

**SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

**BOARD AGENDA ITEM – August 24, 2021**

**PROCUREMENT SOLICITATION**

**ITN 21-314-N-DR – District-Wide Beverage Vending Services**

<input type="checkbox"/> <b>(ITB)</b> Invitation To Bid	<input checked="" type="checkbox"/> <b>(ITN)</b> Invitation To Negotiate	<input type="checkbox"/> <b>(PB)</b> Piggyback
<input type="checkbox"/> <b>(RFP)</b> Request For Proposal	<input type="checkbox"/> <b>(RFQ)</b> Request For Qualifications	<input type="checkbox"/> <b>(SC)</b> State Contract
<input type="checkbox"/> <b>(SS)</b> Sole Source		

**REQUESTOR:** Food & Nutrition Services

**Legal Review Required:**  **Yes**  **No**

**Standard Template Used with No Changes:**  **Yes**  **No**

**Standard Template:** ITN

VENDOR NAME	AMOUNT AWARDED	REQUIRED PRODUCTS/SERVICES
Bottling Group, LLC (Pepsi)	\$650,000.00 annually	District-Wide Beverage Vending Services
<b>Total</b>	<b>\$6,500,000.00</b>	

<input type="checkbox"/> <b>Contract Renewal</b>	<b>New Contract Amount</b>	\$6,500,000.00
<input type="checkbox"/> <b>Recurring Contract</b>	<b>Previous Contract Amount</b>	Variable
<input checked="" type="checkbox"/> <b>New Contract</b>	<b>Variance</b>	N/A

**PRICE INCREASE / DECREASE EXPLANATION:** N/A

**DISCUSSION:**

The District issued an Invitation to Negotiate for District-Wide Beverage Vending Services on March 12, 2021. Two (2) proposals were received. The evaluation committee recommended that the District negotiates with the top rank firm Bottling Group, LLC (Pepsi). After final negotiations, the District and Bottling Group, LLC came to a mutual agreement.

Out of the two proposals received, Bottling Group, LLC (Pepsi) provided the best incentives, sponsorships, and vending pricing.

The standard agreement template has been used but modifications to standard terms and conditions were approved by the Food & Nutrition Services, Legal Services and Risk Management during the negotiation period of May through July 2021.

**CONTRACT TERM:**

The initial contract term shall commence August 25, 2021, and continue until August 24, 2026, with an option to renew for a one (1) five (5) year renewal period.

**RECOMMENDATION:**

It is the recommendation of Robin Novelli, Chief Operating Office and Kevin Thornton, Director of Food & Nutrition Services to approve the attached agreement with Bottling Group, LLC, (Pepsi) in the amount of \$6,500,000.00.

**AUTHORITY FOR ACTION:**

Florida Administrative Code 6A-1.012



**AGREEMENT**  
**By and Between**  
**The School Board of Brevard County, Florida**  
**and**  
**Bottling Group, LLC (“Pepsi”)**

This Agreement (“Agreement”) is made by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Fran Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as “BPS” or “District”) and Bottling Group, LLC (“Pepsi” or “Contractor”) whose business address is 3951 Sarno Road, Melbourne, FL 32934, (hereinafter referred to as “Contractor”), each individual referred to as a “Party” and, collectively, the “Parties.”

**WITNESSETH:**

**WHEREAS**, BPS desires to secure a contractual relationship for the purpose of District-Wide Beverage Vending Services for Brevard County Public Schools, as outlined in Exhibit “A,” Scope of Services (“Services”), and

**WHEREAS**, these Services have been competitively solicited pursuant to ITN 21-314-N-DR, which has been assigned to the tracking number indicated above by BPS for tracking purposes.

**NOW THEREFORE**, for good and valuable consideration and the mutual promises contained herein, the Parties agree as follows:

1. **RECITALS**. The above Recitals are true and correct and are incorporated herein.
2. **DEFINITIONS**. The following definitions of terms associated with this Agreement are provided to establish a common understanding between both Parties to this Agreement, as to the intended application, interpretation, and usage of terms in connection with this Agreement.
  - 2.1. **“AGREEMENT”** refers to the executed Agreement by and between BPS and Contractor.
  - 2.2. **“AMENDMENT”** means a written document authorized by the parties to this Agreement which, when executed by both parties, sets forth any changes to that certain scope of services (“Services”), attached hereto as Exhibit “A” and incorporated herein by reference, that contemplates a change in the Services, work, and materials to be provided and performed by Contractor pursuant to this Agreement, sets forth the basis of compensation due to Contractor of, and sets forth the time period and/or schedule for performance and completion thereof.
  - 2.3. **“BPS”** shall mean The School Board of Brevard County, Florida and may be used interchangeably with Brevard Public Schools.
  - 2.4. **“CONFIDENTIALITY”** For purposes hereof, “Confidential Information” shall mean any non-public information of the other party that is designated as confidential, or that the receiving party knew or reasonably should have known was confidential because it derives independent value from not being generally known to the public. Confidential Information shall not include any information which: (a) a party can demonstrate was rightfully in its possession prior to the date of disclosure to it by the other party; (b) at the time of disclosure or later, is published or becomes part of the public domain through no act or failure to act on the part of a party; (c) a party has developed independently without reference to any Confidential Information of the other party; (d) a party can demonstrate such information came into its possession from a third-party who had a bona fide right to make such information available; or (e) is subject to the Florida Public Records Law, Chapter 119, F.S., or any other information required to be disclosed by a valid court order or agency of government.
  - 2.5. **“CONTRACTOR”** means Bottling Group, LLC, (“Pepsi”) a Party hereto, who is authorized to conduct business in the State of Florida, offering Services hereunder, which has executed this Agreement, and which shall be legally obligated, responsible, and liable for providing and performing any and all of the

## District-Wide Beverage Vending Services

Services, work, and materials, including services and/or work of any approved sub-contractors, required under the covenants, terms, and provisions contained in this Agreement and any and all Amendments thereto.

2.6. "**FUNDS**" shall mean payment made by BPS to Contractor or by Contractor to BPS hereunder.

2.7. "**PARTIES**" shall mean the parties entering into this Agreement, BPS and Contractor, respectively; individually, a "Party."

2.8. "**SERVICES**" shall mean the services as set forth and required, pursuant to the Agreement and described in further detail in Exhibit "A," attached hereto and incorporated herein by reference.

3. **AMENDMENTS AND MODIFICATIONS.** No Amendments and/or modifications of this Agreement shall be valid unless in writing and signed by each of the Parties.

### 4. **TERM AND TERMINATION.**

4.1. The term of this Agreement will cover the period beginning August 25, 2021 through August 24, 2026 and may be renewed at the end of the term up to one (1) optional five (5) year renewal period (collectively, the "Term"). The Agreement term recommendation will be that which is determined to be in the best interest of the School Board. The renewal option shall be exercised at the same or substantial similar terms by mutual written agreement of the Parties.

4.2. Either party may terminate this Agreement if the other commits a material breach of this Agreement; provided, however, that the terminating party has given the other party written notice of the breach and the other party has failed to remedy or cure the breach within thirty (30) days of such notice. If the Term of this Agreement is terminated early by BPS for any reason other than an uncured material breach by Contractor, Contractor will have the right to immediately seek reimbursement from BPS pursuant to Section 15.3.

### 5. **PAYMENT.**

5.1. Contractor agrees to provide BPS with funds for the Agreement in the amounts as outlined in Exhibit "B," Fee Schedule, which is attached hereto and incorporated herein. BPS agrees to pay all accounts owing to Contractor by utilizing the p-card payment method. Via the Contractor's online payment system. BPS shall pay these fees to Contractor for services rendered as outlined in Exhibit "B" which includes all direct charges, indirect charges, and reimbursable expenses, if any.

5.2. Expenses shall only be incurred as authorized by BPS and as provided for in Section 112.061, F.S.

5.3. If the Services are divided into phases, completion of a phase is defined by an appropriate signoff by BPS's and Contractor's project manager that all activities of that phase have been satisfactorily completed according to the project schedule, as agreed upon by both parties attached Exhibit "A." Contractor and BPS will agree upon planned completion dates for each phase and work in good faith to meet the planned schedule. BPS reserves the right throughout each phase to conduct a quality assurance check to ensure accuracy, quality, and delivery of work.

5.4. Subject to Contractor's right to cure under Section 4 herein, should the Services not be completed as scheduled, Contractor and BPS will jointly plan a revised completion date for the Services. Failure on the part of Contractor to complete its work in an accurate and quality manner shall be considered a default of this Agreement.

5.5. **Final Notice.** The final invoice for payment shall be submitted to BPS no more than forty-five days (45) after the Agreement term ends or the Agreement is terminated. Any payment due by BPS under the terms of this Agreement will not be unreasonably withheld once all reports are submitted from Contractor, and if any, necessary adjustments thereto, have been approved by BPS.

