

Schedule "A"

AMENDMENT AGREEMENT

This Amendment made this 23rd day of June, 2025.

BETWEEN:

THE CORPORATION OF THE CITY OF SAULT STE MARIE

(the "City")
OF THE FIRST PART

-and-

MEYERS MUNCHIES

("Meyers")
OF THE SECOND PART

WHEREAS the City and PepsiCo Beverages Canada entered into a Beverage Sales Agreement effective August 1, 2022 to July 31, 2025 (the "City/PepsiCo Agreement") a copy of which is appended as Schedule "A" to this Agreement;

AND WHEREAS pursuant to Exhibit "C" to the City/PepsiCo Agreement, Meyers had the following obligation:

"Vending Commissions - Meyers Munchies (TPO) will pay to the Customer a vending commission (the 'Vending commission') in an amount equal to \$9,000.00 of net revenue actually collected by Meyers from vending equipment placed on the premises of the outlets by PBC (defined as PepsiCo Beverages Canada, a business unit of PepsiCo Canada ULC, and its affiliates and subsidiaries, and hereinafter called "PBC") in each year. The Vending commission shall be calculated and paid by Meyers Munchies (TPO) to the customer on a Meyers Munchies quarterly basis within thirty (30) days of the end of the applicable Meyers Munchies quarter. A detailed report outlining the calculation of the vending Commission, the volume of Products sold through each piece of vending equipment by outlet and an overall summary of the Vending Commission paid to date shall be delivered to the Customer on or about the same time as paying the Vending Commission."

AND WHEREAS Meyers is not a party to the City/PepsiCo Agreement and therefore, the City and Meyers entered into an Agreement dated August 8, 2022, which set out the roles and responsibilities between the City and Meyers, a copy of which is appended as Schedule "B" to this Agreement (the "City/Meyers Agreement");

AND WHEREAS Meyers and the City wish to amend the City/Meyers Agreement as set forth herein;

NOW THEREFORE the City and Meyers agree to amend the City/Meyers Agreement as follows:

1. **Term.** Pursuant to Section 1, Meyers wishes to exercise its right to extend the Term by two (2) Years from August 1, 2025 to July 31, 2027 on the same terms and conditions (the “Renewal Term”).
2. **Funding and Support.** Meyers acknowledges and agrees the during the Renewal Term, Meyers shall continue to pay the City the Vending Commissions as set out in Section 2 of the City/Meyers Agreement.
3. All other terms and conditions of the City/Meyers Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives. **Meyers Munchies**
Per:
Name:
Position:
I have authority to bind the corporation

The Corporation of the City of Sault Ste Marie
Per:
Name: Matthew Shoemaker
Position: Mayor
I have authority to bind the corporation

Per:
Name: Rachel Tyczinski
Position: City Clerk
I have authority to bind the corporation

Schedule "A"



BEVERAGE SALES AGREEMENT

This sets forth the agreement ("**Agreement**") between PepsiCo Beverages Canada, a business unit of PepsiCo Canada ULC, and its affiliates and subsidiaries ("**PBC**") and The Corporation of the City of Sault Ste Marie] (the "**Customer**"), on its own behalf and on behalf of its affiliates and subsidiaries, and on behalf of its individual franchisees and licensees, if any, relating to the purchase by the Customer from PBC of the Products.

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, and terms defined elsewhere in this Agreement shall have the meanings ascribed to them in this Agreement.

"**Authorized FS Distributor**" if applicable, shall mean a food service distributor as designated by Customer and prior approval by PBC.

"**Beverage**" or "**Beverages**" means all carbonated and non-carbonated, non-alcoholic beverages, however dispensed, during the Term including but not limited to, (i) colas and other flavored soft drinks; (ii) fruit juice, fruit juice containing other ingredients and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) milk based drinks; (vii) protein drinks and smoothies; (viii) energy drinks; (ix) water (including but not limited to: flat, plain, sparkling, carbonated, spring, mineral and/or purified); (x) kombucha and sparkling fermented beverages; and (xi) any future categories of nonalcoholic beverage products that may be distributed by PBC.

"**Cases**" shall mean the number of "raw" cases of Packaged Products purchased by the Customer from PBC, delivered in quantities of 8, 12, 15 and 24 bottles/cans, and thereafter in such other size, quantity and type of containers as determined by PBC, from time to time.

