

BILL NO. 11628

ORDINANCE NO. 1576-24

AN ORDINANCE OF THE CITY OF PARK HILLS, MISSOURI APPROVING A US DSD BEVERAGE AGREEMENT WITH PEPSI BEVERAGES COMPANY AND AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR OR THEIR DESIGNATED AGENTS TO ENTER INTO THE AGREEMENT

WHEREAS, the City has obtained a bid and proposed Beverage Agreement (“Contract”) from Pepsi Beverages Company, a copy of which is attached hereto and incorporated herein as “EXHIBIT A”.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARK HILLS, MISSOURI, AS FOLLOWS:

Section 1. Approval of Contract. The Park Hills City Council hereby approves the US DSD Beverage Agreement with Pepsi Beverages Company, as attached hereto as “EXHIBIT A.”

Section 2. Authorizations. The City Administrator, Mayor and/or any other necessary employees are hereby authorized to execute said Contract and any other necessary documents to carry out the intent of the Contract; and the City Clerk is hereby authorized to attest any such signatures on any such documents and to affix the City’s seal thereto to the extent required by such documents. All officials and employees of the City are authorized and empowered, collectively or individually, to take all other actions and steps and to execute all instruments, documents, agreements and contracts on behalf of the City as they shall deem necessary or desirable in connection with said engineering services and the carrying out of the intention of this Ordinance.

Section 4. Severability. The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 5. Effective Date. This Ordinance shall take effect immediately upon its adoption.

DULY READ TWO TIMES AND PASSED THIS 26 DAY OF March, 2024.


Presiding Officer

BILL NO. 11028

ORDINANCE NO. 1576-24

ATTEST:

Brandy Mauler
City Clerk

APPROVED THIS 26 DAY OF March, 2024.

Stacey Easter
Mayor

ATTEST:

Brandy Mauler
City Clerk



Exhibit A



US DSD Beverage Agreement C

Customer Information

Name of Business: City of Park Hills Customer E-mail: Parksandrec@parkhillsmo.net
 Primary Contact: Paul Johnson COF Number(s): 6217183, 6217182
 Address: 9 Bennett Street Fed Tax ID #: 431659205
 City: Park Hills State Tax ID #: 11159774
 State: MO Business Phone: 5734313577 Cell #: 5734309097
 Zip Code: 63601 Business Owner: NA

PBC Information

Agreement Term

PBC Location(s): Farmington
 Created By: Thomas Boyland Route #: 13829
 PBC Market Unit: St. Louis Market Phone #: 314-568-4116
 Sales Method: (check one) Pepsi Direct Pre-Sell (Route #)

Agreement Start Date: 2/15/24
 Agreement End Date*: 2/14/27

(Agreement automatically renews each year unless Cancellation is received at least ninety (90) days prior to the end of the term)

(Check Boxes and Specify, as applicable)

I. PBC Covenants

II. Customer Covenants

X	(A) Loan at no charge (except where prohibited by law - in which event PBC shall charge the minimum legal rental fee allowed), where and as necessary coolers, fountain or other Equipment to the Customer, to be placed and operated pursuant to the terms and conditions of this Agreement (as specified on reverse side). Initial Equipment Placement shall be as follows (fill out as applicable): Coolers: One-Door Two-Door Three-Door Counter-top Energy Fountain: 6 Valve 8 Valve Bar guns (button) Special: Lipton Refreshing Iced Tea Juice Frozen Slush FUB Unit 1 Valve Urn 2 Valve Urn _Other (Specify):
X	(B) PBC shall provide, at no charge to the Customer (except where prohibited by law), periodic maintenance, necessary service and repairs to all Equipment loaned to Customer pursuant to this Agreement.
X	(C) PBC shall make available for purchase by Customer Pepsi branded cups and CO ₂ ("Ancillary Products") at prices as determined by PBC. (Based on availability)
X	(D) Provide Customer with the opportunity to participate as a member of pepsirewards+plus * If unredeemed, earned points will expire after two years * Visit www.pepsirewardsplus.com for full program details
X	(E) For additional local PBC Field input:

