

Lincoln High School  
2600 SW9th St  
Des Moines, IA 50316

Re: Legal Conditions Applicable to Pepsi's Proposal to  
Request for Proposals ("RFP")

If the Des Moines Community School District – Lincoln High School (the "Customer") accepts Pepsi's proposal, Pepsi requests that the Customer and Pepsi incorporate their entire understanding of the relationship into one agreement which will be negotiated between the Customer and Pepsi. Enclosed is a copy of Pepsi's template which Pepsi makes available to the Customer in the event that it chooses to adopt that form of contract.

Pepsi is willing to modify its template to align with the terms and conditions of contract expressed in the RFP. Where the RFP is silent, however, Pepsi requests that the Customer agree to substantially similar terms and conditions as in the attached template.

## LINCOLN HIGH SCHOOL DISTRICT AGREEMENT

This Agreement (“*Agreement*”) is between Bottling Group, LLC and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 3825 106th Street, Urbandale, IA 50322 (“*Pepsi*”) and Lincoln High School, having its principal place of business at 2600 SW9th St, Des Moines, IA 50316 (“*Customer*”).

### 1. Definitions.

“*Beverage*” or “*Beverages*” means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) packaged carbonated or still water (including spring, mineral or purified), (viii) liquid concentrate teas (“*LCT*”), (ix) frozen carbonated and non-carbonated beverages (“*FB*”), and (x) any future categories of nonalcoholic beverage products that may be distributed by Pepsi. Beverages do not include non shelf-stable, non-flavored fluid milk as currently defined by the USDA (i.e., milk beverages containing at least 6.5% non-fat milk solids).

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

“*Competitive Products*” means any and all Beverages that are not Products (as defined herein).

“*Equipment*” means the following types of equipment owned and operated by Pepsi and used to sell or dispense the Products: (1) full service vending machines (“*Vending Machines*”); (2) retail single-serve food service equipment and (3) fountain service equipment.

“*Facilities*” means the entire premises of every school and facility owned or operated by the Customer, now or in the future, including with respect to each school, all academic buildings, athletic facilities, convenience stores, book stores, student operated stores, teachers’ lounges, and concession stands, parking lots, dining facilities, unbranded and branded food service outlets and vending areas. A list of current schools owned and operated by the Customer is set forth on **Exhibit A** attached hereto.

“*Food Service Area*” means all locations within the Facilities where meals, snacks and beverages are served or consumed or areas managed or operated by the Customer’s designated Food Service Operator.

“*Food Service Operator*” means the Customer or any third party that provides food, Beverage or vending services at the Facilities.

“*Gallons*” shall mean the number of gallons of Postmix Products purchased by the Customer from Pepsi.

“*Packaged Products*” means Beverages that are sold and/or distributed by Pepsi in pre-packaged form (e.g., Bottles & Cans). A current list of Pepsi’s Packaged Products is found in attached **Exhibit B** which may be amended from time to time by Pepsi to include Beverages permitted pursuant to the then-current School Policy.

“*Postmix Products*” means beverage products sold and/or distributed by Pepsi and used to create and dispense fountain Beverages. A current list of Pepsi’s Postmix Products is found in attached **Exhibit B**

which may be amended from time to time by Pepsi to include Beverages permitted pursuant to the then-current School Policy.

“**Products**” means Postmix Products and Packaged Products manufactured, bottled, sold and/or distributed, now or in the future, by Pepsi. A current list of Products is attached hereto as **Exhibit B**.

“**Special Events**” means any athletic contests, booster club activities, and all other special events conducted at the Facilities where parents and other adults are a significant part of an audience.

“**Year**” means each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

2. **Term.** The term of this Agreement shall commence on August 1st, 2019 (“**Effective Date**”) and expire upon the later of June 30th, 2020. The Customer reserves the option to renew the contract for four (4) additional years after the original contract period. When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination.

3. **Exclusive Beverage Availability Rights.** The Customer hereby grants to Pepsi the following exclusive Beverage availability rights:

(A) Pepsi shall have the exclusive right to make the Beverages available for sale and distribution at the Facilities, including the right to provide all Beverages sold at Special Events. Subject to the terms and conditions set forth in this Agreement, the Customer agrees that Products shall be the exclusive Beverages sold, dispensed, served or made available at the Facilities.

(B) The Customer shall purchase, and shall require that all concessionaires, Food Service Operators, booster clubs or other third parties selling Beverages at the Facilities purchase all Products, cups, lids and carbon dioxide directly from Pepsi.

