

AGREEMENT

Agreement made by and between The Gatorade Company ("Gatorade"), a Delaware corporation, with offices at 555 West Monroe Street, Chicago, Illinois 60661, and the Oklahoma State University Athletic Department ("**OSU**"), having a principal office at OSU Athletics Center, Gallagher-Iba Arena, Stillwater, Oklahoma. 74078.

WHEREAS, **OSU** is a university whose athletic programs are governed by the National Collegiate Athletic Association ("NCAA") and who participates in the Big 12 Conference (the "Conference"); and

WHEREAS, pursuant to NCAA and Conference rules, **OSU** owns or controls its (and not its opponents) courtside, sidelines, bench areas, dugouts, locker rooms, pre/post game interview areas and other areas immediately contiguous with the non-fan accessible playing surfaces at all of its home and Conference away athletics events and certain of its non-Conference away events, pre-season, season, post-season athletic events, tournaments and exhibitions, both home and away (the "Players' Areas"); and

WHEREAS, **OSU** has the exclusive right to license for commercial purposes the use of the names, symbols, emblems, designs, colors, uniforms and logos of **OSU** (the "Marks") and has the right to grant the licenses and rights hereunder; and

WHEREAS, GATORADE has the exclusive right to manufacture and distribute G Series® products, including: GATORADE PRIME® Pre-Game Fuel Drink and Energy Chews, GATORADE® Thirst Quencher, G2® Thirst Quencher, GATORADE RECOVER® Protein Recovery Shake and Beverage; and G Endurance™ products: including Carb Energy Drink, Energy Chews, Endurance Formula, and Gatorlytes Electrolyte Supplement, individually, collectively and together with such other sports drinks, energy drinks, electrolyte supplements and carbohydrate drinks and drink mixes (from which the Product is made) as Gatorade shall manufacture and/or sell

during the Term hereof (the "Product"); and

WHEREAS, Gatorade desires to obtain the right to exclusively place Product and Gatorade Merchandise (hereinafter defined) in the Players' Areas ("Players' Areas Exclusivity") and rights to use the Marks in connection with its advertising, merchandising, sale and promotion of the Product;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1) Term

- (a) The term of this Agreement shall be for a period of six (6) years, commencing July 1, 2013 and terminating on June 30, 2019.
- (b) **OSU** agrees that six (6) months prior to expiration of the Agreement, Gatorade shall enter into exclusive, confidential good faith negotiations for a new agreement. If terms are not agreed upon by sixty (60) days before the expiration of the Agreement, then **OSU** shall thereafter be free to negotiate with a third party. However, if thereafter **OSU** receives an offer from any third party to enter into an agreement relating to consumable sports performance products, **OSU** will notify Gatorade of the terms of that offer and Gatorade shall have thirty (30) days to provide notice that Gatorade either wishes to enter into an agreement within the terms set forth by the third party or to reject the offer. **OSU** agrees that it will not enter into negotiations with any third party, without first advising that third party of this contractual obligation to Gatorade.

2) Territory

The rights granted by **OSU** to Gatorade hereunder may be exercised worldwide (the "Territory").

3) Use of Marks

OSU hereby grants to Gatorade and Gatorade hereby accepts the right to use solely in connection with Gatorade's advertising, merchandising, sale and promotion of the Product:

- (a) The Marks; and
- (b) The following designations:
 - (i) OFFICIAL SPORTS BEVERAGE OF **OSU**;
 - (ii) OFFICIAL SPORTS PERFORMANCE BEVERAGE OF **OSU**;
 - (iii) OFFICIAL SPORTS DRINK OF **OSU**;
 - (iv) OFFICIAL THIRST QUENCHER OF **OSU**;
 - (v) OFFICIAL SPORTS NUTRITIONAL PRODUCT OF **OSU**;
 - (vi) OFFICIAL ISOTONIC OF **OSU**;
 - (vii) OFFICIAL SPORTS PERFORMANCE WATER OF **OSU**;
 - (viii) OFFICIAL RECOVERY BEVERAGE OF **OSU**;

and/or other designations as may be mutually agreed to (the "Designations"). No other beverage product shall be permitted to bear the same or similar Designations.

