties, and Covenants.

- 8.1 Each party has full power and authority to enter this Agreement, and KSU has full Power and authority to grant and convey to Supplier the rights granted by it as set forth herein.
- 8.2 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 KSU, and constitutes the legal and binding obligation of KSU.

9. Miscellaneous.

- 9.1 This Agreement or any part hereof will not be assigned or otherwise transferred by any party without the prior written consent of the other party; except that if all or substantially all of the assets of Bottler are transferred, Bottler may assign this Agreement to the person acquiring all or substantially all of its assets without the prior written consent of KSU as long as, following such assignment, such person continues Bottler's business and Company guarantees the payment by such person of the payments that are to be made by Bottler hereunder.

- 9.2 If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, litigation, or some other dispute resolution procedure.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed.

Kansas State University

By: 

Jon Wefald
President

Date: _____, 2000

State of Kansas

By: 

John Houlihan
Director of Purchases

Date: 7.13, 2000

Pepsi-Cola Bottling Co. of Marysville, Inc.

By: 

Dan Wassenberg
President

Date: 7-18, 2000

Pepsi-Cola Company of Purchase, New York

By: 

Scott Loeffler
National Sales Manager

Date: 7/18, 2000

EXHIBIT A

GLOSSARY OF DEFINED TERMS

"Approved Cups" means disposable cups the design of which is approved by Company from time to time as its standard trademark cups and/or other disposable containers approved by Company from time to time, all of which will prominently bear the trademark(s) of Pepsi-Cola and/or other Company Beverages on one hundred percent (100%) of the clip surface.

"Beverage" or "Beverages" means all non-alcoholic beverages, including hot, cold, or frozen carbonated or non carbonated or naturally or artificially flavored drinks except coffees and teas freshly brewed, milk, flavored milk, beer, tap water, and juice squeezed fresh on the premises. For the sake of specificity, "Beverages" includes, but is not limited to, carbonated soft drinks, frozen or soft-frozen lemonade consumed through a straw or with a spoon, mixers, packaged waters, fruit and/or vegetable juices, fruit and/or vegetable flavored drinks, ready-to-drink chocolate-based drinks, ready-to-drink tea and coffee products, and all beverage bases from which these can be prepared (such as syrups, powders, crystals or concentrates).

"Campus" means all facilities now or hereafter operated by or in connection with KSU's Manhattan and Salina campuses during the Term. References to Campus include all buildings and grounds associated with KSU's Manhattan and Salina campuses including branded or unbranded food service outlets, vending locations, and all athletic facilities excluding Colbert Hills Golf course. Excluded from "Campus" are all agricultural experiment station branch stations and experimental fields.

"Company Beverages" means Beverages manufactured, distributed, and/or sold under trademarks or brand names owned or controlled by or licensed for use to Pepsi-Cola Company, and other beverages distributed by Bottler.

"Company Beverage Packing" means bodies, cans, cups and other containers which contain Company Beverages when sold, and cartons, cases, and other forms of packaging used to package said containers of Company Beverages.

"Competitive Beverages" means all Beverages other than Company Beverages.

"IAC" means Intercollegiate Athletic Council of Kansas State University, Inc.

"Team" or "Teams" means all intercollegiate athletic teams associated with KSU.

"University Marks" means KSU's name, each Team's name, colors and uniforms, and emblems, and all trade names, trademarks, service marks, designs, logos, mascots, characters, identifications, symbols and other proprietary designs that are in existence on the Effective Date or which will be created during the Term and which are owned, licensed or otherwise controlled by KSU.

COPY

CONCESSION AND EXCLUSIVITY AGREEMENT

This Concession and Exclusivity Agreement is entered into on this 18th day of July 2000 by and among Pepsi-Cola Bottling Co. Of Marysville, Inc., a Kansas corporation with its principal place of business at 602-604 Center Street, P.O. Box 535, Marysville, Kansas 66508 ("Bottler"), Pepsi-Cola Company of Purchase, New York ("Company"), Kansas State University, with campuses located in Manhattan, Kansas and Salina, Kansas ("KSU"), and K-State Student Union Corporation ("KSSU"). Bottler and Company are sometimes referred to jointly herein as Supplier.

Recitals and General Provisions

KSU provides certain food service on its Campus in order to facilitate the ability of its staff, faculty, and students to remain on Campus for classes, study, and other parts of Campus life and in order, thereby, to further its educational mission. KSU now desires to enhance this food service by providing for the delivery throughout the Campus of Beverages and snack food products through vending machines, again for the convenience of KSU's administrative staff, faculty, and students, to enable them to participate fully in Campus life, and thereby for KSU to carry on better its educational mission. Supplier has expertise in the delivery of Beverages and snack food products through vending machines and is willing to cooperate with KSU to deliver these items throughout the Campus through such machines and to share with KSU the concession sale proceeds that are generated from such sales of these items.

In addition, Supplier wishes to obtain the exclusive rights to sell and promote the sale of Beverages throughout the University's Campus, facilities, and food operations. KSU is willing to grant such exclusive right, but only upon certain terms and conditions as set forth herein.

The parties are entering into this Agreement in order to facilitate their respective desires with respect to providing Beverage and snack food concessions on Campus through vending machines and with respect to an exclusive grant of the rights to sell and promote the sale of Beverages throughout the University's Campus, facilities, and food operations. In consideration of these recitals and the mutual promises contained in this Agreement, the parties agree as follows.

