

Monitor's Agreement

Public Version

MONITOR AGREEMENT

MONITOR AGREEMENT (the "Agreement"), dated as of April 23, 2010, between PepsiCo, Inc., 700 Anderson Hill Road, Purchase, New York 10577 ("PepsiCo"), and Eric A. Croson, currently resident at 3006 Wild Meadow Drive, Durham, North Carolina 27705 (the "Monitor").

PRELIMINARY STATEMENTS

On February 26, 2010, PepsiCo and Dr Pepper Snapple Group, Inc. ("DPSG") entered into a Master License Agreement pursuant to which DPSG authorized PepsiCo to produce, sell and distribute certain beverages of DPSG in specified territories in the United States, which Master License Agreement is attached hereto as Exhibit A ("License Transaction").

On February 26, 2010, the Federal Trade Commission (the "Commission") accepted for public comment an Agreement Containing Consent Order and a Decision and Order (collectively, the "Order"), attached hereto as Exhibit B. The Order requires PepsiCo to firewall certain DSPG Commercially Sensitive Information (as defined in the Order) and provides for the appointment of a monitor to ensure that PepsiCo complies with its obligations under the Order.

WHEREAS, the Commission may appoint Eric A. Croson as the monitor pursuant to the Order to monitor PepsiCo's compliance with the terms of the Order, and Eric A. Croson has consented to such appointment;

WHEREAS, the Order further provides that PepsiCo shall execute a Monitor Agreement, subject to the prior approval of the Commission, conferring all the rights, powers and authority necessary to permit the Monitor to carry out such duties and responsibilities pursuant to the Order;

WHEREAS, this Monitor Agreement, although executed by the Monitor and PepsiCo, is not effective for any purpose, including but not limited to imposing rights and responsibilities on PepsiCo or the Monitor under the Order, until it has been approved by the Commission;

WHEREAS, upon such approval by the Commission, the Monitor and PepsiCo intend to be legally bound by this Monitor Agreement; and

NOW, THEREFORE, the parties agree as follows:

DEFINITIONS

- A. "PepsiCo" means PepsiCo, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by PepsiCo, and the respective directors, officers; employees, agents, representatives, successors, and assigns of each.
- B. All other capitalized words or phrases appearing in this Agreement that are not otherwise defined herein are deemed to have the defined meanings assigned to them in the Order.

ARTICLE I

1.1 Powers of the Monitor. The Monitor shall have the rights, duties, powers and authority conferred upon the Monitor by the Order, attached as Exhibit B, that are necessary for the Monitor to monitor PepsiCo's compliance with the requirements of the Order. PepsiCo hereby transfers to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform its duties and responsibilities pursuant to and consistent with the purposes of the Order. Any descriptions thereof contained in this Agreement in no way modify the Monitor's powers and authority or PepsiCo's obligations under the Order.

1.2 Monitor's Duties. The Monitor shall monitor PepsiCo's compliance with the Order. The Monitor's duties shall include monitoring PepsiCo's compliance with the terms of the Order including that:

- a. DPSG Commercially Sensitive Information provided to PepsiCo is DPSG Information Relating to Bottler Functions;
- b. DPSG Information relating to Bottler Functions is conveyed only to the PepsiCo Bottling Operations Personnel or to Additional Firewalled PepsiCo Personnel;
- c. DPSG Information Relating to Bottler Functions that is conveyed to the PepsiCo Bottling Operations Personnel or to Additional Firewalled PepsiCo Personnel is used solely for the purpose of carrying out DPSG Bottler Functions or Legal or Regulatory Functions;
- d. carrying out all other duties of the Monitor specified in the Order.

The Monitor shall act in a fiduciary capacity for the benefit of the Commission only; it is understood and agreed that no such fiduciary relationship exists between the Monitor and PepsiCo.

1.3 Duration of Monitor's Authority. The Monitor shall have all powers and duties described above and consistent with the Order for the term specified for the Monitor in the Order, that is, until five (5) years after the License Transaction is

effective; provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Order.

1.4 Confidential and Proprietary Information. The Monitor shall enter into a confidentiality agreement, attached hereto as Confidential Exhibit C, agreeing to be bound by the terms and conditions of the Order.

1.5 Access to records, documents and facilities. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to PepsiCo's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to PepsiCo's compliance with its obligations under the Order. PepsiCo shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor PepsiCo's compliance with the Order.

1.6 PepsiCo's Duties. PepsiCo agrees that it will:

a. provide the Monitor with information that the Monitor reasonably requests to carry out its duties and responsibilities under the Order.

b. designate a senior individual as a primary contact for the Monitor.

c. develop procedures with respect to DPSG Commercially Sensitive Information, with the advice and assistance of the Monitor, to comply with the requirements of the Order.

c. provide the Monitor with electronic or hard copies, as may be appropriate, of (i) all reports required to be provided to the Monitor pursuant to the Order and (ii) all reports submitted to the Commission pursuant to the Order that are relevant to the Monitor's duties, simultaneous with the submission of such reports to the Commission;

d. provide prior notification to the Monitor of changes to PepsiCo Bottling Operations where required by the terms of the Order;

e. provide the name, position, and function of any proposed Additional Firewalled PepsiCo Personnel to the Monitor, together with a statement of the reasons for the need to include such person, the specific DPSG Information Relating to Bottler Functions that is necessary to be shared, and the time period during which the information is intended to be shared, all as required by the Order;

f. comply with the Monitor's reasonable requests for onsite visits and audits of PepsiCo's facilities; and

g. comply with the Monitor's reasonable requests for follow-up discussions or supplementary information concerning any reports provided to or requested by the

Monitor pursuant to the Order, and will provide the Monitor with access to and copies of other data, records or other information that the Monitor reasonably believes are necessary to the proper discharge of its responsibilities under the Order.