(C) The Customer agrees to comply with Pepsi’s School Policy, attached hereto as **Exhibit C (“School Policy”)** as may be updated from time to time during the Term. A copy of the Policy in effect as of the beginning of the Term is attached hereto as **Exhibit C**. The Customer agrees that it shall at all times during the Term comply with the School Policy and shall cause any designated Food Service Operator to comply with the School Policy, including applicable Beverage type, size and timing requirements/restrictions. The Customer’s or Food Service Operator’s failure to comply with the School Policy shall be a material breach of this Agreement.

(D) The Customer shall permit Pepsi, its employees, agents and representatives, during normal school hours, to enter the Facilities for purposes of servicing and stocking the Equipment, and verifying the Customer’s compliance with the School Policy.

4. **Pricing.**

(A) **Products sold through Vending Machines.** The price for Products sold from Pepsi’s Vending Machines shall be determined as set forth in Section 5(D) herein.

(B) **Products purchased by the Customer.** Pricing for Products purchased by the Customer, its designated Food Service Operator or any other party from Pepsi for sale at the Facilities are listed on **Exhibit B**. The Customer recognizes that such pricing is available for the first Year of this Agreement, thereafter, the pricing may increase up to █████ per year at Pepsi’s sole discretion and Pepsi shall provide the Customer with notice of any increases.

(C) The Consideration (as set forth in Section 5) was calculated based on the Customer and its purchasing representatives (including any designated Food Service Operator(s)) purchasing Products directly from Pepsi at the pricing structure established by this Agreement during the entire Term. Therefore, if the Customer or Food Service Operator demands or requires the purchase of Products from Pepsi at prices other than those established by this Agreement or purchases Products from sources other than Pepsi, then such action shall constitute a material breach of this Agreement.

5. **Consideration.** In consideration of the exclusive rights granted in this Agreement and provided the Customer is not in breach of this Agreement, Pepsi shall provide to the Customer the following:

(A) **Annual Sponsorship Fees.** In each of years one through five, Pepsi shall provide Customer with an annual sponsorship fee in the amount [REDACTED] US Dollars [REDACTED] not to exceed five consecutive payments (the “*Annual Sponsorship Fees*”). The Annual Sponsorship Fee will be paid to Customer within ninety (90) days at the start of each applicable Year. The Annual Sponsorship Fees are earned throughout the Year in which they are paid. In the event Pepsi terminates this Agreement due to the Customer’s failure to cure a breach hereof, the unearned Annual Sponsorship Fees will be repaid to Pepsi pursuant to the terms of Section 8(C) herein.

(B) **Gatorade Sideline Support.** Pepsi shall provide Customer with annual Gatorade Sideline Support of [REDACTED] over the life of the agreement in the form of free Gatorade product or Sideline equipment (including but not limited to; Gatorade Performance Package Kits, Gatorade Coolers, Sport Towels, T-shirts, sport bottles and sport bottle carriers, and sport bags, etc.) upon Customer’s request, provided all requests are administered through a Pepsico Foodservice Sales Representative (the “Gatorade Sideline Support”). The Customer acknowledges that any Gatorade Sideline Support set forth above does not represent a cash payment to the Customer and any unused marketing support or product donation (In whole or in part) shall not be carried over to the next Year.

(C) **Rebates.** Each Year throughout the Term, Pepsi shall calculate the total applicable Cases of Packaged Products and applicable Gallons of Postmix Products purchased from Pepsi by the Customer and its Food Service Operator pursuant to this Agreement, and shall provide the Customer with rebates calculated based on applicable amounts set forth below (the “*Rebates*”). The Rebates, if applicable, shall be paid by Pepsi within ninety (90) days of the end of each applicable Year during the Term.

<i>Rebate Amount</i>	<i>Applicable Products</i>
\$ [REDACTED] /Case	On all : [REDACTED]

6. **Competitive Products.** During the entire Term of this Agreement:

(A) No Competitive Products shall be sampled, sold, served or dispensed anywhere at the Facilities;

(B) No permanent or temporary advertising, signage or trademark visibility for Competitive Products shall be displayed anywhere at the Facilities.

(C) No agreement will be entered into or maintained by the Customer and/or its designated Food Service Operator pursuant to which Competitive Products will be associated with the Customer or the Facilities in any advertising or promotional activity that creates a relationship or connection between Competitive Products and the Customer or the Facilities.

