



BEVERAGE SALES AGREEMENT

This sets forth the agreement ("**Agreement**") between PepsiCo Beverages Canada, a business unit of PepsiCo Canada ULC ("**PBC**") and **Fort Frances Memorial Sports Centre**, (the "**Customer**"), on its own behalf and on behalf of its licensees and franchisees relating to the purchase and resale of PBC Products at the Outlets.

Customer represents and warrants that it has full authority to bind all Outlets (as defined below) to the terms and conditions of this Agreement throughout the Term.

Definitions

As used in this Agreement, the following capitalized terms have the meanings set out below.

"**Authorized FS Distributor**" shall mean a food service distributor as designated by Customer and approved by PBC during the Term.

"**Beverage**" or "**Beverages**" means all carbonated and non-carbonated, non-alcoholic beverages, however dispensed, including but not limited to, (i) colas and other flavored soft drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks; (vii) packaged carbonated or still water (including spring, mineral or purified); and (viii) any future categories of nonalcoholic beverage products that may be distributed by PBC.

"**Cases**" shall mean the number of cases of Packaged Products purchased by the Customer from PBC, in such size, quantity and type of containers as determined by PBC, from time to time.

"**Gallons**" shall mean the number of imperial gallons of the Fountain Products purchased by the Customer from PBC.

"**Fountain Products**" shall mean postmix syrup products used to create and dispense fountain Beverages.

"**Outlets**" shall mean the existing Customer facilities operated under the **Fort Frances Memorial Sports Centre** trade name/trademark or related trade names/trademarks, as listed in attached Exhibit A, and shall include any other Outlet that may be opened, acquired, operated, owned, managed, controlled or franchised by the Customer under those trade names/trademarks during the Term. Customer agrees to provide PBC with prompt notice of any changes to the list of Outlets in Exhibit A and any additional Outlets shall automatically become part of this Agreement. The parties agree to verify the list of Outlets and modify Exhibit A as necessary to reflect such additions and deletions on an annual basis during the Term.

"**Packaged Products**" shall mean Beverages that are distributed in pre-packaged form (e.g., bottles and cans) by PBC.

"**Products**" shall mean Fountain Products and Packaged Products manufactured, bottled, sold and/or distributed by PBC. A current list of Products to be supplied to Customer under the terms of this Agreement is listed in attached Exhibit B.

"**Year**" shall mean each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

1.0 Term

1.1. The term (the "**Term**") of this Agreement shall commence on **May 1, 2015** (the "**Commencement Date**") and, unless earlier terminated in accordance herewith, shall terminate on **April 30, 2018**.

2.0 Exclusivity

2.1. During the Term, except as otherwise set forth in this Agreement, the parties agree the Products shall be the exclusive Beverages (other than hot beverages, alcoholic beverages or milk products) sold, dispensed or otherwise made available, or in any way advertised, displayed, or promoted by Customer at or in connection with the Outlets by any method or through any medium whatsoever (including, without limitation, print, television, radio, internet, coupons, in-store displays and signage). In no event shall there be served, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted, beverage products licensed by, or produced by bottlers licensed by, The Coca-Cola Company or any affiliate thereof, or any other supplier of competitive Beverages.

3.0 Pricing and Distribution

3.1. PBC shall sell and provide the Products set forth in Exhibit B either directly to Customer or to Customer's Authorized FS Distributors (as applicable) for resale at Customer's Outlets.

3.2. The prices for the Products (the "Prices") as of the Commencement Date, are listed in Exhibit B and are exclusive of any applicable product deposits, fees or sales/excise taxes (local, provincial or federal).

3.3. PBC shall increase Prices by 3% each Year during the Term of the Agreement upon (30) days written notice to Customer.

3.3. Price increases exceeding and/or in addition to those referred to above may be made by PBC, in the event of significant demonstrable increase in production or distribution costs to PBC, including without limitation, raw material costs (e.g. sweeteners, aluminum, plastic) and energy/utility costs (e.g. fuel, hydro).

3.4. All sales of Products by PBC to Authorized FS Distributors shall be made on terms determined by PBC. PBC expressly reserves the right to withhold shipment of any new order at any time that existing invoices to an Authorized FS Distributor are outstanding beyond terms. Customer agrees to use commercially reasonable efforts to cause the Authorized FS Distributors to make timely payment for the Products.