"**Gallons**" shall mean the number of US gallons of the Fountain Products purchased by the Customer from PBC during the Term and used to prepare the Fountain Products.

"**Fountain Products**" shall mean Beverages sold and/or distributed by PBC and used to create and dispense fountain beverages and/or frozen carbonated and non-carbonated beverages. A current list of PBC's Fountain Products is listed in the attached Exhibit B which may be amended by PBC from time to time.

Outlets

shall mean the existing Customer facilities owned, operated or managed by the Customer under the trade name/trademark in the attached Exhibit A (and/or any related or similar trademarks, including any successor trademarks/tradenames) in Canada operated by duly authorized franchisees of Customer, a current list of which is attached as Exhibit A, and shall include any other outlet or other facility in Canada in the Customer's system that may be opened, acquired, operated, owned, managed, controlled or franchised by the Customer under such trademarks during the Term. In the event that Customer acquires, owns or operates facilities under a different concept and/or trademark during the Term, Customer will purchase Products pursuant to the terms of this Agreement for service in such facilities, which will be considered Outlets under this Agreement. In the event that new Outlets are added during the Term of this Agreement, the parties shall create an updated Exhibit A and attach it hereto. The Outlets shall include the parking garages or other Customer-owned/controlled/operated surrounding areas located at or within those facilities.

OR buying groups: "means customers of or facilities operated, managed, licensed, by (i) Customer or any of its Affiliates, (ii) companies with whom Customer or any of its Affiliates have entered into an agreement to provide procurement services, and (iii) such additional operations of Customer or any of its licensees, franchisees, or affiliates as Customer may choose to add from time to time.

OR Use for Golf course type of customer: "**Outlet**" shall mean the existing Customer facilities operated under in Exhibit A trade name/trademark or related trade names/trademarks, located at in Exhibit A and shall include (without limitation) all areas thereof, whether indoors or outdoors, sit-down and take out locations, concessions, restaurants, banquet rooms, clubhouse, carts and kiosks, which are now or in the future opened, acquired, operated, owned managed, controlled or franchised by the Customer during the Term

"**Packaged Products**" shall mean Beverages that are sold and/or distributed by PBC in pre-packaged form (e.g., bottles and cans) by PBC. A current list of PBC's Packaged Products is listed in the attached Exhibit B which may be amended by PBC from time to time.

"**Products**" shall mean Fountain Products and Packaged Products manufactured, bottled, sold and/or distributed by PBC.

"**Third Party Operator**", if applicable, includes those persons or entities operating businesses selling or otherwise distributing Products from a location within the Outlets.

"**Year**" will mean a term of 13 financial periods coinciding with PBC's financial periods (each a "Financial Period" typically consisting of four weeks) during the Term, beginning the first day of the Term and each period of 13 Financial Periods thereafter. Term "quarter" or "quarterly" will mean a consecutive period of approximately 3 months coinciding with PBC's Financial Periods each Year during the term of this Agreement.

1.0 Term

1.1. The term (the "**Term**") of this Agreement shall commence on **August 1, 2022** (the "**Effective Date**") and shall expire on **July 31, 2025**. The Customer may extend the Term of the Agreement by a period of (2) years, on the same terms and conditions, upon providing PBC with sixty (60) days prior written notice before the expiry date.

2.0 Exclusivity

2.1. Exclusive Beverage Rights. During the Term of this Agreement, PBC shall have the exclusive right to make all Beverages (including Fountain Products and Packaged Products) available for sale and distribution within the Customer's Outlets, including at all locations located within the Outlets where beverages are sold and catering operations for Customer or its Outlets. Accordingly, the Products shall be the only Beverages of their respective type sold, dispensed or served anywhere at the Outlets, and Customer will cause the purchasing representative for each of the Outlets to purchase all its respective requirements (including a Third Party Operator, if applicable) for such Products directly and exclusively from PBC. In no event shall there be served, dispensed or otherwise made available Beverage products licensed, produced or otherwise distributed by Nestle S.A., Nestle Canada Inc., Coca-Cola Ltd. or Coca-Cola Enterprises or any of their respective affiliates.

