

LAKE SUPERIOR STATE UNIVERSITY FREEDOM OF INFORMATION ACT RESPONSE TO REQUEST FOR PUBLIC RECORDS	FOIA Request Number: 2023-0003
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Dear Kayla Henson – MuckRock:

This letter is in response to your request for information received in this office on January 23, 2023, a copy of which is attached.

**I. RESPONSE TO YOUR REQUEST:**

Your request has been reviewed and the following action has been taken in compliance with the provisions of Michigan's Freedom of Information Act ("FOIA"), MCL 15.231 *et seq*:

1. ☐ **Ten Day Extension Required:** The specific nature of your request involves a circumstance which requires an additional 10 business days to properly process your request as provided by Section 5(6) of the FOIA. The extension due date is \_\_\_\_\_. The reason for this extension is \_\_\_\_\_.
2. ☐ **Deposit Required:** Your request involves a large volume of documents and/or an extensive search. Please submit a 50% deposit for the *estimated* fees (which exceed \$50.00) as set forth in the attached "Statement of Fees For Freedom of Information Act Requests" on Page 3.
3. ☒ **Request Approved:** See Page 3 for information on costs related to your request and delivery or review of the requested documents.
4. ☐ **Request Approved In Part and Denied In Part:** (See denial reason(s) below and/or on next page and Page 3 for information on costs related to your request and delivery or review of the requested documents.)
5. ☐ **Request Denied:** This Public Body has determined that the requested record(s) are exempt from disclosure based on the provision(s) of the Freedom of Information Act (See reason and/or comments set forth below and on next page).
6. ☐ **Request Denied:** The record(s) you have requested do NOT exist within the records of this Public Body.
7. ☐ **Request Denied:** Your request does NOT describe the record(s) sufficiently to enable the public body to determine what record(s) you are seeking. You may submit a new request describing the record(s) in greater detail.

Under Section 10 of FOIA if a Public Body makes a final determination to deny all or a portion of your request you may do one of the following: (1) Submit to the head of the public body a written request for a reversal that states the word "APPEAL" and identifies the reason(s) for reversal of the denial; (2) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after the public body's final determination to deny a request.

Name of FOIA Coordinator or Representative

Lauren Pierce 1/24/2023

Signature of FOIA Coordinator or Representative

*Lauren Pierce*

**II. REASON(S) FOR DENIAL OF RECORD(S), IF APPLICABLE:**

This section applies if your request has been denied in whole or in part. (If denied in part, the request(s) that are denied are circled on the attached copy of your FOIA Request and the applicable exemption(s) are written next to the request.) The denial is based on the following exemption(s) from disclosure of public records under FOIA, specifically MCL 15.243 Section 13: (*Check all that apply.*)

- ☐ (1)(a) Information of a personal nature where public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- ☐ (1)(d) Records or information specifically described and exempted from disclosure by statute, specifically \_\_\_\_\_ [statutory citation]
- ☐ (1)(e) A public record described in this section that is furnished by the public body originally compiling preparing or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.
- ☐ (1)(g) Information or records subject to attorney-client privilege.

# Lake Superior State University

- ☐ (1)(h) Information or records subject to the physician-patient privilege, psychologist-patient privilege, or other privilege recognized by statute or court rule.
- ☐ (1)(i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not conducted, until the deadline for submission of bids or proposals has expired.
- ☐ (1)(k) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure outweighs the public interest in nondisclosure.
- ☐ (1)(l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by disclosure of those facts or evaluation.
- ☐ (1)(m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in a particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the Open Meetings Act, MCL 15.268, *et al.* As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise requested to be made available under MCL 423.201 to 423.217.
- ☐ (1)(p) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only one bidder has met the specifications. This subdivision does not apply after 1 year has lapsed from the time the public body completes the testing.
- ☐ (1)(u) Records of a public body's security measures, including security plans, security codes and combinations, passwords passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.
- ☐ (1)(v) Records or information relating to a civil action in which the requesting party and the public body are parties.
- ☐ (1)(w) Information or records that would disclose the social security number of any individual.
- ☐ (2) A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with section 444 of subpart 4 of part C of the general education provisions act, title IV of Public Law 90-247, 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974. A public body that is a local or intermediate school district shall exempt from disclosure directory information, as defined by section 444 of subpart 4 of part C of title IV of Public Law 90-247, 20 USC 1232g, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school district may take steps to ensure that directory information disclosed under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

Comments and/or Other Exemption Not Listed Above (if applicable):

**N/A**

General Description of Information Deleted or Separated from the Public Record Requested (if applicable):

- N/A

## Lake Superior State University

### STATEMENT OF FEES FOR FREEDOM OF INFORMATION ACT REQUESTS

Date of Statement: 1/24/2023 FOIA Request No.: 2023-0003 Requestor's  
Name: Kayla Henson

**This statement shows the fees (estimated or actual, as applicable) which apply to your request under the Freedom of Information Act. See the transaction checked below:**

- ☒ There is no charge since the fees for the requested documents approved for disclosure are \$20.00 or less. (The first \$20.00 of each FOIA request is waived.)
- ☐ There is a charge for the requested documents approved for disclosure. **Please send the amount (shown in #8 on the final page) at this time.** The requested documents approved for disclosure will be sent to you only AFTER the this amount has been received by Lake Superior State University.
- ☐ Lake Superior State University requires a fifty percent (50%) deposit of the *estimated* fees to be paid **before** your request is processed. **Please send the amount (shown in #5 on the final page) at this time.** You will be billed for remaining costs, if any, prior to any documents being sent to you.
- ☐ You have already paid fifty percent (50%) of the *estimated* fee amount of \$ \_\_\_\_\_. Below is the remaining amount that is due – This amount is based on the *actual* fees. **Please send the amount (shown in #8 on the final page) at this time.** The requested documents that are approved for disclosure will be sent to you only AFTER the remainder of the fee has been received by Lake Superior State University.
- ☐ Thank you for your payment in full. The requested documents that are approved for disclosure are enclosed.