1. **Term of Agreement.** The term of this Agreement shall be for ten and one half (10-12) years, commencing effective as of January 10, 2000 (the "Effective Date") and expiring on June 30, 2010, unless sooner terminated as provided herein (the "Term"). This Agreement may be modified upon mutual written agreement of Supplier and KSU. The provisions found in Contractual Provisions attachment (Form DA 146a, revised 12-98) are hereby incorporated in this contract and made a part thereof.
2. **Definitions.** All capitalized terms used in the Agreement and not otherwise defined will have the meanings as set forth on Exhibit A.

Campus Vending Concessions

3. Providing Beverage and Snack Vending Concessions.

- 3.1 At KSU's request, and to enable KSU more effectively to carry on its educational mission, Supplier shall provide for the sale, throughout KSU's Campus, of Company Beverages and Supplier's snack food products through vending machines. Subject to the necessity of accommodating the needs of students, faculty, staff, and their guests, KSU will cooperate and facilitate such sale.
- 3.2 To effectuate the provisions of section 3.1, Bottler shall provide vending service for Company Beverages throughout KSU's Campus. In this regard, Bottler and KSU shall mutually agree on the Beverages to be offered. Selections will be made with the intention of meeting the preferences of students, faculty and staff of KSU. Bottler shall restock Beverage vending items as often as necessary to maintain the freshness, quality and adequate supply of the offered items. Bottler will provide all Beverage vending equipment it determines, in its discretion, to be reasonably necessary to satisfy the demands of students, faculty and staff on Campus. KSU and Bottler will mutually agree on the specific placement of Beverage vending equipment. Bottler will provide service for its Beverage vending equipment as described in Exhibit C.
 - 3.2.1 KSU agrees that any Beverages served, sold, or dispensed on Campus from vending equipment in disposable vessels will be served in Approved Cups.
 - 3.2.2 Bottler agrees to support KSU's recycling efforts in mutually agreed ways, including but not limited to incorporating recycling messages in advertising materials to develop a consistent message and theme and providing established Campus designed recycling containers for use on Campus.
- 3.3 To effectuate the provisions of section 3.1, Bottler shall provide vending service for snacks and other prepackaged foods ("Snacks") throughout KSU's Campus. In this regard, Bottler and KSU shall mutually agree on the Snack items to be offered which will include, at minimum, items in the following categories: chips, cookies, crackers, nuts, granola, large cookies, chewing gum, mints, cold food, and coffee. Selections will be made with the intention of meeting the preferences of students, faculty, and staff of KSU. All Snack items offered by Bottler will be of high quality. Bottler shall promptly remove from its vending equipment all Snack items that are spoiled, have reached their expiration date, are of poor quality, or are unfit for consumption. Bottler shall restock Snack vending items as often as necessary to maintain the freshness, quality and adequate supply of the offered items. Bottler will provide all Snack vending equipment it determines, in its discretion, to be reasonably necessary to satisfy the demands of students, faculty and staff on

Campus. KSU and Bottler will mutually agree on the specific placement of Snack vending equipment. Bottler will provide service for specific placement of Snack vending equipment. Bottler will provide service for its Beverage vending equipment as described in Exhibit C. Bottler shall keep the Snack vending equipment in clean, safe, sanitary and working condition at all times and shall remove any vending related debris from the areas immediately adjacent to such equipment.

4. General Provision Respecting Vending Equipment.

- 4.1 During the Term, Company and Bottler will provide all vending equipment which the parties agree are reasonably required to dispense Company Beverages and Snacks throughout the Campus. Company and/or Bottler will retain ownership of all equipment placed on Campus. Supplier will develop a plan to ensure the optimal placement of equipment, subject to approval by KSU, which will not be unreasonably withheld. The parties will agree to the initial placement of equipment.
- 4.2 In developing the plans for placement of equipment, Company and Bottler shall have the opportunity to raise with KSU and/or appropriate university officials any questions they may have about security of the equipment, and to amend their placement plan if they are not satisfied with the security provided to the area in question. Company and Bottler understand that KSU will not provide any extra security or take any additional steps to protect the equipment beyond that security normally provided by KSU for the areas of Campus in which the equipment is located. KSU and its affiliates shall have no responsibility for loss or damage to the equipment except for any loss or damage caused by the negligent, willful or wanton, or intentional conduct of their employees.
- 4.3 Bottler and Company agree to provide vending equipment that is state-of-the-art at the time of installation, and to upgrade such equipment upon mutual agreement of the parties. Bottler and Company agree to maintain the equipment in good working condition and in safe condition, and agree to provide KSU with service to the equipment as set forth on Exhibit C.
- 4.4 Concerning the use of debit card technology, Bottler agrees to continue using all readers currently installed at locations served by a Cash to Chip Machine ("CCM"). In addition, Bottler agrees to purchase and install readers on at least one 20-ounce soda vendor at each CCM location served by July 1, 2000. These locations are: Ford, Haymaker, Moore, Durland, Bluemont, Cardwell, Goodnow, Marlatt, Chet Peters Recreation Center, Union ground floor, Union Recreation, Justin, and Hale Library. In subsequent years, readers are to be installed in concert with the addition of cash to chip machine locations as determined by the K-State ID Center. A goal of having the top 20 vending locations equipped with smart chip capability by the end of the fifth year of this contract is agreed by all parties. At the end of the fifth year, an evaluation of "smart chip" vending will be made to determine the placement of future smart chip readers.