2.2. Ancillary Products. During the Term, Customer will cause the purchasing representative for each of the Outlets to purchase all its respective requirements for carbon dioxide and branded disposable cups ("Ancillary Products") exclusively from PBC, provided that the Ancillary Products comply with municipal, provincial and federal legislation. PBC shall ensure the Ancillary Products comply with all applicable municipal, provincial and federal legislation.

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 Effective Date, are listed in Exhibit B and are exclusive of any applicable product deposits, fees or sales/excise taxes (local, provincial or federal). Pricing may vary in territories where PBC bottler rights apply.

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

3.4. 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).

3.5. During the term, if Customer is receiving Products through Direct to Store delivery and would like to move to

purchase the Products through an Authorized FS Distributor, Customer must first obtain PBC's prior written approval. If approval is granted, then 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.

3.6. Subject to Section 3.5 above, if Customer is purchasing Products through an Authorized FS Distributor then such 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.

3.7. During the term, if Customer is purchasing Products through an Authorized FS Distributor and would like to move to purchase the Products through Direct Store Delivery, Customer must first obtain PBC's prior written approval. If approval is granted, then PBC will use reasonable commercial efforts to transfer Customer to its Direct Store Delivery system in a timely fashion, in its sole discretion.

3.8. 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.

4.2. PBC will not accrue, pay or otherwise provide any funding or support set out in Exhibit C in respect of: (i) any Products for which PBC has not received payment in full; or (ii) any Outlet that is in breach of any of the terms this Agreement.

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 the terms of 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. Customer acknowledges that funding is generally being made available to Customer under this Agreement to enable Customer to promote and encourage sales of PBC Products at the Outlets. All marketing and promotional activities relating to the Products will be as mutually agreed to by the parties and will specifically include the following:

Branding on menu boards & custom P.O.S.

5.4. 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.

5.5. 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.

5.6. 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"): *Pepsi, Diet Pepsi, 7UP, Mountain Dew, Crush, Mug Root Beer, Dr Pepper, Dole, Gatorade, Brisk, Lipton Iced Tea, Aquafina, Evian, Frappuccino, Naked, Rockstar, Tropicana*, and such other beverage products, whether in addition to or in substitution therefor, as PBC may offer for sale from time to time. Customer will reinforce compliance with agreed upon PBC plan-o-grams at all Outlets., which may include, without limitation, the addition of listings of new and/or innovative Products."

5.7. Customer understands that the Products provided hereunder are perishable. PBC will not replace stale or spoiled Products. Customer agrees that no Product shall be sold past the code date, and that it shall abide by policies on product handling and quality control periodically advised by PBC.

6.0 Equipment and Service

6.1. PBC will loan each Outlet, at no charge, appropriate equipment for dispensing and cooling 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. Except to the extent attributable to the intentional and/or negligent acts or omissions of Customer, its employees, or its agents, PBC will be responsible for and will bear the risk of loss or damage to unit(s) of Equipment placed and installed upon Outlets and arising as a result of theft and/or vandalism upon the Outlets; provided, however, that in the event of repeated (defined as two or more occurrences) or significant theft, vandalism, destruction or loss, without limitation, PBC will have the right, at its sole discretion, to move or remove any applicable unit of such Equipment from the Outlets.

6.5. 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.

6.6. In respect of all Equipment that is vending equipment, if applicable, 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.

6.7. Customer acknowledges and agrees that PBC shall have the right to delegate its obligations in respect of the administration, installation and maintenance of vending services, including payment of vending commissions, to a third party vending operator ("**Third Party Vending Operator**"), which as of the date of agreement is [insert name] PBC shall have the right to change its Third Party Vending Operator at any time during the Term, subject to Customer's prior approval, which approval shall not be unreasonably withheld. Notwithstanding such delegation, PBC shall remain subject to all of its obligations pursuant to this Agreement for the Term. All Third-Party Vending Operator shall comply with the terms and conditions of the City's Contractor Prequalification Program before being permitted to be a Third-Party Vending Operator.

6.8. 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.

6.9. 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.

6.10. 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.

- (a) 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's volume declines by more than 25% from the average annualized volumes, 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 renegotiate funding in Exhibit C and/or terminate this Agreement upon five (5) days prior written notice.