3.5. Customer or its Authorized FS Distributor shall report and submit to PBC velocity reports indicating volume of and type of products purchased by Outlet and name of Outlet's supplying distributor (the "Purchase Summary Report"). The Purchase Summary Report shall be submitted to PBC for each quarter not later than 60 days past the close of that quarter.

3.6. Notwithstanding delivery of Products to any Outlet(s) via a distributor, Customer shall remain subject to all of its obligations pursuant to this Agreement for the Term.

4.0 Funding, Rebates and Financial Commitments

4.1. In consideration of the rights granted to PBC by Customer during the Term of this Agreement, and provided Customer is not in breach of this Agreement, PBC shall provide Customer with the funding and support set out in the attached Exhibit C.

5.0 Additional Customer Performance Requirements

5.1. This Agreement, including all of PBC's support to the Customer as described herein, is contingent upon the Customer complying with this Agreement.

5.2. Customer will use its commercially reasonable efforts to ensure that all PBC Products maintain continuous or increased presence and exposure within the Outlets following implementation of this Agreement.

5.3. Unless otherwise authorized by PBC, the Customer shall purchase all of their requirements for Product directly from PBC or the Authorized FS Distributor during the Term. The Customer and the Outlets will only sell those PBC Products purchased in accordance with this Agreement from the equipment provided to the Outlets by PBC, as applicable.

5.4. The Customer and its Outlets shall have appropriate brand identification, as identified by PBC, for each PBC Product served on all menus (including catering), menuboards and postmix dispensing valves at each of the Outlets throughout the Term.

5.5. At all times during the Term, the Customer agrees to maintain a reasonable distribution of all PBC Products and to mandate the distribution of a minimum of the following skus of PBC Products, as applicable, at each of the Outlets

("Required SKUS"): 591mL Aquafina; 591mL Pepsi, Diet Pepsi, 7UP, Dr. Pepper, Mountain Dew, Brisk Iced Tea; 591mL Gatorade and G2; 450mL Dole and Ocean Spray; 18L Premix, CO2 cylinders.

5.6. Customer will reinforce compliance with agreed upon PBC plan-o-grams at all Outlets.

6.0 Equipment and Service

6.1. PBC will loan each Outlet, at no charge, appropriate equipment for dispensing the Products during the Term ("**Equipment**"). Customer agrees that the Equipment shall be exclusively used to display and merchandise the Products, and the Customer shall not use the Equipment to display, stock, advertise, sell or maintain any other products (including on the exterior of the Equipment). Title to all Equipment will remain vested in PBC or its affiliate and all such Equipment will be returned to PBC upon expiration or earlier termination of this Agreement. Customer shall not, and shall not allow any Outlet or any other party to, repair, service, maintain, replace, relocate, move or remove any Equipment. PBC shall have the exclusive right to repair, service, maintain, replace, relocate, move and remove any Equipment.

6.2. Each Year during the Term or at PBC's request, Customer shall provide PBC with a written Equipment verification list indicating the asset number, Equipment type and location of the Equipment loaned to the Customer pursuant to this Agreement. Failure to provide such verification list to PBC shall be deemed a material breach of this Agreement.

6.3. PBC will provide, at no charge to the Customer, preventative maintenance and service to the Equipment during the Term. PBC will also provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours. PBC will promptly respond to each applicable Customer request, and will use reasonable efforts to remedy the related Equipment problem as soon as possible. Customer will be responsible for all Equipment costs (including service fees) resulting from Customer's willful or negligent damage or abuse.

6.4. The Customer shall supply and install, or cause to be supplied and installed, at the Customer's cost and expense, all facilities, as may be reasonably necessary, for the use and operation of the Equipment in the Outlets, including, but not limited to, electrical outlets and wiring, drains, conduits, water outlets and cut-off valves.

6.5. In respect of all Equipment that is vending equipment, PBC shall have the exclusive right to stock and re-stock, at no cost to Customer, Products in each of the vending machines and to collect the monies that each vending machine generates. Title to all monies and Products located in such vending equipment will remain vested in PBC or its affiliate. The Product mix offered in each such vending machine shall be determined by PBC.