7. **Equipment and Service.**

(A) Pepsi shall have the exclusive right to install Equipment throughout the Facilities. Pepsi shall have the further right to install additional Equipment in buildings and facilities acquired and/or constructed by the Customer after the date of this Agreement. Pepsi shall place Equipment at mutually agreed upon locations throughout the Facilities. Pepsi reserves the absolute right to remove any glass front Vending Machines that sells less than eight (8) cases of Product per week or any other Vending Machines that sells less than two (2) cases of Product per week. Pepsi shall install Equipment at its sole expense, except where otherwise prescribed by law. Pepsi shall have the right to place full trademark panels on all sides of its Equipment. The Customer shall not permit the operation of any other equipment used for the sale of Beverages at the Facilities without the prior written consent of Pepsi. Customer agrees that the Equipment shall be exclusively used to display and merchandise the Products, and the Customer shall not use the Equipment to display, stock, advertise, sell or maintain any other products (including on the exterior of the Equipment).

(B) Pepsi or one of its subsidiaries or affiliates shall retain ownership in and title to all Equipment.

(C) The Equipment may not be removed from the Facilities without Pepsi's written consent, and the Customer agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by Pepsi in writing. Upon expiration or termination of this Agreement, Customer shall allow Pepsi to pick up all Equipment and the parties shall work together to coordinate a pick-up schedule.

(D) Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment.

(E) Pepsi shall be responsible for collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for all cash monies collected therefrom. Customer agrees to provide reasonable assistance to Pepsi in apprehending and prosecuting vandals. Pepsi shall not be obligated to pay Commissions on documented revenue losses resulting from vandalism or theft of Product with respect to any Vending Machines.

## **8. Breach of Contract and Termination.**

(A) Either party may terminate this Agreement for any breach of this Agreement's material terms by the other party, provided that the non-breaching party shall first provide the breaching party with written notice of the breach and a thirty (30) day opportunity to cure such breach. If the breaching party fails to cure the breach within the thirty (30) day period, the non-breaching party may terminate the Agreement upon written notice to the breaching party.

(B) If any of the material terms of this Agreement, including but not limited to the exclusive rights to sell any one or more of the Products, are prohibited or limited during the Term of this Agreement as a result of a final judicial opinion or governmental regulation for any other reason (including but not limited to beverage tax, package size or product restriction), then Pepsi and Customer will negotiate in good faith to reduce Pepsi's ongoing financial support under the Agreement to neutralize any negative impact such change has on the economics of the original Agreement. If Customer and Pepsi are not able, within sixty (60) days of such prohibition or restriction, to agree on an equitable amendment to the Agreement, Pepsi shall have the right to terminate the Agreement upon thirty (30) days' notice to the Customer.

(C) If the Agreement is terminated by Pepsi pursuant to Section 8(A) or (B) herein, Pepsi shall, without prejudice to any other right or remedy available to Pepsi, obtain a reimbursement from the Customer of any unearned funding paid by Pepsi to the Customer which remains unearned as of the time of termination. With regard to the Initial Support Funds, if any, the amount of such reimbursement shall be determined by multiplying the Initial Support Funds by a fraction, the numerator of which is the number of months remaining in the Term at the time such termination occurs and the denominator of which is the higher of total number of months within the Term (e.g., 5 year term is 60 months) or, if applicable, the number of months expected to comprise the Term based on volume trends as of the time of termination of the Volume Threshold. With respect to the Annual Sponsorship Fee, if any, the amount of such reimbursement shall be determined by multiplying the Annual Sponsorship Fee paid in the Year during which such termination occurs by a fraction, the numerator of which is the number of months remaining in such Year at the time of such termination or limitation and the denominator of which is twelve.

**9. Taxes.** Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the Customer in connection with any fees payable by Pepsi under this Agreement. In addition, Pepsi shall be responsible only for the payment of taxes on the sales of Products through Vending Machines. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment.

