

SPONSORSHIP AGREEMENT

AGREEMENT (hereinafter referred to as the "*Agreement*") effective as of July 1, 2018 (the "*Effective Date*") by and between The University of New Mexico, with its principal place of business at 1 University of New Mexico MSC01 1240, Albuquerque, New Mexico, 87131 (hereinafter referred to as the "*University*") and Bottling Group, LLC on behalf of its affiliates and/or their respective subsidiaries collectively comprising Pepsi Beverages Company, a Delaware limited liability corporation with its principal place of business at 1111 Westchester Avenue, White Plains, NY 10604 and with an office at 540 Gallatin PL. NW, Suite A, Albuquerque, NM 87121 Mexico 87107 (hereinafter referred to as "*Pepsi*").

WHEREAS, Pepsi desires the right to be the exclusive supplier of beverages to the University; and

WHEREAS, Pepsi is experienced in installing, operating, servicing and maintaining equipment for dispensing beverage products and the University has determined that it is in the best interests of the University to contract with Pepsi to provide services for the sale of beverage products; and

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and the other mutual promises set forth herein, the parties agree as follows:

AGREEMENT

I. DEFINITIONS.

- A. "*Agreement Year*" means each and every consecutive twelve (12) month period during the Term beginning with the Effective Date.
- B. "*Approved Cups*" means the disposable cups approved by Pepsi from time to time as its standard trademark cups and other containers approved by Pepsi from time to time and bearing the trademark(s) of Pepsi and/or other Products (as defined herein). In addition, Pepsi agrees that the University shall have the right to produce limited-run commemorative plastic cups reasonably acceptable to Pepsi for use at the Facilities and that such cups shall also be considered to be Approved Cups, provided that Pepsi's trademark for Pepsi® shall be included on such commemorative cups. The use and size of Pepsi's trademark on such commemorative cups shall be subject to the prior approval of Pepsi.
- C. "*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 (both chilled and self-stable); (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*"), (x) value-added protein beverages and (xi) any future categories of nonalcoholic beverage products that may be distributed by Pepsi.

"Beverage" or "Beverages" shall not include milk, flavored milk or beer (alcoholic, low-alcoholic and non-alcoholic). University acknowledges that, in the near term, Pepsi may be expanding its Beverage services to include the provision of hot coffee and tea. At such time as these services may be available from Pepsi, University and Pepsi will mutually determine whether or not the hot coffee and tea categories will be added to the definition of Beverages and will be governed under the scope of this Agreement; however, Pepsi acknowledges that the University's athletics currently has a preexisting exclusive sponsorship with a hot coffee supplier.

- D. **"Competitive Product"** or **"Competitive Products"** means any Beverages other than the Products.
- E. **"Designations"** shall include, but not be limited to, the following: "A Proud Sponsor of the University of New Mexico," "Official Soft Drink the University of New Mexico" and "Official Sponsor of the University of New Mexico Lobos."
- F. **"Facilities"** means the acres of the University campus including but not limited to any and all athletic facilities, business offices, student facilities including residence halls, classrooms, restaurants, concession stands, snack bars, bookstores, convenience stores and dining halls, in any and all other buildings or facilities which currently comprise the campus of the University or which may be and which are operated by or directly in conjunction with the University. "Campus" does not include UNM Hospital or branch campuses of the University of New Mexico.
- G. **"Food Service Provider"** shall mean Chartwells and Levy or any food service provider which may serve at the Facilities at any point during the Term. The Customer acknowledges and agrees that this Agreement, including the pricing, funding and other consideration provided for herein is based on the Customer's current operating model/use of third party Food Service Providers. Thus, in the event that: (i) if the Customer is currently self-operated, the Customer switches to a Food Service Provider, or (ii) if the Customer currently uses a Food Service Provider to operate its concessions, such agreement between the Customer and the current Food Service Provider expires or is terminated, and the Customer enters into a new arrangement with a Food Service Provider; then any such new or subsequent agreement between the Customer and any Food Service Provider (pursuant to either (i) or (ii) above) shall require such Food Service provider to abide by the applicable pricing and other terms set forth in this Agreement to the exclusion of all other benefits, and shall specifically require such Food Service Provider to affirm that it will not be entitled or seek to receive any funding or other benefits/consideration in connection with any agreement such Food Service Provider may separately have with Pepsi or Pepsi's affiliates. In the event that the Customer fails to adhere to this requirement (or the Food Service Provider refuses to abide accordingly), then Customer hereby authorizes Pepsi, and Pepsi shall be entitled to adjust its pricing, funding or other consideration provided to the Customer by an amount equal to the incremental costs incurred by Pepsi as a result of the Customer's change in Food Service Providers.
- H. **"Games"** shall mean all of University's intercollegiate home and away athletic events in which University controls advertising, pouring rights and Student-Athlete Areas, including all pre-season games, regular-season games, post-season games and exhibitions that meet these criteria.
- I. **"Gatorade Products"** shall mean Gatorade products, including: GATORADE® Thirst Quencher, G2® Thirst Quencher, Sports Fuel Drink, Energy Chews, Fuel Bar, Protein Shake, Whey Protein Bar, Whey Protein Powder; and G Endurance™ products: including Carb Energy Drink, Carb Energy Chews, Endurance Formula, and Gatorlytes Electrolyte Supplement; and Propel® Water individually, collectively and together with such other sports drinks, energy drinks, electrolyte supplements and carbohydrate drinks and drink mixes (from which the Product is made) as Pepsi shall manufacture and/or sell during the Term hereof.
- J. **"Gatorade Merchandise"** shall mean Gatorade-branded cups, coolers, ice chests, squeeze bottles, sideline carts, towels and other innovated equipment later developed by Gatorade for purposes of storing, distribution, and using Product in Student-Athlete Areas or providing visibility presence in the Student-Athlete Areas to Gatorade Products.