- (b) Without prejudice to any other remedy available to PBC at law or in equity in respect of any event described above, this Agreement may be terminated in whole or in part by PBC upon thirty (30) days' advance written notice to Customer if (i) any of the Products are not made available at the Outlets as required in this Agreement, (ii) any of the rights granted to PBC herein are materially restricted or limited during the Term; or (iii) a final judicial opinion or governmental regulation prohibits, or materially impacts or impairs (e.g., beverage tax or package size restriction) the availability or cost of Beverages, whether or not due to a cause beyond the reasonable control of Customer. Before PBC exercises its right to terminate as described in this Section, PBC agrees to engage in good faith renegotiations with Customer to adjust the funding offered to Customer herein on an equitable basis to neutralize any negative impact such change may have on the economics of the original Agreement.
- (c) 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).
- (d) From time to time, factors outside of PBC's control may lead to certain Products being out of stock, which shall not be deemed as breach of this Agreement.

7.2. **Remedies / Expiration.** Without limiting any of the other remedies available to PBC, 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. **Transition Period.** Upon termination or expiration of this Agreement, if Customer has not entered into a further agreement with PBC for the purchase of Products, PBC may, upon request by the Customer, continue to provide Products to the Customer to ensure the uninterrupted supply of beverages, for a transition period not to exceed 120 days (unless otherwise mutually agreed upon) following expiration or termination of the Agreement (the "Transition Period"). During the Transition Period, the parties will continue to perform pursuant to the terms and conditions of this Agreement, except that Customer shall not be required to comply with any exclusivity requirements set forth herein and PBC shall not be obligated to provide any funding or other consideration as set forth in this Agreement. During the Transition Period, Customer will provide PBC with reasonable access to the Outlets, free from any claims of trespass and on a mutually agreed upon schedule, for the purposes of removing Equipment. For clarity purposes, although Customer shall no longer be required to comply with the exclusivity requirements of this Agreement, Customer acknowledges and agrees that, except as specifically agreed by PBC in writing, Equipment must be used exclusively to display and/or dispense PBC beverage products, even during the Transition Period.

7.4. **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.

7.5. **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 other trademarks, trade names, slogans, and or other identification of the other party or its products.

7.6. **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.

7.7. **Product Changes.** PBC reserves the right to change or supplement Products offered for sale to Customer at its

discretion, upon notice.

7.8. **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.

7.9. **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 ensure to the benefit of, and be binding upon, the successors and permitted assigns of PBC and Customer.

7.10. **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.

7.11. **Tax.** Customer will remain responsible for any applicable taxes, fees or other tax liability incurred in connection with Customer's receipt of funding and/or Equipment provided by PBC under this Agreement. In addition, Customer will neither assess nor impose upon PBC any common area maintenance fees, taxes or other charges based on occupation of the space allocated to Equipment, nor with respect to the ownership or usage thereof.

7.12. **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, pandemic/epidemic, 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, a "Force Majeure Event"). 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 a Force Majeure Event and the effect of a Force Majeure Event on such party's ability to perform its obligations hereunder. The affected party shall promptly resume performance after it is no longer subject to a Force Majeure Event. In the event Customer's performance obligations are suspended pursuant to a Force Majeure Event as set forth herein, PBC's funding obligations will be suspended for the duration of Customer's nonperformance; once the Force Majeure Event has concluded and Customer resumes performance or in the event Customer is able to perform some but not all of its obligations herein, any fixed or guaranteed funding will be adjusted commensurate with the decline in volume associated with the suspended or partial performance.

7.13. **Right of First Negotiation/Refusal.** As of the commencement of this Agreement until six(6) months prior to the expiration of the Term, Customer hereby grants PBC exclusive negotiation rights with respect to extending the current Agreement or entering into a new agreement for the supply of beverage products to the Customer and/or its Outlets upon expiration of the current Term. Thereafter, if the parties have not entered into a new agreement, the Customer shall be free to enter into discussions/negotiations with third parties.