	(A) Volume Based Term (Check box if applicable) * The Term of this Agreement shall commence on the Agreement Start Date listed above, and end on the later of: (1) _____ or (2) the date on which Customer purchases from PBC _____ Gallons/Cases for sale in the Outlets.
X	(B) EXCLUSIVE - Customer agrees to exclusively serve the Products indicated below at the Customer's Outlet. The Products shall be the only beverages of their respective types sold, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted at or in connection with the Customer's Outlet.
	(C) NON-EXCLUSIVE - Customer agrees to grant PBC the right to have its Products sold, dispensed or otherwise made available, and advertised, displayed, represented or promoted at or in connection with the Customer's Outlet. Notwithstanding the foregoing, if PBC has provided Customer with fountain Equipment, Customer agrees to serve PBC's postmix Products exclusively at its Outlet.
X	(D) DSD - Customer agrees to purchase all Products directly from the PBC Location(s) indicated above and sell only those Products purchased from PBC from the Equipment provided to the Customer by PBC. Customer shall not stock any non-PBC Products (food or beverages) in Equipment.
X	(E) MINIMUM THRUPUT - In order to qualify for applicable Equipment, Customer shall purchase a minimum annual average of 100 Cases per door for each cooler, 100 Gallons per each FB unit, 150 Gallons per each urn, and 500 Gallons per each fountain dispensing unit (minimum requirement may exclude bar guns at PBC's discretion) at the Outlet.
X	(F) REQUIRED PRODUCTS. Purchase, stock and distribute at least each of the Products (as specified below) at all times during the Term.

(1) Required Packages for this Agreement:

Fountain Postmix/BIB	20oz	2 Liter	Cans	Fountain Premix/Tanks
(Limited Market Availability)	Cups	CO2		
Other:				

(2) FOUNTAIN/POSTMIX SKU REQUIREMENTS: (Must carry minimum of Six)

(Based on availability)
 Pepsi, Diet Pepsi, Pepsi Zero Sugar, CF Diet Pepsi, Pepsi Wild Cherry, Starry, Starry Zero Sugar, Mtn Dew, Diet Mtn Dew, Brisk, Dr Pepper, Diet Dr Pepper, Mug, Crush, Dole Lemonade, Fruit Punch, bubbly, Citrus Springs, Viva Sol
 Lipton Iced Tea: Sweet, Unsweet, Other
 Frozen Slush, Juice BIB, Juice Cartridge, Other Innovation

(3) 20oz BOTTLE SKU REQUIREMENTS: Must Check One Level

(All shall be 20 oz bottles unless otherwise indicated)

X	Platinum: Must purchase Pepsi, Diet Pepsi, Pepsi Zero Sugar, Starry, Mtn Dew, Aquafina; Plus any two additional SKUs from brands below:
	Gold: Must purchase any five SKUs from brands below:
	Silver: Must purchase any three SKUs from brands below:

Pepsi, Diet Pepsi, Pepsi Zero Sugar, Mtn Dew, Diet Mtn Dew, Mtn Dew Zero Sugar, Mtn Dew Energy (16oz), Starry, Starry Zero Sugar, Dr Pepper, Diet Dr Pepper, Crush, Lipton Iced Tea, Brisk, Pure Leaf, Gatorade, G2, Gatorade Zero, Propel, Aquafina, LIFEWTR, bubbly (16oz), Tropicana, Naked, KeVita, Dole/Ocean Spray, KickStart (16oz), Starbucks (all packaging), Celsius (12oz), Rockstar (16oz), Muscle Milk

X	Comply with the Terms of this Agreement
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AGREED TO AND ACCEPTED BY:

For PepsiCo Beverage Sales, LLC, operating as Pepsi Beverages Company	
Signature:	Date
Print Name	Title
For Customer	
Signature:	Date
Print Name	Title



US DSD Beverage Agreement C

Customer Information

Name of Business: City of Park Hills
Primary Contact: Paul Johnson
Address: 9 Bennetts Street
City: Park Hills
State: MO
Zip Code: 62101
Customer E-mail: parksandrec@parkhillsmo.net
COF Number(s): 6217183, 6217182
Fed Tax ID #: 43-1659205
State Tax ID #: 11159774
Business Phone: 8734313577 Cell #: 8734309097
Business Owner: N/A