6. **AVAILABILITY OF FUNDS.** The obligations of BPS under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the State of Florida and BPS. If this Agreement is terminated

early due to non-availability of funds or a similar reason as described herein, any advanced funding would need to be returned to Contractor on a prorated basis.

7. **TRUTH-IN-NEGOTIATION CERTIFICATE.** If applicable to the Services contained herein, signature of this Agreement by Contractor shall be deemed an acknowledgement and certification by Contractor that the wage rates and costs used to determine the funds provided for in this Agreement are accurate, complete, and current as of the date of this Agreement. The said rates and costs shall be adjusted to exclude any significant sums should BPS determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to Contractor. BPS shall exercise its rights under this provision within one (1) year following final payment of the funds.

8. **PERSONNEL.**

8.1. All of the Services herein shall be performed by Contractor or under its supervision, and all personnel engaged in performing the Services shall be fully qualified and, if required, authorized or permitted under applicable state and local law to perform such Services.

8.2. **Jessica Lunsford Act (Background Check).**

8.2.1. Contractor shall comply with the Jessica Lunsford Act, effective September 1, 2005, as same may be amended from time to time and with all requirements of Sections 1012.32 and 1012.465, F.S.

8.2.2. Except as provided in Sections 1012.467 or 1012.468, F.S., and consistent with BPS policy, all of Contractor's personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes and BPS. This background screening will be conducted by BPS in advance of the Contractor or its personnel providing any Services under the conditions described in the previous sentence.

8.2.3. Contractor shall bear the cost of acquiring the background screening required by Section 1012.32, F.S., and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Contractor and its personnel.

8.2.4. The Parties agree that the failure of Contractor to perform any of the duties described in this section shall constitute a material breach of this Agreement. Contractor agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical or mental injury, death, or property damage resulting from Contractor's failure to comply with requirements of this section or with Sections 1012.32 and 1012.465, F.S.

8.3. **Key Personnel.** Contractor shall notify BPS as soon as possible, but no later than five (5) working days, after any changes in address or key personnel positions of Contractor. Changes in key personnel may include resignations, approved leaves of absence of six (6) weeks or more, or terminations. Such notification shall be in writing and shall include information related to replacement staff assigned. Contractor agrees to work closely with BPS to ensure that the work and cooperation between the Parties is efficient and mutually productive to both Parties.

8.4. **Background Screening.** To the extent applicable to the Services hereunder, Contractor and all Contractor staff under this Agreement shall meet and comply with all federal, state, county, and city laws, ordinances, rules, and regulations that relate to the background screening process of those applying for work with children, seniors, or the disabled, including those contained in Chapter 408 (Health Care Administration) and Chapter 435 (Employment Screening).

8.5. **Conduct while on BPS Property.** Contractor acknowledges that its employees and agents will behave in an appropriate manner while on the premises of any BPS facility and shall, at all times, conduct themselves in a manner consistent with BPS policies and within the discretion of the premises administrator or designee. It is a breach of this Agreement for any agent or employee of Contractor to behave in a manner which is inconsistent with good conduct or decorum or to behave in any manner that will disrupt the educational program or constitute any level of threat to the safety, health, and well-

being of any student or employee of BPS. Contractor agrees to immediately remove any agent or employee if directed to do so by the premises administrator or designee.

**9. FEDERAL AND STATE TAX.**

- 9.1. BPS is exempt from federal and state taxes for tangible personal property. Contractor shall not be exempted from paying applicable sales tax to the State of Florida and/or the federal government, as the case may be, for the purchase of materials to fulfill contractual obligations with BPS, nor shall Contractor be authorized to use BPS's tax exemption number in securing such materials.
- 9.2. In the event Contractor is also exempt from federal and state taxes for tangible personal property, it shall promptly submit to BPS an appropriate exemption certificate. BPS will sign an exemption certificate submitted to it by Contractor.
- 9.3. Contractor shall be responsible for payment of its own FICA and social security benefits with respect to this Agreement.

**10. DOCUMENTATION AND REPORTING.**

- 10.1. In the performance of this Agreement, Contractor shall maintain books, records, and accounts of all activities in compliance with standard accounting procedures.
- 10.2. **Documentation.** Documentation in connection with the description of the Services as set forth in Exhibit "A" attached hereto shall be provided upon request.
- 10.3. **Reporting.** Contractor shall provide report containing requested data in the requested format in a timely manner as defined by BPS.

**11. INSURANCE.** At its sole expense, Contractor will provide, before commencement of the Services, and submit to BPS along with this Agreement, a certificate(s) evidencing such insurance coverage to the extent listed in 11.1.1 to 11.5.5 below. The following applies to the insurance requirements below for products or services from contractors when all products, services, or work performed, when totaled together, will result in BPS paying to Contractor \$25,000.00 or more during the fiscal year. The insurance requirements are as follows:

- 11.1. **Insurance listed in 11.1.1 below is required of all contractors.** "The School Board of Brevard County, Florida" shall be included as an additional insured to the insurance policy. If the School Board is not included as an additional insured, then the School Board reserves the right to terminate this Agreement.
- 11.2. **Insurance listed in 11.1.2 below.** All contractors whose work for BPS includes products or services, and the value of these products or services are in excess of \$25,000.00, are required to carry this insurance to the limit listed below.
- 11.3. **Insurance listed in 11.1.3 below.** Any contractor transporting district employees, delivering or transporting district owned equipment or property, or providing services or equipment where a reasonable person would believe that BPS is responsible for the work of the Contractor from portal to portal is required to carry this insurance to the limit listed below.
- 11.4. **Insurance as listed in 11.1.4 below.** All contractors that have one (1) or more employees or that subcontract any portion of their work to another individual or company is required to have workers' compensation insurance to the limits listed below. For contracts of \$25,000.00 or more, no State of Florida, Division of Workers' Compensation, Exemption forms will be accepted. All entities and individuals are required to purchase a commercial workers' compensation insurance policy.
- 11.5. **Insurance as listed in 11.1.5 below.** All contractors providing professional services such as architects, engineers, attorneys, auditors, accountants, etc. are required to have this insurance to the limits listed below.

All Contractors will carry and maintain policies as described in numbers 11.1 to 11.5 above and as checked off in the box to the left of each section 11.1.1 to 11.1.5 below as specifically marked by representatives of the BPS

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Office of Procurement Services. All required insurance required must be from insurance carriers that have a rating of "A" or better and a financial size category of "VII" or higher according to the A. M. Best Company. Contractor will notify BPS thirty (30) days in advance of cancellation or any change resulting in a drop below minimum required coverage levels. This is applicable to the procurement and delivery of products, goods, or services furnished to BPS.

- 11.1.1. **Commercial General Liability Insurance:**

Negligence including Bodily Injury and Property Damage	
Per Occurrence -	\$1,000,000
General Aggregate -	\$2,000,000
  
- 11.1.2. **Product Liability and/or Completed Operations Insurance:**

Negligence Including Bodily Injury and Property Damage -	\$1,000,000
Products – Completed Operations Aggregate -	\$2,000,000
  
- 11.1.3. **Automobile Liability:**

Negligence Including Bodily Injury and Property Damage:	
Per Claim -	\$ 500,000
Combined Single Limit (each accident) -	\$1,000,000
  
- 11.1.4. **Workers' Compensation/Employer's Liability:**

W.C. Limit Required* -	Statutory Limits
E.L. Each Accident -	\$ 100,000
E.L. Disease – Each Employee	\$ 100,000
E.L. Disease – Policy Limit	\$ 500,000
  
- 11.1.5. **Professional Liability Insurance (Errors and Omissions):**

<i>For services, goods, or projects that will exceed \$1,000,000 in value over a year.</i>	
Each Claim -	\$1,000,000
Annual Aggregate -	\$2,000,000
 <i>For services, goods, or projects that will not exceed \$1,000,000 in value over a year.</i>	
Each Claim -	\$ 250,000
Annual Aggregate -	\$ 500,000

Professional Liability coverage must be maintained for a two-year period following completion of the Services in this Agreement.