## **10. Representations and Warranties**

(A) Each party represents and warrants to the other: (1) it has full power and authority to enter into this Agreement and to grant and convey to the other the rights set forth herein; and (2) all necessary approvals for the execution, delivery and performance of this Agreement have been obtained and this Agreement has been duly executed and delivered by the parties and constitutes the legal, valid and binding obligation, enforceable in accordance with its terms, and nothing contained in this Agreement violates, interferes with or infringes upon the rights of any third party; (3) the respective signatory of this Agreement is duly authorized and empowered to bind the party to the terms and conditions of this Agreement for the duration of the Term; and (4) the parties have complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

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

**11. Indemnification.**

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

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

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

**12. Force Majeure.** Pepsi will not be responsible for any delay or lack of delivery resulting directly or indirectly from any foreign or domestic embargo, product detention, seizure, act of God, 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 Pepsi or that of the suppliers to Pepsi unless such contingency is specifically excluded in another part of this Agreement. This Agreement will be suspended as to both Product and delivery during any of the above force majeure contingencies. Any and all suspended deliveries will resume after such contingencies cease to exist, if possible, and this Agreement will resume in accordance with its terms, unless otherwise provided for herein.

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

**14. Retention of Rights.** The Customer shall not obtain by virtue of this Agreement, any right, title or interest in the trademarks of Pepsi or PepsiCo, Inc., nor shall this Agreement give the Customer the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of Pepsi or PepsiCo, Inc.

**15. Non-Disclosure.** Except as may otherwise be required by law or legal process, neither party shall disclose to unrelated third parties the terms and conditions of this Agreement without the consent of the other.

**16. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles.

**17. Insurance.**

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

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

**18. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto regarding the subject matter hereof and supersedes all other agreements between the parties. This Agreement may be amended or modified only by a writing signed by each of the parties.

**19. Waiver.** No failure or delay of either party to exercise any rights or remedies under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any rights or remedies preclude any further or other exercise of the same or any other rights or remedies. Any waiver must be in writing and signed by the party waiving the rights.

**20. Assignment; Counterparts.** To the extent permitted by law, this Agreement shall be binding upon and inure to the benefit of Pepsi and the Customer and its respective successors and permitted assigns. The Customer may not subcontract or assign its rights or obligations under this Agreement to any other entity or person without the express written consent of Pepsi, which consent may be withheld at its sole discretion. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**21. Severability.** If any provision of this Agreement shall be deemed or declared unenforceable, invalid or void, the same shall not impair any of the other provisions contained herein which shall continue to be enforceable in accordance with their respective terms, except that this clause shall not deprive any party of any remedy afforded under this Agreement.

**22. Construction.** Customer and Pepsi acknowledge that both parties participated equally in the negotiation of this Agreement and that, accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted.

**23. Right of Offset.** Pepsi reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer for Products ordered from and delivered by Pepsi and any and all balances due and payable to Pepsi pursuant to this Agreement.



**24. Notices.** 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:

If to Customer: Phil Chia  
Activities Director  
Lincoln High School  
2600 SW9th St  
Des Moines, IA 50316

If to Pepsi: Pepsi Beverages Company  
3825 106<sup>th</sup> Street  
Urbandale, IA 50322

With a copy thereof to: Pepsi Beverages Company  
1111 Westchester Avenue, White Plains, NY 10604  
Attention: Law Department

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed on the dates set forth below.

**BOTTLING GROUP, LLC**

**Lincoln High School**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### List of Elementary, Middle and High Schools within the School District

**High School:**

Lincoln High School – 2600 SW9th St, Des Moines, IA 50316

**Other:**

Football Field – 2600 SW9th St, Des Moines, IA 50316

Baseball Field – 1000 SW Porter Avenue, Des Moines, IA 50315

Softball Field – 1000 SW Porter Avenue, Des Moines, IA 50315

**Exhibit B**

Products & Pricing

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

PRODUCT GROUP	PACKAGE	# UNITS / GALLONS	INVOICE PRICING
AQUAFINA	20oz 24L	24	██████
BUBLY	20oz 24L	24	██████
CSD	20oz 24L	24	██████
GATORADE	20oz 24L	24	██████
LIPTON	20oz 24L	24	██████
LIPTON	18.5oz 12L	12	██████

## **PepsiCo U.S. School Policy for Beverages**

*(Updated as of September 2014)*

### **SUMMARY**

PepsiCo follows all federal, state and local regulations governing beverage sales in schools and the company's Global School Beverage Policy (available on [pepsico.com](http://pepsico.com)). In addition, PepsiCo will not offer caffeinated beverages that are marketed as energy drinks for sale to students in elementary, middle or high schools, even if they meet the nutrition thresholds in these standards.