PBC Information

Agreement Term

PBC Location(s): Farmington
Created By: Thomas Boyland Route #: 13829
PBC Market Unit: St. Louis Phone #: 314-568-4116
Agreement Start Date: 2/15/24
Agreement End Date*: 2/14/27

III. PBC AGREEMENT OVERVIEW

(A) Upon request by PBC, Customer shall provide a verification list of the current locations of all Equipment loaned or rented to Customer by PBC ("Equipment List")...
(B) PBC Shall Pay a one-time Initial Support Fund of \$_____ within 90 days of the later of the signing of this Agreement or commencement of Agreement Start Date.
(C) PBC shall pay Annual Support Funds as follows:
Annually: \$ 600 Semi-Annually: \$ Quarterly: \$
Payable within 90 days of the commencement of each Agreement Year, unless otherwise indicated, for the Agreement Years 1-5 and shall not exceed \$3,000 in total payments. For Year 1, payable within 90 days of the later of the signing of this Agreement by both parties or commencement of Agreement, annual index to volume payout based off 700 cs/gls annually
(D) PBC shall provide Marketing Support* up to the following amount:
Annually: \$ 600 Semi-Annually: \$ Quarterly: \$
*Marketing Support will be used and spent by PBC for mutually agreed marketing and other programs. Marketing Support will not be carried over to a subsequent Year and will not be redeemable for a cash payment.
POS Funding (not paid directly)
(E) PBC Shall pay Rebates* on purchased Products based on Schedule A, within 90 days after the period indicated below:
Annually X Semi-Annually Quarterly
*Based on 24 units/case unless otherwise noted in Schedule A
(F) Customer shall return any shells and pallets received from PBC, if applicable.

SCHEDULE A

Table with 5 columns: Product, Units Per Case/Gallons Per BIB, Rebate Per Case/Gallon, Conditional Increased Rebate per Case/Pkg, Conditional Increased Rebate Condition. Rows include 3G BIB, 5G BIB, 20oz Aquafina, 20oz CSD, 20oz Gatorade.

Initial Support Fund and Annual Support Funds, set forth in this Agreement, shall be earned over the Agreement Year or Term, as applicable, and shall be refunded pro rata by Customer if this Agreement is terminated prior to the Agreement End Date.

AGREED TO AND ACCEPTED BY:

For PepsiCo Beverage Sales, LLC, operating as Pepsi Beverages Company
Signature: Date
Print Name Title
For Customer
Signature: Date
Print Name Title

Exclusions

The following Products are excluded from Schedule A and will not receive any Rebates
KDP (Dr Pepper) Products Excluded in Rebates



COF:

IV. GENERAL TERMS

This sets forth the agreement ("Agreement") between PepsiCo Beverage Sales, LLC, on behalf of itself and its affiliates and/or their respective subsidiaries collectively comprising Pepsi Beverages Company ("PBC") and the Customer identified on the front page of this Agreement (the "Customer"), with respect to the purchase of Products.

1. Definitions. As used in this Agreement, the following capitalized terms shall have the respective meanings assigned thereto below.

- a. "Agreement Year" shall mean each twelve-month period beginning with the Agreement Start Date.
- b. "Beverage" or "Beverages" means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed during the Term of the Agreement
- c. "Cases" shall mean cases of bottle & can Products purchased by the Customer from PBC to be delivered in sizes, quantities and types of containers as determined by PBC from time to time.
- d. "Equipment" shall mean all coolers, fountain and other beverage dispensing equipment loaned or rented to the Customer by PBC during the Term.
- e. "Gallons" shall mean the gallons of Postmix, LCT and FB Products purchased by the Customer from PBC.
- f. "Outlet" shall mean the Customer's outlet located at the address indicated under the Customer information section, and any expansions thereof, including any restaurant, outlet or other facility in the Customer's system that may be opened or acquired by the Customer within PBC's bottling territory during the Term (the "Outlets"). In the event that new Outlets are added during the Term of this Agreement, the parties shall create and attach an updated schedule of Outlets, COFs and addresses, to be automatically included as part of the Agreement.
- g. "Products" shall mean Beverages manufactured, sold or distributed by PBC which may be amended by PBC from time to time.
- h. "Initial Term" This Agreement shall become effective upon execution by all parties, and the term of this Agreement shall commence on the Agreement Start Date and expire upon the later of (i) the Agreement End Date; (ii) the Volume Based Term set forth in Section II.A of the Agreement, if applicable or (iii) at least ninety (90) days prior to expiration of any Renewal Period

