

## AGREEMENT

This sets forth the agreement ("*Agreement*") between Bottling Group, LLC and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 7550 Reese Road, Sacramento, CA 95828 ("*Pepsi*") and Associated Students of California State University Chico (the "Customer") with its principal place of business at the Bell Memorial Union, 2<sup>nd</sup> and Chestnut Streets, Chico, CA 95929.

WHEREAS, Customer has the authority to arrange for the provision of Beverages (as defined below) at the Facilities (as defined below) and to grant Pepsi the exclusive rights set forth herein;

WHEREAS, Pepsi desires the right to be the exclusive supplier of beverages to the Customer; and

WHEREAS, Pepsi has submitted a bid in response to an invitation to bid issued by the Customer for the exclusive right to develop and carry out a program for the sale of its beverage products in all of the facilities operated by the Customer; and

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

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

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

### **1. DEFINITIONS**

"*Approved Cups*" means the disposable cups approved by Pepsi from time to time as its standard trademark cups and other containers approved by Pepsi from time to time and bearing the trademark(s) of Pepsi and/or other Products. In addition, Pepsi agrees that the Customer shall have the right to produce limited-run commemorative plastic cups reasonably acceptable to Pepsi for use at the facilities and that such cups shall also be considered to be Approved Cups, provided that Pepsi's trademark(s) for Pepsi® shall be included on such commemorative cups. The use and size of Pepsi's trademark(s) on such commemorative cups shall be subject to the prior approval of Pepsi. Pepsi acknowledges that the Customer is committed to sustainability and to using only compostable cups at the facilities. Therefore, if at any time during the Term Pepsi is unable to provide compostable cups to the Customer, Customer may purchase unbranded compostable cups from a third party until compostable cups are again available from Pepsi.

"*Beverage*" or "*Beverages*" means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) packaged carbonated or still water (including spring, mineral or purified), (viii) liquid concentrate teas ("*LCT*"), (ix) frozen carbonated and non-carbonated beverages ("*FB*"), and (x) any future categories of nonalcoholic beverage products that may be distributed by Pepsi.

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

"Competitive Products" shall mean any and all Beverages other than the products.

"Customer Marks" shall mean (i) the Designations (as defined below) and (ii) the Customer's, logos, name, all trade names, and other proprietary designations which are owned, licensed to or controlled by the Customer and which relate to the facilities and which are in existence at the beginning of the Term or which will be created during the Term. For clarity purposes, Customer Marks shall include, without limitation, logos, name, all trade names, and other proprietary designations associated with the Customer, at the beginning of the Term or which will be created during the Term, if any.

"Designations" shall include, but not be limited to, the following: "A Proud Sponsor of the Associated Students of California State University, Chico," "Official Water and Soft Drink of the Associated Students of California State University, Chico."

"Equipment" means the following types of equipment owned and operated by Pepsi and used to sell or dispense the Products: (i) full service beverage vending machines (ii) retail single-serve food service equipment and (iii) fountain service equipment.

"Facilities" shall mean the premises located on the California State University, Chico (the "campus") facilities owned, leased, or operated by the Customer, now or in the future, including all buildings, the grounds, parking lots, dining facilities, snack bars, food carts, book stores, athletic facilities and concession stands, and, for each building, the grounds, parking, lots, dining facilities, unbranded and branded food service outlets and vending areas. "Facilities" shall also be deemed to include convenience store operations and restaurants initiated during the Term of this Agreement in space leased to third-party commercial tenants within Customer-operated buildings.

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

"Gallons" shall mean the number of gallons of the postmix products purchased by the Customer from Pepsi.

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

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

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

*"Third Party Vending Operator"* shall mean Glen Pye or other such vending operator engaged by the Customer to provide beverage vending services at the facilities.

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

## **2. TERM**

The term of this Agreement shall be for the five (5) year period commencing on January 1, 2018 and expiring on December 31, 2022 (*"Term"*). Upon expiration of the initial Term, Pepsi and Customer shall have the option to extend the Term for an additional two-year period upon mutual written consent of Pepsi and Customer.

## **3. DELIVERIES**

The Bell Memorial Union is located at the corner of 2<sup>nd</sup> Street and Hazel Street in Chico, California. The loading dock is on the Hazel Street side of the building. Packaged Products and Postmix Products may be delivered to this location.