7.14. **Dispute resolution.** If a dispute arises out of or relates to this Agreement, including any dispute about the existence of a breach of this Agreement, and if the dispute cannot be settled through direct discussions, the parties agree to attempt to settle the dispute in an amicable manner by mediation pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc. Such mediation must occur within sixty (60) days after a party's request for mediation. The place of mediation shall be Toronto, Ontario and the language of the mediation shall be English. Thereafter, any unresolved controversy or claim shall be settled by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc., and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitration brought under the terms of this Agreement shall be conducted in Toronto, Ontario, in the following manner: Each party shall appoint one person as an arbitrator. The two arbitrators so chosen shall select a third impartial arbitrator within ten (10) days of the date on which the second arbitrator is selected. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, such arbitrator shall be selected by the ADR Institute of Canada, Inc. The three arbitrators shall determine all questions presented to them by majority vote. The language of the arbitration shall be English. The decision of a majority of the arbitrators shall be final and conclusive on the parties hereto and shall be accompanied by written findings of fact and conclusions of law.

7.15. **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.

7.16. **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.

7.17. **Indemnity.** The Customer shall protect, indemnify and hold harmless PBC and its parent(s), subsidiaries and affiliates, and its and their officers, directors, employees, franchisees, licensees, representatives and agents, from and against any and all losses, liabilities, costs, expenses (including, without limitation, reasonable legal fees), damages, claims, actions, judgments and suits whatsoever arising from, based upon, in any way connection with or relating to: (a) the acts or omissions of the Customer and its franchisees and licensees, and its and their employees, servants, agents or representatives; (b) the breach by the Customer of any of its obligations, covenants, representations or warranties hereunder; or (c) any dispute of a third party in respect of the payments made by PBC to the Customer hereunder.

PBC will indemnify and hold Customer harmless against (i) any claim, loss or expense arising out of the death, disease or bodily injury of a consumer resulting from or caused by the chemical composition of the Products sold to Customer or any ingredient included by PBC in the Products; or (ii) any claim, loss or expense arising out of any patent or trademark infringement suit based on Customer's proper use or sale of the Products; to the extent that any such claim, loss or expense set forth under subsections (i) and (ii) was caused by the fault or negligence of PBC and further provided that the Products were handled under normal conditions of sale, and in accordance with applicable product handling requirements by Customer from the time of delivery until final sale to the consumer, and provided further that (1) Customer gives PBC timely written notice of the assertion or pendency of any such claim, (2) PBC has the right to defend any such claim, and (3) PBC has the right of approval prior to settlement of any such claim.

7.18. **Title.** Title and risk of loss to the Products purchased for the Outlets shall pass to the Customer immediately upon delivery of same.

7.19. **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.

7.20. **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.

7.21. **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.

7.22. **Notices.** All notices and other communications by the parties will be in writing and deemed to have been duly given when delivered in person, via an overnight courier delivery service of general commercial use and acceptance (such as Federal Express or UPS) or via certified or registered mail with return receipt (each, a "Primary Delivery Method"), in each case, with a confirmatory copy by email, addressed as follows (unless notification of change of address is given in writing by means of this Notice provisions), and shall be effective upon receipt via the Primary Delivery Method:

If to PBC:

PepsiCo Beverages Canada 2095
Matheson Blvd E Mississauga,
Ontario L4W 0G2 Attn: Director,
Foodservice

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

If to Customer:

The Corporation of the City of Sault Ste Marie
Attn: Karen Marlow (Manager of Purchasing)
99 Foster Drive – Level 2

Sault Ste Marie, Ontario, P6A 5X6

7.23. **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. There are no representations and warranties or conditions of sale other than those expressly set out herein.

7.24. **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 contrat 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**

By: 

Print Name: Matthew Miller

Title: Unit Sales Manager

Date: June 3, 2022

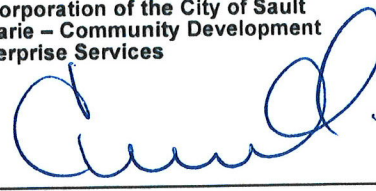
By: _____

Print Name: _____

Title: _____

Date: _____

**The Corporation of the City of Sault
Ste Marie – Community Development
& Enterprise Services**

By: 

Print Name: Christian Provenzano

Title: Mayor

Date: July 11, 2022

(I have authority to bind the company)

By: 

