

## **AGREEMENT**

THIS AGREEMENT is made as of this 1st day of July 2024, by and between Miami University of Oxford, Ohio (the "**University**") and G&J Pepsi-Cola Bottlers, Inc., an Ohio corporation ("**Pepsi**").

WHEREAS, the parties have existing agreements for pouring rights, vending operations and retail sales, and the parties desire to continue this mutually beneficial business relationship; and

WHEREAS, the University has determined, based on the pricing and comprehensive program contained herein, that it is advantageous for Pepsi's products to continue to be preferred, and in some cases, exclusive, beverage products for the University.

NOW, THEREFORE, the parties agree as follows:

1. **Defined Terms.** As used in this Agreement, the following terms have the meanings specified or referred to in this Section 1:

(a) "**BSVI**" has the meaning set forth in Section 4(c) of this Agreement.

(b) "**Convenience Store(s)**" means Dividends located in the Farmer School of Business; Emporium located in the Armstrong Student Center; Greystone located in the Western Dining Commons; King Café located in the King Library; MacCracken Market; Pulse Café located in the Clinical Health Science and Wellness Facility; Scoreboard located in North Quad; Scoreboard Market located at Martin Dining Commons; Goggin Pro Shop; Recreation Sports Pro Shop; and the markets located at the Hamilton and Middletown campuses.

(c) "**Equipment**" has the meaning set forth in Section 5(a) of this Agreement.

(d) "**Exclusive Right(s)**" has the meaning set forth in Section 4(a) of this Agreement.

(e) "**Fountain Equipment**" has the meaning set forth in Section 5(a) of this Agreement.

(f) "**Pepsi Products**" means the following Products: (i) Pepsi-Cola® soft drink products; (ii) Lipton® tea products; (iii) Dole® and Tropicana® juice products; (iv) Gatorade® isotonic sports drink products; Aquafina® bottled water; and (v) Aquafina and other bottle waters and private label water bottled by Pepsi; and (vi) Starbucks ready to drink coffee.

(g) "**Premises**" means the University's campuses located in Oxford, Middletown, and Hamilton, and the learning center located in West Chester. If the University ceases offering Products at any of its campus locations during the Term, the term "Premises" shall be deemed to exclude such locations. If the University expands its operations during the Term, then, subject to the rights of BSVI, such new locations shall be deemed part of the "Premises" under this Agreement.

(h) "**Product(s)**" means all (i) bottled waters; and (ii) teas, ready to drink coffee beverages, juices, isotonic sports drinks, energy drinks, and carbonated and non-carbonated soft drinks that are dispensed from a fountain, vending machine, or sold or otherwise distributed in bottles or cans. The term "Products" shall not include milk, flavored milk, hot chocolate drinks, unflavored dairy products, freshly brewed coffee, freshly brewed tea, fresh squeezed juice, smoothies, alcoholic beverages, non-alcoholic beer or wine, or non-sweetened spring or filtered water dispensed from a standup water dispenser in five gallon or larger sized jugs or bottles or water drawn from the public water supply.

(i) **"School Year"** shall mean July 1 through June 30 of each year during the Term.

(j) **"Sideline Equipment"** has the meaning set forth in **Section 5(a)** of this Agreement.

(k) **"Term"** has the meaning set forth in **Section 2** of this Agreement.

(l) **"UCM"** means the University's Department of University Communications and Marketing (see <https://miamiuh.edu/ucm/>).

(m) **"University Representative"** means a University employee appointed by the Senior Vice President for Finance and Business Services to act as the primary point of contact for the University under this Agreement. The initial University Representative shall be Geno Svec, Senior Director of Dining Services.

(n) **"Vending Equipment"** has the meaning set forth in **Section 5(a)** of this Agreement.

2. **Term.** The term of this Agreement shall commence on July 1, 2024, and shall run until the later of (a) June 30, 2034; or (b) the date by which the University has purchased 875,000 total units (gallons/hardcases) of Pepsi Product (the **"Term"**).

3. **Authority; Validity of Agreement.** Each party represents and warrants, as a material inducement to the other to enter into this Agreement, that:

(a) the execution and delivery of this Agreement and consummation of the transactions contemplated hereby have been duly authorized by it in accordance with the requirements of applicable law and regulation and its internal governance by-laws and rules;

(b) this Agreement has been duly executed and delivered by it and (assuming due execution and delivery by the other party) is a valid, legal and binding obligation, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles; and

(c) it is not a party to, nor is it or its properties subject to or bound by any provision of any contract, mortgage, provision of its organizational documents law, or judgment or decree of any court, governmental body or arbitrator, which would prohibit or otherwise be violated by the execution or performance by it of this Agreement or the consummation of the transactions contemplated hereby.

4. **Rights; Exceptions.**

(a) Except as otherwise set forth in this **Section 4**, the University hereby grants to Pepsi during the Term the exclusive right to sell or otherwise distribute Products on the Premises (the **"Exclusive Right(s)"**), and except as otherwise provided in this **Section 4**, the University shall not permit any third party, including concessionaires, boosters or other guests to sell, distribute, or otherwise make available to students, staff, or guests any Products that may be deemed to be competitive with the Pepsi Products. The parties acknowledge that Pepsi may make adjustments and substitutions among the Pepsi Products, but that the Pepsi Products shall always include a range of beverages at least as broad as set forth in **Section 1** of this Agreement.

(b) **Convenience Stores/Retail Locations.** Pepsi shall not have the Exclusive Right to serve Pepsi Products at the Convenience Stores, but shall have the first choice on placement and the right to stock Pepsi Products on no less than ninety (90%) percent of the all-available beverage shelf space and beverage

cooler space in such Convenience Stores. The University may increase or decrease the number, and change the locations of, the Convenience Stores during the Term, so long as Pepsi is advised of such changes as they occur. The University shall offer 100% of any extra display space in the Convenience Stores for Pepsi Products delivered by Pepsi under this Agreement. Any Products that are competitive with Pepsi Products shall not be retailed at a lower price for the same packaged size.