- K. **"NCAA"** or **"The National Collegiate Athletic Association"** shall mean the sanctioning body of intercollegiate sports.
- I. **"Packaged Products"** shall mean Beverages that are sold and/or distributed by Pepsi in pre-packaged form (*i.e.*, Bottles & Cans).
- J. **"Postmix Products"** shall mean Beverages sold and/or distributed by Pepsi and used to create and dispense fountain beverages.
- K. **"Products"** means any and all Beverage products now or in the future bottled, sold or distributed by Pepsi.
- L. **"Sports Performance Products"** shall mean any and all consumable sports performance products, whether beverage, beverage mix or food, which result in delivery of ingredients or constituents for sports performance or are marketed or advertised as enhancing athletic performance.
- M. **"Student-Athlete Areas"** shall mean all athletic department facilities, including, but not limited to, courtside, sidelines, bench areas, dugouts, locker rooms, training rooms, weight rooms, or pre/post game interview areas and other areas immediately contiguous with the non-fan accessible playing surfaces.
- N. **"Supplies"** shall mean any Approved Cups, straws and lids necessary for the dispensing of Products.
- O. **"Teams"** shall mean all intercollegiate athletic teams associated with the University.
- P. **"Team Marks"** means the characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the University and which relate to the University and which are in existence on the Effective Date or which will be created during the Term, but excluding any of such marks or other rights to the extent that such rights are not controlled by the University.
- Q. **"Term"** means the ten (10) Agreement Year period beginning on the Effective Date and continuing up to and including June 30, 2028, unless sooner terminated as provided herein.
- R. **"University Marks"** means (i) the Designations (as defined above) and (ii) the University's characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the University and which relate to the Facilities and the Teams and which are in existence on the Effective Date or which will be created during the Term.

II. GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS.

During the Term, University hereby grants to Pepsi the following exclusive Beverage availability and exclusive Beverage merchandising rights as set forth and described below:

A. Beverage Availability at the Facilities.

1) Grant of Rights.

(a) Except as specifically provided in this paragraph, Pepsi shall have the exclusive right to make Beverages available for sale and distribution throughout the Facilities, including, but not limited to, through vending services, through food service, through bookstores and other retail locations and the right to provide all Beverages sold at athletic contests (i.e., concession stands, sales in stands (hawking) or other means), booster club activities, and all other special events conducted at any location at the Facilities ("*Special Events*"). Except as specifically provided in this paragraph, the Products shall be the only Beverages sold, dispensed or served at the Facilities and the Products shall be sold at all concession or vending locations located within the Facilities. The University acknowledges and agrees that the only exceptions to Pepsi's exclusive Beverage rights throughout the Facilities will be the University's right to sell Competitive Products in up to 10% of the shelf space allocated to Beverages at retail store locations within the Facilities; there are currently five (5) such locations at the Facilities. Such Competitive Products available at retail store locations within the Facilities shall be limited to Coke, Diet Coke, Dr Pepper and Diet Dr Pepper. Competitive Products must be sold through University owned coolers and may not be sold through Competitive Products branded equipment. In addition, such Competitive Products may not be featured or incorporated into any displays.

(b) Pepsi shall have the exclusive right to install full service beverage vending machines ("*Vending Machines*"), retail single-serve food service equipment (e.g., coolers) ("*Retail Equipment*") and fountain service equipment ("*Fountain Equipment*") (Vending Machines, Retail Equipment and Fountain Equipment are collectively referred to as the "*Equipment*") throughout the Facilities. Pepsi shall have the further right to install additional Equipment in buildings and facilities acquired and/or constructed by the University at any time during the Term. Pepsi shall install the Equipment at its sole expense. Pepsi shall have the right to place full trademark panels on all sides of its Equipment. Pepsi, or one of its affiliates, shall retain title to all Equipment.

2) Purchasing of Product.

The University will purchase and will require the Food Service Provider and all other third parties selling Beverages at the Facilities to purchase all Product, cups and lids directly from Pepsi at the prices established pursuant to this Agreement. Such pricing is subject to increase annually during the Term and such increases will take effect at the beginning of each new Agreement Year. Increases to Postmix Product pricing will be in accordance with increases to Pepsi's national account pricing. Increases to Packaged Product pricing will be in accordance with increases to the group pricing offered to Pepsi's local premiere customers. In addition, Pepsi will provide the University with full service Beverage vending. Vend prices will be determined by Pepsi. Pepsi will provide prior notice to Customer of any increases to the then current vend prices.

Notwithstanding the foregoing, until such time as Pepsi has the capability to delivered chilled juice Products to the Facilities, the University shall purchase its requirements for chilled juice Products from a distributor authorized by Pepsi.

3) Food Service.

During the Term, Pepsi will work directly with University through its Associate Director, Food Services Contract Liaison and General Manager of the Food Service Contract or University's alternate designee (the "*University Representative*") and the Food Service Provider for the Facilities, to provide all of its requirements for the Products. University shall cause its Food Service Provider to purchase the Products from Pepsi at prices set forth in this Agreement. The University shall cause its Food Service Provider to purchase Products from Pepsi in sufficient quantities to ensure the regular and continuous distribution of the Products at the Facilities. Pepsi shall work directly with its Food Service Provider to promote sales of the Products through appropriate point-of-sale and other advertising materials bearing the trademarks of the Products.