Sutter Hall is located on Legion Avenue. Packaged Products and Postmix Products may be delivered to this location.

Concessions deliveries may be made to the above locations or as needed to the event site.

Butte Station is located on campus near Tehama Hall. Vehicular access to this site is only permitted between the hours of 6:00 am and 7:00 am. The only exception would be using an electric vehicle for delivery. Otherwise all Products will need to be hand trucked to this location.

Holt Station is located on campus near Holt Hall. Vehicular access to this site is only permitted between the hours of 6:00 am and 7:00 am. The only exception would be using an electric vehicle for delivery. Otherwise all Products will need to be hand trucked to this location.

## **4. GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS**

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



A. Beverage Availability at the Facilities

1. Grant of Rights

(a) Except with regard to the *Permitted Exception* set forth below, Pepsi shall have the exclusive right to make beverages available for sale and distribution throughout the Facilities, including the right to provide all beverages sold at athletic contests (*i.e.*, concession stands, sales in stands (hawking) or other means), booster club activities, and all other special events conducted at any location on the Facilities ("*Special Events*"). The Products shall be the only beverages sold, dispensed or served at the Facilities (e.g., at concession stands, sales in stands (hawking) or other means), and the products shall be sold at all food service concession or vending locations located within the Facilities.

(b) *Permitted Exception*: The only permitted exceptions to Pepsi's exclusive Beverage rights at the Facilities is the following: Pepsi agrees to allow competitive products to be made available in up to twenty percent (20%) of the shelf space in the convenience stores located at the Customer operated facilities. The competitive products that may be sold in the twenty percent (20%) shelf space at convenience stores shall include, but not be limited to, locally produced beverage products such as Knudsen Juices. At all times during the term, Pepsi's equipment and products shall be placed in the primary locations in each convenience store.

(c) Pepsi shall have the exclusive right to install the equipment throughout the Customer operated facilities. With prior written approval from Customer, Pepsi shall have the further right to install additional equipment in buildings and facilities acquired and/or constructed by the Customer after the date of this Agreement. Pepsi shall install the equipment at its sole expense; with prior written approval. The Customer will be responsible for all electrical hook-ups and charges related thereto. Pepsi shall have the right to place full trademark panels on all sides of its equipment. Pepsi, or one of its affiliates, shall retain title to all equipment.

2. Purchasing of Postmix Products.

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

3. Purchasing of Packaged Products.

The Packaged Products shall be purchased by Customer, the Food Service Provider and the Third Party Vending Operator from Pepsi at prices established by Pepsi from time to time. Current pricing for Packaged Products is as set forth in Exhibit A attached hereto.

4. Food Service.

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



5. Vending.

Pepsi's Products shall be the only Beverages sold through vending machines at the Facilities during the Term. The Third Party Vending Operator will purchase all Pepsi Packaged Products to be stocked in Vending Machines directly and exclusively from Pepsi. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to vending machines.

B. Product Merchandising Rights.

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

1. Approved Cups; Product Hawking and Catering.

Customer agrees that all Products served, sold or dispensed at concession locations in which products are served to customers at the facilities shall be served in approved cups and all other beverages served, sold or dispensed within the facilities shall be served in either approved cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of competitive products. Pepsi agrees to make approved cups available for purchase and the Customer shall purchase, and shall require that all concessionaires, Food Service Providers, booster clubs and other third parties selling beverages at the facilities purchase all products, cups, lids and carbon dioxide directly from Pepsi at prices determined by Pepsi. Pepsi acknowledges that the Customer is committed to sustainability and to using only compostable cups at the facilities. Currently, compostable cups are available from Pepsi in 24 oz. size. Pepsi will notify Customer if compostable cups in other sizes become available from Pepsi. Therefore, if at any time during the Term Pepsi is unable to provide compostable cups to the Customer, Customer may purchase unbranded compostable cups from a third party until compostable cups are again available from Pepsi. Customer shall cause Products to be "hawked" at the facilities at all events taking place at the facilities (including, without limitation, at all home games of all intercollegiate athletic teams associated with the Customer, if any), and served as part of the catering selection in private boxes, suite, backstage areas, locker rooms and press areas. Customer further agrees that products to be "hawked" in the stands shall be sold only in approved cups. As used herein, "hawking" shall refer to the sale of single servings of a product in the seating areas of the facilities through the use of vendors circulating through such seating areas.