### **INSTRUCTIONS:**

- ☐ **If you do not wish to pursue your request, please indicate with a “check” here and return this form *within three days* to the FOIA Coordinator at the above address.**

If you wish to inspect the requested documents approved for disclosure, please contact Lake Superior State University FOIA Coordinator at [lpierce1@lssu.edu](mailto:lpierce1@lssu.edu) to arrange for an appointment for viewing. Note that charges for searching and examination of materials and/or photocopying of any documents that require redaction are still applicable.

**If your request requires a fee of more than \$20.00, in order to process your request, you must submit a check payable to: “Lake Superior State University” with FOIA Request No. 2023-0003 printed in the memoline on the check. Mail a copy of this form and your check to:**

Lake Superior State University  
Attention: FOIA Coordinator  
650 W. Easterday Ave.,  
Sault Ste Marie, MI 49783

# Lake Superior State University

CHARGES:                      ☐ *Estimated Fees*                      ☐ Actual Fees

1. Labor charges for searching and examination of materials.....	\$0.00
2. Duplication costs for photocopying documents or providing computer diskette(s).....	\$0.00
3. Shipping and Handling charges.....	\$0.00
4. Subtotal Charge (sum of lines 1 – 3).....	\$0.00
<b>5. Fifty Percent (50%) of <i>Estimated Fees</i> Required NOW (Line 4 divided by 2)-----</b>	<b>\$0.00</b>
6. Actual Amount of Fees.....	\$0.00
7. Minus waiver of first \$20.00-----	N/A
<b>8. Remainder Due NOW (Line 7 minus line 5)-----</b>	<b>\$0.00</b>

Policy

- *Reproduction cost per page, not including labor, covers materials and operational costs.*
- *A labor charge, which shall be calculated on the basis of actual time spent in duplications of the requested records, mailing and cost of examination, review, and deletion of exempt information as provided in Section 14 of Act 422. Labor charge will be calculated on basis of lowest clerical rate x .20, multiplied by actual time required, and cost of mailing if requested.*
- *Requested copies shall not be delivered to requestor until payment of fees has been received by the University. A deposit may be required as provided for in the Act.*
- *Fees for records which cannot be reproduced by processes such as Xerox will be determined by the freedom of information officer or designate, in consultation with appropriate officer under whose jurisdiction said records are kept.*
- *The first twenty dollars worth of work must be free for a person who is on welfare or presents facts showing inability to pay because of indigency.*

## NOTICE OF REQUESTOR'S RIGHT TO SEEK JUDICIAL REVIEW

You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal any denial to the President of LSSU or to commence an action in the Circuit Court to compel disclosure of any requested records if you believe they were wrongfully withheld from disclosure. If you are successful in asserting the right to inspect or receive a copy of a public record or a portion of a public record in court, the court will award reasonable attorney's fees, costs, and disbursements. If you prevail in part of your action, the court may in its discretion award reasonable attorney's fees, costs and disbursements or an appropriate portion of reasonable attorney's fees, costs and disbursements.

Lake Superior State University  
FOIA Office  
650 W. Easterday Ave. Sault Ste.  
Marie, MI 49783

January 23, 2023

To Whom It May Concern:

Pursuant to the { Michigan Freedom of Information Act. }, I hereby request the following records:

- A copy of any and all contracts (including associated amendments and exhibits) awarded to Pepsi, Coca-Cola, or any subdivision thereof, for the provision of beverages or other goods in any facilities under the purview of this organization, including all activities and buildings associated with athletics, sports, dining services, or otherwise. If this agency does not have a contract with either of the named companies, please provide the equivalent agreement with the currently employed company.
- If the contract(s) was cancelled, any and all materials related to its cancellation.
- If the contract was cancelled, the statement from the university about cancellation.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within { 5 days }.

Sincerely,

{ Kayla Henson }

View request history, upload responsive documents, and report problems here:  
<https://www.muckrock.com/respond/1421461/>

If prompted for a passcode, please enter:  
BEXWRFKE

Filed via MuckRock.com  
E-mail (Preferred): 139375-85857601@requests.muckrock.com

PLEASE NOTE OUR NEW ADDRESS  
For mailed responses, please address (see note):  
MuckRock News  
DEPT MR 139375  
263 Huntington Ave  
Boston, MA 02115

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests

might be returned as undeliverable.

## SPONSORSHIP AGREEMENT

This agreement (the "**Agreement**") is made by and between Great Lakes Coca-Cola Distribution, L.L.C. dba Great Lakes Coca-Cola Bottling (the "**Sponsor**"), and Lake Superior State University, a not-for-profit corporation incorporated under the laws of the State of Michigan and located in Sault Saint Marie, Michigan (the "**University**").

The parties are entering into this exclusive sponsorship agreement because the University wishes to grant to Sponsor, and Sponsor wishes to obtain, the exclusive rights (i) to offer Beverages for sale and/or sampling on the Campus, and (ii) to market and associate Beverages with the University and to promote their consumption and sale generally and on the Campus.

In consideration of the mutual promises contained herein, the parties agree as set forth below.

1. **Term.** This Agreement takes effect on March 1, 2019 (the "**Effective Date**") and expires on Feb 29, 2029, unless (i) mutually extended under the terms hereof or by written agreement of the parties, or (ii) sooner terminated as provided herein (the "**Term**").