4) Product Placement/Use

- (a) **OSU** shall cause Gatorade-identified cups, coolers, ice chests, squeeze bottles, sideline carts, towels and other innovated equipment later developed by Gatorade for purposes of storing, distribution, and using Product in Players' Areas or providing visibility presence in the Players' Areas to Products (hereinafter "Gatorade Merchandise") to be exclusively placed (in the manner specified in Exhibit A in all Players' Areas at all **OSU** intercollegiate home and away athletic events, including all pre-season games, regular-season games, post-season games and exhibitions

(the “Games”), and subject to NCAA guidelines and regulations regarding individual player endorsements (and subject to Conference guidelines with respect to post-season games). For the purposes of clarification and not limitation, **OSU** agrees that the locker room and pre- and post-game interview areas are part of the “Players’ Areas” and as such, **OSU** will cause Gatorade branded products to be exclusively placed in the locker rooms and the pre- and post-game interview areas for player access and usage. No other beverage container or chew product shall be permitted to be placed or used in any Players’ Areas.

- (b) **OSU** agrees that it will not grant Players’ Areas Exclusivity to any other beverage or chew product, nor allow any other beverage, beverage container or chew product to be placed in or near the Players’ Areas, whether a sports nutrition product or not. Water and any other beverage can be placed in or near Players’ Areas as long as it is placed in Gatorade Merchandise. Further, **OSU** shall not grant promotional rights of any kind, for any other beverage or chew product, advertising or merchandising to appear in or near the Players’ Areas (including, but not limited to, on chairbacks, equipment, towels, tables, equipment cases and apparel, but specifically excluding rotating courtside and/or baseline signage, matrix board signage, or permanent lighted signage). Athletes, coaches and other **OSU** personnel may not appear at any pre- or post-game interview or press conference, whether in the locker room or designated media interview room, with any other beverage or chew product.

- (i) To ensure that all future opponents and/or tournament, bowl and event organizers (individually, the “Coordinator”) are made aware of this Agreement, Gatorade requires that the following statement

be inserted into all future tournament/event contracts:

OSU has a pre-existing agreement that contractually binds **OSU** to exclusively place and utilize Gatorade-identified cups, coolers, ice chests, squeeze bottles, towels and product ("Gatorade Merchandise") within the courtside area, players' bench area, locker rooms, pre- and post-game interview areas/rooms and sidelines during the event ("Players' Areas Exclusivity"). [COORDINATOR] hereby acknowledges **OSU's** obligation to provide Players' Areas Exclusivity for Gatorade Merchandise and agrees that **OSU** shall have the exclusive right to place such Gatorade Merchandise at [the event]. [COORDINATOR] shall obtain from the event venue, tournament operator, and other party, all the rights necessary to grant **OSU** the exclusivity rights hereunder.

- (ii) In the event a Coordinator interferes with **OSU's** contractual obligation to provide Players' Areas Exclusivity for Gatorade Merchandise, **OSU** will request the use of generic, non-brand-identified cups, coolers, ice chests, squeeze bottles, sideline carts and towels ("Non-branded Merchandise") for use for that event. If **OSU's** request to place Non-branded Merchandise, is denied by the Coordinator, **OSU** will notify Gatorade of this interference with **OSU's** contractual obligation to Gatorade, and Gatorade and **OSU** will negotiate, in good faith, a remedy for the breach of this Agreement. **OSU** will assist Gatorade in any way necessary in Gatorade's challenge against the Coordinator's interference, but under no circumstance will Gatorade deny or prevent **OSU's**

ability to participate in an intercollegiate event.

- (c) Gatorade shall, at its cost, provide and deliver to **OSU** such reasonable quantities of Gatorade Merchandise as may be agreed to between the parties from time to time.

5) Promotion Rights/Services

OSU hereby grants Gatorade the following promotional rights and services during each year of the Agreement:

(a) Tickets and Parking Passes:

- (i) Four (4) premium reserved season tickets and one (1) VIP parking pass for each home football game.
- (ii) Four (4) premium reserved season tickets and one (1) VIP parking pass for each home men's basketball game.
- (iii) Option to purchase tickets to all post-season events in which **OSU** teams participate.

(b) Hospitality:

- (i) Thirty (30) group tickets in a good location and five (5) parking passes for one (1) mutually agreed upon priority conference football game each year of the agreement. If available, **OSU** to provide group with on-field access for pre-game activities.

(c) Media Elements:

- (i) One (1) full-page, four-color advertisement in each football game program guide.
- (ii) One (1) full-page, four-color advertisement in both the men's and women's basketball game program guide.

(d) Gatorade Fuel Bar:

OSU will make a good faith effort to install a Gatorade branded Fuel Bar

for student athlete use within **OSU**'s athletics facility, contingent on the execution of an additional agreement setting out the obligations of the parties. Design and branding to be mutually agreed upon by both parties.