Print Name: Rachel Tyczinski

Title: City Clerk

Date: July 11, 2022

**APPROVED BY
CITY OF SAULT STE. MARIE**

BY-LAW# 2022-133

**Exhibit A
Customer Outlets**

1.	GFL Memorial Gardens	14 Towers equipped with auto-pour heads; 4 Concourse Level Concessions each equipped with 3 towers; 1 Event Level Concession equipped with 1 tower; 1 Suite Level Concession equipped with 1 tower
2.	Northern Community Centre	2 Single Door Floor Model Coolers (main concession & upstairs concession); 2 Towers equipped with auto-pour heads (main concession & upstairs concession)
3.	Bellevue Park	1 Single Door Counter Top Model Cooler; 1 Single Door Floor Model Cooler
4.	Roberta Bondar Park	2 Towers equipped with auto-pour heads; 1 Single Door Counter Top Model Cooler; 1 Double Door Floor Model Cooler
5.	John Rhodes - Field House	1 Double Door Floor Model Cooler
6.	John Rhodes – Pool	1 Single Door Floor Model Cooler
7.	John Rhodes – Community Centre	Concession – 1 Post Mix Machine with 2 towers (auto pour); 1 Single Door Counter Top Model Cooler;

**Exhibit B
Products and Prices**

Product	Package Price	Unit Price
355ml 24pk CSD/NCB	\$10.08	\$.42
591ml 24pk CSD Bottles	\$26.76	\$1.12
591ml 24pk NCB Bottles	\$26.76	\$1.12
591ml 24pk Aquafina Bottles	\$17.28	\$0.72
591ml 12pk Gatorade and G2	\$15.66	\$1.31
710ml 24pk Gatorade and G2	\$47.73	\$1.99

Product	Price	Unit Price
547ml 12pk Pure Leaf	\$23.27	\$1.94
405ml 12pk Starbucks Frappuccino	\$33.87	\$2.82
450ml 12pk Dole Juice	\$18.66	\$1.56
473ml 12pk Rockstar	19.44	\$1.62

Product	Price
20L Bag of Syrup (CSD) Pepsi	\$72.46
12L Bag of Syrup (CSD)	\$43.50
12L Bag of Syrup (NCB)	\$55.74
CO2 -20LB Tank	\$33.67
22oz Cups (1200 units)	\$83.39
32oz Cups (480 units)	\$65.32
22ozLids (2400 units)	\$83.39
32oz Lids (960 units)	\$58.37

Exhibit C Funding and Support

Exclusivity Rebate – PBC will accrue the amount specified in Exhibit "B" under the "Rebate" column (the "**Exclusivity Rebate**") for each "raw" Case of Product, as specified in Exhibit "B", purchased by the Customer and the Outlets. The Exclusivity 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 Exclusivity 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 Exclusivity Rebates for sale to Outlets that are in breach of the terms of this Agreement.

Signing Bonus – PBC will pay to the Customer a one-time signing bonus of \$5,000.00 (the "**Signing Bonus**"). The Signing Bonus shall be earned pro rata and shall be paid within sixty (60) days of execution of this Agreement.

Annual Exclusive Beverage Rights Fee – PBC will pay to the Customer an annual exclusive beverage rights fee of \$12,000.00 (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.

Managed Marketing Support Funds – PBC will allocate an annual marketing support fund in the amount \$3,000.00 (the "**Marketing Support Funds**") each Year during the Term, which shall be used for such marketing programs as may be mutually agreed by PBC and the Customer with the objective of increasing Product sales in the Outlets. The Marketing Support Funds shall be managed by PBC on a declining basis each applicable Year. Proof of performance and invoice are required in order for PBC to remit any Marketing Support Funds to Customer. Any unspent portion of the Marketing Support Funds in any Year may not be carried over to a subsequent Year.

Vending Commissions – Meyers Munchies (TPO) will pay to the Customer a vending commission (the "**Vending Commission**") in an amount equal to \$9,000.00 of net revenue actually collected by PBC from vending equipment placed on the premises of the Outlets by PBC in each Year. The Vending Commission shall be calculated and paid by Meyers Munchies (TPO) to the Customer on a Meyers Munchies quarterly basis within thirty (30) days of the end of the applicable Meyers Munchies quarter. A detailed report outlining the calculation of the Vending Commission, the volume of Products sold through each piece of vending equipment by Outlet and an overall summary of the Vending Commission paid to date shall be delivered to the Customer on or about the same time as paying the Vending Commission.

Schedule "B"

AGREEMENT

THIS AGREEMENT made this 8TH day of August, 2022.