- 4.5 KSU will work to develop additional smart chip uses. The K-State ID Center will develop a comprehensive marketing plan in order to make the smart chip more attractive to the university community.

5. Concession Revenues: Sharing These Revenues.

- 5.1 Beverage vending machines, coffee and food machine prices will be held at their current levels for the first three years. Adjustments thereafter (if any) in these levels will be contingent on raw material costs and regional/local industry standards/competitive pricing.
- 5.2 With respect to all sales of Beverages made through vending machines on Campus during the Term, KSU shall receive 50 percent of the gross sales price. Sales tax shall be deducted from KSU's share based on the commission rate. Remittance of sales tax is responsibility of Bottler. No other deductions by the supplier, such as for spoilage, will be permitted.
- 5.3 With respect to all sales of Snacks (other than cold food and coffee) sold through vending machines on Campus during the Term, KSU shall receive 14 percent of the gross sales price and Bottler shall receive 86 percent of the gross sales price. Sales tax shall be deducted from KSU's share based on the commission rate. Remittance of sales tax is responsibility of Bottler. No other deductions by the supplier, such as spoilage, will be permitted.
- 5.4 Bottler will collect all of the proceeds of vending machine sales and divide such proceeds as provided for in sections 5.2 and 5.3. Bottler shall provide reconciled concession sales reports to KSU monthly. These reports shall be made available on or before the 30th day of each month for sales generated during the preceding month. KSU will have the right to conduct an audit of the commission sales, using an auditor of their choice at their expense, upon reasonable notice at any time during the term of the agreement.

Exclusivity Agreement

6. Campus Beverage and Snack Sales Rights.

- 6.1 Subject to the exceptions in Section 9, KSU agrees that all Beverages sold, distributed, or offered for sampling (that is, distributed at no cost) at all locations on Campus where Beverages are sold, distributed or offered for sampling will be Company Beverages. Subject to the exceptions in Section 9, no Competitive Beverages will be sold, distributed, offered for sampling, advertised, or promoted on Campus.

- 6.1.1 Prices for Beverages sold by Supplier to KSU are listed in Exhibit B.

- 6.1.2 Effective with the installation of bag-in-the-box ("BIB") syrups at Housing and Dining Service, the special pricing for BIB syrup is firm for three years (see Exhibit B), after which the price will be adjusted annually in the summer for the increase in the cost of raw materials. Pricing for BIB syrups for all other departments is firm for one year and will be adjusted to the National Account selling price as determined by the Pepsi-Cola Company.
- 6.1.3 KSU agrees that all Beverages served, sold, or dispensed on Campus in disposable vessels will be served in Approved Cups, subject to the Gatorade Agreement identified in section 9.2. All cups will be provided at supplier's cost.
- 6.2 KSU hereby grants to Bottler the exclusive right to provide vending service for Snacks on Campus.
- 7. **Provisions Respecting Equipment Other Than Vending Equipment.**
 - 7.1 During the Term, Company and Bottler shall provide all soft drink dispensing equipment, which the parties agree are reasonably required to dispense Company Beverages on Campus. Company and/or Bottler will retain ownership of all equipment placed on Campus. Supplier will develop a plan to ensure the optimal placement of equipment, subject to approval by KSU, which will not be unreasonably withheld. The parties will agree to the initial placement of equipment.
 - 7.2 Bottler shall provide new fountain and visi-cooler equipment to KSU including KSU Dining Hall, KSSU operated food facilities, and Bramlage Coliseum, consistent with the current situation at each location.
- 8. **Marketing and Promotion.**
 - 8.1 KSU will have the right, in its sole discretion, to pre-approve the concept of any promotional or marketing activity undertaken hereunder, and artwork or other items created by Supplier for use in promotional or marketing activities or otherwise in accordance with the terms of this Agreement. In addition to this approval, any on-Campus promotional events shall require approval of the University Program Committee.
 - 8.2 KSU and Bottler will cooperate in the development of a nine-year Wildcat collector can panel series as well as other promotional programs highlighting KSU.
 - 8.3 KSU and Bottler will cooperate in the development of at least two custom programs/activities a year for the University and the KSU residence halls.

- 8.4 Subject to the necessity of accommodating the needs of students, faculty, staff, and their guests, KSU and KSSU will cooperate, within reason and the educational mission of KSU, in Supplier's efforts to maximize the sale and distribution of Company Beverages on Campus