2. **Definitions.** All defined terms used in this Agreement and not otherwise defined will have the meanings set forth on **Exhibit A**.

3. **Beverage Availability Rights.**

3.1 University agrees that all Beverages sold, distributed, or sampled (that is, distributed at no cost), advertised or promoted anywhere, anytime on the Campus and in connection with the University and/or the Teams will be Products. Sponsor and University agree that, at a minimum, the following Products will be available: Coca-Cola® classic (or Coke®), diet Coke®, Coke Zero®, Sprite®, Minute Maid® juices, Dasani® and PowerAde®. No Competitive Products will be sold, distributed, sampled, advertised, or promoted anywhere, any time on Campus.

3.2 University will purchase from Sponsor, and Sponsor will sell to University, all of University's requirements for Beverages (and Approved Cups, lids and carbon dioxide, as applicable) at the prices listed in **Exhibit B**. Annual price increases shall occur automatically on November 1st of each Agreement Year. In addition, in the event of an increase in Sponsor's cost of goods, manufacture or delivery, or new or increased taxes, deposits or other government related charges or fees, Sponsor may increase prices.

If, during the Term, University elects to contract with a Concessionaire, University will cause Concessionaire to purchase from Sponsor all requirements for Beverages, Approved Cups, lids and carbon dioxide, as applicable. Such purchases will be made at prices and on terms set forth in this Agreement. University acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to University or a Concessionaire if such Concessionaire has an existing agreement with Sponsor. If such Concessionaire requires Sponsor to pay Concessionaire funding or to provide Products pursuant to prices under the separate agreement with the Concessionaire, and Sponsor agrees, then University agrees that Sponsor may deduct such duplicate allowances, funding and/or lost margin on such lower cost Products paid to or sold to Concessionaire. The reimbursement shall be made by University either by (i) a credit against from any payment made by Sponsor to University, (ii) an invoice from Sponsor to University, (iii) increased pricing to University (where Sponsor is required to pay Concessionaire funding only), or (iv) any other manner reasonably determined by Sponsor.

 

3.3 University will use its reasonable efforts to maximize the sale and distribution of Products on Campus. University will promote the sale of Products by causing Products to be hawked in stands in Approved Cups and plastic bottles (currently twenty-ounce) at all sporting events and during all events when any items of any make or description are hawked on the Campus.

3.4 University hereby grants to Sponsor the exclusive Beverage vending rights on Campus. University agrees that Sponsor shall have the right to place a mutually agreed upon number of Beverage vending machines in mutually agreed upon locations on Campus.

#### 4. **Marketing Rights.**

4.1 University grants to Sponsor the following promotional rights, which are exclusive as to Beverages, to:

4.1.1 Market and promote Beverages in connection with the University, the Campus, and the Teams.

4.1.2 Use, subject to Section 4.3, the University Marks on a royalty-free basis. University acknowledges and agrees that such promotional activities may be conducted in conjunction with Sponsor's customers; and Sponsor will have the right to incorporate its customers' marks, logos and/or branded products with the University Marks on any advertising, point-of-sale, packaging, or premium items or materials. University hereby grants Sponsor a license to use the University Marks on a royalty-free basis for the purposes of promoting Products as provided herein. University agrees to work with Sponsor on a case-by-case basis to assist in promotions conducted by Sponsor with its customers.

4.1.3 Refer to Sponsor in any of Sponsor's marketing materials as a "sponsor" of the Campus, the University, and/or the Teams, and refer to any brand of Products in any of Sponsor's marketing materials as the "official" or "exclusive" soft drink, sports drink, tea, juice, or juice drink, etc. of the Campus, University or the Teams.

4.1.4 Undertake Beverage promotions at or in connection with the Campus and/or the Teams, including offering Products in promotional packaging bearing the University Marks on a royalty-free basis.

4.1.5 Sample Products and survey individuals on the Campus with University's prior approval as to location and time.

4.2 University grants to Sponsor the following exclusive merchandising rights:

4.2.1 University agrees that all Beverages served, sold, or dispensed on the Campus in disposable vessels (including Beverages sold, served, or made available in locker rooms and players' benches) will be served in Approved Cups.

4.2.2 Materials promoting the Products at the point-of-sale on the Campus, which will include translites and pictorials on dispensing equipment depicting Approved Cups and Products, will be clearly visible to the purchasing public and will be displayed in a manner and location acceptable to Sponsor.

*Dan* *DAP*



4.2.3 Product trademarks will be prominently displayed on each menu board and Beverage vending machine on the Campus.

4.3 University will have the right to pre-approve: (i) the concept for any promotional activity undertaken hereunder, and (ii) any artwork or other items created by Sponsor for use in promotional activities or otherwise in accordance with the terms of this Agreement and that incorporate any of the University Marks. If University fails to respond to any submission within a period of ten (10) working days subsequent to the actual receipt by University of such submission, then such submission will be deemed approved by University. University agrees that its approval hereunder will not be unreasonably withheld.

4.4 University agrees that it will not, directly or indirectly (nor will University permit anyone to whom University has granted promotional, advertising or other rights), maintain any agreement or relationship pursuant to which any Competitive Products are associated in any manner with University, the Campus, or the Teams in any fashion that creates or tends to create the impression of a relationship or connection between the University, the Campus or the Teams and any Competitive Product. For further specificity, and not by way of limitation, University agrees that no permanent or temporary advertising, signage, or trademark visibility for Competitive Products will be displayed or permitted anywhere on the Campus. Nothing contained herein will prevent on-Campus consumption by students, faculty or their guests of Competitive Products purchased outside the Campus.