4) Vending.

Pepsi shall have the right to place a mutually agreed to number of Vending Machines at the Facilities for dispensing the Products, provided, however that Pepsi shall work with University to identify optimal locations for such equipment. The location of all placements will be mutually agreed upon by Pepsi and the University. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to Vending Machines. Pepsi will be responsible for all installation costs associated with putting vending machines in new locations.

B. Product Merchandising Rights.

During the Term and subject to the terms and conditions contained in this Agreement, University grants Pepsi the exclusive right to merchandise Products at the Facilities as set forth and described below:

1) Menu Board Advertising.

University agrees that Pepsi's trademarks for products shall be listed on the menu boards at concession locations in which Products are served to customers at the Facilities. All brand identification containing Pepsi trademarks and/or service marks for menu boards set forth herein will be prepared and installed by University at University's sole cost and expense.

2) Approved Cups; Product Hawking and Catering.

University agrees that all Products served, sold or dispensed at concession locations in which Products are served to customers at the Facilities shall be served in Approved Cups and all other Beverages served, sold or dispensed within the Facilities shall be served in either Approved Cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of Competitive Products. University will purchase and will require the Food Service Provider and all other third parties selling Beverages at the Facilities to purchase all disposable cups directly from Pepsi at the prices established pursuant to this Agreement.

III. GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS.

During the Term, University hereby grants to Pepsi the right to advertise and promote Products in and with respect to the University (the "University Advertising"), the Team and the University Marks upon the terms and conditions contained in this Agreement and as set forth and described below.

The only exceptions to Pepsi's exclusive right to advertise and promote Beverages at Facilities and in connection with the University and the Teams are as follows:

- During PopeJoy Events, NCAA tournaments and other NCAA-sponsored events held at the Facilities (collectively the "*Permitted Events*"), University may display signage at the Permitted Event which includes the trademarks of Competitive Products that are owned by a sponsor of the Permitted Event; provided that (i) Pepsi's advertising shall not otherwise be affected during the Permitted Event; (ii) no Competitive Products may be sold or distributed at any such Permitted Event (except that Competitive Product donated by the NCAA Sponsor may be distributed to referees at the NCAA Event);, and (iii) any such temporary signage, advertising or trademark displays, shall be removed immediately following the completion of the Permitted event.

All University Advertising must be used to promote Pepsi products. Third party advertising may only be included as follows:

1. The 3rd party must be partners with Lobo Sports Properties or subsequent partners
 2. The advertising used must be approved by Lobo Sports Properties General Manager
- A. Signage (following the end of Year 1, any changes to one or more items listed below will require mutual written agreement by the parties)

1. University Stadium – Main Video Scoreboard Premium Panel Signage – 8'x12' Backlit
2. University Stadium – Concourse signage – 4 panels – 2'x8' each backlit
3. University Stadium – North End Zone Sign – 5'x8' Backlit
4. University Arena – LED TV Signage – East Court – 3'x45' (rotate with 19 other partners)
5. University Arena – LED Signage – West Court – 3'x40' (rotate with 14 other partners – rotate between logo and full screen exposure)
6. Outdoor Marquee Signage – 2 backlit panels – 2'x4' each – corner of University and Caesar Chavez
7. Soccer and Volleyball signage
8. Souvenir concession cups logo ID

B. Promotions. (following the end of Year 1, any changes to one or more items listed below will require mutual written agreement by the parties)

1. University Stadium – LoboVision Feature - :30 second feature TBD
2. University Arena – LoboVision Feature - :30 feature TBD – Men's and Women's Basketball
3. Sampling Events – three times per year
4. Retail Promotion – two times per year – details TBD
5. Tailgate Promotion – co-sponsor of season-long promotion during football season
6. Blimp – Pepsi will be an official sponsor of the Blimp at all Lobo Basketball events; unless mutually agreed to by the parties to retire or discontinue the blimp in connection with the Lobo Basketball events. To the extent the Blimp requires refurbishing during the Term, Pepsi will pay for such refurbishing. All such expenses must be pre-approved by Pepsi.

C. Public Address Announcements. (following the end of Year 1, any changes to one or more items listed below will require mutual written agreement by the parties)

1. Public Address Announcements at each Lobo Home game

D. Print Advertising. (following the end of Year 1, any changes to one or more items listed below will require mutual written agreement by the parties)

1. The Pepsi logo, as specified by Pepsi, shall be prominently displayed on University printed materials, including but not limited to, game event schedules, flyers and menus as mutually agreed upon by the Athletic Department and Pepsi.

E. Design and Installation of University Advertising.

Pepsi agrees, at its own cost, to provide University with the general design of all Pepsi Advertising that is relevant to the University. The University advertising shall be constructed and installed by University (or an agent thereof) at University's sole cost and expense. All University advertising shall be in conformity with the general scheme and plan of the University and the surrounding areas.

F. Advertising Signage Changes.

University recognizes Pepsi's right to change, modify and alter its advertising for, or identification of, any of the Products or to discontinue the manufacture of any of the Products. Pepsi shall reimburse University for all reasonable costs and expenses incurred by University in changing or modifying or altering any University Advertising, menu boards and other Pepsi identification or references to any of the Products necessitated by Pepsi's changes to the advertising, trade marks or trade names, designations or identification thereof. Pepsi shall have the right to modify, change or alter the promotional messages appearing thereon and all such modifications, changes and/or alterations shall be at Pepsi's sole cost and expense. University shall use reasonable efforts to minimize the cost to Pepsi for modifying, altering and/or changing Pepsi's advertising.