- 11.6. All insurance shall be primary and not contributory to any other insurance carried by The School Board of Brevard County, Florida. This shall also apply to any self-insurance maintained by The School Board of Brevard County, Florida.
- 11.7. Contractor shall notify BPS's Risk Management Department within thirty (30) days of notice of cancellation Contractor received from its insurer on above required insurance.
- 11.8. Contractor shall provide evidence of all insurance in the form of a Certificate of Insurance (Acord).
- 11.9. Contractor agrees that proof of insurance shall be provided prior to execution of this Agreement and that no Services shall begin until proof of insurance is received by BPS. Receipt of proof of insurance shall not be construed as an approval of Contractor's insurance or a release or waiver of Contractor's obligation to provide insurance required in this Agreement.
- 11.10. To the extent permitted by law, Contractor's insurance shall contain a waiver of rights to recover from BPS or its insurance.
- 11.11. Any required insurance that Contractor self-insures or carries retentions in excess of Ten Thousand Dollars (\$10,000.00) shall be pre-approved by BPS's Risk Management Department and referenced in an addendum to this Agreement.

**12. STANDARD OF CARE.** In providing Services under this Agreement, Contractor will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice by BPS, Contractor will correct those Services not meeting such a standard.

**13. INDEMNIFICATION.**

13.1. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless SCHOOL BOARD, and its employees ("Indemnitees") from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs, and attorneys' fees at the pre-trial, trial, and appellate levels, arising out of: (i) CONTRACTOR's performance under this Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of CONTRACTOR or other persons employed or utilized by CONTRACTOR in the performance of this Agreement, (ii) its breach of any term or condition of this Agreement; (iii) product liability suits resulting from the use or consumption of Beverage Products purchased directly from Contractor. The remedy provided to the Indemnitees by this indemnification is in addition to and not in lieu of any other remedy available under this Agreement or otherwise. CONTRACTOR's available insurance under this Agreement, or otherwise, will not diminish or limit this indemnification obligation in any way. The remedy provided to the Indemnitees by this indemnification survives this Agreement. The provisions of this Section specifically survive the termination of this Agreement. The provisions of this Section are intended to require the CONTRACTOR to furnish the greatest amount of indemnification allowed under Florida law. If any indemnification requirement in this Agreement violates any law, the Parties agree the provision requires the greatest level of indemnification by the CONTRACTOR to the Indemnitees allowable under Florida law. CONTRACTOR acknowledges that indemnification by the SCHOOL BOARD may be unenforceable under Florida law and that the SCHOOL BOARD does not waive any legal defense based on the unenforceability of such indemnification position. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS's sole gross negligence or intentional misconduct. The agreement to indemnify, as outlined in this section, includes an obligation for Contractor to indemnify BPS for liability for any negligence on the part of BPS until/unless both Contractor and BPS agree that BPS was solely negligent. If the question of "solely negligent" should arise, a court agreeable to both Parties may be engaged to settle this dispute.

13.2. Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of, BPS's sovereign immunity protection and limitations of liability pursuant to Section 768.28, F.S. Any indemnity or assumption of liability by BPS hereunder shall be subject to BPS's rights to sovereign immunity and any other limitations of liability provided BPS pursuant to Florida law.

**14. SUCCESSORS AND ASSIGNS.** BPS and Contractor each binds itself and its partners, successors, executors, administrators, and assigns to the other Party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither BPS nor Contractor shall assign, sublet, convey, or transfer its interest in this Agreement without the prior written consent of the other *provided however*, Contractor may assign and transfer the agreement (in whole and not in part) to an affiliate without the consent of BPS hereto if such affiliate is (x) capable of fully performing all obligations of the assignor hereunder and (y) agrees, in writing to perform all of the obligations and assume all liabilities of the assignor hereunder, and (z) aligns with the mission and goals of the District, as determined by the District. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of BPS, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than BPS and Contractor.

**15. GOVERNING LAW AND REMEDIES.**

15.1. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary arising out of the Agreement will have its venue in Brevard County and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

15.2. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

15.3. **REMEDIES.** If the Term of this Agreement is terminated early for any reason other than an uncured material breach by Contractor, BPS will surrender to Contractor all Equipment provided by Contractor and will forfeit all funding not paid as of the date of termination. In addition, without prejudice to any other right or remedy available to Contractor, Contractor will have the right to immediately seek reimbursement from BPS the following:

1. An amount reflecting reimbursement for all funding previously advanced by Contractor but not earned by BPS pursuant to the terms of this Agreement. With regard to the Annual Partnership Funds and, if applicable, any other annual funds, the amount of such reimbursement will be the result of multiplying, the total amount of such funds paid to BPS in the Year in which the Agreement is terminated by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is 12 (twelve);
2. In Years 4 or 5 should the District elect to terminate the Agreement early in any event other than an uncured material breach by Contractor, the District must provide at least 30 days' notice prior to the Agreement Year 4 or 5 start date to Contractor of its intent to terminate the Agreement and no additional reimbursement from District to Contractor will be applicable. If the District terminates the Agreement prior to Agreement Year 4 other than an uncured material breach by Contractor, the District will provide the Contractor an amount reflecting reimbursement for the cost of installation, service and refurbishing of Equipment provided during the Term and the cost of removal of all Equipment that has been installed in the BPS's facilities, as applicable and not to exceed One Hundred Twenty-Five dollars (\$125.00) per piece of vending, cooler, or fountain equipment provided by Pepsi.

**16. CONFLICT OF INTEREST.** Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services required hereunder, as provided for in Section 112.311, F.S. Contractor further represents that no person having any interest shall be employed for said performance of services. Contractor shall promptly notify BPS in writing by certified mail of all potential conflicts of interest for any prospective business association, interest, or other circumstances that may influence or appear to influence Contractor's judgment or quality of Services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstances and the nature of work that Contractor may undertake. Contractor shall request an opinion by BPS as to whether the association, interest, or circumstance would, in the opinion of BPS, constitute a conflict of interest if entered into by Contractor. BPS agrees to notify Contractor of its opinion by certified mail within thirty (30) calendar days of receipt of notification by Contractor. If, in the opinion of BPS, the prospective business association, interest, or circumstance would not constitute a conflict of interest by Contractor, BPS shall so state in its response, and Contractor may, at its option, enter into said association, interest, or circumstance and it shall be deemed not a conflict of interest with respect to the Services provided to BPS by Contractor under the terms of this Agreement. If BPS, in its sole discretion, determines that there is a conflict, Contractor shall not enter into or if already entered into, will immediately terminate such arrangement or Agreement with the subject business associate.

**17. INDEPENDENT CONTRACTOR RELATIONSHIP.**

17.1. Contractor is, and shall be, in the performance of all Services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of BPS. All persons engaged in any of the work or Services performed pursuant to this Agreement shall at all times, and in all places, be subject to Contractor's sole direction, supervision, and control. Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects to Contractor's relationship and the relationship of its employees to BPS shall be that of an independent

contractor and not as employees or agents of BPS. Contractor does not have the power or authority to bind BPS in any promise, agreement, or representation.

17.2. Nothing contained herein shall be deemed to create an association, partnership, joint venture, or relationship of principal and agent or master and servant among the Parties or any affiliate thereof, or to provide any Party hereto with the right, power, or authority whether expressed or implied, to create any such duty or obligation on behalf of any other Party.

18. **ARREARS.** Contractor shall not pledge BPS's credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgment, lien, or any form of indebtedness. Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**19. CONFIDENTIAL INFORMATION AND DISCLOSURE OF DOCUMENTS.**

19.1. Contractor shall deliver to BPS for approval and acceptance, and before eligible for final payment of any amounts due, all documents and materials prepared by Contractor for BPS under this Agreement.

19.2. All BPS written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by BPS at its expense will be kept as Confidential Information by Contractor and will not be disclosed to any other party, directly or indirectly, without BPS's prior written consent unless required by a lawful order of court. All drawings, maps, sketches, and other data developed or purchased under this Agreement or at BPS's expense shall be and remains BPS's property and may be reproduced and reused at the discretion of BPS. As requested, BPS shall comply with the provisions of Chapter 119, F.S.

19.3. The Party receiving Confidential Information will not at any time disclose to any person or entity (including, without limitation, any member of the media) or use for its own benefit or the benefit of anyone, Confidential Information of the other Party without the prior written consent of said Party. Neither Party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court, authorized agency of government, or in compliance with Chapter 119, F.S.

**20. PUBLIC RECORDS.**

20.1. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE BPS CUSTODIAN OF PUBLIC RECORDS AT (321) 633-1000 ext. 11453, [recordsrequest@brevardschools.org](mailto:recordsrequest@brevardschools.org), BREVARD COUNTY PUBLIC SCHOOLS, RECORDS MANAGEMENT, 2700 Judge Fran Jamieson Way, Viera, Florida 32940.**

20.2. This Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.

20.3. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable

time at a cost that does not exceed the cost provided in Chapter 119, F.S. Contractor shall timely comply with BPS's request for records.