9. **Permitted Exceptions.**

- 9.1 KSU Housing and Dining will have the right to purchase from other suppliers a 100 percent frozen juice, a canned fruit juice (46 oz. or larger) and powdered drink beverages from other suppliers as needed, except Cola-Cola. If a line extension results in Pepsi-Cola carrying a comparable product, the Pepsi-Cola product will be used as long as it meets present quality standards. This provision shall not be deemed to allow advertising or promotion rights with respect to such Competitive Beverages, except that trademarks for such Competitive Beverages may be displayed on menu boards and on vending equipment as needed to indicate availability.
- 9.2 Stokely-Van Camp, Inc. has obtained certain rights with regard to serving and promoting Gatorade in connection with the University's intercollegiate athletic program and Teams (the "Gatorade Agreement"). KSU will provide Supplier with a true and complete copy of the Gatorade Agreement, dated April 21, 1999, and will provide a copy of any extensions or amendments to the Agreement. It is agreed that compliance with the Gatorade Agreement is not a violation of this Agreement, provided that the scope of the rights granted under the Gatorade Agreement shall not be expanded (except as to duration) beyond those set forth in the April 21, 1999 agreement. Upon expiration of the Gatorade Agreement, Supplier will have the opportunity to competitively negotiate with the State of Kansas for the right to provide similar products and services as set forth in the Gatorade Agreement. However, such negotiations shall be conducted in accordance with applicable statutory procedures (KSA 75-37,102).
- 9.3 Supplier recognizes and agrees that from time to time registered student organizations may exercise their rights to use Campus facilities, and in doing so may display various marks, including those associated with Competitive Beverages, and that such display will not be deemed to be a violation of this Agreement; provided that KSU takes reasonable steps to prevent said organizations from selling or otherwise dispensing Competitive Beverages on Campus; provided that KSU takes reasonable steps to stop such organizations from creating the impression that KSU endorses or has a relationship with a Competitive Beverage; and provided that KSU takes reasonable steps to minimize the effects of the appearance of such an endorsement of a Competitive Beverage.
- 9.4 Supplier further recognizes and agrees that from time to time KSU may desire to bring an event, performance, or exhibition to Campus, and such event, performance or exhibition may be sponsored in whole or in part by a Competitive Beverage. In such cases, it will not be a violation of this Agreement for the event, performance or

exhibition to acknowledge the sponsorship of a Competitive Beverage, provided that the acknowledgement makes it clear that the Competitive Beverage is a sponsor of the event, performance or exhibition and not a sponsor of KSU. KSU will take reasonable steps to minimize any appearance that arises from the acknowledgment that there is any relationship between the Competitive Beverage and KSU.

- 9.5 Supplier recognizes and agrees that in the event that a NCAA or Big Twelve championship game is held in an athletic facility on Campus, to the extent required by NCAA rules or regulations or Big Twelve rules, such athletic facility may display temporary advertising, signage, or trademark visibility for Competitive Beverages.
- 9.6 Nothing contained herein will prevent on-Campus consumption by students, faculty, staff or their guests of Competitive Beverages purchased outside the Campus for individual use and not for resale.
- 9.7 Notwithstanding any provision of this Agreement to the contrary, it shall not be a violation of this Agreement for the University or its employees to engage in academic research involving a Competitive Beverage. If such research involves sales of Competitive Beverages on Campus, KSU will notify Supplier of the sales as soon as KSU becomes aware of such sales, provided that, in the judgment of KSU, said notification can be made without compromising or having a negative effect on such research.
- 9.8 It shall not be a violation of this Agreement for a Competitive Beverage to be served or dispensed as part of medically related patient care at student health centers on Campus.
- 9.9 Nothing in this Agreement shall be construed as preventing any publications or broadcast media that are distributed on Campus from selling ads for any Competitive Beverages. In the event that a publisher or broadcaster uses University Marks to endorse a Competitive Beverage, KSU will take reasonable steps to stop the appearance of an endorsement of a Competitive Beverage by KSU and to minimize the effects of such unauthorized use of University Marks.
- 9.10 Nothing in this Agreement shall be construed as requiring KSU to prohibit or restrict the right of any person from engaging in speech protected by the Constitution of the United States or the Constitution of the State of Kansas.
- 9.11 It shall not be a violation of this Agreement for KSU to comply with bylaws, rules, or regulations of the National Collegiate Athletic Association as they exist as of the date of signing of this Agreement, even if such bylaws, rules, or regulations may require that University Marks be used in connection with Competitive Beverages under certain circumstances. In the event NCAA bylaws, rules, or regulations change after the date of signing of this Agreement in a manner that would substantially diminish the value of the rights granted to the Supplier under this

Agreement, the parties shall, upon the request of the Supplier, enter into good faith negotiations to attempt to reach agreements upon either an equitable reduction in all payments to be paid hereunder other than guaranteed commissions or an extension of duration of the Agreement sufficient to recapture the lost opportunities resulting from said change.

10. Exclusivity Payments.

- 10.1 Company agrees to pay, and Bottler hereby guarantees the payment of \$1,000,000, to KSU, in consideration of the exclusivity rights granted in Section 6. Of this amount, \$200,000 shall be paid on the Effective Date of this Agreement and \$80,000 shall be paid on January 10 of each of the years 2001 through 2010. The payments made pursuant to this section 10.1 shall be paid to Kansas State University Foundation, acting on behalf of KSU, which amounts shall thereafter be maintained and expended by Kansas State University Foundation in and from an account designated and controlled by KSU pursuant to arrangements made between Kansas State University Foundation and KSU.
- 10.2 A growth fund for KSU will be established using the Full Time Equivalent ("FTE") student base in Fall Semester 2000 as the yearly base. Bottler shall pay, and Company hereby guarantees the payment, to KSU of \$10.00 per each incremental FTE student beginning in the Fall Semester 2001. This funding will be in addition to the yearly \$80,000 paid in January and shall be deposited in the same manner.
- 10.3 Also in consideration of the exclusivity rights described in section 6, Bottler shall pay, and Company hereby guarantees the payment, to KSU of "commissions" based on the commission rate described in Exhibit B. Bottler guarantees that the aggregate minimum commission it will pay on gross sales of bottle/can and Snacks during the ten and one-half year Agreement Term shall be \$3,517,500. The guaranteed commissions shall be paid as follows: Bottler shall pay earned year-to-date commissions starting effective as of March 15, 2000 and continue monthly payments on or near the fifteenth day of each month thereafter. At this Agreement's yearly renewal date, Bottler shall pay the difference between the total monthly commission payments and the yearly guarantee of \$335,000. The guarantee payments made pursuant to this section 10.3 shall be calculated as if the concession payments received by KSU pursuant to section 5.2 were commissions paid to KSU pursuant to this section 10.3, and shall be paid to K-State Student Union Corporation, acting on behalf of KSU, which amounts shall thereafter be maintained and expended by K-State Student Union Corporation in and from an account designated and controlled by KSU pursuant to arrangements made between K-State Student Union Corporation and KSU.