## 5. GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS

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

A. Advertising

1. Facilities and Print Advertising.

Pepsi shall have the right to facilities and print advertising as mutually agreed between the parties and as further outlined in Exhibit B. Pepsi will be responsible for the cost of any changes that Pepsi requests to the signage.

B. Promotional Rights

1. General Sponsorship Designation.

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

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

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

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

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

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

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



Customer shall not make any alterations or changes to the design or type of the Pepsi Marks without the prior written consent of PepsiCo, Inc.

## 6. GRANT OF OTHER RIGHTS

### Sampling

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

### Additional Rights.

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

## 7. EXCLUSIVITY

A. During the Term, Customer, its agents, representatives, and staff (i) shall not themselves nor shall they permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products at the Facilities or in connection with the Customer, and its staff and (ii) shall ensure that the Products are the only Beverages sold, served, promoted, marketed, advertised, merchandised, sponsored or endorsed, at the Facilities or in connection with the Customer, and its staff. The only permitted exception are as stated in Section 4.A(1)(b) herein as well as Pepsi's agreement that Customer may advertise locally produced competitive products, such as Knudsen Juices, that are sold in the 20% shelf space in convenience stores as set forth in 4.A(1)(b).

B. Customer recognizes that Pepsi has paid valuable consideration to ensure an exclusive associational relationship with the facilities, Customer, and/or Customer Marks with respect to beverages and that any dilution or diminution of such exclusivity seriously impairs Pepsi's valuable rights. Accordingly, the Customer will promptly oppose Ambush Marketing (as defined below) and take attempt to stop Ambush Marketing and to protect the exclusive associational rights granted to Pepsi pursuant to this Agreement. In the event any such Ambush Marketing occurs during the Term, each party will notify the other party of such activity immediately upon learning thereof. As used herein, "Ambush Marketing" shall mean an attempt by any third party, without Pepsi's consent, to associate competitive Products with the Facilities, Customer and/or Customer Marks, or to suggest that competitive products are endorsed by or associated with the facilities, Customer and/or Customer Marks by referring directly or indirectly to the facilities, Customer and/or Customer Marks.

## 8. CONSIDERATION

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

### A. Annual Sponsorship Fees.

An Annual Sponsorship Fee (the "Annual Sponsorship Fee"), payable annually pursuant to the following:

Year	Applicable Time Period	Amount	Due Date: within 60 days after:
1	January 1, 2018 – December 31, 2018	\$51,000	December 31, 2018
2	January 1, 2019 – December 31, 2019	\$51,000	December 31, 2019

<b>Year</b>	<b>Applicable Time Period</b>	<b>Amount</b>	<b>Due Date: within 60 days after:</b>
3	January 1, 2020 – December 31, 2020	\$51,000	December 31, 2020
4	January 1, 2021 – December 31, 2021	\$51,000	December 31, 2021
5	January 1, 2022 – December 31, 2022	\$51,000	December 31, 2022
6	January 1, 2023 – December 31, 2023	\$51,000	December 31, 2023
7	January 1, 2024 – December 31, 2024	\$51,000	December 31, 2024
*Annual Sponsorship Fees are only payable for Years 6 and 7 if Pepsi and Customer agree by mutual written consent to renew the agreement for such additional two-year period pursuant to Section 2 herein.			

**B. Annual Athletics Support Fund.**

An Annual Athletics Support Fund (the “*Annual Athletics Support Fund*”), payable annually pursuant to the following:

<b>Year</b>	<b>Applicable Time Period</b>	<b>Amount</b>	<b>Due Date: within 60 days after:</b>
1	January 1, 2018 – December 31, 2018	\$54,000	December 31, 2018
2	January 1, 2019 – December 31, 2019	\$54,000	December 31, 2019
3	January 1, 2020 – December 31, 2020	\$54,000	December 31, 2020
4	January 1, 2021 – December 31, 2021	\$54,000	December 31, 2021
5	January 1, 2022 – December 31, 2022	\$54,000	December 31, 2022
6	January 1, 2023 – December 31, 2023	\$54,000	December 31, 2023
7	January 1, 2024 – December 31, 2024	\$54,000	December 31, 2024
*Annual Athletic Support Funds are only payable for Years 6 and 7 if Pepsi and Customer agree by mutual written consent to renew the agreement for such additional two-year period pursuant to Section 2 herein.			