ARTICLE II

2.1 Retention and payment of Counsel, Consultants, and other Assistants. The Monitor shall have the authority to employ, at the cost and expense of the PepsiCo, such attorneys, consultants, accountants, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities as allowed pursuant to the Order provided that such individuals enter into a confidentiality agreement that requires the same standard of care and obligations of confidentiality to which the Monitor must adhere. Before hiring any legal counsel, the Monitor shall confirm with both counsel and PepsiCo that there is no conflict of interest if that counsel represents the Monitor.

2.2 Compensation of the Monitor. PepsiCo will pay the Monitor in accordance with the hourly fee schedule attached hereto as Confidential Exhibit D for all time spent in the performance of the Monitor's duties including all monitoring activities related to the Order (including any and all such activities performed prior to the date of this Agreement), all work in connection with the negotiation and preparation of this Monitor Agreement, and all reasonable and necessary travel time.

a. In addition, PepsiCo will pay (i) all out-of-pocket expenses incurred by the Monitor in the performance of the Monitor's duties, including any auto, train or air travel in the performance of the Monitor's duties, international telephone calls, and (ii) all fees and disbursements reasonably incurred by such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties.

b. The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.

ARTICLE III

3.1 Monitor's liabilities and indemnification. PepsiCo hereby agrees to indemnify the Monitor and his consultants, accountants, attorneys and other representatives and assistants (collectively the "Indemnified Parties") and hold the Indemnified Parties harmless in accordance with and to the extent required by the Order. Without in any way limiting the generality of the foregoing, PepsiCo shall indemnify the Indemnified Parties and hold the Indemnified Parties harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims,

damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor. The Monitor's maximum liability to the PepsiCo relating to services rendered pursuant to this Agreement (regardless of the form of the action, whether in contract, statutory law, tort, or otherwise) shall be limited to the total sum of the fees paid to the Monitor by PepsiCo, except to the extent that any losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton actions, or bad faith by the Monitor. IN NO CIRCUMSTANCES WHATSOEVER SHALL MONITOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

3.2 Monitor's removal. If the Monitor materially breaches its responsibilities under the Order, the Commission may terminate this Agreement and appoint a substitute Monitor.

3.3 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission.

3.4 Termination: This Agreement shall terminate the earlier of: (a) the date set forth in the Order; (b) PepsiCo's receipt of written notice from the Commission that the Commission has determined that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; or (c) with at least thirty (30) days advance notice to be provided by the Monitor to PepsiCo and the Commission, upon resignation of the Monitor. The Monitor may resign at any time during the term of this Agreement for any reason by providing such 30 days written notice to PepsiCo and the Commission and he shall have no liability as a result of his resignation. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force.

3.5 Conflicts of Interest: If the Monitor becomes aware during the term of this Agreement that he has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of his duties under this Agreement, the Monitor shall promptly inform PepsiCo and the Commission of any such conflict.

3.6 Independent Contractor. It is understood that the Monitor will be serving under this Monitor Agreement as an independent contractor and that the relationship of employer and employee shall not exist between Monitor and PepsiCo. The Monitor will not be entitled to participate in any employee benefit plans or accrue any employee benefits as a result of providing services under this Agreement.

3.7 Choice of Law. This Monitor Agreement shall be subject to the substantive law of the State of New York (regardless of any other jurisdiction's choice of law principles). This Monitor Agreement is for the sole benefit of the parties hereto and their permitted assigns and the Commission, and nothing herein express or implied shall give or be construed to give any other person any legal or equitable rights hereunder. This Monitor Agreement contains the entire agreement between the parties hereto with respect to the matters described herein and replaces any and all prior agreements or

understandings, whether written or oral.

3.8 Notices. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail or reputable overnight courier, to the applicable party at its address below (or to such other address as to which such party shall hereafter notify the other party):

If to the Monitor:

Eric A. Croson
3006 Wild Meadow Drive
Durham, North Carolina 27705

If to PepsiCo:

PepsiCo, Inc.
700 Anderson Hill Road
Purchase, New York 10577
Attn: General Counsel

If to the Commission:

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
ATTN: Naomi Licker

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITOR:

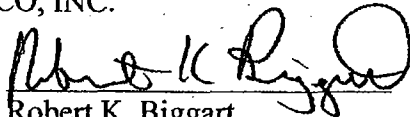


Eric A. Croson

PEPSICO:

PEPSICO, INC.

BY:



Robert K. Biggart
Assistant Secretary

Exhibit A

**Master License Agreement
[redacted]**