2. Consideration. In consideration of the rights granted in this Agreement, and provided the Customer is not in breach of this Agreement, PBC shall provide the Customer the following – if applicable as indicated on the first two pages of this Agreement:

- a. **Funding.** As set forth in this Agreement, Funding, as applicable, may consist of: (1) an Annual Support Fund payment in the amount indicated in this Agreement, payable as specified herein and earned over the duration of the Agreement Year in which it is paid; (2) Rebates, payable for applicable Cases or Gallons of Products purchased by Customer from PBC during the applicable funding period; (3) a one-time only Initial Support Fund in the amount indicated in this Agreement, payable within ninety (90) days of the later of installation of Equipment or signing of this Agreement by both parties, and earned on an equal monthly basis over the Initial Term of the Agreement has only a "time-based" duration, and will be earned on an equal per Gallon/Case basis if the Agreement has a "later of time or Gallons/Cases purchased" duration; and (4) such other consideration as indicated on the first two pages of this Agreement, including that based on exclusive/non-exclusive status of the Customer; and

The Customer acknowledges and agrees that all consideration set forth herein is to be earned by the Customer based on its full compliance with the terms, and requirements of this Agreement and PBC shall provide such consideration provided the Customer (1) has paid in full, without offsets, auto or other deductions, all invoices for Products delivered to the Customer, and (2) is not in breach of its obligations under this Agreement.

3. Equipment. The Equipment loaned to Customer pursuant to this Agreement, shall remain the property of PBC or one of PBC's affiliates throughout the Term. Customer will surrender all Equipment to PBC upon expiration or termination of this Agreement as more fully set forth below. PBC or one of its affiliates shall retain all right title and interest in the Equipment. PBC will make initial delivery of each piece of Equipment to the Customer's designated location. At all times during the Term, Customer shall comply with PBC's Product merchandising standards, and policies and procedures regarding the operation and use of PBC's Equipment, as such standards and policies may be updated or modified by PBC from time to time. Failure to comply with this provision shall be deemed a material breach of this Agreement. At PBC's sole discretion, the Customer may have the opportunity to receive additional loaned Equipment from PBC, subject to any additional stipulations as determined by the local PBC office servicing the Customer. In connection with the foregoing, Customer acknowledges and agrees that Equipment shall only be used to house/dispense PBC Products and may not be safe or suitable for storage of non-Beverage items. Customer shall not remove or cause to be removed or otherwise encumber the Equipment from the location above designated without the written consent of PBC.

a. **Equipment Repairs.** Customer agrees to promptly notify PBC if the Equipment needs to be repaired or serviced and shall fully cooperate with PBC in effecting any necessary repairs or service. Provided the Customer is in compliance with all terms and conditions of this Agreement, PBC agrees to provide free service and repair of the Equipment (except where prohibited by law). Customer shall keep the Equipment free from any liens or encumbrances except those caused by PBC. Customer shall be liable to PBC for careful use and return of the Equipment in good condition, and any Equipment or parts lost or damaged by fire, theft, accident, or for any other reason, shall be paid for, at the time of loss, by Customer. All reasonable expenses incurred by PBC in securing return of the Equipment, including but not limited to hourly charges for PBC's employees, shall be Customer's responsibility. PBC shall have the right, during Customer's usual business hours, to enter the premises where the Equipment is located and shall have free access thereto for purposes of inspecting or removing the Equipment.