Notwithstanding any other provision of this Agreement, the parties expressly hereby acknowledge and agree that the arrangement established hereunder by which KSU makes purchase price payments to Bottler for products sold by Bottler to KSU (which priced, at their initial levels, are set forth on Exhibit B) and the

corresponding payment by Bottler to KSU of the "commissions" that are provided for in the preceding paragraph is for the convenience of Bottler in maintaining Bottler's books and records, and that with respect to KSU this arrangement constitutes the purchase of such products at a price equal to the amount paid by KSU to Bottler net of the commissions received by KSU from Bottler. The parties shall prepare their tax returns in accordance with the applicable requirements of law, taking this acknowledgment and agreement into account.

- 10.4 Bottler agrees to expend, and Company guarantees that Bottler shall expend, marketing funds of a minimum of \$50,000 per year for 10 years, including \$20,000 per year in free product. KSU will have the sole right to approve or disapprove uses of marketing funds.

Sales of Equipment

11. Sale.

- 11.1 Bottler has paid to date \$210,132.78 to KSSU for equipment and vehicles and ownership of such equipment and vehicles has been transferred to Bottler by KSSU. Bottler has paid to date \$12,874.15 to KSSU for the value of the bottles/cans and snacks in its warehouse and in its vending machines as of the end of December 1999 inventory.
- 11.2 The individual items of property sold pursuant to this section 11 and the price for each such item are described in Exhibit D.

Further Provisions

12. Remedies for Loss of Rights.

- 12.1 The State of Kansas, Director of Purchases will have the right to terminate this Agreement at any time, if:
- 12.1.1 Either Company or Bottler fails to make any payment due under this Agreement, and such default continues for a period of 30 days after KSU provides written notice to Company and Bottler of such default; or
- 12.1.2 Supplier breaches any material term or condition of this Agreement, and such breach continues uncured for a period of 45 days after KSU provided written notice to Supplier of such breach.
- 12.2 Supplier will have the right to terminate this Agreement upon 90 days written notice to KSU and KSSU at any time, if:

KSU or KSSU breaches any material term or condition of this Agreement, and if such breach continues uncured for the 45-day period referenced in Section 12.1.2.

13. Disclosure of Agreement.

13.1 Contract documents in the possession of KSU are subject to the provisions of the Kansas Open Records Act, K.S.A. 45-201 et seq., as amended from time to time.

13.2 KSU takes the position that this Agreement is a public record under the above referenced statutes. Therefore, if KSU receives a written request for a copy of this Agreement it will comply and disclose a copy of this Agreement unless Supplier exercises any rights it may have under the above-referenced statutes to prevent such disclosure. Upon receiving a written request for disclosure of the Agreement, KSU will fax the request to Supplier within twenty-four normal office hours of the day the request is received.

14. Representations, Warranties, and Covenants.

14.1 Each party has full power and authority to enter into this Agreement, and KSU has full power and authority to grant and convey to Supplier the rights granted by it as set forth herein.

14.2 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 KSU and constitutes the legal and binding obligation of KSU.

15. Insurance.

15.1 Bottler agrees to provide KSU with certificates of insurance showing that the following minimum limits are in effect prior to the execution of this Agreement:

Comprehensive General Liability Insurance with limits not less than six million dollars (\$6,000,000) each occurrence for bodily injury and property damage, a general aggregate of seven million dollars (\$7,000,000) and a products-completed operations aggregate of seven million dollars (\$7,000,000). Comprehensive General Liability will include the following coverage; premises operations, broad form property damage, completed operation, independent contractors and contractual, and products liability.

Comprehensive Automobile Liability Insurance in an amount not less than six million dollars (\$6,000,000) for bodily injury and property damage combined. This coverage will cover all of Bottler's owned, non-owned or hired vehicles.

Worker's Compensation Insurance in the amounts required by Kansas statute.

Employers Liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each accident; Five Hundred Thousand Dollars (\$500,000); bodily injury by disease, policy limit; One Hundred Thousand Dollars (\$100,000) each employee. Property Damage in an amount of not less than five million dollars (\$5,000,000) to cover all sums which Bottler will locally be liable to pay by reason of liability imposed for damages to or destruction of KSU's property in the care, custody and/or control of Bottler, including the loss of use thereof.

Employees Dishonest Bond in an amount of not less than five thousand dollars (\$5,000).

- 15.2 Bottlers certificate for liability insurance will name KSU, KSSU, IAC, and the state of Kansas as additional insured 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 the negligence or other fault of the Supplier or any of Supplier's agents, representatives or employees.

16. **Miscellaneous.**

16.1 The parties agree to meet at least annually to discuss the progress and operation of the Agreement. Bottler will provide commission sales reports no less frequently than monthly. Bottler will provide accountability reports and full service reports periodically but no less than annually and upon request with reasonable notice. The parties will review marketing initiatives, volume generating opportunities, performance and other contract administration issues as they arise. KSU will have the right to conduct an audit of either or both of concession sales and commission sales records, using an auditor of its choice at its expense, upon reasonable notice at any time during the term of the Agreement.