5. **Consideration.** For the rights described herein, Sponsor agrees to the following:

5.1 **Sponsorship Fees.** Sponsor agrees to pay University an aggregate of One Hundred Fifty Thousand Dollars (\$150,000.00) for the entire Term (the "Sponsorship Fees"). The Sponsorship Fees shall be paid in equal annual installments of Fifteen Thousand Dollars (\$15,000) by March 1st of each Agreement Year. If the Agreement is not fully executed until after the Effective Date, the first payment of Sponsorship Fees for Agreement Year One will be made forty-five (45) days from Sponsor's receipt of the fully executed Agreement.

5.2 **Commissions.** Sponsor shall pay the University commissions on full-service Beverage vending sales based on the rates and initial vend prices set forth below.

<u>Package</u>	<u>Commission</u>	<u>Vend Rate</u>
20 oz Sparkling Soft Drinks	20%	\$1.75
20 oz Dasani Water	20%	\$1.75
20 oz Smartwater	20%	\$2.00
20 oz Vitaminwater	20%	\$2.00
20 oz Powerade	20%	\$1.75
16 oz Monster Energy	20%	\$3.00

Commissions are paid based upon cash collected, after deducting taxes, deposits, recycling fees, other handling fees and credit and debit card fees, if any. Commission rates for any new Products added after the Effective Date will be at the lowest rate listed above unless otherwise mutually agreed to by the parties in a written amendment to this Agreement.

Sponsor may at any time decrease commissions in the event of an increase in Sponsor's cost of goods, manufacture or delivery or new or increased taxes, deposits or other government related

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fees or charges. Sponsor shall notify University thirty (30) days in advance prior to the date any such substantial commission decrease takes effect.

Commissions shall not be payable on any sales from vending machines not filled or serviced exclusively by Sponsor. Sponsor may adjust the vend prices in Agreement Years 3 and 7. In addition, Sponsor may adjust vend prices as necessary to reflect changes in its costs, including cost of goods, manufacture or delivery, or new or increased taxes or other government related charges or fees. Commissions will be paid each month following the month in which they are earned, with an accounting of all sales and monies in a form reasonably satisfactory to the University, and shall become immediate property of University.

**5.3 Product Donations** - Sponsor will donate up to \$500 of Products (valued at wholesale price) with exact product selection to be mutually agreed to by Sponsor and University, annually for student and faculty special events, but not for resale. Products will be provided upon University's request. In the event University does not request all complimentary Products by the end of each Agreement Year, any remaining complimentary Products shall be retained by Sponsor with no further obligation for such Agreement Year.

**5.4 Athletics Sideline Fund**. Each Agreement Year, Bottler will budget and spend \$1,000.00 (\$10,000 over the Term) to provide University with mutually agreed upon sideline isotonic athletic equipment, which may include coolers, squeeze bottles, and related items for University's athletic events on Campus. The funds provided pursuant to this Section 5.4 will be held in a fund managed by Sponsor. Sponsor shall provide University with quarterly reports during each Agreement Year setting forth the balance of the fund and any additional information relating to the funds as reasonably requested by University. All funds made available must be spent within the Agreement Year for which they are budgeted. Unused funds will be forfeited.

**5.5 Retail Promotions** – Each Agreement Year, Sponsor will coordinate a promotional activity to support University's athletic programs by providing sampling at retail store locations in the geographical area surrounding the Campus, as mutually agreed upon. Each semester during University's academic year, Sponsor will coordinate a promotional activity providing sampling at University's retail stores located on Campus as mutually agreed upon. If a promotional activity does not occur within the timeframe specified for any reason, such promotional activity will be forfeited.

## **6. Equipment and Service.**

**6.1** During the Term, Sponsor will loan to University pursuant to the terms of Sponsor's Equipment Placement Agreement ("SEPA"), at no cost all Beverage dispensing equipment ("Equipment") which is reasonably required in Sponsor's discretion to dispense Products at the Campus. Freestyle and/or fountain equipment may be subject to a separate agreement with The Coca Cola Company. University represents and warrants that electrical service on the Campus is proper and adequate for the installation of Equipment, and University agrees to indemnify and hold harmless Sponsor from any damages arising out of defective electrical services.

**6.2** University agrees (i) it will execute documents evidencing Sponsor's ownership of the Equipment, (ii) upon request of Sponsor, University will execute the SPEA, however, if any of the terms of the SPEA are in conflict with the terms of this Agreement, this Agreement will control; (iii) the Equipment may not be removed from the University without Sponsor's written consent; (iv) University will not encumber the Equipment in any manner or permit any attachment thereto

*Handwritten signatures:* [Signature] DAP

except as authorized by Sponsor for the Equipment; (v) that only Products will be stored, displayed, dispensed, or sold in or through the Equipment; and (iv) University will be responsible to Sponsor for any loss or damage to the Equipment, reasonable wear and tear excepted.

6.3 Sponsor will provide University with reasonable, free service to its Equipment, except University will bear the cost of service required due to actions of University or its employees, students, guests or contractors. All Equipment service will be provided during normal business hours. Any removal, remodel, relocation or reinstallation of dispensing equipment, flavor changes, summerize/winterize, line changes, or service necessitated by damage or adjustments to the equipment resulting from misuse, abuse, failure to follow operating instructions, service by unauthorized personnel, unnecessary calls (equipment was not plugged in, CO<sub>2</sub> or fountain syrup container was empty), or calls that are not the result of mechanical failure (collectively "Special Service Calls"), are not considered regular service and will not be provided free of charge. Charges for Special Service Calls will be charged at The Coca-Cola Company's (or Sponsor's) then current rate and will be invoiced on a quarterly basis. Charges will include labor, travel time, parts, and administrative costs.