G. Maintenance of Signage.

University shall maintain all University Advertising and other signs and advertising for Products in good order. University shall affect any necessary repairs reasonably determined by University at University's sole cost and expense. Where practical, University shall consult with Pepsi prior to incurring any material signage or other related maintenance expenses.

H. Gatorade Product Placement.

University shall place Gatorade Products and Gatorade Merchandise exclusively in the Student-Athlete Areas at all Games in the manner recommended in Exhibit A or mutually agreed to in writing by the parties, approval not to be unreasonably withheld. No other beverage or Sports Performance Product shall be permitted to be placed or used in any Student-Athlete Areas at Games without the prior written approval of Pepsi; provided, however, water and any other beverage can be placed in or near Student-Athlete Areas as long as it is placed in Gatorade Merchandise. Further, University shall not grant promotional rights of any kind, for any other beverage or Sports Performance Product's advertising or merchandising to appear in or near the Student-Athlete Areas at Games (including, but not limited to, on chairbacks, equipment, towels, tables, equipment cases, apparel, and signage directly behind and at the same level of the student athlete bench or dugout

area). For the purposes of clarification and not limitation, University agrees that the locker room and pre- and post-game interview areas are part of the "Student-Athlete Areas" at Games and as such, University will cause Gatorade Products to be exclusively placed in the locker rooms and the pre- and post-game interview areas for student-athlete access and usage at Games. Student-athletes, coaches and other University personnel may not appear at any pre- or post-game interview or press conference, whether in the locker room or designated media interview room, with any other beverage or Sports Performance Product. In the event a future opponent and/or tournament, bowl or other event run by a third party that is not a permitted exception to exclusivity set forth below interferes with University's obligation to exclusively place Gatorade Products and Gatorade Merchandise in the Student-Athlete Areas at any Games, University shall request the use of generic, non-brand-identified merchandise for use for that event and shall notify Pepsi of this interference, but in no event shall this interference be deemed a breach by University of its obligations under this Agreement. Under no circumstance will Pepsi deny or prevent University's ability to participate in an intercollegiate event.

In the event University is subject to on-going adverse publicity or public opinion, or Pepsi's association with the University subjects Pepsi to adverse publicity or public opinion, which in the sole judgment of Pepsi is or may be detrimental to the company's or brand's image, then Pepsi shall have the right to request in writing that University use non-branded generic merchandise in its Student-Athlete Areas.

H. Promotional Rights.

University hereby agrees that Pepsi shall have the right to promote the fact that Pepsi is an official sponsor of the Teams and the University and that the Products are available at the Facilities, including the right of Pepsi to refer to itself using the Designations. Such promotion may be conducted through the distribution channels of television, radio and print media, on the packaging of (including cups and vessels) and at the point-of-sale of any and all Products wherever they may be sold or served. University hereby grants to Pepsi a nonexclusive license to use the name of the Teams, the Team Marks and the University Marks, for the limited purposes of promoting Products within the context of promotional activities. Pepsi acknowledges that, in order to make full use of the rights granted in this Agreement, Pepsi shall conduct the promotional activities through its primary distribution channels in which Pepsi sells Products to the ultimate consumer, such as at the retail level, within drug stores and other retail outlets, by and through mass merchandise campaigns and together with Pepsi's food service accounts and customers.

I. Representations, regarding the Ownership and Protection of the Team Marks and the University Marks and Related Proprietary Rights.

University represents and that it is the sole and exclusive owner of all right, title and interests in and to the Team Marks and the University Marks (including without limitation, all goodwill associated therewith) and Pepsi's use of the Team Marks and the University Marks pursuant to this Agreement will not infringe the rights of any third parties. Pepsi acknowledges that nothing contained in this Agreement shall provide Pepsi with any right, title or interest to the Team Marks or the University Marks other than the right to use such Team Marks and University Marks granted under this Agreement. Pepsi (on behalf of itself and its Affiliates) agrees that it shall not attack the title or any rights of University and its Affiliates and cooperate with University and its Affiliates to procure any protection or to protect any of the rights of University and its Affiliates in and to the Team Marks and University Marks. Pepsi shall cause to appear on all materials incorporating the Team Marks and the University Marks such legends, markings and notices as University or its Affiliates may request in order to give appropriate notice of any trademarks, service mark, trade

name, copyright or other right with respect to the Team Marks and the University Marks. Pepsi shall not make any alterations or changes to the design or type of the Team Marks and University Marks without the prior written consent of University.

J. Representations, Warranties and Covenants regarding the Ownership and Protection of Proprietary Rights of Pepsi.

Pepsi represents and warrants that Pepsi is authorized to use certain names, logos, service marks and trademarks of PepsiCo, Inc. (including without limitation, all goodwill associated therewith) (the "Pepsi Marks") under a license from PepsiCo, Inc. University acknowledges that nothing contained in this Agreement shall provide University with any right, title or interest to the names, logos, service marks and trademarks of PepsiCo, Inc. without the prior written approval of PepsiCo, Inc. University (on behalf of itself and its Affiliates) agrees that it shall not attack the title or any rights of PepsiCo, Inc., Pepsi and its Affiliates and cooperate with PepsiCo, Inc., Pepsi and its Affiliates to procure any protection or to protect any of the rights of PepsiCo, Inc., Pepsi and its Affiliates in and to the Pepsi Marks. University shall cause to appear on all materials incorporating the Pepsi Marks such legends, markings and notices as Pepsi or its Affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Pepsi Marks. University shall not make any alterations or changes to the design or type of the Pepsi Marks without the prior written consent of PepsiCo, Inc.