b. **Equipment upon Expiration or Termination of this Agreement.** If this Agreement is terminated or expires and the parties do not enter into a subsequent agreement, then the Customer shall fully cooperate with PBC to insure that PBC is able to pick up its Equipment. Within 15 days after the expiration or termination the Customer shall coordinate with PBC so that PBC may pick up its Equipment at the Customer's locations. Once PBC has picked up and inspected the Equipment, PBC shall notify the Customer of any damage to or missing Equipment/parts (excluding reasonable wear and tear). Customer shall immediately pay to PBC all applicable costs, expenses, and fees associated with the repair/replacement of the Equipment or associated parts. Failure make such payment shall be deemed a material breach of this Agreement.

4. Product Price. Prices for Products (including for Ancillary Products, if applicable) shall be at the discretion of PBC and subject to change from time to time.

5. General Terms

a. **Breach and Termination.** In the event either party breaches a provision of this Agreement, the non-breaching party shall give the other party written notice of such breach. Upon receipt of such written notice, the breaching party shall have thirty (30) days to cure such breach. If such breach is not cured within the specified time period, the non-breaching party may terminate this Agreement upon the expiration of such cure period upon written notice to the breaching party.

b. **Remedies.** In the event of early termination, Customer shall immediately reimburse PBC for the following: (i) an amount representing reimbursement for the cost of installation and removal of the Equipment provided to Customer by PBC pursuant to this Agreement; and (ii) Customer shall reimburse PBC for a prorated portion of any Funding advanced by PBC and not earned by Customer as of the time of termination, with such prorated amount calculated as set forth in Section 2(a) above and (iii) an amount as liquidated damages, for lost sales suffered by PBC as a result of such termination, equal to the sum of: (1) the product of \$7 multiplied by the projected number of Gallons of Postmix, LCT and FB Products that Customer would have been expected to purchase during the remainder of the Term based on the Customer's average annualized purchase rate and (2) the product of \$10 multiplied by the projected number of 24-pk case equivalents of Packaged Products that Customer would have been expected to purchase during the remainder of the Term based on Customer's average annualized purchase rate. In addition to the foregoing, Customer shall not receive any consideration pursuant to this Agreement which has not been fully earned or redeemed (including Pepsi Rewards points) by Customer as of the date of such breach.

c. **Failure to meet Minimum Thruput Requirement.** Throughout the Term, if Customer's purchase trends reasonably indicate that Customer cannot achieve the average Cases/Gallons as indicated on the front page of this Agreement, then PBC shall have the right to either (i) remove Equipment completely and terminate this Agreement pursuant to Section 5(a), or (ii) substitute/adjust Equipment placement(s) as deemed reasonably necessary by PBC and the Customer shall surrender or make available for return the Equipment within 20 days after written notice from PBC.

d. **Right of Offset.** PBC reserves the right to withhold payments due hereunder as an additional remedy for breach, or as an offset (partial or whole) against any amounts not paid by Customer to PBC pursuant to this Agreement, including the payments set forth in Sections (b) above.

e. **Customer Representation.** Customer represents and warrants to PBC that the execution, delivery and performance of this Agreement by Customer will not violate any agreements with, or rights of, third parties.

f. **Non-Disclosure.** Except as may otherwise be required by law or legal process or as reasonably necessary for PBC to enforce its rights hereunder, Customer shall not



US DSD Beverage Agreement C

disclose to unrelated third parties the terms and conditions of this Agreement without the written consent of PBC.

g. Assignment/Acquisition. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned or otherwise transferred by either party by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties, *provided, however*, that PBC may assign and transfer this Agreement (in whole and not in part) to an affiliate without the consent of Customer hereto; *provided, however*, that, (x) such affiliate is capable of fully performing all obligations of the assignor hereunder and (y) such affiliate agrees, under a separate agreement acceptable to the other party and signed by such affiliate, to perform all of the obligations and assume all liabilities of the assignor hereunder. In the event that a third party acquires Customer or substantially all Outlets or if Customer is acquired or merges with a third party, Customer will, in connection with such transaction, cause the acquiring party/merged entity, in writing, to ratify this Agreement and assume all of the obligations of Customer hereunder. In the event that Customer does not deliver written evidence of such ratification and assumption of this Agreement by the acquiring party or merged entity within ten (10) days following the closing of the transaction, Customer will be in breach of this Agreement and PBC may, at its option, terminate this Agreement effective immediately and Customer will pay to PBC all sums specified in Section ___ herein.