16.2 This Agreement or any part hereof will not be assigned or otherwise transferred by any party without prior written consent of the other party; except that if all or substantially all of the assets of Bottler are transferred, Bottler may assign this Agreement to the person acquiring all or substantially all of its assets without prior written consent of KSU as long as, following such assignment, such person continues Bottler's business and Company guarantees the payment by such person of the payments that are to be made by Bottler hereunder.

16.3 No party will obtain, by this Agreement, any right, title, or interest in the names, logos, trademarks, copyrights, or other intellectual property of the other parties, nor, except as provided herein, will this Agreement give any party the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks, copyrights or other intellectual property of the other parties.

16.4 If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try

in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, litigation, or some other dispute resolution procedure.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed.

Kansas State University

By: _____

Jon Wefald
President

Date: _____, 2000

State of Kansas

By: _____

John Houlihan
Director of Purchases

Date: _____, 2000

Pepsi-Cola Bottling Co. of Marysville, Inc.

By: _____

Dan Wassenberg
President

Date: 7-18, 2000

Pepsi-Cola Company of Purchase, New York

By: _____

Scott Loeffler
National Sales Manager

Date: 7/18, 2000

K-State Student Union Corporation

By: _____

Bernard Pitts
Director, KSSU

Date: 7/18, 2000

EXHIBIT A

GLOSSARY OF DEFINED TERMS

"Approved Cups" means disposable cups the design of which is approved by Company from time to time as its standard trademark cups and/or other disposable containers approved by Company from time to time, all of which will prominently bear the trademark(s) of Pepsi-Cola and/or other Company Beverages on one hundred percent (100%) of the clip surface.

"Beverage" or "Beverages" means all non-alcoholic beverages, including hot, cold, or frozen carbonated or non carbonated or naturally or artificially flavored drinks except coffees and teas freshly brewed, milk, flavored milk, beer, tap water, and juice squeezed fresh on the premises. For the sake of specificity, "Beverages" includes, but is not limited to, carbonated soft drinks, frozen or soft-frozen lemonade consumed through a straw or with a spoon, mixers, packaged waters, fruit and/or vegetable juices, fruit and/or vegetable flavored drinks, ready-to-drink chocolate-based drinks, ready-to-drink tea and coffee products, and all beverage bases from which these can be prepared (such as syrups, powders, crystals or concentrates).

"Campus" means all facilities now or hereafter operated by or in connection with KSU's Manhattan and Salina campuses during the Term. References to Campus include all buildings and grounds associated with KSU's Manhattan and Salina campuses including branded or unbranded food service outlets, vending locations, and all athletic facilities excluding Colbert Hills Golf course. Excluded from "Campus" are all agricultural experiment station branch stations and experimental fields.

"Company Beverages" means Beverages manufactured, distributed, and/or sold under trademarks or brand names owned or controlled by or licensed for use to Pepsi-Cola Company, and other beverages distributed by Bottler.

"Company Beverage Packing" means bodies, cans, cups and other containers which contain Company Beverages when sold, and cartons, cases, and other forms of packaging used to package said containers of Company Beverages.

"Competitive Beverages" means all Beverages other than Company Beverages.

"IAC" means Intercollegiate Athletic Council of Kansas State University, Inc.

"Team" or "Teams" means all intercollegiate athletic teams associated with KSU.

"University Marks" means KSU's name, each Team's name, colors and uniforms, and emblems, and all trade names, trademarks, service marks, designs, logos, mascots, characters, identifications, symbols and other proprietary designs that are in existence on the Effective Date or which will be created during the Term and which are owned, licensed or otherwise controlled by KSU.

EXHIBIT B

PRODUCT PRICING

The following prices are subject to adjustment as provided in the Agreement.

Carbonated Beverages

| PACKAGE | PRICE |
|-----------------------|--------------|
| 24/20 oz. NR Bottles | \$12.50/case |
| 15/1 Liter NR Bottles | \$11.00/case |
| 8/2 Liter NR Bottles | \$9.60/case |
| 24/12 oz. Cans | \$7.50/case |

BAG IN BOX SYRUPS

Dining Services:

| | |
|------------|---------------------------|
| 5 Gallon | \$6.70/box, \$1.34/Gal |
| 2.5 Gallon | \$4.02/box, \$1.34/Gal |

All Other KSU Locations:

| | |
|------------|----------------------------|
| 5 Gallon | \$35.45/box, \$7.09/Gal |
| 2.5 Gallon | \$17.72/box, \$7.09/Gal |

PREMIX

| | |
|-----------------|--------------------|
| 5 Gal. Canister | \$15.00/\$3.00/Gal |
|-----------------|--------------------|

Juices/Punches

| | |
|----------------------|--------------|
| Ocean Spray 12/16 oz | \$8.20/case |
| Fruitworks 24/20 oz | \$11.00/case |

Frozen Concentrate

| | |
|--------------------|-------------|
| Citrus Hill: | \$18.75/gal |
| 100% Juice Flavors | \$13.75/gal |
| 50% Juice Flavors | |

Other

Lipton Tea 12/16 oz

\$7.75/case

PACKAGE**PRICE****Isotonic Beverages (Excluding Intercollegiate Athletics)**

24/20 oz. NR Bottles

\$12.50/case

32 oz. NR Bottles

\$14.20/case

Bottled Water**Klarbrunn**

24/.5 Liter NR Bottles

\$9.20/case

12/1 Liter NR bottle

\$8.45/case

Aquafina

24/500 ML

\$14.00/case

12/1 Liter NR bottle

\$10.00/case

12/1.5 Liter NR bottle

\$9.20/case

Product Vending Commissions (All KSU Campuses including Salina)**Item****Percentage
Commission****Beverages:**

12 oz. Can

50%

20 NR bottle

50%

Snacks

All Snacks (not including cold food and coffee)

14%

EXHIBIT C

EQUIPMENT AND SERVICE

Bottler agrees to provide the following service to the Beverage and Snack Vending Equipment at no charge to KSU.