- 20.4. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.
- 20.5. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this Agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of this Agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor keeps and maintains public records upon completion, expiration, or termination of this Agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this Article. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.
21. **CONTINGENT FEES.** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.
22. **ACCESS AND AUDITS.** Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least five (5) years after completion of this Agreement. BPS or its duly authorized representatives shall have access to such books, records, and documents pertaining to this Agreement as required in this section for the purpose of inspection, audit, excerpts, and transcription during normal business hours, at BPS's cost, upon five (5) business days' written notice.
23. **NON-DISCRIMINATION.** Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, sexual orientation, gender identity, or expression, and genetic information or any other category of persons protected pursuant to Florida law.
24. **SURVIVAL.** All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The insurance and indemnity provisions set forth in the Agreement shall survive the termination of the Agreement.
25. **AUTHORITY.** Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.
26. **COMPLIANCE WITH LAWS.** Contractor agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations as well as applicable BPS policies and regulations, rules, and guidelines in connection with the Services to be provided hereunder, including, without limitation, BPS Policy 6460 Vendor Relations. BPS agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations in connection with the Services to be provided hereunder.
27. **SEVERABILITY.** If any terms or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, such term or provision shall be stricken and deemed unenforceable and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
28. **NAMES; TRADEMARKS.** Contractor shall acquire no rights under the Agreement to, and shall not use, the name of The School Board of Brevard County, Florida or the name of "Brevard County Schools" or "BPS" either alone or in conjunction with or as part of any other name, word, mark, picture, logo, design, and/or trademark (collectively, "BPS Marks") in any of Contractor's advertising, publicity, or promotion; to express or imply any

endorsement by BPS or Brevard County Schools of its Services; or in any other manner (whether or not similar to the uses hereinabove specifically prohibited) without the prior review and written approval by BPS, except as expressly permitted herein. No advertisement, publication, or other use of BPS Marks shall be published or otherwise promulgated by Contractor without BPS's prior inspection and written approval. This clause shall survive the expiration or sooner termination of this Agreement.

**29. COPYRIGHTS.** Contractor is hereby notified that the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and, any rights of copyright to which a grantee, subgrantee, or a Contractor purchases ownership with grant support. Furthermore, the Parties agree that BPS has the right to make copies through in-house printer or other non-commercial means, of any materials, whether in tangible or electronic means or media, that are delivered under the provisions of this Agreement for use within BPS for purposes related to BPS business, operations, the delivery of the educational program, or to comply with the requirements of law, rule, policy, or regulation.

**30. PROTECTION AND HANDLING OF DATA.**

30.1. **Data Confidentiality.** Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action that could result in substantial harm to BPS or an individual identified with the data or information in Contractor's custody.

30.2. **Compliance with Laws and BPS Policies and Procedures.** Contractor will not knowingly permit any Contractor's personnel to have access to any BPS facility or any records or data of BPS if the person has been convicted of a crime in connection with (1) a dishonest act, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. §1829(a); or (2) a felony. Contractor must, to the extent permitted by law, conduct a check of public records in all of the employee's states of residence and employment for at least the last five (5) years in order to verify the above. Contractor shall assure that all contracts with subcontractors impose these obligations on the subcontractors and shall monitor the subcontractors' compliance with such obligations.

30.3. **FERPA.** To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in Sections 1002.22 and 1002.221, F.S. (the Protection of Pupil Privacy Acts), 20 U.S.C. §1232g - the Family Educational Rights and Privacy Act (FERPA), the federal regulations issued pursuant thereto (34 CFR Part 99), and/or any other applicable state or federal law or regulation regarding the confidentiality of student information and records. Further, Contractor, and its officers, employees, agents, and representatives, shall fully indemnify and hold BPS harmless for any violation of this provision including, but not limited to, defending BPS and its officers, employees, agents, and representatives against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon BPS, or payment of any and all costs, damages, judgments, or losses incurred by or imposed upon BPS arising out of the breach of this provision by Contractor, its officers, employees, agents, or representatives, to the extent that the Contractor, or its officers, employees, agents, or representatives, shall either intentionally or negligently violate this provision, Sections 1002.22 and 1002.221, F.S., or other applicable state, local, or federal laws, rules, or regulations. This provision shall survive the termination of or completion of all performance obligations under this Agreement, and shall remain fully binding upon Contractor.

30.4. **HIPAA, CIPA, and GLBA.** Contractor also agrees to comply with all applicable state and federal laws, regulations, and BPS policies including Privacy Rights of Students, Computer Users' Responsibilities, Security of Computing Resources, Security of Data, Privacy of Computing Resources, Health Information Privacy and Accountability Act (HIPAA), Children Internet Protection Act (CIPA), and the Gramm-Leach Bliley Act (GLBA).

30.5. **Data Security.** Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all

appropriate security updates as designated by a relevant authority (e.g. Microsoft notifications, etc.). Likewise, BPS agrees to conform to the following measures to protect and secure data:

- 30.5.1. **Data Transmission.** Contractor agrees that any and all transmission or exchange of system application data with BPS and/or any other parties shall take place via secure means, e.g. HTTPS, FTPS, SFTP, or equivalent.
- 30.5.2. **Data Storage and Backup.** Contractor agrees that any and all BPS data will be stored, processed, and maintained solely on designated servers and that no BPS data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by BPS with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by BPS for any general or specific case.
- 30.5.3. Contractor agrees to store all BPS backup data stored as part of its backup and recovery processes in encrypted form, using no less than 128 bit key.
- 30.5.4. **Data Re-Use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in this Agreement. Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. As required by Federal law, Contractor further agrees that no BPS data of any kind shall be revealed, transmitted, exchanged, or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by an BPS officer with designated data, security, or signature authority.
- 30.6. **End of Agreement Data Handling.** Contractor agrees that upon termination of this Agreement it shall return all data to BPS in a useable electronic form, and erase, destroy, and render unreadable all BPS data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within thirty (30) days of the termination of this Agreement or within seven (7) days of the request of an agent of BPS, whichever shall come first.
- 30.7. **Data Breach.** Contractor agrees to comply with the State of Florida Database Breach Notification process and all applicable laws, including, but not limited to, Section 501.171, F.S., that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), Contractor agrees to notify BPS immediately and assume responsibility for informing all such individuals in accordance with the applicable law and to indemnify, hold harmless, and defend BPS, its board members, employees, and representatives from and against any claims, damages, or other harm related to such Notification Event.
- 30.8. **Mandatory Disclosure of Protected Information.** If Contractor becomes compelled by law or regulation (including securities laws) to disclose any Protected Information, Contractor will provide BPS with prompt written notice so that BPS may seek an appropriate protective order or other remedy. If a remedy acceptable to BPS is not obtained by the date that Contractor must comply with the request, Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.
- 30.9. **Remedies for Disclosure of Confidential Information.** Contractor and BPS acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage BPS in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give BPS the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Contractor further grants

## District-Wide Beverage Vending Services

BPS the right, but not the obligation, to enforce these provisions in Contractor's name against any of Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.

- 30.10. **Safekeeping and Security.** As part of the Services, Contractor will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers, passwords, and similar security codes and identifiers issued to Contractor's employees, agents, or subcontractors. Contractor agrees to require its employees to promptly report a lost or stolen access device or information.
- 30.11. **Non-Disclosure.** Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants, and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants, and auditors have written confidentiality obligations to Contractor and BPS.
- 30.12. **Request for Additional Protection.** From time to time, BPS may reasonably request that Contractor protect the confidentiality of certain Protected Information in particular ways to ensure that confidentiality is maintained. Contractor has the right to reasonably decline BPS's request.
31. **NON-EXCLUSIVE AGREEMENT.** Notwithstanding Contractor's vending machine exclusivity provided in Exhibit "A", the Parties understand and agree this Agreement is a non-exclusive agreement and the Parties hereto may participate in other comparable services to and from any other person or entity.
32. **ENTIRETY OF AGREEMENT.** BPS and Contractor agree that this Agreement and any documents made a part thereof, sets forth the entire agreement between the Parties, that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the Parties hereto. In the event a conflict arises, the Parties shall discuss any such conflict and the priority of controlling documents shall be as follows: this Agreement, the solicitation, any addenda, and Contractor's response to the solicitation. The parties work in good faith to rectify any conflicts.
33. **CONFLICTS.** If there is a conflict between this Agreement and any Exhibits and/or Attachments attached, this Agreement governs.
34. **CONSTRUCTION OF AGREEMENT.** Each Party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement.
35. **OTHER CONDITIONS.**
- 35.1. **Legal Authority.** It is understood that those signing this Agreement have the legal authority to enter into binding Agreements.
- 35.2. **Terms and Conditions.** This Agreement contains all the terms and conditions agreed upon by the Parties. Items incorporated by reference are physically attached hereto. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the Parties hereto.
- 35.3. **License and Permits.** Contractor shall obtain and possess throughout the term of this Agreement all licenses and permits required for its operations under Federal, Florida, and local laws and shall comply with all fire, health, and other applicable regulatory codes.
- 35.4. **Location.** All Services shall be performed and located in appropriate settings that are convenient, safe, clean, and well-maintained.
- 35.5. **Access.** BPS agrees to provide full accessibility to property owned or leased by BPS for Contractor's employees to perform Services as agreed upon herein. For software support, BPS agrees to allow for secure, remote access to the system via internet-based tools such as WebEx or PCAnywhere or as outlined and agreed upon herein.