Sponsor will not be obligated to provide service hereunder during periods in which it is prevented from doing so due to strikes, civil disturbances, unavailability of parts or other causes beyond the control of Sponsor. Sponsor will not be liable for damages of any kind arising out of delays in rendering service.

## **7. Remedies for Loss of Rights.**

7.1 In addition to any other legal or equitable remedy, University will have the right to terminate this Agreement upon forty-five (45) days' written notice to Sponsor at any time if:

7.1.1 Sponsor fails to make any payment due under this Agreement, and if such default continues uncured for the forty-five (45) day period referenced in this Section 7.1; or

7.1.2 Sponsor breaches any material term or condition of this Agreement, and if such breach continues uncured for the forty-five (45) day period referenced in this Section 7.1.

7.2 In addition to any other legal or equitable remedy, Sponsor will have the right to terminate this Agreement upon forty-five (45) days' written notice to University at any time if:

7.2.1 University breaches any material term or condition of this Agreement, and if such breach continues uncured for the forty-five (45) day period referenced in this Section 7.2; or

7.2.2 University's right to convey any of the promotional and Beverage availability rights contained in this Agreement expire or are revoked; or

7.2.3 Any material component of the Campus is closed for a period of at least one hundred twenty (120) days, whether or not such closure is due to a cause beyond the reasonable control of University.

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- 7.3 Upon early termination of this Agreement for any reason, University will refund the un-earned portion of all Sponsorship Fees and refund a pro rata portion of the costs of refurbishing and installing the Equipment paid with respect to the Agreement Year in which termination occurs. The Sponsorship Fees for each Agreement Year will be deemed earned pro rata on a daily basis during such Agreement Year, in each case up to the date of termination or, if earlier, the date of any breach hereunder by University.
- 7.4 If any material component of the Campus is closed for more than thirty (30) consecutive days, but less than one hundred twenty (120) consecutive days, Sponsor may extend the Term for a corresponding period, whether or not such closure is due to a cause beyond the reasonable control of University.
- 7.5 If (i) any of the rights granted to Sponsor herein are materially restricted or limited during the Term (including as a result of Ambush Marketing), or (ii) if there is a closing of any material component of the Campus, (iii) if the volume of Products sold to the University decreases for any reason in any twelve month period by 20% or more over the prior twelve month period or (iv) a Team fails to play all of its scheduled home games on the Campus for a period of more than thirty (30) consecutive calendar days during its scheduled season (whether or not due to a cause beyond the reasonable control of University, including a strike or other work stoppage), then in addition to any other remedies available to Sponsor, Sponsor may elect, at its option, to adjust the Sponsorship Fees and Commissions to be paid to University for the then remaining portion of the Term (and University will pay to Sponsor a pro rata refund of any prepaid amounts and a pro rata refund of the costs of refurbishing and installing the Equipment) to reflect the diminution of the value of rights granted hereunder to Sponsor. In the event Sponsor elects to exercise its right to such adjustment and refund, University may, at its option, within ten (10) days following receipt of notice of any adjustment, notify Sponsor of its disagreement with the amount of the adjustment. The parties will then attempt in good faith to resolve the disagreement over such adjustment. If the parties cannot, after good faith negotiations, resolve the matter, Sponsor may terminate this Agreement.
- 7.6 The parties acknowledge that the rights granted to Sponsor herein are special, unique and extraordinary, and are of peculiar value, the loss of which cannot be fully compensated by damages in an action at law or any application of other remedies described herein. As a result, University acknowledges and agrees that, in addition to any other available remedies, in the event of a material limitation of any of Sponsor's rights hereunder, Sponsor will be entitled to seek and obtain equitable relief, including an injunction requiring University to comply fully with its obligations under this Agreement.
- 7.7 University recognizes that Sponsor has paid valuable consideration to ensure an exclusive associational relationship with University, the Teams, the University Marks, and the Campus with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Sponsor's valuable rights. Accordingly, University will promptly oppose Ambush Marketing and take all reasonable steps to stop Ambush Marketing and to protect the exclusive associational rights granted to Sponsor by University in this Agreement. In the event any such Ambush Marketing occurs during the Term, each party will notify the other parties of such activity immediately upon learning thereof.
- 7.8 Sponsor shall have the right to withhold and not pay further Sponsorship Fees or any other amounts which may become payable to University pursuant to this Agreement if: (i) University has failed to perform its obligations hereunder; (ii) Sponsor's rights hereunder have been

 

lost, limited or restricted, including the existence of Ambush Marketing; or (iii) there exists a bona fide dispute between the parties.

**8. Rights of First Negotiation and Refusal.**

8.1 Sponsor will have the Rights of First Negotiation and Refusal upon expiration of this Agreement for any similar agreement regarding Beverage availability, merchandising, promotional or advertising rights.

8.2 Sponsor will have the Rights of First Negotiation and Refusal for any new forms of advertising or sponsorship offered by the University and not otherwise covered by this Agreement.

9. **Confidentiality.** Subject to the provisions of applicable law, University agrees that the terms and conditions provided to University by Sponsor under this Agreement will be kept confidential by University, its agents, employees and representatives and will not be disclosed in any manner whatsoever, in whole or in part, by University or its agents, employees or representatives without the prior written consent of Sponsor. The foregoing obligation regarding confidentiality will remain in effect for a period of three (3) years after the expiration of this Agreement.

**10. Representations, Warranties and Covenants.**

10.1 University represents, warrants and covenants to Sponsor as follows:

10.1.1 University has full power and authority to enter into this Agreement and to grant and convey to Sponsor the rights set forth herein.