(c) Rights of the Visually Impaired. The Exclusive Rights shall be subject in all cases to the rights of the Ohio Bureau for the Visually Impaired ("BSVI") and any visually impaired licensees pursuant to Ohio R.C. Chapter 3304. Pepsi hereby agrees that (i) there shall not be a violation of this Agreement in the event that the BSVI or visually impaired licensees exercise their statutory right regarding the sale and distribution of Products at the Premises during the Term; and (ii) it shall amend the terms and conditions of this Agreement to account for any agreement or arrangement entered into between the University, BSVI, and any BSVI licensee.

(d) Starbucks Exception. Pepsi hereby acknowledges that the University has Starbucks franchises on its campus that sell Products other than Pepsi Products, and that such Product sales by Starbucks shall not violate the Exclusive Rights or other terms and conditions contained in this Agreement.

(e) Catering Exception. The University shall use commercially reasonable efforts to encourage the sale of Pepsi Products sold through all University catering services, but it will not be a violation of the Exclusive Rights or this Agreement if the University sells Products competitive with the Pepsi Products if requested by a catering customer.

#### 5. Equipment and Service.

(a) Pepsi shall install and maintain on the Premises during the Term vending machines ("Vending Equipment"), post-mix fountain beverage dispensing units and coolers ("Fountain Equipment"), and sideline coolers and dispensers ("Sideline Equipment") for athletic events, in locations agreed upon by the parties. Vending Equipment, Fountain Equipment, and Sideline Equipment are sometimes hereinafter referred to collectively as the "Equipment". All Equipment shall be consistent with Pepsi's highest standards for such types of Equipment. All Vending Equipment shall be accessible to individuals with disabilities.

(b) All Equipment shall remain the sole property of Pepsi. Pepsi shall maintain and repair the Equipment, and shall keep the Equipment in good working order and condition at all times during the Term without cost to the University unless repairs or replacements are required as a result of the negligent acts of the University. University shall not, nor shall it permit, any third party to repair, replace, relocate, move, or remove any of the Equipment (other than Sideline Equipment); provided that Pepsi shall relocate or remove Equipment upon Miami's reasonable request for reasons of safety, security, or other necessity. University shall use its best efforts to keep the Equipment in clean and sanitary condition, free of graffiti and all announcements, advertising, or other materials, at all times. University agrees to promptly notify Pepsi personnel of the need for any repairs or servicing of the Equipment, and to fully cooperate with Pepsi personnel in effecting such necessary repairs and servicing, including without limitation providing timely access to the Premises for such purposes. All Equipment on the Premises shall be identified as dispensers of Pepsi Products.

(c) Pepsi shall provide service personnel as needed at events in Yager Stadium.

#### 6. Commissions and Additional Support.

(a) Support Payments to the University. Each School Year during the Term, Pepsi shall make all of the following payments to the University:

(i) Year 1 Signing Bonus. Pepsi shall make a one-time payment to the University of \$100,000.00 as a signing bonus. These funds are unrestricted and may be spent by the University for any lawful purpose.

(ii) University Support Fund. Pepsi shall pay the University \$410,000.00 annually during the Term, for a total of \$4,100,000.00. These funds are unrestricted and may be spent by the University for any lawful purpose.

(iii) Sustainability Fund. Pepsi shall pay the University \$5,000.00 annually during the Term, for a total of \$50,000.00. These funds are intended to be used by the University to support sustainability initiatives.

(iv) Esports Support Fund. Pepsi shall pay the University \$5,000.00 annually during the Term, for a total of \$50,000.00. These funds are intended to be used by the University to support its Esports programs.

(v) CO2 Fund. Pepsi shall pay the University \$20,000.00 annually during the Term, for a total of \$200,000.00. These funds are intended to be used by the University to support carbon dioxide purchased from Pepsi.

(vi) MU Influencer Support. Pepsi shall pay the University \$7,000.00 annually during the Term, for a total of \$70,000.00. These funds are to be used by the marketing teams for both Pepsi and the University to create mutually beneficial marketing content. All marketing content created hereunder shall be approved by both parties prior to being posted or otherwise displayed to the public.

(vii) ICA Sideline Equipment Fund. Pepsi shall pay the University \$20,000.00 annually during the Term, for a total of \$200,000.00, which will be used by University's Department of Intercollegiate Athletics to purchase Sideline Equipment directly from the NCAA Gatorade portal.

(b) Additional Funding to the University. In addition to all monetary support provided to the University in Section 6(a) above, each School Year during the Term, Pepsi shall provide the following additional support to the University:

(i) Intentionally deleted.

(ii) ICA Gatorade Fueling Station.

(A) Pepsi shall provide funding of up to \$20,000.00 in the first School Year of the Term to create a Gatorade fueling station for the University's student athletes. The fueling station will have Gatorade branding prominently displayed. Uses of these funds are primarily for the construction of the fueling station. If the actual construction costs for the fueling station are less than \$20,000, then Pepsi shall use such remaining amount to support the fueling station (e.g., provide products for consumption at the fueling station, improvements or maintenance to the fueling station, etc.).

(B) At the outset of the sixth School Year, Pepsi shall provide funding of up to \$20,000 for a refresh of the Gatorade fueling station. If the actual refresh costs for the fueling station are less than \$20,000, then Pepsi shall use such remaining amount to support the fueling station (e.g., provide products for consumption at the fueling station, improvements or maintenance to the fueling station, etc.).

(C) Pepsi shall be solely responsible for maintaining, repairing, and/or replacing all Equipment at the fueling station during the Term.

(D) All work related to the construction, improvement, or maintenance of the fueling station will be directed and performed by the University's Department of Physical Facilities in compliance with applicable portions of Ohio R.C. Chapters 153 and 4115.