- 35.6. **Covenant Not-to-Hire.** Each Party agrees not to hire or attempt to hire employees of the other Party during the term and for a period of one (1) year after the term (including any renewal term) of this Agreement, without the express written consent of the other Party.
- 35.7. **Public Entity Crime.** Pursuant to Section 287.133, F.S., the following restrictions are placed on the ability of persons convicted of public entity crimes to transact business with BPS: when a person or affiliate has been placed on the convicted vendor list following a conviction for a public entity crime, it may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted contractor list.
36. **DEBARMENT.** By signing this Agreement, Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- 36.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.
- 36.2. Have not, within the preceding five (5) year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- 36.3. Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph.
37. **NON-WAIVER.** The failure of either Party to exercise or delay in exercising any right, power, or privilege provided for hereunder shall not be deemed a waiver thereof; nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege under this Agreement. No Party shall be deemed to have waived a right, power, or privilege provided for herein, unless such waiver is in writing and signed by the waiving Party. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.
38. **FORCE MAJEURE.** No party will be responsible to the other for any failure, in whole or in part, to perform any of its respective obligations hereunder, to the extent and for the length of time that performance is rendered impossible or commercially impracticable resulting directly or indirectly from any foreign or domestic embargo, product detention, seizure, act of God pandemic, epidemic, insurrection, war and/or continuance of war, the passage or enactment of any law ordinance, regulation, ruling, or order interfering directly or indirectly with or rendering more burdensome the purchase, production, delivery or payment hereunder, including the lack of the usual means of transportation due to fire, flood, explosion, riot, strike or other acts of nature or man that are beyond the control of the parties unless such contingency is specifically excluded in another part of this Agreement ("Force Majeure Event"). Any party(s) so affected, will (i) use all reasonable efforts to minimize the effects thereof and (ii) promptly notify the other party(s) in writing of the Force Majeure and the effect of the Force Majeure on such party's ability to perform its obligations hereunder. The affected party(s) will promptly resume performance after it is no longer subject to Force Majeure. In the event BPS's performance is temporarily suspended pursuant to a Force Majeure Event, Contractor's funding obligations will be suspended for the duration of BPS's nonperformance. Once BPS resumes performance or in the event BPS is able to perform some, but not all of its obligations herein, any fixed, advanced, or guaranteed funding will be adjusted commensurate with the decline in volume associated with the suspended or partial performance.
39. **NOTICE.** Any notice which either party is required or permitted to give hereunder will be in writing, signed by the notifying party and will be either delivery by hand or nationally-recognized overnight courier service or

deposited in the United States mail, certified or registered mail, return receipt requested, postage paid, addressed as follows:

40.

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

Attention: Procurement and Distribution Services  
2700 Judge Fran Jamieson Way  
Viera, Florida 32940

**BOTTLING GROUP, LLC (“PEPSI”)**

Attention: Anthony Munroe  
3951 Sarno Road  
Melbourne, FL 32934

Notice will be deemed to have been given when delivered by hand or nationally recognized overnight courier service, or when received as evidenced by the return receipt, or the date such notice is first refused, if that be the case.

41. **COUNTERPARTS**. This Agreement may be executed in counterpart copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one (1) original document.
42. **E-Verify**. Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security’s E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Contractor must provide evidence of compliance with 448.095, Fla. Stat by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Contractor’s E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and BPS may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with BPS securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

**SIGNATURE PAGE TO FOLLOW**

**IN WITNESS WHEREOF**, BPS has made and executed this Agreement and Contractor has made and executed this Agreement on the day and year written below.

**BOTTLING GROUP, LLC (“PEPSI”)**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Authorized Representative Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Misty Belford, Board Chairperson

YEAR	FND	CNTR	PROJECT	FUNC	OBJT	PRG	S	AMOUNT

Send required insurance certificates to the Procurement and Distribution Services Department.  
 New Contractors: Send all completed Forms to the Procurement and Distribution Services Department.

Contractor Contact Name: Anthony Munroe  
 Email Address: Anthony.Munroe@pepsico.com  
 Phone Number: (Office): 321.426-2008 (Cell): 321.508.6127

**Exhibit "A"****SCOPE OF SERVICES****1.0 SCOPE OF SERVICES****1.1 PRODUCTS AND AVAILABILITY**

- A. The products shall be the line of all non-alcoholic beverages excluding milk, hot or cold coffee, hot or cold tea, hot chocolate, fresh or concentrated fruit smoothies, and 100% fruit juices required by the National School Breakfast and Lunch Programs. As defined herein, Beverage Products are sold by way of vending machines through our food service operation, which shall be exclusively Contractor products, and in the athletic concession stands, which shall be exclusively Contractor products for concessions stands that receive loaned Contractor equipment. The District desires a wide variety of beverages to be provided by the Contractor for sale, including water, juices, and isotonic, however Food and Nutrition Services reserves the right to offer additional non-competitive tea beverage choices in the cafeteria that are not included in the Contractor's beverage portfolio. All products offerings must be pre-approved by FNS and meet the District's Wellness Policy and USDA Smart Snack guidelines.
1. Elementary Schools - Elementary Schools Facilities may elect to have vending machines that are only accessible to students for after-school programs or for athletic fields where joint use agreements for facility usage are in effect with other governmental entities. All vending machines containing all product types would be allowed to operate 30 minutes after the end of the regular school day. Notwithstanding the above, all products may be sold at all hours in teacher lounges or other non-student vending areas.
  2. Middle Schools – Middle Schools Facilities may elect to have vending machines that are only accessible to students for after-school programs or for athletic fields where joint use agreements for facility usage are in effect with other governmental entities. All vending machines containing all product types would be allowed to operate 30 minutes after the end of the regular school day. Notwithstanding the above, all products may be sold at all hours in teacher lounges or other non-student vending areas.
  3. Junior/Senior High School - By USDA regulation, junior/senior high schools must operate under the middle school rules as listed above. There can be no variation from the policy regarding middle schools and that of the junior/senior high schools. All vending machines containing all product types would be allowed to operate 30 minutes after the end of the regular school day. Notwithstanding the above, all products may be sold at all hours in teacher lounges or other non-student vending areas.
  4. High Schools - High school machines that offer unflavored water, flavored water, 100% fruit juices, and isotonic that meet the District's Wellness Policy and USDA Smart Snack guidelines would be able to be in operation all day. All vending machines containing all product types would be allowed to operate

30 minutes after the end of the regular school day. Notwithstanding the above, all products may be sold at all hours in teacher lounges or other non-student vending areas.

5. Other District Locations/Facilities. All products will be vended and sold at all hours.

\*Machines containing only unflavored water, flavored water, 100% fruit juices, and isotonics that meet the District's Wellness Policy and USDA Smart Snack guidelines may operate in and around the cafeteria only with approval of the Office Food and Nutrition Services.

- B. The final product line to be sold on District owned property will be the mutual decision of the Office of Food and Nutrition Services and the Contractor. The product line may be revised by mutual agreement and contract Amendment to comply with revisions to all applicable federal, state, and local laws, administrative rules, regulations, and district policy.
- C. The District shall not be required to provide personnel for selling beverages. However, if the District desires to sell over-the-counter beverages in the cafeteria and at events with its own personnel, the Contractor shall be required to provide beverages at a cost not greater than the cost stipulated in Exhibit B "Fees/Incentives" for sale at District or school related events.
- D. The Contractor would be required to provide the proper equipment to sell 20-ounce CSD and NCB bottles and 12-ounce CSD and NCB cans in the cafeteria and in all concession stands. There are approximately 190 vending machines, 195 freestanding coolers in the cafeteria operation and 55 units in the concession stands.

## 1.2 MARKETING RIGHTS

- A. The District will provide the Contractor the right to supply all non-alcoholic beverages excluding milk, hot or cold coffee, hot or cold tea, hot chocolate and 100% fruit juices required by the National Breakfast and Lunch Programs (the "Beverage Products"), including concession stands, but subject to any applicable laws, regulations, or policies with respect to the District's food service program. Except as noted above, during the term of the Contract, the Contractor shall fully supply all products in a timely manner to keep all vending machines, food service, and concessions operating fully supplied with respect to all cans, bottles, syrups, carbonation, and all other necessary supplies to allow the District and the Contractor to maximize sales.
- B. The Contractor may receive beverage advertising opportunities in all District owned facilities and at all District functions to the extent provided in Section 2.17 of the District's original solicitation.
- C. The District shall use its best efforts to ensure that the benefits described above are afforded the Contractor. However, the rights shall apply only with respect to District owned and controlled facilities with respect to which the District retains

District-Wide Beverage Vending Services

control of space utilization decisions. The rights shall not be extended to the District current or future Charter Schools.