**C. Annual Sustainability Fund.**

An Annual Sustainability Fund (the “*Annual Sustainability Fund*”), payable annually pursuant to the following:

<b>Year</b>	<b>Applicable Time Period</b>	<b>Amount</b>	<b>Due Date: within 60 days after:</b>
1	January 1, 2018 – December 31, 2018	\$5,000	December 31, 2018
2	January 1, 2019 – December 31, 2019	\$5,000	December 31, 2019
3	January 1, 2020 – December 31, 2020	\$5,000	December 31, 2020
4	January 1, 2021 – December 31, 2021	\$5,000	December 31, 2021
5	January 1, 2022 – December 31, 2022	\$5,000	December 31, 2022
6	January 1, 2023 – December 31, 2023	\$5,000	December 31, 2023
7	January 1, 2024 – December 31, 2024	\$5,000	December 31, 2024
*Annual Sustainability Funds are only payable for Years 6 and 7 if Pepsi and Customer agree by mutual written consent to renew the agreement for such additional two-year period pursuant to Section 2 herein.			

**D. Annual Flex Fund.**

An Annual Flex Fund (the “*Annual Flex Fund*”), payable annually pursuant to the following:

<b>Year</b>	<b>Applicable Time Period</b>	<b>Amount</b>	<b>Due Date: within 60 days after:</b>
1	January 1, 2018 – December 31, 2018	\$50,000	December 31, 2018
2	January 1, 2019 – December 31, 2019	\$50,000	December 31, 2019
3	January 1, 2020 – December 31, 2020	\$55,000	December 31, 2020



<b>Year</b>	<b>Applicable Time Period</b>	<b>Amount</b>	<b>Due Date: within 60 days after:</b>
4	January 1, 2021 – December 31, 2021	\$55,000	December 31, 2021
5	January 1, 2022 – December 31, 2022	\$60,000	December 31, 2022
6	January 1, 2023 – December 31, 2023	\$65,000	December 31, 2023
7	January 1, 2024 – December 31, 2024	\$65,000	December 31, 2024

\*Annual Flex Funds are only payable for Years 6 and 7 if Pepsi and Customer agree by mutual written consent to renew the agreement for such additional two-year period pursuant to Section 2 herein.

**E. Rebates.**

Each Year throughout the Term, Pepsi shall calculate the total applicable Cases of Packaged Products and applicable Gallons of Postmix Product purchased from Pepsi by the Customer and its Food Service Provider pursuant to this Agreement, and shall provide the Customer with rebates calculated based on applicable amounts set forth below (the “*Rebates*”). The Rebates, if applicable, shall be paid by Pepsi within sixty (60) days of the end of each applicable Year during the Term.

<b>Rebate Amount</b>	<b>Applicable Products</b>
\$3.00/Gallon	Gallons of Postmix Product
\$2.00/Case	24-pk Cases of Packaged Products
\$1.25/Case	15-pk Cases of Packaged Products
\$1.00/Case	12-pk Cases of Packaged Products

**F. Price Protection Rebates.**

In each of Years Two and Three, and only Years Two and Three, upon verification by Pepsi that Customer has met its performance obligations under this Agreement, in the event that the price per Gallon of Postmix Products and the price per Case of Packaged Products for any such Year increases over the price for immediately preceding Year, then Pepsi will rebate to Customer for the Year under consideration an amount of money equal to that portion of any such price increase in excess of the prior Year’s pricing for the applicable Gallons or Cases purchased during such Year (“**Price Protection Rebates**”). Price Protection Rebates will be paid to Customer within sixty (60) days after the end of each of Years Two and Three.

## 9. ADDITIONAL CONSIDERATION

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

A. Pepsi will provide annual product donations of up to a total of 500 cases of a combination of 12 oz. cans of carbonated soft drinks and 16.9 oz. bottles of Aquafina per Year across the Facilities upon request of the Customer; provided, however, that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer acknowledges and agrees that unrequested Product in any Year will not be carried over to a subsequent Year.