IV. GRANT OF OTHER RIGHTS.

A. Tickets and Hospitality. (items below are for Year 1 and may be changed during the Term upon the mutual agreement of the parties)

University will provide Pepsi during each applicable season throughout the Term with:

1. Diamond Level Lobo Club membership
2. Seasons Tickets, as follows:

(a) Football

<u>Section</u>	<u>Row</u>	<u>Seats</u>
B	11	19-30
B	12	19-30
Zia	d-2 3	1-4
E	56	1-4
E	57	1-4

(b) Men's Basketball

<u>Section</u>	<u>Row</u>	<u>Seats</u>
P	22	18-21
G	12	1-6
LLR	2	5-8

(c) Women's Basketball

<u>Section</u>	<u>Row</u>	<u>Seats</u>
LLT	1	13-16
Y	33	1-4
B	14	1-12

Seats locations can be changed by mutual agreement; subject to availability. Pepsi shall also have the right to make a "value for value" change with regard to the tickets as set forth above in accordance with the provisions of Section III herein.

B. Sampling.

University agrees to permit Pepsi to conduct, at Pepsi's sole cost and expense, limited sampling of the students at the Facilities in a form and manner as specifically authorized and approved by University and in accordance with rules and procedures established by University, in its sole discretion, as may be amended or supplemented from time to time by University. Competitive Products may not be sampled at the Facilities during the Term.

V. EXCLUSIVITY.

Except as otherwise provided for in Article II(A), during the Term, University, the Team and its players, coaches and staff (i) shall not themselves nor shall they permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products or any other Sports Performance Products other than Gatorade Products at the Facilities or in connection with the University, the Team, the Team Marks, University Marks or any of its players, coaches and staff and (ii) shall ensure that the Products are the only Beverages sold, served, promoted, marketed, advertised, merchandised, sponsored or endorsed, at the Facilities or in connection with the University, the Team, the Team Marks or any of its players, coaches and staff (iii) shall ensure that the Gatorade Products are the only Sports Performance Products sold, served, promoted marketed, advertised, merchandised, sponsored or endorsed in the Student-Athlete Areas at Games.

Notwithstanding the foregoing, in addition to the permitted exception in Section II(A)(1) above, Customer shall be permitted to sell, dispense, market and make available a Competitive Product in a category(ies) of Beverages for which, at such time, Pepsi does not have a comparable Beverage (i.e. tomato juice); provided, however, once Pepsi has a comparable Beverage Product available to Customer, then Customer shall discontinue the sale of such Competitive Product and Pepsi shall supply to Customer its comparable Product on an exclusive basis. In addition, with respect to Athletics, Customer shall be permitted to dispense and enter into a sponsorship directly with Muscle Milk or any other mutually agreed to value-added protein beverage supplier

VI. CONSIDERATION.

In consideration for the advertising, merchandising, promotional rights, and the other related rights and benefits provided to Pepsi by University as described herein, Pepsi agrees to pay to University:

- A. An initial sponsorship fee in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), payable to the University within sixty (60) days of the signing of this Agreement by both parties (the "*Initial Sponsorship Fee*"). The Initial Sponsorship Fee is earned by the University over the Term. In the event Pepsi terminates this Agreement due to the University's failure to cure a breach hereof, the unearned Initial Sponsorship Fee will be repaid to Pepsi pursuant to the terms of Section IX.C. herein.

B. An annual sponsorship fee, payable as follows (the “*Annual Sponsorship Fee*”):

Agreement Year	Applicable Time Period	Amount	Due Date: within 60 days after:
1	July 1, 2018 – June 30, 2019	\$850,000	The later of Execution of the Agreement by parties or the Effective Date.
2	July 1, 2019 – June 30, 2020	\$850,000	July 1, 2019
3	July 1, 2020 – June 30, 2021	\$850,000	July 1, 2020
4	July 1, 2021 – June 30, 2022	\$850,000	July 1, 2021
5	July 1, 2022 – June 30, 2023	\$850,000	July 1, 2022
6	July 1, 2023 – June 30, 2024	\$850,000	July 1, 2023
7	July 1, 2024 – June 30, 2025	\$850,000	July 1, 2024
8	July 1, 2025 – June 30, 2026	\$850,000	July 1, 2025
9	July 1, 2026 – June 30, 2027	\$850,000	July 1, 2026
10	July 1, 2027 – June 30, 2028	\$850,000	July 1, 2027

The Annual Sponsorship Fee is earned by the University throughout the Year in which it is paid. In the event Pepsi terminates this Agreement due to the University’s failure to cure a breach hereof, the unearned Annual Sponsorship Fee will be repaid to Pepsi pursuant to the terms of Section IX.C. herein.