### 1.3 PRICING

Pricing will be based on what was negotiated and as listed in Exhibit B "Fee Schedule".

### 1.4 EQUIPMENT

- A. The Contractor will be required to furnish, as soon as possible based on its submitted plan but no later than thirty (30) days after contract is signed, Contractor-owned and maintained vending beverage machines and refrigerated coolers for food services and concession stands at all agreed upon locations. Unless otherwise agreed by the District, elementary schools shall have one or more machines, middle and high schools shall have one machine for each 150 students, or more with the final decision on number of machines above the minimum will be at the discretion of the school principal. The vending machines shall be modern and of the latest machine technology, have bill change capabilities, credit card readers, be electrically efficient with a Vending Miser or equal brand, energy saving device, have unit sales counting capabilities and be aesthetically acceptable to the District. There are approximately 190 vending machines, 195 freestanding coolers in the cafeteria operation and 55 units in the concession stands.
- B. All vending machines located in elementary or secondary schools, and not in the teachers' lounge(s) or other areas inaccessible to students, will be required to have a clock so it may be turned off and on automatically in order to comply with District's Wellness Policy and USDA Smart Snack guidelines. An alternate plan that can accomplish the same criteria may be considered if submitted in the proposal.
- C. Contractor will be levied a fine of \$200.00 per day for any machine vending beverage products outside of the prescribed hours and/or any non-compliant products that do not meet District Wellness policy and the National School Lunch Program, provided that Contractor was afforded a seventy-two (72) business hour cure period to resolve any such non-compliance. The parties agree to work in good faith to resolve any non-compliant vending machines.
- D. Vending machines shall be quiet and not disruptive to the activities on-going on District property.
- E. The District agrees to provide reasonable assistance to Contractor in apprehending and prosecuting vandals. Contractor shall not be obligated to pay Commissions on documented revenue losses resulting from vandalism or theft of Beverage Product with respect to any vending machines.
- F. The installation and expense of installation of vending machines shall be the Contractor's responsibility. The District shall cooperate with, and support, reasonable requests from the Contractor in this regard.

- G. Any vending machine or refrigerated cooler that operates in or around the schools' cafeterias can only display water, 100% fruit juices or isotonic signage or logos. Beverages advertised in the areas accessible to students during the school day must be consistent with established Smart Snacks in School Nutrition standards. The District may reject machine signage or logo if deemed objectionable or a distraction to the activities in any District facility or on District property.
- H. The Contractor will supply coolers to District for carnivals and special events where Contractor's products are sold on a case by case basis as mutually agreed upon.
- I. The Contractor will provide both preventative maintenance to equipment and maintain general routine cleanliness of all vending machines during scheduled visits at the District's facilities. Contractor agrees to clean the inside and the outside of all vending machines, as well as all immediate vending machine areas.

## 1.5 VENDING EQUIPMENT MAINTENANCE

The Contractor shall be responsible for the maintenance and repair of vending equipment and any other equipment it provides for use on District property, which is Contractor owned during the term of this contract. The District will exercise prudent care in the handling and operation of any such equipment. The Contractor will work to ensure that each vending machine is not out of service for more than 24 hours from the time of notification by any District employee of a malfunction. However, because delays in service may be caused by factors well outside of Contractor's control, Contractor does not pay financial penalties for down equipment. Contractor requests that its service record be measured in the aggregate such that an isolated failure does not escalate into a material breach of the agreement. The Contractor shall evaluate and replace machines, which have a record of being chronically out of service or malfunctioning.

## 1.6 ELECTRICITY

The District shall furnish, at no cost to the Contractor, the necessary electricity for the operation of the vending machines. All vending machines shall be electrically efficient with a Vending Miser or equal brand energy saving device. A projection of the maximum annual electrical cost and maximum aggregate annual electrical consumption per machine shall be included in the proposal. The District shall take reasonable measures, consistent with the District mission, to avoid power loss and to restore power if, and when, a power outage occurs.

## 1.7 STORAGE SPACE

The District shall not be required, without fee, to furnish any storage space for Beverage Products owned by the Contractor. The District may provide temporary storage of concession equipment after athletic or other events without charge. The District will consider a proposal to provide long term inventory storage for products or machines for an annual fee.

## 1.8 COMMISSION PAYMENTS/PROCEDURES

- A. The Contractor shall pay to the District commissions in four (4) quarterly payments per fiscal year, July through June. Contractor agrees to pay Commissions to District within thirty (30) days of the end of each 4-week accounting period established by Contractor. Contractor shall make all pertinent revenue and sales records respecting the Vending Machines available to District. District agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by District in writing within one (1) year of the date such Commissions payment is due. District acknowledges and agrees that Commission payments from Contractor below Seventy-Five US Dollars (\$75.00) will require additional processing time and will not be subject to Contractor's thirty (30) day reconciliation period.
- B. Notwithstanding the provisions contained in 1.4.E herein pertaining to vandalism and commission payments, the parties acknowledge that the District will be subject to a vending machine minimum per location. Student vending machines will be provided by Contractor for high schools and all other vending machines and corresponding locations will be evaluated on a case by case basis with a District minimum throughput requirement of one (1) case per week.
- C. All machines shall have automatic sales counters which can be used for sales verification by the District, or its representatives.

## 1.9 ACCOUNTING REQUIREMENTS

- A. All financial records of the Contractor pertaining to this contract shall be made available for audit during normal working hours by the District or its designated auditor.
- B. The Contractor shall supply vending refund coupons for the District's locations for monies lost in the District's vending machines. The District will provide to Contractor documentation of the applicable amount, date of vending loss, and asset location of vending loss. The Contractor shall reimburse these funds on a timely basis as defined in the final contract document. The District shall make available one of its personnel from time to time to administer such cash change fund as needed, but the Contractor shall have all the responsibility with respect to such funds.
- C. The District must approve the Contractor's monthly report format for the purpose of tabulating and monitoring sales receipts and the making of commission payments. Such reports shall be submitted to the District's Authorized Representative monthly and shall include detailed sales reports by product and machine location, as well as a periodic reconciliation of the sales dollars from each location with the gross expected sales dollars based on the product sold. The report must separate sales and commission payments by site and by program (Food Service and Athletics). The Contractor shall maintain complete and accurate records of vending transactions for each machine in accordance with the accepted industry standards and will keep such financial records for a period of three years after the close of each year's operation.

## 1.10 ACCURACY OF BILLING

The Contractor shall certify that its payments of commissions are accurate and correct on each and every payment. If an audit reveals discrepancies, such as under payment, the Contractor will be allowed time to investigate and work with the District to resolve any discrepancies prior to reimbursement as applicable, as mutually agreed upon by the parties.

## 1.11 AUTHORIZED REPRESENTATIVES

- A. The District shall appoint one of its key personnel as a representative (the "District's Authorized Representative") who shall have the power and authority to interface with the Contractor and represent the District in all administrative matters concerning this Contract, including without limitation such administrative matters as correction of problems and reduction of costs.
- B. The Contractor shall appoint one of its key personnel as a representative (the "Contractor's Authorized Representative") who shall have the power and authority to interface with the District and represent the Contractor in all administrative matters concerning this Contract; including without limitation such administrative matters as correction of problems and reduction of costs. The Authorized Representative shall be the person identified in the Contractor's Proposal, unless the Contractor provides written notice to the District naming another person to serve as its Authorized Representative.

## 1.12 SCHEDULE OF PERFORMANCE

The Contractor may be required by the District at any time to provide a schedule of the routes and supplies, deliveries, and installations upon award of contract which show the order in which the Contractor proposes to perform the installations and daily or weekly deliveries.

## 1.13 LICENSES AND TAXES

- A. All state, county, and city license fees shall be paid by the Contractor. The District shall be promptly reimbursed for any penalties or necessary and reasonable expenses due to the Contractor's failure to obtain necessary licenses.
- B. The Contractor shall promptly pay all taxes applicable to Contractor by law pertaining to all vending machines resulting from sales through the Contractor's vending machines. Contractor reserves the right to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed) provided that Customer received thirty (30) days' notice and supporting documentation of such event (e.g., new legislation, introduction of new tax or deposit) and such pass-through shall not be deemed a price increase. The District shall be promptly reimbursed by the Contractor for any penalties or costs resulting from the Contractor's failure to promptly pay such taxes.