(E) Pepsi will deliver Pepsi Product on an as-needed basis as requested by the University's Department of Intercollegiate Athletics and/or the University Representative.

(F) Upon the conclusion of the construction or refresh of the fueling station, Pepsi shall provide the University Representative with a report indicating the total cost for the construction or refresh (as the case may be).

(iii) ICA Product Support.

(A) Pepsi shall provide complementary Pepsi Product to support University's Department of Intercollegiate Athletics. The wholesale value of such Pepsi Product shall be \$20,000.00 annually during the Term, for a total of \$200,000.00.

(B) Pepsi will deliver such Pepsi Product on an as-needed basis as requested by the University's Department of Intercollegiate Athletics and/or the University Representative. For clarity, the product support described in this Subsection is in addition to all other product support described in Section 6(a) above.

(G) Pepsi shall provide the University with the monthly report described in Section 6(d)(ii) of this Agreement for the support provided hereunder.

(iv) University Product Support.

(A) Pepsi shall provide complementary Pepsi Product to the University during the Term. The wholesale value of such Pepsi Product shall be \$7,000.00 annually during the Term, for a total of \$70,000.00.

(B) Pepsi will deliver such Pepsi Product on an as-needed basis as requested by the University Representative. For clarity, the product support described in this Subsection is in addition to all other product support described in Section 6(a) above.

(C) Pepsi shall provide the University with the monthly report described in Section 6(d)(ii) of this Agreement for the support provided hereunder.

(v) Equipment/Service/Delivery Investment. Pepsi shall provide equipment and service repair as needed during the Term. It is estimated that the annual value during the first School Year shall be \$42,354. The parties acknowledge and agree that the value will vary from year-to-year and may be higher or lower than the estimated value from the first School Year.

(c) Marketing Support to University. In addition to all other support provided to the University in Section 6(a) and Section 6(b) above, each School Year during the Term, Pepsi shall provide the following additional marketing support to the University:

(i) Redhawk Water Labels. Pepsi shall provide funding of up to \$3,000.00 annually during the Term, for a total of \$30,000.00. These funds are intended to be used to support University-branded water products sold on the Premises. Pepsi shall not change the creative content or appearance of the water labels without UCM's prior written consent. Pepsi shall provide the University with the monthly report described in **Section 6(d)(ii)** of this Agreement for the support provided hereunder.

(ii) Redhawk Water Distribution. During move-in week of each School Year, Pepsi shall distribute Redhawk bottled water to students and their families, as well as University faculty and staff, at designated locations on the Premise determined by the University. The estimated annual value of such water is \$4,000.00, for a total of \$40,000.00 during the Term. For clarity, the product support described in this Subsection is in addition to all other support described in **Section 6(a)** above. Upon the conclusion of move-in week during each School Year, Pepsi shall provide the University Representative a report indicating the wholesale and retail value of the water distributed during such move-in week.

(iii) Vehicle Wrapping.

(A) During the Term, Pepsi shall cause to have at least two (2) semi-trailers in its fleet to be wrapped with University and Pepsi trademarks and other agreed upon brand indicia. Pepsi and the University shall work in a cooperative manner to mutually agree on the creative content and overall appearance of the wrappings prior to rolling out this marketing effort. The parties may add graphics to an additional Pepsi vehicle as mutually agreed during the Term.

(B) During the fifth School Year, the parties shall work on a creative brand refresh for the semi-trailer and vehicle wrappings, with such refresh to be rolled-out no later than the start of the sixth School Year.

(C) Pepsi shall cause the semi-trailer and vehicle wrappings to be maintained in good condition and shall replace the wrapping as necessary during the Term due to wear and tear as reasonably requested by the University during the Term. The wrapped semi-trailers and vehicles shall be used in Pepsi's normal delivery routes throughout Ohio and Kentucky.

(iv) Radio and Television Broadcast.

(A) Pepsi shall have the right to identify itself in its advertising and marketing related to the University's intercollegiate athletic programs as the Official Soft Drink of the Miami University Redhawks, and to be identified during the University's television and radio broadcasts of athletic events, including during play-by-play of Men's and Women's Basketball, Ice Hockey and Football games on radio and television, and during pregame radio and television of Men's Basketball and Football. Pepsi shall work with the University's multi-media rights agency (currently Van Wagner) to effectuate these advertising and marketing programs and efforts.

(B) All creative content for such advertising and marketing must be approved by the University Representative and UCM. The value of such marketing efforts shall be \$30,000 net annually (\$35,295 gross annually) for a total of \$300,000.00 net (\$352,950.00 gross).

(C) Pepsi shall provide the University with the monthly report described in **Section 6(d)(ii)** of this Agreement for the support provided hereunder.

(v) Promotional Events. During each School Year, Pepsi will work with the University to develop mutually beneficial marketing and promotional events, such as samplings, premium

giveaways, promotional packaging, contests, etc. Without limiting the forgoing, University shall provide the following to Pepsi during the Term:

(A) The University shall provide Pepsi with the opportunity to offer one (1) on-campus sampling activation with giveaways on a mutually agreeable date. All such programs must be approved by the University Representative and UCM. The value of such marketing efforts shall be \$2,500.00 annually for a total of \$25,000.00.

(B) The University shall provide Pepsi with the opportunity to offer two (2) on-campus giveaways on mutually agreeable dates. Activations may include, but are not limited to, enter to win programs and halftime promotions. All such programs must be approved by the University Representative and UCM. The value of such marketing efforts shall be \$20,000.00 annually for a total of \$200,000.00.

(C) Pepsi shall be permitted 20oz CSD sales at "Pepsi Zone" displays during mutually agreed upon key football games. The creative for the Pepsi Zone displays shall be agreed to in writing by the University.