10.1.2 All necessary approvals for the execution, delivery and performance of this Agreement by University have been obtained, and this Agreement has been duly executed and delivered by University and constitutes the legal and binding obligation of University enforceable in accordance with its terms.

10.1.3 University has the exclusive right to license the University Marks.

10.1.4 University has not entered into, and during the Term of this Agreement, will not enter into: (a) any other agreements (including agreements with any Broadcaster or any other sponsors of the Campus and/or any Team) which would prevent it from fully complying with the provisions of this Agreement; or (b) any agreement granting Beverage availability or merchandising or promotional or advertising rights that are inconsistent with the rights granted to Sponsor pursuant to this Agreement, including any agreements with Concessionaires or third party food service operators, vending companies, and/or other entities which sell or distribute Beverages (including agreements with Broadcasters or other sponsors of the Campus and/or any Team).

10.2 Sponsor hereby represents, warrants and covenants as follows:

10.2.1 Sponsor has full power and authority to enter into and perform this Agreement.

10.2.2 All necessary approvals for the execution, delivery and performance of this Agreement by Sponsor have been obtained, and this Agreement has been duly

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executed and delivered by Sponsor and constitutes the legal and binding obligation of such party enforceable in accordance with its terms.

- 10.2.3 Sponsor has not entered into, and during the Term of this Agreement will not enter into, any other agreements which would prevent it from fully complying with the provisions of this Agreement.

## 11. Indemnification Rights

- 11.1.1 University Indemnification Obligations. University agrees to defend, indemnify, and hold Sponsor harmless from and against all claims, suits, liabilities, costs, and expenses, including reasonable attorneys' costs and fees related to: (i) University's material breach of this Agreement; (ii) for injury to, including death of, persons (whether they be third persons or employees of any of the parties hereto) or any loss of or damage to property in any manner arising from, the rights conveyed herein; and (iii) all claims, demands or litigation alleging that any of the University Marks violates or infringes on trademarks, tradenames, copyrights, or other proprietary rights provided that such tradenames, trademarks, and copyrights have been used in the exact manner provided by University, with the understanding that the obligations set forth above shall not apply to any loss or damage to the extent caused by the acts, omissions, or negligence of the party seeking to be indemnified.
- 11.1.2 Sponsor Indemnification Obligations. Sponsor shall defend, indemnify, and hold University harmless from and against all claims, suits, liabilities, costs, and expenses, including reasonable attorney's costs and fees related to: (i) Sponsor's material breach of this Agreement; and (ii) for injury to, including death of, persons (whether they be third persons or employees of any of the parties hereto) or any loss of or damage to property in any manner arising from the negligence of Sponsor, its employees, and agents in the course of their duties to Sponsor with the understanding that the obligations set forth above shall not apply to any loss or damage to the extent caused by the acts, omissions, or negligence of the party seeking to be indemnified.
- 11.1.3 Indemnification Procedures. Whenever any party entitled to indemnification (the "Indemnified Party") pursuant to the previous paragraphs receives notice of any potential claim which may be subject to indemnity, such party shall promptly notify the party obligated to indemnify (the "Indemnifying Party"). The Indemnifying Party shall have the obligation to assume the defense of such claim by counsel designated by it and reasonably acceptable to the Indemnified Party, provided that the Indemnifying Party shall not settle or compromise any such claim, or consent to the entry of any judgment, without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld. The Indemnified Party, its affiliates, employees and representatives, shall fully cooperate with and timely assist the Indemnifying Party with the defense of such claim. If the Indemnifying Party fails to assume the defense of such claim as soon as reasonably possible, in any event prior to the earlier of twenty (20) days after receipt of notice of the claim or five (5) days before the date an answer to a complaint or similar initiation of legal proceeding shall be due, the Indemnified Party shall have the

 

right to undertake, at the Indemnifying Party's expense, the compromise or settlement of any such claim on behalf of and at the risk and expense of the Indemnifying Party.

**12. Miscellaneous.**

12.1 Each party agrees to maintain sufficient insurance to adequately protect the respective interests of the parties hereto. The limits of coverage, as mutually agreed among the parties, will not be construed as a limitation of any potential liability to any of the parties, and failure to request evidence of this insurance will in no way be construed as a waiver of each party's obligation to provide the agreed insurance coverage.

12.2 Any notice or other communication hereunder will be in writing, will be sent via registered or certified mail, or overnight courier and will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, and (ii) if sent by overnight courier, one business day after delivery to such courier. Any notice or other communication will be addressed as set forth below, or to such other address as any party will advise the others in writing:

**If to Sponsor:**

Great Lakes Coca-Cola Distribution, L.L.C.  
dba Great Lakes Coca-Cola Bottling  
100 Coca-Cola Drive  
Belleville, Michigan 48111  
Attention: FSOP Director

**with a copy to:**

Great Lakes Coca-Cola Distribution, L.L.C.  
7400 N. Oak Park Avenue  
Niles, IL 60714  
Attention: General Counsel

**If to University:**

Lake Superior State University  
650 W Easterday Ave  
Sault Ste. Marie, Michigan 49783  
Attention: David Paitson, Ed.D.  
Director of Athletics  
[dpaitson@lssu.edu](mailto:dpaitson@lssu.edu)

12.3 (i) Because this Agreement is for rights unique to University, none of University's rights or obligations may be assigned, by operation of law or otherwise, without Sponsor's prior written consent. Any assignment that violates the terms of this provision is void.