6) Exclusivity

- (a) **OSU** agrees that it will not grant to any third party any rights to sell Competitive Products at the Games or to advertise, be recognized as a **OSU** sponsor, or promote **OSU** with Competitive Products. "Competitive Products" shall include all beverage, smoothie, powder, bar, confectionary, gel, tablet, strip, concentrate and/or syrup (the "Forms") products that are marketed and/or promoted as enhancing athletic performance, muscle development and/or aiding the recovery process within each of the need states outlined below:
- (i) Fluid and Electrolyte Replacement (Hydration) – all Forms, whether carbonated or non-carbonated sports drinks, sports beverages, isotonics, electrolyte and fluid replacement beverages and/or supplements that compete with Gatorade Thirst Quencher, G2, Gatorade Endurance Formula, or GatorLytes Electrolyte Supplement, including, but not limited to Powerade, All-Sport, FRS, coconut waters, Accelerade, PowerBar Endurance, Enlyten Sports Strips, Rehydralyte, Sustain, Herbalife24 Hydrate, and Herbalife H3O Fitness Drink;
 - (ii) Energy – all Forms that deliver energy to the body through ingredients like carbohydrates that compete with Gatorade Prime products, including, but not limited to, Carbo Pro, 180, Clif Shot Bloks, PowerBar Gel, and AdvoCare Rehydrate Gel. Nourishment –

all Forms that provide nutrition to the body through ingredients like carbohydrates, vitamins, or protein that compete with Gatorade Nutrition Shake, or Gatorade Nutrition Bar, including, but not limited to, Boost, GO!, EAS Myoplex Sport, Clif, Nature Valley, PowerBar Performance, and Snickers Marathon;

- (iii) Recovery – all Forms that assist with muscle development and/or aid in the recovery process by returning an athlete to a state of readiness through ingredients and supplements like carbohydrates, protein and antioxidants that compete with Gatorade Recover products, including, but not limited to, milk, chocolate milk, Muscle Milk, MetRx, Endurox R4, EAS Myoplex Deluxe, Core Power, PowerAde Milk, Rockin Refuel, and PowerBar ProteinPlus, Herbalife 24 Rebuild, AdvoCare Muscle Gain, and AdvoCare Post Workout Recovery;
- (iv) Health – All Forms that aid in maintaining or improving healthy muscles, joints, and bones through ingredients like carbohydrates, protein, vitamins, antioxidants, glutamine and glucosamine; and,
- (v) Enhanced Hydration (Waters) – all packaged hypertonic, hypotonic or isotonic products, regardless of Form that are enhanced (other than with trace amounts) with oxygen, flavor, caffeine, vitamins, minerals, protein and/or carbohydrates and are marketed and/or promoted as a sports performance beverage that compete with Propel® Water Beverage, including, but not limited to, Pentahydrate, Powerade Option, Mio, Aquafina Flavorsplash, Fruit2O, Glaceau VitaminWater and Glaceau SmartWater, but excluding plain or pure water such as Dasani, Evian, and

Aquafina as they are currently formulated.

(b) Non-competitive Products

(i) **OSU** and Gatorade both acknowledge Energy drinks that delivery energy to the body through caffeine (i.e. NOS, Red Bull, 5-hour ENERGY®) are not covered in the above categories. **OSU** shall not grant to any third party within the Caffeinated Energy category the rights to use the Marks with products that are marketed and/or promoted as enhancing athletic performance.

(c) This Agreement constitutes an endorsement of the Product by **OSU**, its athletic programs and teams. **OSU** agrees they will not promote, endorse or allow **OSU's** programs to promote or endorse, or be caused to promote or endorse any other Competitive Products. No agreement or relationship will be entered into or maintained by **OSU** pursuant to which Competitive Products are associated in any manner with **OSU's** teams, athletes, coaches, and/or its programs in any advertising, promotional activity or other endeavor which creates or tends to create the impression of a relationship or connection between such Competitive Product and **OSU's** teams, coaches, athletes, and/or its programs. **OSU** acknowledges that allowing any Competitive Products to receive endorsement benefits from **OSU** would seriously diminish the rights received in this Agreement, resulting in a breach of the Agreement.