The Campus will be served by two dedicated full service Pepsi routes. The Dining Services accounts will be placed on a regular service cycle.

Five Star Vending will run one dedicated, and two part time Snacks routes daily to service the Manhattan Campus.

Unlimited repair calls.

No charge for parts or labor on Pepsi-owned equipment.

No charge for installation, including running lines (parts and service) to a central syrup room where possible.

Carbon dioxide will be provided at \$5.00 per 20Ib. tank and \$10.00 per 50Ib tank. Deposits will be waived. Supplier will contribute to a CO2 fund, payable in April of each year, based on Bramlage syrup sales of \$.25 per gallon.

Supplier will provide recycling bins and assist in the development in a comprehensive recycling program to incorporate both aluminum and plastic.

Cups will be provided at cost.

EXHIBIT D

VEHICLES, EQUIPMENT AND INVENTORY PURCHASED BY BOTTLER

Vehicles

| | | |
|----------------------|----|---------------|
| 1984 Chevy Cargo Van | \$ | 515 |
| 1988 GMC Cargo Van | | 2,025 |
| 1988 GMC Cargo Van | | 2,025 |
| 1988 GMC Cargo Van | | 2,025 |
| 1994 Ford Truck | | <u>13,640</u> |
| Subtotal | \$ | 20,230 |

Snack and Vending Equipment

| | |
|------|---|
| KSSU | \$194,000 for all KSU Vending Equipment |
|------|---|

| | |
|----------|--|
| Bramlage | \$10,000 for all Bramlage fountain units |
|----------|--|

Inventory

| | |
|---|--|
| Inventory in KSSU machines and KSSU warehouse | Cost of goods in vending machines and warehouse as of December 1999 ending inventory |
|---|--|



**COPY FOR DEPARTMENTAL
VERIFICATION AND FILES.**
NOTIFY CONTROLLER'S OFFICE, PURCHASING
SECTION, IMMEDIATELY OF ANY DISCREPANCIES

BILL GRAVES
Governor

DAN STANLEY
Secretary of Administration

JOHN T. HOULIHAN
Director of Purchases
900 S.W. Jackson, Room 102-N
Landon State Office Building
Topeka, KS 66612-1286
(785) 296-2376
FAX (785) 296-7240
<http://da.state.ks.us/>

DEPARTMENT OF ADMINISTRATION
Division of Purchases

CONTRACT PROPOSAL

Contract Number: 33725
Replaces Contract: New
Date Mailed: June 4, 1999
Closing Date: July 8, 1999, 2:00 P.M.
Procurement Officer: Jay P. Oyler
Telephone: 785-296-1171
E-Mail Address: jayo@dapurch.wpo.state.ks.us

Item: Beverage Pouring Rights/Vendor Services

Agency: Kansas State University
Location(s): Manhattan and Salina, KS

Period of Contract: See Attached

Guarantee: \$1,000,000.00 Performance Bond

Scope:

RECEIVED KSU

JUN 8 1999

PURCHASING

Expiration Date:
6/30/2010

READ THIS REQUEST CAREFULLY

Failure to abide by all of the conditions of this Request may result in the rejection of a bid. Inquiries about this Request should indicate the contract number and be directed to the procurement officer. Return in a sealed envelope or other container only the signature page and bid forms not later than the closing date indicated above. Retain the remaining documents for reference.

SIGNATURE SHEET

Item: Beverage Pouring Rights/Vendor Services

Agency: Kansas State University

We submit a proposal to furnish requirements during the contract period in accordance with the specifications and Schedule of Supplies. I hereby certify that I (we) do not have any substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest is one which a reasonable person would think would compromise the open competitive bid process.

Addenda: The undersigned acknowledges receipt of the following addenda:

#1(☒) #2(☐) #3(☐) None(☐)

Legal Name of Firm or Corporation Pepsi Cola Bottling Co. of Marysville, KS Inc.

Telephone (800) 499-7161 Local (785) 562-5334 Fax (785) 562-5164

E-Mail _____

Address 604 Center Street

City & State Marysville, Kansas Zip Code 66508

FEIN Number 48-0687753

Please Indicate Taxes Currently Registered for in Kansas:

Corporate Income Tax (☒) Sales Tax (☒) Withholding Tax (☒) Compensating Use Tax (☒) None (☐)

Signature Dan Wassenberg Date 7-7-1999

Typed Name of Signature Dan Wassenberg Title President

If awarded a contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.

Address _____

City & State _____ Zip Code _____

Telephone (800) _____ Local _____ Fax _____

E-Mail _____

This pricing is available to Political Subdivisions of the State of Kansas.

Yes _____ No ☒ (Refusal will not be a determining factor in award of this Contract)

Agencies may use State of Kansas Business Procurement Card for purchases from this contract.