B. Pepsi shall provide the Customer with an annual Gatorade sideline kit valued at up to Two Thousand Five Hundred Dollars (\$2,500) per Year across the Facilities upon request of Customer, provided, however, that Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer acknowledges and agrees that unrequested sideline kits in any Year will not be carried over to a subsequent Year.

## **10. EQUIPMENT AND SERVICE**

### **A. Beverage Dispensing and Other Equipment.**

1. Pepsi shall, based upon Pepsi's survey of the facilities' needs, provide and install all necessary equipment at the Customer's facilities for the dispensing of product during the Term. Title to all equipment shall be with Pepsi or its affiliates. All Pepsi equipment shall be new or like-new, energy-efficient and consistent with the quality of equipment Pepsi provides to similar educational accounts operating in the relative geography.

2. During the Term Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the equipment. Pepsi will provide repair service to its equipment installed at the facilities.

3. The Equipment may not be removed from the Customer's facilities without Pepsi's written consent, and the Customer agrees not to encumber the equipment in any manner or permit other equipment to be attached thereto except as authorized by Pepsi. At the end of the Term, Pepsi shall have the right to, and shall upon request of the Customer, remove all equipment from the Customer's facilities at no expense to the Customer.

4. The Customer's third party vending operator (i) shall be responsible for stocking the vending machines with product purchased directly from Pepsi at the prices established by this Agreement and (ii) shall be responsible for collecting all cash monies from the vending machines and for all related accounting for all cash monies collected there from. The Customer agrees to provide assistance to Pepsi in apprehending and prosecuting individuals who vandalize the equipment.

5. Pepsi reserves the absolute right to remove any glass front vending equipment that sells less than eight (8) cases of product per week or any other vending equipment that sells less than two (2) cases of product per week.

### **B. Service to Equipment.**

The contractor, at its own expense, shall maintain each of the drink machines in good working order. Quick and reliable service is required on all fountain equipment, including ice makers. The Customer requires a maximum response time of four (4) hours on equipment located in these areas: Marketplace, Creekside Café, Butte Station, Holt Station, and Sutter Hall, or any other retail unit that may be open during the term of the contract. Service includes any major repairs needed due to mechanical breakdown, the replacement of any and all necessary spare parts, and the periodic adjustment, cleaning and overhaul of those units.

Pepsi, at no charge to Customer, will provide all beverage dispensing, premix/post-mix equipment, lid and cup dispensers, vending machines, merchandisers, and other equipment as required by same or its designated purchasers. Equipment must be new or refurbished like new.

Pepsi, at its own expense, shall maintain each of the drink machines in good working order. Pepsi shall also perform preventative maintenance and regular service audits on all such equipment. All service calls and all replacement parts will be at no charge to the Customer.



## 11. REMEDIES FOR LOSS OF RIGHTS – TERMINATION

### A. Customer's Termination Rights

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

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

### B. Pepsi's Termination Rights

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

### C. Additional Termination Rights Available to Pepsi and Customer

Without prejudice to any other right or remedy available to either party at law or in equity of any event described below, this Agreement may be terminated by either party if the other party, or any parent of such other party, shall: (i) have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within sixty (60) days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e)(2)(A) of

Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Agreement; or (ii) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affairs in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within 60 days thereafter); or (iii) admit in writing its inability to pay its debts as such debts become due.

**D. Annual Funds in the Event of Termination**

If Pepsi terminates this Agreement pursuant to Section B or Customer terminates this Agreement without cause, then Pepsi shall be entitled to from Customer, without prejudice to any other right or remedy available to Pepsi, and Customer shall pay to Pepsi all funding paid by Pepsi to the Customer which remains unearned as of the time of termination. With regard to the Annual Sponsorship Fees, Annual Athletic Support Funds, Annual Sustainability Funds and Annual Flex Funds (together, the "Annual Funds"), the amount of such reimbursement shall be determined by multiplying the total of the Annual Funds paid to Customer in the Year in which the Agreement is terminated by a fraction, the numerator of which is the number of months remaining in such Year at the time such termination occurs and the denominator of which is 12.