C. An annual scholarship fund, payable as follows (the “*Annual Scholarship Fund*”):

Agreement Year	Applicable Time Period	Amount	Due Date: within 60 days after:
1	July 1, 2018 – June 30, 2019	\$8,000	The later of Execution of the Agreement by parties or the Effective Date.
2	July 1, 2019 – June 30, 2020	\$8,000	July 1, 2019
3	July 1, 2020 – June 30, 2021	\$8,000	July 1, 2020
4	July 1, 2021 – June 30, 2022	\$8,000	July 1, 2021
5	July 1, 2022 – June 30, 2023	\$8,000	July 1, 2022
6	July 1, 2023 – June 30, 2024	\$8,000	July 1, 2023
7	July 1, 2024 – June 30, 2025	\$8,000	July 1, 2024
8	July 1, 2025 – June 30, 2026	\$8,000	July 1, 2025
9	July 1, 2026 – June 30, 2027	\$8,000	July 1, 2026
10	July 1, 2027 – June 30, 2028	\$8,000	July 1, 2027

Pepsi will receive recognition with regard to all scholarships awarded using the Annual Scholarship Funds. The Annual Scholarship Fund is earned by the University throughout the Year in which it is paid. In the event Pepsi terminates this Agreement due to the University’s failure to cure a breach hereof, the unearned Annual Scholarship Fund will be repaid to Pepsi pursuant to the terms of Section IX.C. herein.

VII. ADDITIONAL CONSIDERATION.

In addition to the consideration specified in Section VI above, Pepsi shall provide the following further consideration to the University:

- A. **Student Services Products Free of Charge.** Each Agreement Year throughout the Term, upon request from the University, Pepsi will provide to University's Student Services Department annual Products free of charge, with a total annual value not to exceed Twenty Thousand Dollars (\$20,000) to be used by the University across student campus wide events, provided however, that the University will administer all request through a central contact so that the University may prioritize the requests. University acknowledges and agrees Product requests not used/made in any Agreement Year shall not be carried over to a subsequent Agreement Year and are not redeemable for a cash value.
- B. **Athletic Department Products Free of Charge.** Each Agreement Year throughout the Term, upon request from the University, Pepsi will provide to University's Athletic Department annual Products free of charge, with a total annual value not to exceed Twenty Thousand Dollars (\$20,000) to be used by the University across all athletic programs, provided however, that the University will administer all request through a central contact so that the University may prioritize the requests. University acknowledges and agrees donated Product requests not used/made in any Agreement Year shall not be carried over to a subsequent Agreement Year and are not redeemable for a cash value.
- C. **Marketing Activation Support.** Each Agreement Year throughout the Term, Pepsi will provide the University with mutually agreed to marketing promotion activation support in an amount not to exceed Fifteen Thousand Dollars (\$15,000) ("*Marketing Activation Support*"). Pepsi and the University will work together to develop appropriate marketing promotions featuring the University's athletic programs each Agreement Year. University shall have final approval on all athletic marketing promotions. University acknowledges and agrees that athletic marketing promotions not utilized in an Agreement Year shall not be carried over to a subsequent Agreement Year and are not redeemable for a cash value.
- D. **Gatorade Sideline Support.** Pepsi will, or cause one of its Affiliates to, provide mutually-acceptable annual support in merchandise and Gatorade Products (the "*Gatorade Support*"), in accordance with the following:
- (1) A "Credit Fund" for use by the Teams and University athletics program to utilize for Gatorade Support on the Gatorade Team Zone website (the "*Website*") each Agreement Year an amount of Fifteen Dollars (\$15,000). Any Credit Fund not used in any Agreement Year shall not be carried over to the subsequent Agreement Year and is not redeemed for cash. Should the Teams and University lose the ability to place Gatorade Products in the Student-Athlete Areas during the Term, Pepsi shall have the right to negotiate with University to reduce or eliminate the Credit Fund for that specific period of time; and
 - (2) Gatorade shall, at its cost, provide and deliver to University reasonable quantities of Gatorade Merchandise as may be agreed to between the parties from time to time; and
 - (3) Gatorade will provide reasonable quantities of Gatorade Product and Gatorade Merchandise in support of University summer camp programs at Gatorade's reasonable discretion based on number of camp attendees. In return for this Gatorade Merchandise and Product commitment, University's athletics department will communicate to its camp program directors that Gatorade Products are the exclusive Sports Performance Products for use at sports camps and clinics. In the event (i) any law or regulation relating to advertising to children is passed or otherwise becomes effective or (ii) a self-regulatory body, public, or consumer interest group generates a voluntary policy or proposal limiting or restricting advertising to children and the benefits provided by or to Pepsi in this Section

violates such law, regulation, policy, or proposal, then the provisions of this Section with respect to support of the youth camps shall be considered null and void.

VIII. EQUIPMENT AND SERVICE.

A. Beverage Dispensing and Other Equipment.

1. Pepsi shall, based upon Pepsi's survey of the Facilities' needs, provide and install all Equipment at the Facilities for the dispensing of Product during the Term. Title to all Equipment shall be with Pepsi or its affiliates. Pepsi shall bear the cost of installation of the Equipment, including the cost of any electrical work necessary for new installations. Pepsi shall not be responsible for the payment of utilities with respect to the Equipment.

2. During the Term and at no cost to the University, Pepsi will service and stock, as necessary, (i) the Equipment and (ii) any additional Equipment determined by the parties to be installed at new locations on the Facilities

3. The Equipment may not be removed from the Campus without Pepsi's written consent, and the University agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by Pepsi. Upon expiration or termination of this Agreement, Pepsi shall have the right to remove all Equipment from the Facilities at no expense to the University.

4. 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. The University agrees to provide reasonable assistance to Pepsi in apprehending and prosecuting vandals.

5. Pepsi reserves the right to remove any glass front vending machine that sells less than eight (8) cases of Product per week or any other vending machine which sells less than two (2) cases of Product per week.

6. Pepsi agrees the University or any of its duly authorized representatives at any time during the contract period shall have access to, and the right to audit and examine any pertinent books, documents, papers and records relating to the successfully Offeror's performance of the contract for vending machines.