- C. The Contractor shall comply with all Federal, State, local and District regulations governing the preparation, handling, and serving of beverages, and shall procure and keep in effect all necessary licenses and permits required by law and agrees to post such permits in a prominent place as may be required by law.

#### 1.14 SERVICE PERSONNEL AND SERVICE VEHICLES

The Contractor's personnel shall, at all times, be dressed in service uniforms, wear a vendor badge, and shall observe all District regulations in effect. The Contractor shall be responsible for furnishing its service personnel the proper company uniforms. Contractor's delivery vehicles must adhere to District advertising policies and must not include advertisement of alcoholic beverages.

#### 1.15 LOCATION OF VENDING MACHINES

The District shall not be required to relocate any electrical outlets in order to provide electrical power to vending machines at desired locations. The use of electrical cords for vending machine power which are longer than ten feet (10') must be approved by the District. The Contractor shall request, in writing, by no later than 45 days after contract award, the desired installation of additional electrical outlets, or movement of existing electrical outlets. The Contractor shall make recommendations for the purpose of determining electrical outlet and vending machine locations within new or significantly reconfigured schools or facilities. However, final decisions regarding the location of electrical outlets and vending machines shall be solely determined by the District.

#### 1.16 SALES ENHANCEMENT

The Contractor shall meet quarterly, or at such other times as may be agreed upon by the parties, with the Contracting Officer, or his/her designee, and key District personnel including to plan and coordinate the services provided under the Contract with the intent to enhance sales in the District in a manner which is educationally sound.

#### 1.17 BEVERAGE ADVERTISING BENEFITS

The Beverage Advertising Benefits may include principally the following benefits:

##### A. The following advertising and other rights:

1. A 2'x5' sign which must include positive educational message, not just the name of beverage supplier in each of the high schools.
2. A 2'x5' sign which must include positive educational message, not just the name of beverage supplier in each of the middle schools.
3. A 2'x3' sign which must include positive educational message, not just the name of beverage supplier in each of the elementary schools.
4. A 2'x3' sign which must include positive educational message, not just the name of the beverage supplier in each of the other district-owned facilities.

\* School Principal/Site Administrator will have to approve all signage as well as the

size of such signage.

5. Four "eight second" P.A. announcements at each Brevard County Public Schools, high school home varsity football game and basketball game.
6. A 4'x16' banner at middle and high school stadiums, where applicable, at all times during the term of the contract.
7. Twenty season passes to all Brevard County Public Schools, athletic events (Regular Season only).
8. *Corporate Sponsor Night* at one Brevard County Public Schools, athletic event. Benefits to include: Introduction of CEO, product sampling, additional signage opportunities, information distribution, etc. (Different location each year on a rotating basis).
9. Exclusive beverage panel advertising on all District scoreboards, corporate partner pays for panels (Principal/onsite Administrator approval).

**NOTE:** The above benefits shall be inclusive of, and not in addition to, any existing advertising of a similar nature being received by the Offeror for which payment has not yet been made.

- B. The District shall make a good faith effort to commence the benefits listed in paragraph above within six months after the commencement of the Contract. Contractor acknowledges that certain advertising benefits described above cannot be made available until the second year of the Contract because the events will have been held or the publications published prior to the commencement of the contract. If in the reasonable judgment of the District any of the advertising benefits described above become impractical to deliver, the District may substitute another benefit which has approximately the same benefit to the Contractor. All advertising is subject to the District's policies on advertising, including approval rights in order to ensure suitability. The Contractor shall be responsible for, and shall pay all costs of, designing, laying out and producing such advertising.
- C. Subject to the advance approval of the District, Contractor shall have the right to distribute promotional items for Beverage Products at no cost to the District, including but not limited to pencils, calendars, book covers, mouse pads, classroom supplies, classroom materials, rulers and planners.
- D. The District shall use its best efforts to ensure that the benefits described above are afforded the Contractor. For this purpose, the rights of the Contractor shall preclude advertising of Beverage Products directly competing with Contractor's principal Beverage Products. The rights shall apply only with respect to District owned and controlled facilities with respect to which the District retains control of advertising decisions. The rights shall be subject to any existing conflicting contract rights. The District represents that the only existing conflicting contract rights known to the District's Director of Food and Nutrition Services upon execution of the final Contract will be listed in an Exhibit to the Contract.

## 1.18 PURCHASING CARDS

The School Board of Brevard County may choose to use a "Purchasing Card" for ordering of goods and materials or payment of invoices under this proposal for all

District-Wide Beverage Vending Services services including food service and concession stand operation. The Contractor, by submitting a proposal, agrees to accept this manner of payment and may not add additional handling charges or service fees to purchases made with the District's purchasing card(s). Refusal to accept this condition may cause the proposal to be declared non-responsive, or result in revocation of the contract, if already awarded. No third-party payment, i.e. Pay pal will be considered.

#### 1.19 TIME OF DELIVERIES (VENDING)

It is the intention of the District to allow deliveries at schools and administrative sites during regular hours listed in Exhibit "A". Other delivery times must be coordinated and approved by the school principal/site administrator, or the District's Authorized Representative.

#### 1.20 FOOD SERVICE DELIVERIES

- A. During the school year, elementary school deliveries shall be completed between the hours of 6:00 A.M. and 2:00 P.M.; secondary school deliveries shall be completed between the hours of 7:00 A.M. and 3:00 P.M. The time of delivery shall be scheduled so that a responsible school employee can check all products at the time of delivery. Under no circumstances will a driver be given a key to a school. Deliveries shall be made *weekly* to all sites provided that minimum delivery size of fifteen (15) cases are fulfilled; however, the Food and Nutrition Services Department reserves the right to request second deliveries for the large secondary programs. Drivers must be in uniform with an identification badge, neatly groomed and have a professional appearance. They must conduct themselves in a respectable and courteous manner while performing duties and while at any BPS facility. Uniforms must be clean and free from excessive wrinkles or stains.
- B. Delivery schedule for individual sites shall be submitted by the Contractor to the Director of Food and Nutrition Services for approval three (3) weeks prior to the first delivery and remain constant thereafter. Changes in delivery schedule initiated by the Contractor must be submitted to Director of Food and Nutrition Services for approval 30 days prior to implementation. Food and Nutrition Services Department will furnish school name, location, contact name, phone number, and school calendar to the Contractor. The Food and Nutrition Services Department will work with the distributor to develop a delivery schedule. The school calendar will provide notification of the opening day of school and non-school days so that special arrangements may be made for delivery as may be approved by the district. Due to school holidays and breaks deliveries may be required on a day other than the regularly scheduled delivery day. This day will be mutually agreed upon by Food and Nutrition Services and the Contractor. The Contractor shall schedule opening school deliveries on days after school food service manager's report to work, and prior to the first school day of each school year. Deliveries must be made in dual or tri-compartment refrigerated trucks to adequately protect frozen, dry, chilled, and special care products in accordance with packer's recommendations. Drivers must deliver products into dry storage, freezer or cooler rooms as designated by the cafeteria manager. Drivers are not required to place products on shelves or remove containers from master cartons. If an item is

District-Wide Beverage Vending Services omitted from an order by the Contractor, or is delivered in unacceptable condition (defrosted frozen product or damaged container for example), Contractor will make every effort to provide a replacement delivery within 24 hours, if approved by the Food and Nutrition Services. If an extra delivery is required due to a district error, a Contractor may require a minimum order. At the time of delivery to each location, the driver shall leave one copy of a properly executed invoice or delivery ticket. If there are discrepancies noted at this time, they must be shown on the invoice or delivery ticket. This document must show the amount of each article with bid prices and extensions accurately listed. The Office of Food and Nutrition Services Manager (or designee) must sign all copies of the invoice/delivery ticket as authorization for payment. All deliveries shall conform in every respect to any Federal, State, County, and local laws relating to products under contract.

- C. The following requirements are also necessary:
- a) Emergency Deliveries may be required and are defined as phone in, or e-mail orders placed by the Office of Food and Nutrition Services designee. These orders may be placed due to theft, food spoilage, emergency changes, etc.
  - b) Special Purchase Deliveries are defined as phone in, or e-mail orders placed by the Office of Food and Nutrition Services for special menus, functions, field trips, etc. All special purchases (any item(s) not awarded on a contract) must be approved through the Office of Food and Nutrition Services prior to delivery.
  - c) Will Call orders may be necessary and are defined as product ordered and picked up by the school center at the Distributor Services location as needs dictate. Orders will be for emergencies only and approved by the Office of Food and Nutrition Services and placed via email.
  - d) In the event of vehicle breakdown or other delay, the awarded distributor must have a contingency plan for immediate recovery and submit the plan to District prior to the beginning of each school year. The Contractor will be responsible to ensure the items are delivered to the designated schools as scheduled. The Distributor will be responsible for contacting both the District and each individual Food Service Manager of any delivery delays and re-schedule for the same day delivery.