Yes _____ No ☒ (Refusal will not be a determining factor in award of this Contract)

Kansas State University Pricing Sheet

The offeror must complete, sign, and return this pricing sheet as part of his/her proposal. Failure to provide pricing information in the manner required may result in rejection of the offeror's proposal.

A. Fountain Pricing - Post Mix Syrup

Item Description

Price/Gallon

Bag-in-the-box syrups

\$*6.70/1.34/firm, fixed price per 5 gallon container

(Same as Tanks)

\$*4.02/1.34/firm, fixed price per 2.5 gallon container

Brands:

Pepsi-Cola

Diet Pepsi

Mt Dew

Dr. Pepper

(see page 20 of

Partnership Proposal

for complete list)

*This price is for residence halls only. All other venues will be at National Account Price of \$7.09/gal., adjusted annually.

*Homeing - 3 year fixed
Everyone else - annual*

Pre Mix Syrups

Bag-in-the-box syrups:

\$15.00 /firm, fixed price per 5 gallon container

Brands:

Pepsi-Cola

Diet Pepsi

Mt Dew

Dr. Pepper

All Flavors

(see page 20 of

Partnership Proposal

for complete list)

Carbon dioxide

\$5.00/20 lb tank

10.00/50 lb tank

No deposits

Cups - No charge

Carbonated Beverages

| | |
|---------------------|--|
| 8 oz. NR Bottles | \$ -- /firm, fixed price per case |
| 10 oz. NR Bottles | \$ -- /firm, fixed price per case |
| 20 oz. NR Bottles | \$ 12.50 /firm, fixed price per case 24/case |
| 1 Liter. NR Bottles | \$ 11.00 /firm, fixed price per case 15/case |
| 2 Liter. NR Bottles | \$ 9.60 /firm, fixed price per case 8/case |
| 12 oz. Cans | \$ 7.50 /firm, fixed price per case 24/case |

Other:

| | |
|---------------------|---|
| Lipton Tea 12/16 oz | \$ 7.75 /firm, fixed price per case 12/case |
| | \$ /firm, fixed price per case |
| | \$ /firm, fixed price per case |

Juice/Punches**Brands:**

| | |
|---------------------|--|
| Ocean Spray 12/16oz | \$ 8.20 /firm, fixed price per case 12/case |
| Fruitworks 24/20 oz | \$ 11.00 /firm, fixed price per case 24/case |
| | \$ /firm, fixed price per case |
| | \$ /firm, fixed price per case |
| | \$ /firm, fixed price per case |
| | \$ /firm, fixed price per case |
| | \$ /firm, fixed price per case |
| | \$ /firm, fixed price per case |
| | \$ /firm, fixed price per case |

Frozen Concentrate**Brands:**

| | |
|--------------------|--|
| Citrus Hill: | \$ /firm, fixed price per case |
| 100% Juice Flavors | \$ 18.75 gal/firm, fixed price per case 3gal/BIB |
| 50% Juice Flavors | \$ 13.75 gal/firm, fixed price per case |
| | \$ /firm, fixed price per case |
| | \$ /firm, fixed price per case |
| | \$ /firm, fixed price per case |

Isotonic Beverages (Excluding Intercollegiate Athletics)

| | | |
|-------------------|----------|-------------------------------------|
| 8 oz. NR Bottles | \$ -- | /firm, fixed price per case |
| 20 oz. NR Bottles | \$ 12.50 | /firm, fixed price per case 24/case |
| 24 oz. NR Bottles | \$ -- | /firm, fixed price per case |
| 32 oz. NR Bottles | \$ 14.20 | /firm, fixed price per case |
| 64 oz. NR Bottles | \$ -- | /firm, fixed price per case |
| 5 gallon powder | \$ -- | /firm, fixed price |

All sport

Other:

| | | |
|-------|----------|-----------------------------|
| _____ | \$ _____ | /firm, fixed price per case |
| _____ | \$ _____ | /firm, fixed price per case |
| _____ | \$ _____ | /firm, fixed price per case |

Bottled Water

| | | |
|------------------------------------|----------|-------------------------------------|
| Brand <u>Aquafina</u> <u>20 oz</u> | | |
| 500 ML | \$ 14.00 | /firm, fixed price per case 24/case |
| 1 Liter NR bottle | \$ 10.00 | /firm, fixed price per case 12/case |
| 1.5 Liter NR Bottle | \$ _____ | /firm, fixed price per case |

| | | | | |
|------------------|---------|--------|-----------|-----------------------------|
| Other: | .5 ltr | \$9.20 | 24/case | |
| <u>Klarbrunn</u> | 1.0 ltr | \$8.45 | \$12/case | /firm, fixed price per case |
| | 1.5 ltr | \$9.20 | 12/case | |

Pricing For University Vending Services:

Product Vending Commissions - Beverages:

| Item | Vend Price | Percentage Commission To University |
|-----------------|------------|-------------------------------------|
| 12 oz can | \$.55 | 50% |
| 20 oz NR bottle | \$.85 | 50% |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Product Vending Commissions - Snacks:

| | | |
|----------|-------|-----|
| Candy | \$.60 | 12% |
| Chips | \$.50 | 12% |
| Pastry | \$.80 | 12% |
| Crackers | \$.40 | 12% |
| Cookies | \$.50 | 12% |
| Gum | \$.40 | 12% |

*coffee
soft drink supplies
cold foods*

*12%
12%
0%*

*Tell free \$
x/or driver
for refunds for
new products*