(D) Pepsi shall provide the University with the monthly report described in **Section 6(d)(ii)** of this Agreement for the support provided hereunder.

(vi) **Social Media.**

(A) During each School Year, Pepsi will work with the University to develop mutually beneficial social media marketing and promotional efforts to be provided through each party's respective social media platforms.

(B) All such efforts must be approved by the University Representative and UCM. The value of such marketing efforts shall be \$2,500.00 annually for a total of \$25,000.00.

(A) Pepsi shall provide the University with the monthly report described in **Section 6(d)(ii)** of this Agreement for the support provided hereunder.

(d) **Payment to University; Monthly Reports to University.**

(i) **Payment.** All payments due and owing pursuant to **Sections 6(a)** above shall (i) be made on or before July 1 of each School Year; (ii) be made payable to Miami University; and (iii) be made via ACH (or any other payment method reasonably requested by the University during the Term). All issues pertaining to payments shall be directed to the University Representative. Pepsi reserves the right to set-off any undisputed amount owing to Pepsi by the University (the "**Undisputed Overdue Amount**") against any amount payable by Pepsi to the University under **Section 6(a)** of this Agreement. Pepsi shall not be able to exercise its set-off rights hereunder unless the Undisputed Overdue Amount is more than ninety (90) days past due, and only upon providing the University thirty (30) days' prior written notice.

(ii) **Reports.** For all other support provided to the University by Pepsi under **Section 6(b)** and **Section 6(c)** of this Agreement, Pepsi shall provide the University with a report at the end of each month of each School Year during the Term that includes (A) the total amount or value of support provided to the University in that month; (B) the year-to-date amount or value of support provided to the University; (C) the amount or value of support still available to the University for the remainder of such School Year; and (D) any other information reasonably requested by the University.

(e) Approval of Marketing and Promotional Materials. Pepsi and the University will each present to the other, in advance of production the contents, appearance, and presentation on any and all promotional or other similar materials proposed by either to be used in connection with any promotion utilizing the other party's trademarks. Pepsi will not produce, publish or in any manner use or distribute any such material without the written approval of the University's Brand and Licensing Manager; and the University agrees it will promptly examine and approve or disapprove all submissions, and promptly notify Pepsi of its decision. The University will not produce, publish or in any manner use or distribute any such material without the written approval of the Vice President of On-Premise or her designee, and Pepsi agrees it will promptly examine and approve or disapprove all submission and timely notify the University of its decision.

(f) Signage and Marketing. During the Term, Pepsi shall have the exclusive right to advertise the Products on the Premises. The University shall take all steps necessary to prevent any permanent or temporary advertising, signage, or trademark visibility for products competitive with the Pepsi Products from being displayed anywhere on the Premises, including on scoreboards. Pepsi may only display signage on its Equipment and as otherwise set forth in this Agreement without written authorization from the University. The University hereby grants Pepsi the right to display signage in the athletic facilities described in Section 9(a) of this Agreement. All signage and message center opportunities conveyed to Pepsi will be used for the purposes of corporate logo placement as recognition of sponsorship and sponsorship acknowledgement announcements. The University's Athletic Director and UCM's Brand and Licensing Manager must approve all signage artwork prior to signage production and installation.

(g) Use of Marks and Content.

(i) Pepsi shall during the Term be permitted to use the University's licensed trademarks for sponsorship identification purposes, provided that Pepsi obtains the prior written approval of the University's Brand and Licensing Manager. Pepsi and the University agree that nothing contained in this Agreement will give either party any right, title or interest in the trademarks held or used by the other party, and that any and all use of such trademarks, and the goodwill arising therefrom, will inure to the benefit of both parties respectively.

(ii) Unless expressly agreed to the contrary in writing, Pepsi will not disclose any documents, reports, writings, video images, photographs or papers of any nature, prepared by Pepsi (or its contractors) for the University in performing this Agreement, to any other person or entity without the written permission of the University, and the University will own all copyrights thereto.

7. Pricing. Pepsi shall sell Pepsi Products to the University at the prices set forth on the product and pricing lists attached hereto as **Appendices 1, 2, 3, & 4**. Except as otherwise described in **Appendix 3** for 5-gallon fountain pricing (the "**Fountain Pricing**"), Pepsi may increase the prices of Pepsi Product no more than four percent (4%) per year. If the Pepsi Product mix changes or if the price for Pepsi Products changes, then Pepsi shall provide the University and its dining services provider (currently Chartwells) with revised product and pricing lists; provided that the Foundation Pricing shall not change during the Term. Pricing shall be in effect for the entirety of each School Year. The University shall be responsible for setting retail pricing for all Pepsi Products, including Pepsi Products sold through Vending Machines.

8. Sales Growth Incentive. As used in this Section 8, the term "**Growth Product**" shall mean all purchased cases of 24-pack equivalized Pepsi bottle and can Product sold on the Premises versus the previous School Year. For every 24-pack equivalized case in excess of 101% versus the previous School Year, up to 104.9%, Pepsi shall pay \$2.00 per case. For every 24-pack equivalized case in excess of 105%,



Pepsi shall pay \$3.00 per case. Pepsi shall pay to the University the sales growth incentives set forth in this Section 8 no later than August 1st for the previous School Year.

9. Overview of University's Commitment related to ICA and Esports Facilities.

(a) The University will provide to Pepsi during the Term the following signage opportunities:

<b>Facility</b>	<b>Signage Opportunity</b>
Yager Stadium	Scoreboard, & Sideline Signage (Pepsi, Mountain Dew, and Aquafina Logo).
Millett Hall	One permanent sign on rotation & 2 Portal signs (1 Pepsi & 1 Mountain Dew Logo).
McKie Field	One logo panel sign.
Indoor Sports Center	Mutually agreed upon signage.
Goggin Ice Center	Logo on Ice, 1 Logo on Permanent Scoreboard Sign & 2 Logos on Dashboard.