(ii) Sponsor may assign all or part of its rights and obligations under this Agreement to any licensed Coca-Cola Company bottler, The Coca-Cola Company or any of Sponsor's or The Coca-Cola Company's Affiliates.



- 12.4 The parties are acting herein as independent contractors and independent employers. Nothing herein contained will create or be construed as creating a partnership, joint venture or agency relationship between the parties and no party will have the authority to bind the other in any respect.
- 12.5 **EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.**
- 12.6 No party will obtain, by this Agreement, any right, title, or interest in the trademarks of the other parties, nor, except as provided herein, will this Agreement give any party the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of the other parties.
- 12.7 This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without reference to its conflict of law rules. Any litigation arising from or related to this Agreement shall be brought exclusively in Federal or State Court in Chicago, Illinois and the parties agree to submit to the jurisdiction of such courts. The prevailing party in any litigation shall be entitled to an award of its reasonable attorney's fees and costs and expenses.
- 12.8 Each of the parties hereto agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder.
- 12.9 This Agreement and its Exhibits contains the entire agreement between the parties with respect to the subject matter hereof and supersede all previous communications, representations, agreements, promises or statements, either oral or written, by or between any party with respect thereto. All amendments to or waivers of this Agreement must be in writing signed by all the parties.
- 12.10 This Agreement may be executed and delivered with facsimile or electronic signatures which shall be deemed original signatures for all purposes.

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

Sponsor: Great Lakes Coca-Cola Distribution,  
L.L.C. dba Great Lakes Coca-Cola Bottling

By: *David A. Woelke*

Printed Name: DAVE WOELKE

Title: FSOP DIRECTOR

Date: 1-14-2019

University: Lake Superior State University

By: *David Paitson*

Printed Name: David Paitson

Title: Director of Athletics

Date: 2-5-19



## EXHIBIT A

### GLOSSARY OF DEFINED TERMS

**"Affiliate"** means, as to any entity, any other entity which is controlled by, controls, or is under common control with such entity. The term "control" (including the terms "controlled," "controlled by" and "under common control with") will mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity.

**"Agreement Year"** means each twelve (12) month period during the Term beginning with the Effective Date, and any remaining period of time between the last twelve (12) month period and the end of the Term

**"Ambush Marketing"** means an attempt by a third party, including any Broadcaster, without Sponsor's consent, to associate Competitive Products with the Campus, the University, the University Marks, or any Team, or to suggest that Competitive Products are endorsed by or associated with University, the Campus, the University Marks, and/or any Team by referring directly or indirectly to University, the Campus, or the University Marks, and/or the Teams.

**"Approved Cups"** means disposable cups approved by Sponsor from time to time as its standard trademark cups and/or vessels and/or other (disposable and nondisposable) containers approved by Sponsor from time to time, all of which shall prominently bear the trademark(s) of Products (as herein defined) on all of the cup surface.

**"Beverage" or "Beverages"** means all non-alcoholic beverages (i.e. anything consumed by drinking), whether or not such beverages (i) contain nutritive, food, or dairy ingredients, OR (ii) are in a frozen form. This definition applies without regard to the beverage's labeling or marketing. Powders, syrups, grounds (such as for coffee), herbs (such as for tea), concentrates, K-Cups® pods and all other beverage bases from which Beverages can be made are deemed included in this definition. For the avoidance of doubt, "flavor enhancers", "liquid water enhancers", brands and products of water purification and beverage making systems (e.g. Brita®, Soda Stream®), and non-alcoholic beverages sold as "shots" or "supplements" are considered Beverages. "Beverage" or "Beverages" shall not include fresh-brewed unbranded coffee and tea products, free and reduced price lunch line milk and juice, water drawn from the public water supply and unbranded juice squeezed fresh on Campus.

**"Bona Fide Offer"** means a proposed agreement concerning rights and obligations with respect to Beverage availability, merchandising, promotional, and/or advertising, which agreement, if executed by University and the third party, would be legally binding.

**"Broadcaster"** means any entity which for any business purpose publishes, prints, syndicates, televises or broadcasts any photograph, film, videotape or other recording or rendering of the Campus (or any portion thereof) and/or of any event held on the Campus including any Team games.

**"Campus"** means the entire premises of each and every facility owned, leased, controlled by or operated by the University either now or in the future, including without limitation all academic buildings, athletic facilities, areas and facilities where intramural sports are conducted, school stores, convenience stores, retail outlets, auditoriums, theatres, housing, maintenance facilities and medical facilities, and including for each such location, the grounds, parking lots, all buildings which are part of the location, all cafeterias, faculty and staff lounges, dining facilities, branded or

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unbranded food service outlets, concession stands, press rooms, sky boxes, stadium suites, vending locations and players' benches, sidelines and locker rooms.

**"Competitive Products"** means any and all Beverages other than Products (as defined herein).

**"Concessionaire"** means any third party providing services under contract at the Campus that directly or indirectly relates to the service of Beverages.

**"Fresh Milk"** means that liquid taken from female mammals for human consumption, and which may be pasteurized, homogenized, and/or have calcium and/or vitamins A and D added. Fresh Milk shall not include milk to which sweeteners, flavorings, fruit juice, carbonation, protein, minerals, vitamins (other than vitamins A and D), whey, caseins, cultures, tea, coffee or other ingredients have been added. Fresh Milk does not include liquids that may be commonly described as "milk" but which do not meet the preceding definition of "Fresh Milk," such as coconut milk/water or "Muscle Milk."

**"Fresh Brewed Coffee"** means ground or unground roasted coffee beans or a beverage brewed in multi-cup coffee makers from the ground or unground roasted coffee beans prepared on-premise and served hot or cold for immediate consumption.