**Exhibit "B"**

**FEES/INCENTIVES**

This Agreement, including all of Contractor's support to District as described below, is contingent upon District's compliance with all of the following performance criteria throughout the Term:

- **Annual Partnership Funds:** Each Year throughout the Term, Contractor agrees to provide District with annual partnership funds in a total amount of Ten Thousand US Dollars (\$10,000) which will be payable in two (2) separate payments each Year, not to exceed ten (10) consecutive total payments, as set forth below (the first payment referred to as the "Upfront Annual Partnership Funds" or "Upfront Funds," and the second payment referred to as the "End of Year Annual Partnership Funds" or "End of Year Funds", collectively the "Annual Partnership Funds"). The Annual Partnership Funds will be payable to District pursuant to the following:
  1. The Upfront Funds will be in the amount of Seven Thousand Five Hundred US Dollars (\$7,500) not to exceed five (5) consecutive payments. The Annual Upfront Funds will be paid to District within sixty (60) days after the commencement of each applicable Year, except that for Year 1, such payment will be made within sixty (60) days of the later of (i) the first day of the Term or (ii) the signing of this Agreement by both parties. The Upfront Funds are earned throughout the Year in which they are paid. In the event of early termination for any reason other than an uncured material breach by Contractor, the unearned Upfront Funds will be repaid to Contractor pursuant to the terms of Section 15.3.1 herein.
  2. District acknowledges and agrees that each End of Year Fund, payable to District herein, will be adjusted based on the number of Units purchased from Contractor and sold throughout the District's facilities pursuant to this Agreement during the Year, as compared to an annual combined Gallons and Cases ("Units") threshold of 51,000 ("*Annual Units Threshold*"). Therefore, if during any Year the number of Units purchased from Contractor falls below 80% of the Annual Units Threshold, then the End of Year Funds payable for the applicable Year will be reduced by a percentage equal to the percentage decrease between the Annual Units Threshold and the actual number of Units sold during such Year. *For example, if the total End of Year Funds are equal to \$2,500 and the Annual Units Threshold is 51,000 Units, and during Year 1 the actual Units sold is 39,780 Units (78% index to Annual Units Threshold), then the End of Year Funds for Year 1 will be \$300 (Total Upfront Funds and End of Year Funds reduced by 22%).* The End of Year Funds will be paid to District within sixty (60) days after the end of each applicable Year.
- **Gatorade Funds:** Each Year throughout the Term, Contractor agrees to provide District with annual Gatorade product support in the amount of Two Thousand Five Hundred US Dollars (\$2,500) not to exceed five (5) payments (the "Gatorade Funds"). The Gatorade Funds will be paid to Customer within sixty (60) days after the of commencement of each applicable Year, except for Year 1, such payment will be made within sixty (60) days of

the later of (i) the first day of the Term or (ii) the signing of this Agreement by both parties.

- **Rebates:** Each Year throughout the Term, Contractor agrees to calculate the total number of eligible Cases and Gallons purchased by the District from Contractor pursuant to this Agreement, and will provide District with rebates calculated based on an applicable rate of \$0.25 per case on all packaged (non-vending) products (the “Rebates”). The Rebates, as applicable, will be paid by Contractor within sixty (60) days after the end of each Year.
- **Annual Donated Products:** Each Year throughout the Term, Contractor agrees to provide District with a combination of 12oz cans of carbonated soft drinks and 16.9oz Aquafina at no additional charge in the sums below by location type:
  - Adult Education                      10 cases
  - Elementary Schools                      20 cases
  - Middle Schools                              40 cases
  - Jr/Sr Schools                                75 cases
  - High Schools                                 75 cases
  - District                                        100 cases

District locations will administer all requests through a central contact so that District may prioritize the requests. District acknowledges and agrees that unrequested Product in any Year shall not be carried over to the subsequent Year or be redeemable for cash payment.

- **Miscellaneous Support**
  - Concession freestanding coolers will be provided by Contractor to all concession stands at no charge to District as long as Beverage Products are ordered through Pepsi Direct. Annual purchase minimums to maintain concessions equipment are specified in Contractor’s original ITN submittal.
  - Cafeteria freestanding coolers for the serving lines will provided by Contractor to all District school cafeterias at no charge.

- **Vending Prices**  
 Contractor agrees to provide District with commissions, as a percentage of the actual cash (“cash in bag” or “CIB”) collected by Contractor from the Vending Machines placed at District’s facilities, less any applicable government-imposed taxes/fees and deposits, as applicable (“Commissions”). Such Commissions shall be at the rate(s) set forth below (the “Commission Rate”) and shall be calculated as follows:

Product	Package Size	Initial Vending Price	Commission Rate
Carbonated Soft Drinks	20 oz PET Bottle	\$1.75	34%
Aquafina Water	20 oz PET Bottle	\$1.75	34%
LIFE Water	20 oz PET Bottle	\$1.75	34%
Gatorade	12 oz PET Bottle	\$1.25	34%
Gatorade	20 oz PET Bottle	\$1.75	34%
Propel	20 oz PET Bottle	\$1.75	34%

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Lipton & Dole Non-Carbonated	20 oz PET Bottle	\$1.75	34%
Lipton Pure Leaf Teas	18.5 PET Bottle	\$2.25	34%
Tropicana Juices	10 PET Bottle	\$1.25	34%
SoBe Life Water	20 oz PET Bottle	\$2.00	34%
Mtn Dew Kickstart	12 oz Can	\$1.75	34%
Bubly	12 oz Can	\$1.00	34%
Starbucks DS Energy – Cans	15 oz	\$3.00	34%
Rockstar Energy Drink – Cans	16 oz	\$2.75	34%
Bang Energy Drink – Cans	16 oz	\$3.00	34%
Starbucks Frappuccino	13.7 oz	\$3.25	34%

- Change to Commission Rate/Formula. District agrees that Contractor shall have the right to change the Commission Rate and/or its formula/method for calculating Commissions as may be required by applicable laws or as reasonably necessary to respond to legislative acts in order that the Commission Rate remains cost neutral.
- Vend Price. The initial vend prices for District to qualify for any Commissions are set forth in the Commission chart above. Vending prices are effective for the first year of the Term and may be increased one time for the products by Contractor beginning no later than Year 3 of the Agreement by \$0.25. Any other vend price increase(s) proposed throughout the Term must be mutually agreed upon by the parties.

● **Bottle & Can Product Pricing - Food Services & Concessions**

Product	Package Type	Pack Size	Case Cost	Unit Cost	Rebate
Aquafina Water	16.9 oz PET Bottle	24	\$5.75	\$0.2396	\$0.25
Aquafina Water	12 oz PET Bottle	24	\$6.75	\$0.2813	\$0.25
Aquafina Water	20 oz PET Bottle	24	\$7.75	\$0.3229	\$0.25
LIFE Water	20 oz PET Bottle	24	\$20.50	\$0.8542	\$0.25
Bubly	12 oz Can	24	\$8.50	\$0.3542	\$0.25
Carbonated Soft Drinks	12 oz Can	24	\$8.50	\$0.3542	\$0.25
Lipton & Dole Non-Carbonated	12 oz Can	24	\$8.50	\$0.3542	\$0.25
Gatorade	12 oz PET Bottle	24	\$13.75	\$0.5729	\$0.25
Gatorade	20 oz PET Bottle	24	\$18.50	\$0.7708	\$0.25
Propel	20 oz PET Bottle	12	\$9.25	\$0.7708	\$0.25
Carbonated Soft Drinks	20 oz PET Bottle	24	\$18.50	\$0.7708	\$0.25
Lipton & Dole Non-Carbonated	20 oz PET Bottle	24	\$18.50	\$0.7708	\$0.25
Lipton & Dole Non-Carbonated	16.9 oz PET Bottle	24	\$17.00	\$0.7083	\$0.25

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Tropicana Juice	10 oz PET Bottle	24	\$14.50	\$0.6042	\$0.25
Tropicana & Dole Juice	15.2 oz PET Bottle	12	\$17.50	\$1.4583	\$0.25
SoBe Life Water	20 oz PET Bottle	12	\$11.00	\$0.9167	\$0.25
Mtn. Dew Kickstart	12 oz Alum. Can	18	\$15.00	\$0.8333	\$0.25

The parties agree to keep pricing firm for first year of the Term, then the pricing will increase no more than 3% annually on the contract start date with a 1.5% rebate on net revenue sales starting in years 2,3,4 and 5.