(b) In addition, the University through its Department of Intercollegiate Athletics will provide Pepsi with the following:

- (i) 2 VIP Experiences - 1 football/ 1 basketball each season - promotional use only;
- (ii) Mutually agreed to signed basketballs/footballs from coaches (not for resale) for promotional programs;
- (iii) Sampling rights at games without fee;
- (iv) Hyperlinks to Pepsi & Dr Pepper on ICA's webpage (currently [www.miamiredhawks.com](http://www.miamiredhawks.com));
- (v) Pepsi logo on 25% of printed schedules and ticket backs;
- (vi) One full page, color advertisement in all athletic programs;
- (vii) 12 passes to general seating for football, 12 passes to general seating for basketball, and 6 hockey tickets, including 4 parking passes for all home games & Red & White Club passes;
- (viii) Invitation to post-season games (Football / Basketball/ Ice Hockey);
- (ix) 200 General Admission tickets for a mutually agreed upon football game and 200 General Admission tickets for a mutually agreed upon basketball game including a Pepsi Family Day;
- (x) Up to two (2) social media promotional opportunities during the football season and up to two (2) social media promotions opportunities during the basketball season on University owned or controlled handles; and

(xi) Recognition of ICA's webpage (currently [www.miamiredhawks.com](http://www.miamiredhawks.com)) and the Official Beverage Sponsor of Miami University Athletics.

(c) The University will provide to Pepsi during the Term signage opportunities at Esports locations, along with vendor/cooler placement for incremental sales of 20oz CSD / Energy drinks. All signage will be on the back wall behind live Esports broadcasts. The rights contained herein are exclusive, and Pepsi will be the only sponsor for Products in the Esports arena.

10. **Independent Contractor.** Pepsi will not be an employee of the University, but an independent contractor. Pepsi will indemnify and hold harmless the State of Ohio, the University, and the employees and agents of each with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to employment of the persons providing services to the University with respect to this Agreement. Nothing in this Agreement will be construed as authority for Pepsi to make commitments which will bind the University or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.

11. **Insurance.** Pepsi shall carry and maintain during the Term, at Pepsi's expense, all necessary insurance which shall include, as a minimum, the following:

(a) Worker's Compensation insurance to the full extent as required by applicable law and Employer's Liability insurance with limits of not less than \$1,000,000, or self-insurance to the same extent;

(b) Commercial General Liability coverage for bodily injury and property damage, including products and completed operations and contractual liability coverage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(c) Commercial Automobile Liability coverage, including non-owned and hired, in an amount not less than \$1,000,000,

(d) With respect to all liability insurance, if coverage is written on a claims-made basis, it shall be maintained for a period of not less than two (2) years after contract completion. Such insurance shall have a retroactive date not later than the date on which Pepsi commenced the performance of services hereunder. ***Pepsi shall name the State of Ohio and Miami University as additional insureds on general and automobile coverages.*** All insurance required pursuant to this section shall be primary coverage to any insurance or self-insurance carried by the University and shall provide a waiver of subrogation in favor of the University. All companies issuing insurance policies must be authorized to do business in Ohio and have a rating of at least A VII, as noted in the most recent edition of the AM. Best's Insurance Guide. No later than July 1, 2024, Pepsi shall provide the University with certificates of insurance evidencing the required coverage. Pepsi, on its own initiative, shall also provide certificates of insurance for the renewal of coverage. The certificates of insurance shall contain a provision stating that the policy or policies have been endorsed so that they will not be cancelled without thirty (30) days prior written notice to the University. All certificates shall be sent to the University's office of risk management via email at [vpfinancebusiness@miamioh.edu](mailto:vpfinancebusiness@miamioh.edu) or via ordinary mail to 501 East High Street, 218 Roudebush Hall, Oxford, OH 45056.

12. **Confidentiality.** University acknowledges that Pepsi regards the commission and other support information relating to Pepsi Products is sensitive business information which, if disclosed to competitors of Pepsi, would provide them with unfair competitive advantage. Accordingly, University shall use all reasonable efforts to keep confidential the terms and conditions of this Agreement relating thereto, except as may be required by law or legal process, including all provisions of the Ohio Public Records law.

13. Default and Early Termination.

(a) Each party shall have the right to terminate this Agreement prior to expiration of the Term upon a breach by the other party of any term or condition of this Agreement of such nature and magnitude as to frustrate the essential purposes and benefits of this Agreement for the complaining party. The complaining party shall give written notice by certified or registered mail of the claimed breach to the breaching party, who shall cure the breach within 60 days of such notice, or the complaining party shall have the right to give notice of termination of the Agreement.

(b) In the event that BSVI or any visually impaired licensee exercises their rights under Ohio R.C. Chapter 3304, and such exercise of their rights materially and substantially affects either party's rights or obligations under this Agreement, then the parties shall use commercially reasonable efforts to update this Agreement on terms mutually agreeable to each party. To the extent permitted under applicable law, the University will endeavor to have BSVI and/or visually impaired licensees purchase Products from Pepsi. If the parties are unable to come to a mutually agreeable resolution in a timely fashion, then either party may terminate this Agreement by providing the other party one hundred twenty (120) days' prior written notice.

(c) Upon termination or expiration of the Term of this Agreement, University shall permit Pepsi reasonable access to the Premises for the purposes of removing any Equipment; Pepsi shall have ninety (90) days after termination or expiration to effectuate such removal. Until the time that all Equipment is removed, University's obligations to safeguard and keep the Equipment clean shall continue. In completing removal, Pepsi shall use its best efforts to leave each location in the condition in which it existed prior to installation except for reasonable wear and tear and except for any damage beyond Pepsi's control. Upon effecting removal of all Equipment, Pepsi shall thereupon issue final payment to University for amounts, if any, still owing to University as commissions, as provided in this Agreement.