6.6. Upon termination or expiration of this Agreement, if Customer has not entered into a further agreement with PBC for the purchase of the Products, Customer shall surrender to PBC all Equipment installed in the Outlets, whether leased, loaned or otherwise made available by PBC. PBC shall have the right to deduct the full value of the Equipment from any and all funds owing to Customer and/or the applicable Outlet(s) in the event PBC is prevented from removing such Equipment within thirty (30) days of the expiration or earlier termination of this Agreement.

6.7. Customer and/or each Outlet, as applicable, shall be responsible for the full replacement cost of all Equipment not returned, damaged, lost, or stolen while in its possession.

6.8. The Customer and its Outlets shall only use the Fountain Products for use in preparing the fountain beverage products (i) in accordance with the standards established by PBC; and (ii) only for immediate or imminent consumption and shall not resell the Fountain Products either to nonaffiliated outlets or to consumers in any form other than the Fountain Products.

7.0 General Terms

7.1. **Termination.** Either party may terminate this Agreement: (i) if the other commits a material breach of this Agreement, provided, however, that the terminating party has given the other party written notice of the breach and the other breaching party has failed to remedy or cure the breach within thirty (30) days of such notice; or (ii) if the other party takes any action with respect to its liquidation or winding-up, or makes an assignment for the benefit of creditors, or any proposal under the Bankruptcy and Insolvency Act (Canada), or any comparable statute, or if a bankruptcy petition is filed or presented by such party, or if a court of competent jurisdiction enters a judgment or order approving any such petition or any petition seeking reorganization, arrangement or composition of such party or its debts or obligations, or if a custodian or receiver or receiver and manager or similar official is appointed for such party or any of its assets. If for any reason the Customer closes a Material (as defined below) number of Outlets for a period of sixty (60) business days or more, then such event shall be deemed a material breach of this Agreement, and PBC shall have

the right to immediately terminate this Agreement upon five (5) days prior written notice. As used herein, "Material" shall refer to the closure of one or more Outlets such that the Customer's volume is expected to decline by more than 25% from the average annualized volumes.

In the event of breach of this Agreement by one or more Outlet(s), the parties agree that PBC shall have the option, in lieu of termination of the entire Agreement, to terminate the Agreement only as it pertains to the applicable breaching Outlet(s) and to obtain an equitable reimbursement for the portions of funding and other costs attributable to such breaching Outlet(s).

7.2. Remedies / Expiration. If this Agreement is terminated before its expiration for any reason other than uncured material breach by PBC, then Customer will immediately make the following payments by no later than 30 days following the effective date of such termination:

- I. an amount reflecting reimbursement for all funding previously advanced by PBC but not earned by Customer and/or the Outlets pursuant to the terms of this Agreement in respect of the unexpired portion of the Term, or the Year for which it was paid, as the case may be, on a pro rata basis; and
- II. an amount reflecting reimbursement for the cost of installation, service and PBC Equipment that has been installed in the Outlets, if applicable.

7.3. Right of Offset. PBC reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer pursuant to this Agreement.

7.4. Trademarks. PBC reserves the right to final approval, in its sole discretion, of any and all promotional or other materials utilizing PBC 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 a party claims or has proprietary 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. Upon Termination or expiry of this Agreement each party shall immediately cease all use of the others trademarks, trade names, slogans, and or other identification of the other party or its products.

7.5. Payment. Payment of PBC invoices shall be in accordance with their stated terms which, if credit is granted, are currently the thirtieth (30th) day from date of invoice. All payments to PBC shall be rendered without deduction or set off. Customer and each Outlet shall, upon request, complete a PBC credit application and shall be subject to PBC's credit policies. Customer acknowledges that in the event PBC ceases to sell Products to Customer or any Outlet in accordance with PBC's credit policies, PBC shall not be in breach of this Agreement.

7.6. Product Changes. PBC reserves the right to change or supplement Products offered for sale to Customer at its discretion, upon notice.

7.7. Confidentiality. The Customer and PBC agree to keep this Agreement and its terms, as well as the information which is disclosed to it by the other party in connection with the performance of this Agreement, confidential and not to disclose this Agreement or its terms to any third party without the prior written consent of the other party, subject only to disclosure of such information to the party's auditors and legal counsel and as required by law or legal process. The Customer further acknowledges and agrees that the disclosure of the terms of this Agreement could reasonably be expected to significantly harm the competitive position and/or significantly interfere with the general negotiating and business position of PBC. The parties acknowledge and agree that details of any public announcements, statements or disclosure concerning this Agreement shall be jointly agreed to prior to the making of any such public announcements, statements or disclosure by either party.