h. Distribution Limitation. PBC reserves the right to limit quantities, withhold or deduct funding as an offset to amounts not paid by Customer or terminate this Agreement if Customer (i) sells Products directly or indirectly for resale outside of the PBC's exclusive territory where the Outlet operates and (ii) purchases Products outside PBC's exclusive territory where the Outlet operates and resells such Products within PBC's exclusive territory.

i. Right of First Refusal. Upon expiration or termination of this Agreement, if the parties have not entered into a new agreement, the Customer shall be free to enter into discussions/negotiations with third parties except that Customer shall grant PBC the absolute right of first refusal to match any bona fide offers made by a third party with respect to Beverage sales at the Outlets. The Customer shall provide PBC with details of any such bona fide offers, and PBC shall have a thirty (30) day window to decide whether it will match such offer and exercise its right of first refusal. The parties agree that beverage type/category and not brand names shall be considered for the purposes of determining a match.


j. Trademarks. PBC shall have final authority to review and approve, in its sole discretion, all aspects of any advertising or promotion provided for under this Agreement, including of any and all promotional or other materials utilizing PepsiCo trademarks, and no documents, point of sale, coupons, sell sheets, etc. shall be released without PBC's prior written approval. Any and all trademarked, copyrighted or other material in which either party claims or has property rights shall remain the sole and exclusive property of that party and shall be used by the other solely for the purposes listed and to the extent allowed by this Agreement.

k. Indemnification. Customer shall defend and indemnify PBC against all costs, expenses, claims or losses incurred through claims of third parties resulting from Customer's breach of the terms and conditions of this agreement as well as any claims for damages based on personal injury, death or property damage due to Customer's actions and/or omissions, including but not limited to any claims related to Customer's misuse of (and/or failure to adhere to PBC's quality and handling requirements related to) PBC's Equipment, Products or IP/Trademarks.

l. 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 Customer's performance is temporarily suspended pursuant to a Force Majeure Event, Pepsi's funding obligations will be suspended for the duration of Customer's nonperformance. Once Customer resumes performance or in the event Customer 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.

m. Arbitration. Customer acknowledges and agrees that PBC has the right and authority, at its election, to bring a suit in any court of competent jurisdiction related solely to the issues of: (i) collection for unpaid invoices for Products delivered to the Customer; or (ii) recovery of Equipment loaned to Customer pursuant to this Agreement or the value thereof. Except for the claims excluded above, the parties expressly acknowledge and agree that any and all unresolved disputes, controversies or claims between the parties arising out of or relating to this Agreement or the parties' relationship generally, whether brought forth under breach of contract, tort, price discrimination, restraint of trade or other theory of law (statutory or common law), shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Discovery rules for such arbitration shall be pursuant to the Federal Rules of Civil Procedure, and the location for such arbitration and the number of arbitrators shall be mutually determined by the parties. If the parties cannot mutually agree to such terms, then the arbitration shall take place in New York City and be presided over by a panel of three arbitrators to be selected upon mutual agreement. The arbitration proceeding and award, if any, shall be subject to the Non-Disclosure requirements contained herein. It is intended that each party shall be responsible for bearing its own costs associated with arbitration as provided for hereunder, except that the arbitrator(s) shall be authorized to award the costs of arbitration as the interests of justice require. Unless PBC expressly waives the arbitration requirement, all other disputes and claims, if any, between the parties would still be subject to, and remain bound by, this Arbitration requirement.

n. 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, including prior funding commitments relating to the purchase of the Products by Customer. This Agreement may be amended or modified only by a writing signed by each of the parties.

Pepsi Beverages Company		Customer	
Signature:	Date:	Signature: 	Date: 4/11/24