7) Compensation

(a) The fee to be paid by Gatorade to **OSU** in consideration of the rights granted, and performances rendered by **OSU** under this Agreement shall be Three Hundred Seventy Five Thousand Dollars (\$375,000). The fee shall be paid according to the following schedule:

- (i) September 1, 2013 – Sixty Thousand Dollars (\$60,000);
 - (ii) September 1, 2014 – Sixty Thousand Dollars (\$60,000);
 - (iii) September 1, 2015 – Sixty Thousand Dollars (\$60,000);
 - (iv) September 1, 2016 – Sixty Five Thousand Dollars (\$65,000);
 - (v) September 1, 2017 – Sixty Five Thousand Dollars (\$65,000); and,
 - (vi) September 1, 2018 – Sixty Five Thousand Dollars (\$65,000);
- (b) Gatorade will provide a “credit fund” for **OSU** to utilize for purchases of Products on the Gatorade Team Zone website each year of this Agreement in the following amounts:
- (i) July 1, 2013 – Two Hundred Twenty Five Thousand Dollars (\$225,000)
 - (ii) July 1, 2014 – Two Hundred Twenty Five Thousand Dollars (\$225,000)
 - (i) July 1, 2015 – Two Hundred Thirty Seven Thousand Five Hundred Dollars (\$237,500)
 - (ii) July 1, 2016 – Two Hundred Thirty Seven Thousand Five Hundred Dollars (\$237,500)
 - (iii) July 1, 2017 – Two Hundred Fifty Thousand Dollars (\$250,000)
 - (iv) July 1, 2018 – Two Hundred Fifty Thousand Dollars (\$250,000)
- (c) The parties acknowledge that Gatorade’s willingness to pay the compensation set forth herein during the term of this Agreement is based on **OSU**’s willingness and ability to exclusively place Gatorade Merchandise in the Players’ Areas for the Games. If, during the term of this Agreement, **OSU** loses the ability to cause Gatorade Merchandise to be exclusively placed in all **OSU** Players’ Areas, Gatorade shall have the right, in its sole discretion, to terminate this Agreement, upon thrity (30) days’ written notice to **OSU**. Should Gatorade decide not to terminate

the Agreement, the parties will negotiate in good faith to determine the appropriate reduction, if any, to the compensation set forth herein.

8) Assignment

This Agreement and all rights and duties hereunder are personal to the parties and shall not, without the prior written consent of the other party, be sublicensed or assigned, provided, however, Gatorade shall be entitled to license or assign its rights hereunder to its parent or any of its affiliates or to the successor in interest or assignee to all or substantially all of the Gatorade business.

9) Indemnification

- (a) **OSU** hereby agrees to indemnify and hold harmless Gatorade, its parent company PepsiCo, Inc., and each of their subsidiaries and affiliates and all of their respective officers, directors, agents and employees against any claims, demands, causes of action or damages, including reasonable attorneys' fees, arising out of (i) **OSU's** alleged or actual breach of this Agreement or any applicable laws; (ii) any act or omission by **OSU** in the performance of this Agreement; (iii) the use of any premium or promotional item disseminated by **OSU** during any promotional day or other game-related event; and, (iv) the conduct by **OSU** of any game or event; provided that **OSU** is given prompt notice of, and shall have the option to undertake and conduct the defense of, any such claim, demand or cause of action.
- (b) Gatorade hereby agrees to indemnify and hold harmless **OSU** and its trustees, officers, directors, agents and employees against any claims, demands, causes of action or damages, including reasonable attorneys' fees, arising out of (i) Gatorade's alleged or actual breach of this Agreement; (ii) any act or omission by Gatorade in the performance of

this Agreement; (iii) the use, advertisement, or sale of any product distributed by Gatorade in connection with this Agreement; and, (iv) any premium or promotional items disseminated by Gatorade in connection with this Agreement; provided that Gatorade is given prompt notice of, and shall have the option to undertake and conduct the defense of, any such claim, demand or cause of action.

10) Termination

Without prejudice to any other rights they may have, the parties shall have the right to terminate this Agreement, by written notice, at any time if the other party shall be in breach of any material provision of this Agreement, and if such breach is not cured within thirty (30) days after notification.

11) Probation

In the event that **OSU's** athletics department is placed on probation, then Gatorade shall have the right, in its sole discretion, to terminate this agreement upon thirty (30) days' written notice to **OSU**. Should Gatorade decide not to terminate and such probation decreases or eliminates television coverage of **OSU's** football or basketball games, or eliminates any chance of bowl participation, then Gatorade shall be entitled to a rebate of 75% of the cash compensation for each year during the probationary period.

12) Relationship of the Parties

Nothing herein contained shall be construed to place the parties in the relationship of partners or joint venturers or employer-employee and neither shall have the right to obligate or bind the other party in any manner whatsoever.