7.8. Assignment/Acquisition. In the event that a third party acquires Customer or all or a group of the Outlets, or if Customer 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/merged entity within ten (10) days following the closing of the transaction, PBC may, at its option, terminate this Agreement effective immediately. The Agreement shall not be otherwise assignable without the express written consent of PBC. In the event the transferee has an existing local agreement with PBC (which agreement covers the purchase of Products), then, PBC shall have the right to determine which Agreement shall continue in force and effect. PBC may assign this Agreement at any time to any PBC affiliate without any prior consent. This Agreement shall enure to the benefit of, and be binding upon, the successors and permitted assigns of PBC and Customer.

7.9. Governing Law. This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein without regard to conflict of laws principles.

7.10. **Tax.** Customer acknowledges and agrees that neither PBC nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by Customer in connection with the consideration or any other fees payable by PBC under this Agreement.

7.11. **Force Majeure: Impossibility of Performance.** Neither party shall be responsible to the other or to any third party for any failure, in whole or in part, to perform any obligations hereunder, to the extent and for the length of time that performance is rendered impossible or commercially impractical, owing to acts of God, public insurrections, floods, fires, strikes, lockouts, or other labor disputes, disruptions in supply, shortages or scarcity of materials, crop failures, freezes, and other circumstances of substantially similar character beyond the reasonable control of the affected party (collectively, "Force Majeure"). Any party so affected shall (i) use all reasonable efforts to minimize the effects thereof and (ii) promptly notify the other party 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 shall promptly resume performance after it is no longer subject to Force Majeure.

7.12. **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.

7.13. **Insurance.** Each party shall, at its sole cost and expense, place and maintain insurance throughout the Term that it deems adequate, sufficient and consistent with prudent industry standards to insure its activities and obligations in connection with this Agreement. Without limiting the generality of the foregoing, Customer shall name PBC as a loss payee under its applicable insurance policies and shall notify PBC of any loss or damage to the Equipment.

7.14. **Relationship of the Parties.** Each party hereto is an independent contractor and has no authority or right to incur obligations of any kind in the name of or for the account of the other party. Neither party shall be deemed to be an associate, partner, principal or agent of the other.

7.15. **Construction.** If any covenant, obligation or provision contained in this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each covenant, obligation and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

7.16. **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.

7.17. **Notices.** Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing, addressed as follows:

If to PBC:

PepsiCo Beverages Canada
5205 Satellite Drive
Mississauga, Ontario L4W 5J7
Attn: Director, Foodservice

With a copy to (which shall not constitute notice) the PBC Legal Department at the same address.

If to Customer:

Fort Frances Memorial Sports Centre
740 Scott Street
Fort Frances, ON P9A 1H8
Attn: Manager of Community Services

7.18. **Representations and Warranties.** Each party represents and warrants to the other that it has full power and authority, corporate and otherwise, and has been duly authorized, to enter into and perform its obligations under this Agreement and that neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor compliance with or performance of any of the provisions hereof, will: (a) violate or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with the giving of notice or the passage of time or otherwise, would constitute such a default) under any of the terms, conditions or provisions of any

existing agreement or other instrument or obligation to which it is a party, or by which it or any of its properties, assets or operations may be bound or affected; (b) violate any order, writ, injunction, decree, or any statute, rule or regulation, applicable to it or any of its properties, assets, or operations; or (c) require any action, or consent or approval of, or review by, any other party, including without limitation any third party, court or governmental body or other agency, instrumentality or authority, except as shall have been duly obtained and effective as of the date of this Agreement.

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

7.20 At the request of all parties, this Agreement has been drawn up in the English language. A la demande expresse des parties, ce contract a été rédigé en langue anglaise.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date set forth below.