**"Products"** means Beverage products purchased directly from Sponsor or sold through vending machines owned and stocked exclusively by Sponsor.

**"Rights of First Negotiation and Refusal"** means that University will negotiate exclusively with Sponsor (i) for a period of ninety (90) days before the termination of this Agreement for any similar agreement regarding Beverage availability, merchandising, promotional or advertising rights and/or (ii) for a period of ninety (90) days following the date new forms of signage or advertising become available. After such exclusive negotiation period, University will be free to negotiate with any person or entity. If University receives a Bona Fide Offer regarding such rights from a third party, then University will be obligated to notify Sponsor of such offer, provide Sponsor with a copy of such offer and Sponsor will have thirty (30) business days from the date of such notice to offer to contract with University on terms no less favorable to University than those contained in the Bona Fide Offer of a third party. In no event will University enter into a contract with a third party upon terms and conditions more favorable to such third party than those previously offered to Sponsor.

**"Team" or "Team(s)"** means all intercollegiate athletic teams associated with the University.

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



**EXHIBIT B**  
**PRODUCT PRICING**

Package/Brand	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
20 oz Soft Drinks	\$27.60	\$28.70	\$29.85	\$31.05	\$32.29	\$33.58	\$34.92	\$36.32	\$37.77	\$39.28
20 oz Dasani	\$14.64	\$15.23	\$15.83	\$16.47	\$17.13	\$17.81	\$18.52	\$19.27	\$20.04	\$20.84
20 oz Powerade	\$24.96	\$25.96	\$27.00	\$28.08	\$29.20	\$30.37	\$31.58	\$32.85	\$34.16	\$35.53
20 oz Vitaminwater	\$31.92	\$33.20	\$34.52	\$35.91	\$37.34	\$38.84	\$40.39	\$42.00	\$43.68	\$45.43
20 oz Smartwater	\$27.12	\$28.20	\$29.33	\$30.51	\$31.73	\$33.00	\$34.32	\$35.69	\$37.12	\$38.60
32 oz Powerade	\$18.30	\$19.03	\$19.79	\$20.59	\$21.41	\$22.26	\$23.16	\$24.08	\$25.04	\$26.05
16 oz Monster Energy	\$38.16	\$39.69	\$41.27	\$42.92	\$44.64	\$46.43	\$48.28	\$50.22	\$52.22	\$54.31
12 oz Can Soft Drinks	\$13.44	\$13.98	\$14.54	\$15.12	\$15.72	\$16.35	\$17.01	\$17.69	\$18.39	\$19.13
1 Liter Dasani	\$15.00	\$15.60	\$16.22	\$16.87	\$17.55	\$18.25	\$18.98	\$19.74	\$20.53	\$21.35
1 Uter Smartwater	\$18.96	\$19.72	\$20.51	\$21.33	\$22.18	\$23.07	\$23.99	\$24.95	\$25.95	\$26.99
23 oz Peace Tea	\$31.20	\$32.45	\$33.75	\$35.10	\$36.50	\$37.96	\$39.48	\$41.06	\$42.70	\$44.41
18.5 oz Gold Peak	\$31.20	\$32.45	\$33.75	\$35.10	\$36.50	\$37.96	\$39.48	\$41.06	\$42.70	\$44.41
16 oz Hubert's	\$33.60	\$34.94	\$36.34	\$37.80	\$39.31	\$40.88	\$42.51	\$44.22	\$45.98	\$47.82
12 oz Minute Maid Juice	\$30.72	\$31.95	\$33.23	\$34.56	\$35.94	\$37.38	\$38.87	\$40.43	\$42.04	\$43.72
12 oz Can - Dasani Sparkling	\$14.64	\$15.23	\$15.83	\$16.47	\$17.13	\$17.81	\$18.52	\$19.27	\$20.04	\$20.84
11.5 oz Core Power	\$56.64	\$58.91	\$61.26	\$63.71	\$66.26	\$68.91	\$71.67	\$74.53	\$77.52	\$80.62
24 oz Monster Brands	\$49.92	\$51.92	\$53.99	\$56.15	\$58.40	\$60.74	\$63.16	\$65.69	\$68.32	\$71.05
500 ml Dasani	\$12.24	\$12.73	\$13.24	\$13.77	\$14.32	\$14.89	\$15.49	\$16.11	\$16.75	\$17.42
700 ml Smartwater	\$29.76	\$30.95	\$32.19	\$33.48	\$34.81	\$36.21	\$37.66	\$39.16	\$40.73	\$42.36
16.9 oz MM Sparkling	\$27.12	\$28.20	\$29.33	\$30.51	\$31.73	\$33.00	\$34.32	\$35.69	\$37.12	\$38.60
13.7 oz Dunkin Donuts Coffee	\$43.44	\$45.18	\$46.98	\$48.86	\$50.82	\$52.85	\$54.97	\$57.16	\$59.45	\$61.83
14 oz YUP	\$30.72	\$31.95	\$33.23	\$34.56	\$35.94	\$37.38	\$38.87	\$40.43	\$42.04	\$43.72
15 oz Monster Java	\$44.64	\$46.43	\$48.28	\$50.21	\$52.22	\$54.31	\$56.48	\$58.74	\$61.09	\$63.54

\*All prices are per standard physical case and exclusive of taxes, deposits, handling fees, and recycling fees.

Bag in Box prices are as set forth in Concessionaire's contract with The Coca-Cola Company ("TCCC"). If, during the Term, University does not have a contract with a Concessionaire, or the Concessionaire does not have a contract with TCCC, then Bag in Box prices shall be as mutually agreed by Sponsor and University.

*Dan* *DAP*