(d) The parties acknowledge that, without the assurance of Exclusive Rights for the full duration of the Term and the expectation of sales to the level set forth in **Section 2** above, Pepsi would be unwilling to provide the commissions and other benefits set forth herein. In recognition of this fact, the parties agree that, if the University should terminate this Agreement during its Term for any reason other as set forth in **Section 13(a)** or **Section 13(b)** above, in addition to Pepsi ceasing all future payments of any kind to the University, the University shall pay to Pepsi as liquidated damages the sum of \$38,083.33 for each month or portion of month remaining during the then-current School Year.

14. Force Majeure. If a Force Majeure Event (defined below) prohibits or significantly impacts Pepsi's performance under this Agreement, and if Pepsi is not in default under this Agreement prior to the Force Majeure Event, then the University shall, in its sole discretion, either (a) reduce the sponsorship amounts described in **Section 6(a)** of this Agreement (the "Sponsorship Payments") by the total number of days out of three hundred and sixty-five (365) that the Pepsi Product sales were significantly impacted during the Force Majeure Event; or (b) extend the length of this Agreement by the number of days that Pepsi Product sales were significantly impacted by the Force Majeure Event. Because Sponsorship Payments are paid in advance to the University, any reduction of Sponsorship Payments under this **Section 14** shall be in the form of a credit to the amount due by Pepsi to the University for future Sponsorship Payments during the Term. The University shall also not be liable to Pepsi for any losses resulting from the failure to perform its part of this Agreement when such failure is due to a Force Majeure Event. Both parties shall make all reasonable efforts to remove or eliminate the Force Majeure Event, and the parties shall discuss in good faith what, if any, modification of the terms of this Agreement may be required in order to continue to perform their obligations under this Agreement. In such case, modification of the terms of the Agreement shall not be unreasonably withheld by either party. Upon cessation of the Force Majeure Event, the parties shall diligently pursue performance of its obligations under this Agreement. As used in this Section "Force

Majeure Event” means any event beyond the University’s or Pepsi’s reasonable control including without limitation, fire, flood, riot, earthquake, strike, or other labor disturbance (whether by the University’s employees or Pepsi’s employees), civil or military commotion, acts of God, war, terrorism, or any law, ordinance, rule or regulation, epidemics, pandemics (including diseases and illness), governmental action, declaration, or order (including, but not limited to any declaration or order by the president of the United States of America, the Governor of Ohio, or by any public health department or any of the foregoing).

15. General Provisions.

(a) This Agreement shall be binding upon and inure the benefit of the parties and their respective successors and assigns. This Agreement shall not be assigned by either party without the prior written consent of the other, except that Pepsi may assign its rights and obligations under this Agreement to any successor to substantially all of its properties and business.

(b) All notices provided for in this Agreement shall be in writing and effective upon receipt, if personally delivered to the person and address specified below, or three (3) days after placing in the U.S. Mail, postage prepaid, addressed:

If to University, to: David K. Creamer  
Vice President, Finance and Business Services  
Miami University  
501 East High Street  
218 Roudebush Hall  
Oxford, Ohio 45701

with copy to: Miami University  
Attn: Office of General Counsel  
501 East High Street  
215 Roudebush Hall  
Oxford, OH 45056  
[generalcounsel@miamioh.edu](mailto:generalcounsel@miamioh.edu)

If to Pepsi, to: Bill Stemm  
Vice President of On-Premise  
G&J Pepsi Cola  
1241 Gibbard Avenue  
Columbus, OH 43219

(c) Or such other representatives where notice of such additional or changed representatives has been delivered as set forth herein. The University Representative will serve as the University’s contract administrator under this Agreement, and will be Pepsi’s point of contact at the University for day-to-day operations under this Agreement. Pepsi will channel all communications through the University Representative. The University Representative will only have the ability to bind the University pursuant to rights granted to such individual in the Signature Authorities chart (currently available at <https://miamioh.edu/about/leadership-administration/general-counsel/contracts.html>).

(d) This Agreement sets forth the entire understanding and agreement between the parties respecting its subject matter and supersedes all prior agreements, oral or written. This Agreement may be amended or modified only if such amendment or modification is reduced to writing and executed by the University’s Vice president of Finance and Business Services and by Pepsi’s On-Premise Sales Manager. If Pepsi deviates from the terms of this Agreement without a written amendment, it does so at its own risk.

No waiver or failure to enforce any rights under this Agreement by either party shall be deemed a continuing waiver or a waiver of any other rights under this Agreement, and any waiver must be in writing to be effective.

(e) This Agreement shall be governed by and construed in accordance with the laws of State of Ohio, including the Ohio Public Records Law, Section ORC 149.43, and, without limitation, the following laws and rules:

(i) Nondiscrimination. Pursuant to ORC Section 125.111, Pepsi agrees that Pepsi, any subcontractor, and any person acting on behalf of Pepsi or any subcontractor, will not discriminate, by reason of race, creed, color, religion, sex, age, handicap, national origin, or ancestry against any citizen of the State of Ohio in the employment of any person qualified and available to perform the work under this Agreement. Pepsi further agrees that they, any subcontractor, and any person acting on behalf of Pepsi or 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, handicap, national origin, or ancestry. Pepsi and any subcontractor further agree to abide by and comply with all other provisions of ORC Section 125.111.

(ii) Conflict of Interest. All parties to this Agreement understand and agree to act in accordance with applicable Ohio Conflict of Interest and Ohio Ethics Laws including ORC Sections 102.02, 102.03, 102.04, 102.05, 2921.01 and 2921.42.

(iii) Worker's Compensation. Pepsi will comply with all federal and state laws and regulations pertaining to Worker's Compensation Requirements for insured or self-insured programs.