**PEPSICO BEVERAGES CANADA,
a business unit of PEPSICO CANADA ULC**

Fort Frances Memorial Sports Centre

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Date: _____

**Exhibit A
Customer Outlets**

**Fort Frances Memorial Sports Centre
740 Scott Street
Fort Frances, ON P9A 1H8
COF #8725226**

**Center Ice Canteen
740 Scott Street
Fort Frances, ON P9A 1H8
COF #9817276**

Exhibit B
Products and Prices

Bottles & Cans		Min Order of 2cs	2015
		Case Pack	
	591ml CSD/NCB	24	\$23.69
	591ml Aquafina	24	\$13.39
	591ml Gatorade/G2	12*	\$13.42
	547ml Lipton Pure Leaf	12	\$18.30
	450ml Dole/Ocean Spray	12	\$14.46
	2L CSD/NCB	8	\$14.21
	473ml Dew Kickstart Cans	12	\$11.85
	473ml CSD/NCB Cans	12	\$9.27
	355ml CSD GLASS (6x4pk)	24	\$21.00
	591ml SOBE	12	\$17.65
	1L CSD/NCB	15	\$17.00
	500ml Aquafina (12)	12*	\$7.00
	500ml Aquafina (24)	24	\$11.64
	591ml Aquafina Plus	12	\$18.44
	591ml Aquafina Splash	24	\$18.44
	710ml Aquafina	24	\$35.02
	1L Aquafina	15	\$15.45
	1.5L Aquafina	12	\$18.44
	500ml Montellier (4x6pk)	24	
	1L Montellier	12	
	4L Capilano		\$3.83
	500ml ONE Coconut Water	12	\$24.00
1L ONE Coconut Water	12	\$35.00	
500ml Gatorade	12	\$25.69	
710ml Gatorade / G2	24	\$39.62	
950ml Gatorade / G2	12	\$27.87	
325ml Starbucks Coffee	12	\$22.50	
355ml Starbucks Refreshers	12	\$26.00	
473ml AMP	12	\$25.60	
Rockstar 250ml	12*	\$18.55	
Rockstar 355ml	12	\$25.60	
Rockstar 473ml	12	\$25.10	
Rockstar 444ml	12	\$25.60	
Rockstar 710ml	12	\$32.00	
Rockstar Water 590ml	12	\$23.00	

Fountain		Min Order of 2cs	2015
		Case	
		Pack	
	Premix	1	\$19.20
	20L CSD BIB	1	\$52.21
	12L CSD BIB	1	\$31.34
	12L NCB BIB	1	\$40.16
	11.36L Dole Straw/Kiwi	1	\$40.16
	12L Cranberry Generic	1	\$64.65
	12L Generic Margarita	1	\$60.41
12L Motts	1	\$62.69	
12L Orange Juice	1	\$79.67	
Juice Tyme (3.79L Cartridge)	1	\$97.64	

Cups, Lids & CO2	12 Oz Cups - Case	2,000	\$102.00
	16 Oz Cups - Case	1,000	\$50.00
	24 Oz Cups - Case	1,000	\$76.00
	32 Oz Cups - Case	480	\$47.00
	44 Oz Cups - Case	480	\$79.25
	12/16/24 Lids	2,000	\$50.00
	32 Oz Lids - Case	960	\$42.00
	44 Oz Lids - Case	960	\$79.25
	CO2 Tank - 20lb	1	\$24.00

Exhibit C
Funding and Support

Purchase Rebate – PBC will accrue the amount specified in Exhibit “B” under the “Rebate” column (the “**Purchase Rebate**”) for each case of Product, as specified in Exhibit “B”, purchased by the Customer and the Outlets. The Purchase Rebate shall be calculated and paid by PBC to the Customer on a PBC quarterly basis, within sixty (60) days of the end of the applicable PBC quarter. Where Products are purchased from an Authorized FS Distributor, the Purchase Rebate shall be paid after receipt and verification of the Purchase Summary Report (as defined in section 3.6). PBC shall not accrue or pay any Purchase Rebates for sale to Outlets that are in breach of the terms of this Agreement.

Annual Exclusive Beverage Rights Fee – PBC will pay to the Customer an annual exclusive beverage rights fee of \$1000 (the “**Exclusive Beverage Rights Fee**”) each Year during the Term. The Exclusive Beverage Rights Fee shall be earned pro rata over the applicable Year in which it is paid and shall be paid within sixty (60) days of the first (1st) day of the applicable Year.

Products	Volume Incentive Rebates
591mL 24pk CSD & NCB	\$1.00 per case
591mL 24pk Aquafina	\$1.00 per case