## **12. TAXES**

Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the Customer in connection with any fees payable by Pepsi under this Agreement. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its equipment.

## **13. CONFIDENTIALITY**

A. **SB-8** With the recent passage of the California State University Auxiliary Organizations Transparency & Accountability Act (SB-8) which took effect on January 1, 2012, the Associated Students at California State University Chico, which is one of the 93 auxiliaries within the CSU system, cannot honor confidentiality clauses or requests within contracts. As such, any mention of confidentiality must be stricken from all contracts if and where stated.

The passage of SB-8 essentially means that all CSU auxiliary contracts and other communications (subject to very limited exceptions) will, upon request, become available to members of the public. We pledge to keep you informed of any request for records that might divulge the terms of our contract with you, and to work with you to protect what information, if any, can and should be protected under the new Act.

## **14. REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. Each party represents and warrants to the other:

1. It has full power and authority to enter into this Agreement and to grant and convey to the other the rights set forth herein; and
2. all necessary approvals for the execution, delivery and performance of this Agreement have been obtained and this Agreement has been duly executed and delivered by the parties; and constitutes the legal, valid and binding obligation, enforceable in accordance with its terms, and nothing contained in this Agreement violates, interferes with or infringes upon the rights of any third party;
3. the respective signatory of this Agreement is duly authorized and empowered to bind the party to the terms and conditions of this . for the duration of the Term; and



4. the parties have complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

B. Each of the parties hereto agree that:

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

C. To the extent that any intercollegiate athletic team is permanently relocated to a venue which is not within the Facilities as its home venue, Customer agrees that it shall ensure all rights of Pepsi hereunder shall be extended to such venue as to any advertising and pouring rights contained herein.

## **15. INDEMNIFICATION**

A. Pepsi will indemnify and hold the State of California, the Board of Trustees of California State University, California State University Chico and the Customer harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; (ii) product liability suits resulting from the use or consumption of Products purchased directly from Pepsi; and/or (iii) the negligence or willful misconduct of Pepsi, (excluding claims arising out of the Customer's negligence or willful misconduct).

B. To the extent permitted by applicable law, the Customer will indemnify and hold Pepsi, its subsidiaries, affiliates or assigns harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of (i) its breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the Customer (excluding claims arising out of Pepsi's negligence or willful misconduct).

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

## **16. INSURANCE**

A. Each party hereto maintains and agrees to maintain, at all times during the Term and for a period of three (3) years thereafter, a comprehensive program of risk retention and insurance with such insurance carriers and in such amounts of insurance coverage reasonably acceptable to the other party. Each party agrees to name the other and each of its affiliates, and their respective officers, directors, employees, agents, representatives and successors and assigns on a certificate of insurance, as additional insureds with respect to the certificate holder's negligence.

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

## **17. NOTICES**

Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited

with a public telegraph company for immediate transmittal, charges prepaid, or by telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company  
7550 Reese Road  
Sacramento, CA 95828  
Attn: Director, Food Service

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

Pepsi Beverages Company  
1111 Westchester Avenue  
White Plains, NY 10604  
Attn: Legal Department

If to Customer:

Associated Students of California State University Chico  
Bell Memorial Union Room 218  
2nd and Chestnut Streets  
Chico, CA 95929  
Attn: Dining Director

P.O. Box 7570  
Chico, CA 95921-7570

## **18.ASSIGNMENT**

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

## **19.GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflicts of laws principles. Any legal proceeding of any nature whatsoever brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be submitted for trial, without jury, before the Courts of the State of California, or the United States District Court having jurisdiction in Butte County, California, or, if neither of such courts shall have jurisdiction, then before any court sitting in Butte County, California having subject matter jurisdiction. The parties consent and submit to the jurisdiction of any such court and agree to accept service of process inside or outside the State of California in any manner to be submitted to any such court pursuant hereto, and the parties hereto expressly waive all rights to trial by jury regarding any such matter.

## **20. FORCE MAJEURE**

If the performance by either party hereto of its respective nonmonetary obligations under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions,



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

## **21. RELEASE, DISCHARGE OR WAIVER**

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

## **22. PRIOR NEGOTIATIONS ENTIRE AGREEMENT**

This Agreement and the exhibits attached hereto, set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Agreement shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Pepsi and/or any of its affiliates and any affiliate of Customer.