B. Service to Equipment.

Pepsi or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. Preventative maintenance of the Equipment shall take place at the Facilities no less than once every six (6) months. Pepsi shall provide University with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. Pepsi shall respond to each University request and use reasonable efforts to remedy the related Equipment problem as soon as possible. Pepsi response time to a call for service shall not exceed twenty-four hours during a work week Monday through Friday, 8:00 am to 5:00 pm.

IX. REMEDIES FOR LOSS OF RIGHTS - TERMINATION

A. University's Termination Rights.

- 1) Without prejudice to any other remedy available to University at law or in equity in respect of any event described below, this Agreement may be terminated by University at any time effective fourteen (14) days following written notice to Pepsi from University if:
 - (a) Pepsi fails to make any payment due hereunder, and such default shall continue for forty five (45) days after written notice of such default is received by Pepsi; or
 - (b) Pepsi breaches or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect and Pepsi fails to cure such breach within forty-five (45) days after written notice of default is delivered to Pepsi. If such cure cannot reasonably be accomplished within such forty-five (45) day period, this provision shall not apply where Pepsi shall have, in good faith, commenced such cure and thereafter shall diligently proceed to completion; provided, however, that such cure is completed to the reasonable satisfaction of University within ninety (90) days from the date of Pepsi's receipt of such written notice of default.

B. Pepsi's Termination Rights

Without prejudice to any other remedy available to Pepsi at law or in equity in respect of any event described below, this Agreement may be terminated in whole or in part by Pepsi at any time, effective thirty (30) days following written notice to the Customer if (i) any of the Products are not made available as required in this Agreement by the Customer, their agents or concessionaires; (ii) any of the rights granted to Pepsi herein are materially restricted or limited during the Term of this Agreement; (iii) a final judicial opinion or governmental regulation prohibits, or materially impacts or impairs (*e.g.*, beverage tax or size restriction) the availability or cost of Beverages, whether or not due to a cause beyond the reasonable control of the Customer; or (iv) Customer breaches any or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect. In connection with the foregoing, Pepsi shall give Customer notice of the event and where applicable (for events within Customer's control), shall provide Customer forty-five (45) days to cure such breach. If the identified breach/event is not remedied with the applicable notice period, then Pepsi may terminate this Agreement and recover from the Customer a reimbursement in accordance with Section **Error! Reference source not found. (Error! Reference source not found.)**. In addition to the termination rights set forth herein, in the event of any of the occurrences outlined in subsections (i) – (iii) above, Pepsi shall have the right, at its discretion and in lieu of termination, to mandate that the Customer meet and engage in good faith negotiations aimed at modifying the Agreement to reduce Pepsi's ongoing support of the Customer by an amount that is equitable in light of the diminution of right to Pepsi (*e.g.*, equivalent to the percentage volume decline on campus). If such negotiations fail, then Pepsi shall have the right to terminate the Agreement upon thirty (30) days' notice.

C. Sponsorship Fees in the Event of Termination

If Pepsi terminates this Agreement pursuant to Article IX.(B), then Pepsi shall be entitled to from University, without prejudice to any other right or remedy available to Pepsi, and University shall pay to Pepsi a reimbursement of any unearned Initial Sponsorship Fee, Annual Sponsorship Fee and Annual Scholarship Fund paid by Pepsi to University for the Agreement Year in which such termination occurs. With regard to the Initial Sponsorship Fee, the amount of such reimbursement shall be determined by multiplying the Initial Sponsorship Fee 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 120. With regard to the Annual Sponsorship Fee and the Annual Scholarship Fund, the amount of such reimbursement shall be determined by multiplying the Annual Sponsorship Fee and the Annual Scholarship Fund paid in the Agreement Year during which such termination occurs by a fraction, the numerator of which is the number of months remaining in such Agreement Year at the time of such termination and the denominator of which is 12.

X. TAXES

University acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the University in connection with the Initial Sponsorship Fee, the Annual Sponsorship Fee, the Annual Scholarship Fund or any other 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 at the Facilities. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to Vending Machines.

XI. CONFIDENTIALITY

- A. Except as otherwise required by law or the rules or regulations of any national securities exchange or the rules or regulation of the University, the University and Pepsi agree not to disclose Confidential Information (as hereinafter defined) to any third party other than to their respective directors, officers, employees and agents (and directors, officers, employees and agents of their respective Affiliates) and advisors (including legal, financial and accounting advisors) (collectively "Representatives"), as needed.
- B. Confidential Information" shall include all non-public, confidential or propriety information that University or its Representatives make available to Pepsi or its Representatives or that Pepsi or its Representatives make available to University or its Representatives in connection with this Agreement. "Confidential Information" shall include, but not be limited to, the terms and conditions of this Agreement. It is expressly understood that the disclosure in or pursuant to this Agreement by University, Pepsi or their prospective Representatives of Confidential Information is not a public disclosure thereof, nor is a sale or offer for sale of any product, equipment, process or service of University or Pepsi.
- C. The provisions of this Article XI and the obligations of the parties hereunder will survive the expiration or sooner termination of this Agreement for a period of three (3) years following such date of expiration or termination of this Agreement.