### **PERMITTED PRODUCTS**

Consistent with federal regulations issued by the U.S. Department of Agriculture (USDA) and PepsiCo's Global School Beverage Policy, PepsiCo will offer schools only those beverage products that meet the following standards, if such products are to be sold to students. In addition, PepsiCo will not offer caffeinated beverages that are marketed as energy drinks for sale to students in elementary, middle or high schools, even if they meet these standards, and will follow state and local regulations if stricter than these standards.

#### **Elementary School**

- Plain water or plain carbonated<sup>1</sup> water (no size limit)
- 100% fruit/vegetable juice (up to 8-ounce)
- 100% fruit/vegetable juice diluted with water - with or without carbonation<sup>1</sup> - and no added sweeteners (up to 8-ounce)
- Low-fat milk, unflavored (up to 8-ounce)
- Non-fat milk, flavored or unflavored, including nutritionally equivalent milk alternatives (up to 8-ounce)

#### **Middle School**

- Same as elementary school except that juice and milk meeting elementary school criteria may be up to 12-ounce
- If a middle school and high school are in the same building and students of all ages have access to the areas where beverages are sold, beverages must meet the middle school standards. If, in the above situation, the middle school students do not have access to the area where beverages are sold to high school students, high school beverage standards may be implemented for that area.

#### **High School**

Same as middle school except that the following beverages are also permitted:

- Zero-calorie beverages with or without flavors and with or without carbonation up to 20-ounce. (As defined by U.S. Food and Drug Administration (FDA), "zero-calorie" beverages are labeled to contain less than 5 calories per 8-ounce, or no more than 10 calories per 20-ounce)
- Low-calorie beverages with or without flavors and with or without carbonation up to 12-ounce. (As defined by FDA, "low calorie" beverages are labeled to contain no more than 40 calories per 8-ounce, or no more than 60 calories per 12-ounce)

- Sports drinks with more than 40 calories per 8-ounce: only before, during and after physical activity/exposure to heat (such as at sport practices, training sessions and competitions), when such sales take place either (1) during the “extended day” (as defined in this policy below) in those schools not subject to USDA regulations, or (2) outside of the “school day”(as defined by USDA<sup>1</sup>) in those schools subject to USDA regulations

### **APPLICATION OF POLICY**

**Schools:** This school beverage policy applies to all elementary, middle and high schools in the United States, whether public or private and whether or not such schools participate in the reimbursable school breakfast or lunch plan run by the Federal government.

**Time of Day:** This policy applies to beverages sold to students on school grounds during the school day as well as the extended school day. The “extended school day” is the time before and after school when students are involved in events (e.g., clubs, yearbook, band and choir practice, student government, drama and childcare programs) that are primarily under the control of the school or third parties on behalf of the school.

As noted above, the inclusion of the extended day in this school beverage policy does not prohibit sales of sports drinks with more than 40 calories per 8-ounce during the extended school day to student athletes at practices, training sessions and competitions or to other students engaged in physical activity/exposed to heat, except in those schools subject to the USDA regulations where sports drinks may be sold to these students only during the period from 30 minutes after the school day until midnight prior to the next school day.

**Special Circumstances:** This policy does not apply to the sale of beverages: (1) in staff areas of schools that are not accessible to students; (2) at, or immediately before or after, school-related events where parents and other adults are a significant part of an audience (e.g., sporting events, school plays and band concerts); or (3) for fundraisers held at schools (other than fundraising through vending machines, school stores, snack bars, à la carte sales).

### **Providing Choice and Information**

PepsiCo will work to provide vending machines in a variety of graphic designs, including designs featuring low-calorie brands; to show calorie counts on vendor selection buttons; and to include a calorie awareness message such as “Calories Count – Check then Chose” (or similar) on vendor fronts.

### **Promoting Wellness and Education**

PepsiCo will encourage schools to use contract-related sponsorship and marketing funds, if any, to promote student fitness, wellness and health education programs in schools.

### **Independent Bottlers and Third Party Distributors**

Independent bottlers and third-parties that distribute PepsiCo products to schools should comply with all federal, state and local regulations governing the sale of beverages in schools. In addition, PepsiCo encourages independent bottlers and third-party distributors to follow the product standards and other guidance outlined within PepsiCo’s policy above.

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#### **Notes:**

*1. The USDA regulations which took effect July 1, 2014 do not apply to (1) beverages sold to students in schools that do not participate in the reimbursable school breakfast or lunch plan run by the Federal government; or (2) beverages sold to students outside the “school day” (“school day” is defined by USDA as the period from midnight before, to 30 minutes after the end of the official school day).*

###