## **23. RELATIONSHIP OF THE PARTIES**

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

## **24. EFFECT OF HEADINGS**

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

## **25. CONSTRUCTION**

This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties.

## 26. SEVERABILITY

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

## 27. AMENDMENTS

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

## 28. COUNTERPARTS

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

## 29. FURTHER ASSURANCES

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

## 30. RIGHT TO OFFSET

Pepsi reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer for Products ordered from and delivered by Pepsi pursuant to this Agreement.

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

BOTTLING GROUP, LLC

By: 

Name: Kirt Duncan

Title: Key Account Manager, Education

Date: 5/3/18

ASSOCIATED STUDENTS OF CALIFORNIA STATE UNIVERSITY, CHICO

By: 

Name: David Buckley

Title: Executive Director

Date: 5/3/18

By: 

Name: Jamie Clyde

Title: Associate Executive Director

Date: 5/3/18



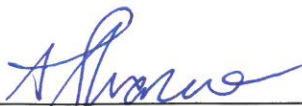
By:   
Name: Alisha Sharma  
Title: President  
Date: 5/3/18

Exhibit A

Current description & pricing for Postmix Products and Packaged Products

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



## Exhibit B

### **VENDOR SPONSORSHIP With Chico State Intercollegiate Athletics**

The intercollegiate athletics program at Chico State is comprised of 13 sports:

- Baseball
- Volleyball
- Softball
- Golf (men and women)
- Track and Field (men and women)
- Basketball (men and women)
- Soccer (men and women)
- Cross County (men and women)

Each year Chico State hosts 62 to 72 home date athletic contests.

Chico State Athletics uses all available media resources to promote home athletic events.

Wildcat men's and women's basketball games, as well as, baseball games, are broadcast on KPAY Radio 1290 AM and the KPAY Sports App.

Radio ads for Chico State Athletic events area run throughout the school year on the following radio stations: KPAY, KHSL, KMXI, KBQB, KTHU, KRQR, and KCEZ.

Television ads for select Chico State Athletic events are broadcast on the following stations: KRVU (MY21), KCVU (FOX), KNVN (NBC), and KHSL (CBS).

Print ads are placed in the Enterprise Record on select weeks over a 34 week period.

#### **Attendance for 2016-2017 school year:**

Soccer	5,524
Volleyball	3,019
Basketball	15,287
Softball	1,620
Baseball	5,476
Intramural Sports	1,950
Club Sports	900
Physical Education Classes	325
Summer Camps	1,250
Enloe Exercise Classes	450

Chico State Athletics provides Vendor the following promotional elements:

#### **Signage:**

Advertising space on the following scoreboards year round:

1. Acker Gym – two boards
2. Nettleton Stadium

Seasonal advertising space on the following:

1. Nettleton Stadium 7' x 16' outfield sign
2. Wildcat Softball Stadium 3' x 16' outfield sign
3. University Soccer Stadium 6' x 20' fence sign

Year round advertising space on the following:

1. University Stadium 3' x 24' section sign
2. Acker Gym 4' x 12' section sign

**Print:**

1. Front inside cover ad in Wildcat Illustrated, a 32 page tabloid published three times per year focusing on student athletes and coaches at Chico State. It is distributed in both the Chico Enterprise Record (21,000 copies), the Oroville Mercury-Register (5,500 copies), the Paradise Post (4,500 copies) and throughout the campus (5,000 copies).
2. Full page black and white or color ad in five sport media guides:  
soccer – back inside cover, black and white,  
volleyball – back cover color  
basketball – back inside cover, black and white  
softball – full page black and white  
baseball – back inside cover
3. Vendor logo on all intercollegiate pocket schedules.  
Men's and women's soccer  
Men's and women's volleyball  
Men's and women's basketball  
Men's and women's baseball  
Men's and women's softball

**Public Address:**

A Vendor public address announcement per game for each home athletic contest in volleyball, soccer, basketball, softball, and baseball.

**Internet Presence:**

Vendor logo included as a "Corporate Sponsor" on Athletic Department website.

**Basketball Season Tickets**

Chico State Athletics provides Vendor with four season tickets to Wildcat Basketball.