(iv) Drug-Free Workplace. Pepsi agrees to comply with all applicable federal, state, and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

(v) NCAA Compliance. Pepsi agrees to strictly adhere to and comply with, and to cause all of its clients, advertisers, licensees, parent, affiliates, subsidiaries, advertising/promotional agencies, staff and any sub licensees or other persons with which it enters into any agreement as set forth hereunder, to strictly adhere to and comply with NCAA Rules, which may be amended from time to time by the NCAA.

(f) Funding for any Agreement between the University and a contractor is dependent at all times upon the appropriation of funds by the Ohio General Assembly and/or any other instrument of the State of Ohio authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then the Agreement may be terminated effective the last day for which appropriated funding is available.

(g) The University reserves the right to audit or cause to be audited Pepsi's books and accounts with the University at any time during the term of this Agreement and for ten (10) years thereafter.

*[Signature Page Follows]*

**AGREEMENT**

*\*Signature Page\**

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives as of the date first written above.

**MIAMI UNIVERSITY:**

By: David K Creamer  
David Creamer, Senior Vice President for  
Finance and Business Services

Date: 5-10-24

**G&J PEPSI-COLA BOTTLERS, INC.:**

By: Bill Stemm  
Bill Stemm, Vice President of G&J  
Pepsi Cola

Date: 5/10/24

## APPENDIX 1 – PEPSI FOUNTAIN PRICING

CARBONATED SOFT DRINKS					
CODE	1 GALLON BIB	PRICE	CODE	1 GALLON BIB	PRICE
3201	Pepsi	\$4.40 gal. / \$22.00 BIB	3224	Tonic/Quinine	\$4.40 gal. / \$22.00 BIB
3202	Dt. Pepsi	\$4.40 gal. / \$22.00 BIB	3228	Wild Cherry Pepsi	\$4.40 gal. / \$22.00 BIB
3204	CF Dt. Pepsi	\$4.40 gal. / \$22.00 BIB	3230	Dr. Pepper	\$4.40 gal. / \$22.00 BIB
3205	Mt. Dew	\$4.40 gal. / \$22.00 BIB	3231	Dt. Dr. Pepper	\$4.40 gal. / \$22.00 BIB
3206	Dt. Mt. Dew	\$4.40 gal. / \$22.00 BIB	3236	Orange Crush	\$4.40 gal. / \$22.00 BIB
3211	Mug Root Beer	\$4.40 gal. / \$22.00 BIB	3265	Starry	\$4.40 gal. / \$22.00 BIB
1 GALLON BIB					
			3414	Mt Dew Code Red	\$4.40 gal. / \$13.20 BIB
			3421	Pepsi Zero	\$4.40 gal. / \$13.20 BIB
NON-CARBONATED SOFT DRINKS					
CODE	Brisk Lipton Iced Teas 5 Gallon	PRICE	CODE	Tropicana 5 Gallon	PRICE
3280	Unsweetened Plain Tea	\$4.40 gal. / \$22.00 BIB	3260	Trop. Yel Lemonade	\$4.40 gal. / \$22.00 BIB
3298	Raspberry Tea	\$4.40 gal. / \$22.00 BIB	3261	Trop. Pink Lemonade	\$4.40 gal. / \$22.00 BIB
			3262	Trop. Fruit Punch	\$4.40 gal. / \$22.00 BIB
CODE	Brisk Lipton Iced Teas 3 Gallon		CODE	Gatorade 3 Gallon	
3489	Lipton Sweet/no lemon	\$20.91 gal. / \$62.74 BIB	3440	Fruit Punch	\$17.57 gal. / \$52.71 BIB
			3441	Lemon Lime	\$17.57 gal. / \$52.71 BIB
			3443	Orange	\$17.57 gal. / \$52.71 BIB
CODE	Citrus Springs 3 Gallon	PRICE	CODE	1 GALLON BIB	PRICE
3518	Orange Juice 100%	\$23.00 gal. / \$69.00 BIB	3465	SoBe Lifewater Yumberry Pomegranate	\$16.82 gal. / \$50.47 BIB
3516	Cranberry	\$23.00 gal. / \$69.00 BIB			
3515	100% Apple Juice	\$23.00 gal. / \$69.00 BIB			
3514	Kiwi Strawberry	\$23.00 gal. / \$69.00 BIB			
3482	Ginger Ale	\$23.00 gal. / \$69.00 BIB			
CODE	Flavor Shots 1 Gallon		CODE	Luzianne Teas 3 Gallon	
1847	Flavor Shot Vanilla	\$21.00 gal. / \$21.00 BIB	3218	Luzianne Tea Sweet	\$20.91 gal. / \$62.74 BIB
1848	Flavor Shot Cherry	\$21.00 gal. / \$21.00 BIB	3417	Luzianne Tea UnSweet	\$20.10 gal. / \$60.30 BIB
1849	Flavor Shot Strawberry	\$21.00 gal. / \$21.00 BIB			
1850	Flavor Shot Lemon	\$21.00 gal. / \$21.00 BIB			
			CODE	CO2	\$37.15 w/ \$150.00 deposit
			8300	CO2	with purchase of Pepsi
					Coke Fountain Products

**APPENDIX 2 – CUPS AND LIDS**

**Cups & Lids Pricing**  
**Year 1**

<b>Double Poly</b>	<b>Quantity</b>	<b>Price</b>	<b>Unit Price</b>	<b>Product Code</b>
<b>16oz Cups</b>	<b>1000</b>	<b>\$74.09</b>	<b>\$0.07</b>	<b>9616</b>
<b>24oz Cups</b>	<b>1000</b>	<b>\$80.00</b>	<b>\$0.08</b>	<b>9624</b>
<b>32oz Cups</b>	<b>480</b>	<b>\$59.75</b>	<b>\$0.12</b>	<b>9632</b>
<b>32oz Lids</b>	<b>960</b>	<b>\$40.64</b>	<b>\$0.04</b>	<b>9732</b>
<b>22oz Eco Cups</b>	<b>1000</b>	<b>\$74.09</b>	<b>\$0.07</b>	<b>9718</b>
<b>16/22/24oz Eco Lids</b>	<b>2000</b>	<b>\$47.81</b>	<b>\$0.02</b>	<b>9719</b>