XII. REPRESENTATIONS.

A. Representations of University

University hereby represents to Pepsi as follows:

- 1) University has full power and authority to enter this Agreement and to grant and convey to Pepsi the rights set forth herein;
- 2) All necessary approvals for the execution, delivery and performance of this Agreement by University have been obtained and this Agreement has been duly executed and delivered by University and constitutes the legal, valid and binding obligation of University 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 signatory of this Agreement is duly authorized and empowered to bind University to the terms and conditions of this Agreement for the duration of the Term; and
- 4) University has complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

B. Representations and Warranties of Pepsi

Pepsi hereby represents and warrants to University as follows:

- 1) Pepsi has full power and authority to enter into and perform this Agreement;
- 2) All necessary approvals for the execution, delivery and performance of this Agreement by Pepsi have been obtained and this Agreement has been duly executed and delivered by Pepsi and constitutes the legal, valid and binding obligation of Pepsi 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 signatory of this Agreement is duly authorized and empowered to bind Pepsi to the terms and conditions of this Agreement for the duration of the Term, and
- 4) Pepsi has complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

C. General

Each of the parties hereto agree that (i) the representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement, and (ii) 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.

XII. INDEMNIFICATION.

Liability. As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees or agents. The liability of the University of New Mexico shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

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

XV. NOTICES.

Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or by telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company
540 Gallatin PL. NW, Suite A
Albuquerque, NM 87121 Mexico 87107
Attn: General Manager

With a copy to (which shall not constitute notice):

Pepsi Beverages Company
1111 Westchester Avenue
White Plains, NY 10604
Attn: Legal Department

If to University:

The University of New Mexico
1 University of New Mexico MSC01 1240
Albuquerque, NM 87131
Attn: Purchasing and University Services

XVI. ASSIGNMENT.

This Agreement or any part hereof or interest herein shall not be assigned or otherwise transferred by either party without the prior written consent of the other party nor shall the same be assignable by operation of law, without the prior written consent of the other party; provided however, that Pepsi may assign and transfer this Agreement (in whole and not in part) to an Affiliate without the consent of University 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. This Agreement shall be binding upon and inure to the benefit of the parties hereto

and their respective permitted successors and assigns. University represents to Pepsi that any change in the Food Service Provider at the Facilities shall not affect Pepsi's rights or obligations hereunder.

XVII. FORCE MAJEURE.

If the performance by either party hereto of its respective nonmonetary obligations under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance only to the extent such performance or obligation is so delayed or prevented by such occurrence without liability of any kind. Nothing contained herein shall be construed as requiring either party hereto to accede to any demands of, or to settle any disputes with, labor or labor unions, suppliers or other parties that such party considers unreasonable.

XVIII. RELEASE, DISCHARGE OR WAIVER.

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

XIX. PRIOR NEGOTIATIONS; ENTIRE AGREEMENT.

This Agreement, RFP, Pepsi's response, Best & Final Offer and the exhibits attached hereto, set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Agreement shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Pepsi and/or any of its Affiliates and any Affiliate of University.

XX. RELATIONSHIP OF THE 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 partnership between the parties.

XXI. EFFECT OF HEADINGS.

The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.

XXII. CONSTRUCTION.

This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgement and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties.

XXIII. SEVERABILITY.

If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

XXIV. AMENDMENTS.

No provision of this Agreement may be modified, waived or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, waivers or amendments shall not require additional consideration to be effective.

XXV. COUNTERPARTS.

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.

XXVI. FURTHER ASSURANCES.

Each party hereto shall execute any and all further documents or instruments and take all necessary action that either party hereto may deem reasonably necessary to carry out the proper purposes of this Agreement.

XXVII. 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 or any balances due Pepsi pursuant to this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly entered into as of the date above written.

University of New Mexico

By: _____

Name: _____

Title: _____

Bottling Group, LLC operating as Pepsi Beverage Company

By: _____

Name: _____

Title: _____

EXHIBIT A

PLACEMENT OF GATORADE PRODUCT AND MERCHANDISE

FOOTBALL

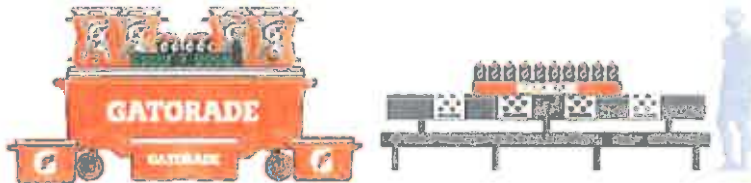
SIDELINE LAYOUT



INVENTORY PER TEAM

- A (1) LARGE SIDELINE CART
- B (4) 10 GALLON CONTOUR COOLER
- C (1) 100 QUART CHEST
- D (4) 50 QUART CHEST
- E 75oz CONTOUR SQUEEZE BOTTLE
- F 6 BOTTLE CARRIER
- G 12oz CUP
- H SIDELINE TOWEL
- I MIXING STICK
- J FITCHER
- K (2) MOBILE ICE BARREL
- L BOTTLE TROUGH

LAYOUT DETAIL



LAYOUT DETAIL-TOP VIEW



BASKETBALL

SIDELINE LAYOUT



INVENTORY PER TEAM

- A (1) DOUBLE METAL COOLER CART
- B (4) 45 QUART CHEST
- C (24) 32oz CONTOUR SQUEEZE BOTTLE
- D (2) 6 BOTTLE CARRIER
- E (750) 12oz CUP
- F (100) SIDELINE TOWEL
- G (1) 7 GALLON CONTOUR COOLER
- H (1) 3 GALLON CONTOUR COOLER

LAYOUT DETAIL



CART DETAIL-TOP VIEW



COOLER LAYOUT DETAIL-TOP VIEW