13) Warranty

Each party represents that it has the right and authority to enter into this Agreement

and to grant the rights hereunder.

14) Merger

This writing constitutes the entire agreement and understanding between the parties hereto and cancels, terminates and supersedes any prior agreement, writing or understanding relating to the subject matter hereof. None of the provisions of this Agreement can be waived or modified except expressly in writing signed by both parties, and there are no representations, promises, agreements, warranties, covenants or undertakings other than those contained herein. If any term hereof shall be void or unenforceable, the remaining terms shall be in full force and effect.

15) Waiver

The waiver by either party of a breach by the other party of any provision herein shall not in any way constitute a waiver of any succeeding breach of the same or any other provision.

16) Notices

Any notice or any communication hereunder shall be in writing, shall be sent via registered or certified mail, and shall be given when deposited, postage pre-paid, in the United States mail, addressed as set forth below, or to such other addresses either party shall advise the other in writing:

If to Gatorade:

The Gatorade Company

Attn: John Shea, Senior Director of Sports Marketing

555 West Monroe Street, 10-2

Chicago, Illinois 60661

with a copy to:

The Gatorade Company

Attn: Gatorade Counsel

555 West Monroe Street, 11-13

Chicago, Illinois 60661

If to **OSU**:

Oklahoma State University Athletics

Attn: David Martin, Sr. Associate Athletics Director

Gallagher-Iba Arena

Stillwater, Oklahoma 74078

17) Proprietary Names and Marks

Except as provided for herein, neither party to this Agreement shall use the logo, trademark or name of the other without the other's prior written approval which may be given or withheld at such party's discretion. Neither party shall obtain, by this Agreement, any right, title or interest in the trademarks, names or logos of the other, nor shall this Agreement give either party the right to use, refer to, or incorporate in marketing, or other materials in names, logos or trademarks or copyrights of the other, except as expressly provided herein.

18) Television and Radio

Nothing herein shall prohibit or limit **OSU's** right to contract with respect to television and radio broadcast rights for **OSU** games, nor limit or prohibit any advertisement on any products in connection with such broadcasts.

19) Confidentiality

Except as may be required by law, the terms of this Agreement, including the financial arrangements and the duration, shall be considered confidential and shall not be disclosed by Gatorade or **OSU** to any third party, except **OSU's** accountants under confidentiality, without the prior written consent of Gatorade or **OSU**.

20) Governing Law

This Agreement and shall be governed by the laws of the state of Illinois.

21) Survival

The following provisions shall survive expiration or termination of this Agreement: 9
16, 19, 20 and 21.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and
year signed below.

AGREED TO AND ACCEPTED:

THE GATORADE COMPANY



By: John Shea

Title: Senior Director
Sports & Event Marketing

Date: 9/17/13

AGREED TO AND ACCEPTED:

OKLAHOMA STATE UNIVERSITY


By: David Martin

Title: Deputy Director of Athletics

Date: 9/18/13

EXHIBIT A

SUGGESTED PLACEMENT OF GATORADE MERCHANDISE

Football (Cart placed at the 50 yard line)

SIDELINE LAYOUT



INVENTORY PER TEAM

- A (1) COOLER CART
- B (4) 10-GAL COOLERS
- C (1) 102-QT ICE CHESTS
- D (4) 48-QT ICE CHESTS
- E (24) SQUEEZE BOTTLES
- F (4) PRIME CADDIES
- G (4) SQUEEZE BOTTLE CARRIERS
- H (4) RECOVER CADDIES
- I (750) 12-OZ CUPS
- J (100) TOWELS

LAYOUT DETAIL



LAYOUT DETAIL-TOP VIEW



Basketball (Cart placed behind the coach)

SIDELINE LAYOUT



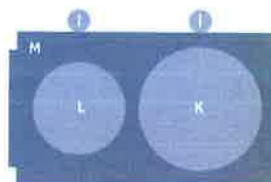
INVENTORY PER TEAM

- D (4) 48-QT ICE CHESTS
- E (24) SQUEEZE BOTTLES
- F (2) 01 POUCH CADDIES
- G (4) 02 BOTTLE CADDIES
- H (2) 03 BOTTLE CADDIES
- I (750) 12-OZ CUPS
- J (100) TOWELS
- K (1) 7-GAL COOLER
- L (1) 3-GAL COOLER
- M (1) DOUBLE COOLER CART

LAYOUT DETAIL



CART DETAIL-TOP VIEW



COOLER LAYOUT DETAIL-TOP VIEW