**APPENDIX 3 – PEPSI FOUNTAIN PRICE INCREASES**

**5-Gallon Fountain Pricing**

- **Year 1** - \$1.53 per gallon increase
  - \$4.40 Gal/\$22.00 Box
- **Year 2** - \$1.10 per gallon increase
  - \$5.50 Gal/\$27.50 Box
- **Year 3** - \$.75 per gallon increase
  - \$6.25 Gal/\$31.25 Box
- **Year 4** - \$.75 per gallon increase
  - \$7.00 Gal/\$35.00
- **Year 5** - \$.75 per gallon increase
  - \$7.75 Gal/\$38.75 Box
- **Years 6 thru 10**
  - 4% increase each year

## APPENDIX 4 – PEPSI BOTTLE & CAN PRICING

CSD's				
BRAND	PACKAGE		CASE	UNIT
CSD'S	7.5oz Cans	(24) Cans	\$9.42	\$0.39
CSD's	12oz Cans	(24) Cans	\$9.42	\$0.39
CSD's	2-Lb NR	(8) Bottles	\$14.42	\$1.80
CSD's	20oz NR	(24) Bottles	\$22.14	\$0.92
CSD's	1-Ltr NR	(15) Bottles	\$20.40	\$1.36
Pepsi Next	13.6oz Cans	(12) Cans	\$14.18	\$1.18
Schweppes				
Schweppes	1-Ltr NR	(15) bottles	\$20.09	\$1.34
Schweppes	10oz Glass	(24) bottles	\$15.05	\$0.63
Energy				
Double Shot	6.5oz Can	(12) Cans	\$22.91	\$1.91
Double Shot Energy	15oz Can	(12) Cans	\$26.34	\$2.20
Triple Shot Energy	15oz Can	(12) Cans	\$26.34	\$2.20
Mt Dew ENERGY	16oz Can	(12) Cans	\$14.88	\$1.24
Mt Dew Kick Start	16oz Can	(12) Cans	\$14.88	\$1.22
Rockstar	16oz Can	(12) Cans	\$21.33	\$1.78
Celsius 2-12pk	12oz	(12) Cans	\$46.38	\$3.87
Celsius	12oz Can	(12) Cans	\$23.18	\$1.93
Gatorade Fast Twitch	12oz NR	(12) PET	\$22.16	\$1.85
Juice				
Ocean Spray/Dole	15.2oz NR	(12) Bottles	\$14.11	\$1.18
Dole Lemonade	20oz NR	(24) Bottles	\$22.14	\$0.92
Chilled Juice TROPICANA				
Tropicana Premium Juice	12oz NR	(12pk) Bottles	\$17.04	\$1.42
Premium Juice	50oz NR	(6pk) Bottles	\$26.02	\$4.34
NAKED JUICE				
Naked Juice Flavors	15.2oz NR	(6pk) Bottles	\$20.81	\$2.60
KEVITA				
Kevita Flavors	15.2oz NR	(6pk) Glass Bottles	\$18.60	\$2.60

NON-CARB				
BRAND	PACKAGE		CASE	UNIT
Water				
Aquafina	20oz NR	(24) Bottles	\$10.02	\$0.42
Aquafina	1-Ltr NR	(15) Bottles	\$10.32	\$1.09
Propel Fitness Water	1-Ltr NR	(12) Bottles	\$20.40	\$1.70
Propel Fitness Water	20oz NR	(12) Bottles	\$15.24	\$1.27
LifeWTR	1-Ltr NR	(12) Bottles	\$16.56	\$1.38
LifeWTR	700ml NR	(12) Bottles	\$13.00	\$1.08
LifeWTR	20oz NR	(24) Bottles	\$18.00	\$0.75
Subly and Subly Bounce	12oz Cans	(24) Cans	\$12.17	\$0.51
Subly	16oz Cans	(12) Cans	\$14.93	\$1.24
Tea				
Lipton Brisk	1 Ltr NR	(15) Bottles	\$13.49	\$0.90
Lipton Pure Leaf	16.5oz NR	(12) Bottles	\$13.80	\$1.15
Lipton Pure Leaf	64oz NR	(8) Bottles	\$19.55	\$2.44
Isotonics				
Gatorade Protein Bars	2.8oz Bar	(12) Pack	\$21.25	\$1.77
Gatorade / G2	12oz NR	(24) Bottles	\$25.35	\$1.06
Gatorade / G2	20oz NR	(24) Bottles	\$23.23	\$0.97
Gatorade	24oz NR	(24) Bottles	\$41.83	\$1.74
Gatorade	29oz NR	(15) Bottles	\$24.48	\$1.63
Gatorade	20oz NR	(12) Bottles	\$23.38	\$1.95
Gatorade Flt	28oz NR	(15) Bottles	\$25.70	\$1.71
Gatorade Zero with Protein	16.5oz NR	(12) Bottles	\$18.18	\$1.52
Ready to Drink Coffee				
Frappuccino	13.7oz NR	(12) Bottles	\$24.85	\$2.07
SB Pink & Paradise Drink	14oz NR	(12) Bottles	\$33.42	\$2.79
SB Iced Espresso	14oz NR	(12) Bottles	\$33.65	\$2.80
SB Cold & Crafted	11oz	(12) Bottles	\$18.82	\$1.57
SB Nitro	9.6oz	(12) Cans	\$33.42	\$2.79
Ready to Drink Protein				
Muscle Milk & Muscle Milk Pro	14oz NR	(12) Bottles	\$45.16	\$3.76