BETWEEN:

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

(the "City")
OF THE FIRST PART

-and-

MEYERS MUNCHIES

("Meyers")
OF THE SECOND PART

WHEREAS the parties hereto acknowledge and agree that City and PEPSICO CANADA ULC ("Pepsi") has entered into an agreement dated August 8, 2022 which grants Pepsi exclusive rights to make all "beverages" available for sale and distribution within the City's "Outlets" as defined and set out in that Agreement, which is appended as Schedule "A" to this Agreement (the "City/Pepsi Agreement");

AND WHEREAS pursuant to Exhibit "C" to the City/Pepsi Agreement, Meyers has the following obligation:

"Vending Commissions – Meyers Munchies (TPO) will pay to the Customer a vending commission (the "Vending Commission") in an amount equal to \$9,000.00 of net revenue actually collected by Meyers from vending equipment placed on the premises of the Outlets by PBC in each Year. The Vending Commission shall be calculated and paid by Meyers Munchies (TPO) to the Customer on a Meyers Munchies quarterly basis within thirty (30) days of the end of the applicable Meyers Munchies quarter. A detailed report outlining the calculation of the Vending Commission, the volume of Products sold through each piece of vending equipment by Outlet and an overall summary of the Vending Commission paid to date shall be delivered to the Customer on or about the same time as paying the Vending Commission."

AND WHEREAS Meyers is not a party to the City/Pepsi Agreement, the parties hereto desire to enter into this Agreement to formalize the commitment and obligation of Meyers as set out above;

AND WHEREAS Meyers and Pepsi also entered into an Agreement which sets out roles/responsibilities that are relevant to Meyers' and Pepsi's obligations to the City in the City/Pepsi Agreement, which Agreement is appended as Schedule "B" to this Agreement (the "Meyers/Pepsi Agreement") and which Meyers acknowledges is therefore relevant herein;

NOW THEREFORE in consideration of the rents, covenants and agreements herein contained and hereby assumed, the parties for themselves and their respective successors and assigns do hereby covenant and agree with one another as follows:

1. TERM

The term (the "Term") of this Agreement shall commence on August 1, 2022 and shall expire on July 31, 2025. The City may extend the Term of the Agreement by a period of two (2) years on the same terms and conditions upon providing Meyers with sixty (60) days prior written notice before the expiry date (the "Renewal Terms").

2. VENDING COMMISSIONS

Meyers acknowledges and agrees to pay the City the Vending Commissions in accordance with the terms and conditions set out in the City/Pepsi Agreement during the Term and any Renewal Terms. Specifically, Meyers shall:

pay to the Customer a vending commission (the "Vending Commission") in an amount equal to \$9,000.00 of net revenue actually collected by Pepsi from vending equipment placed on the premises of the Outlets by Pepsi in each Year of the Term. The Vending Commission shall be calculated and paid by Meyers Munchies (TPO) to the City on a Meyers Munchies quarterly basis within thirty (30) days of the end of the applicable Meyers Munchies quarter. A detailed report outlining the calculation of the Vending Commission, the volume of Products sold through each piece of vending equipment by Outlet and an overall summary of the Vending Commission paid to date shall be delivered to the City on or about the same time as paying the Vending Commission.

The parties acknowledge and agree that the Vending Commissions shall be payable by Meyers to the City for the duration of the City/Pepsi Agreement including the Term and any Renewal Terms. Meyers shall provide the City with any financial information or documentation to support the vending commissions paid/collected as may be requested by the City's Finance Department.

3. OTHER AGREEMENTS

Meyers acknowledges and agrees that it is a "Third Party Operator" as defined in the City/Pepsi Agreement and shall be responsible for all obligations that are set out in the City/Pepsi Agreement as it relates to the Third Party Operator.

Meyers further acknowledges and agrees to comply with all obligations as set out in the Meyers/Pepsi Agreement.

4. TERMINATION

The City may terminate this Agreement upon giving Meyers thirty (30) days' written notice.

5. CITY'S CONTRACTOR PREQUALIFICATION PROGRAM

Meyers shall comply with the terms and conditions of the City's Contractor Prequalification Program at all times during the Term and Renewal Term of this Agreement.

6. INSURANCE AND INDEMNITY

- (a) Meyers shall provide and maintain comprehensive general liability insurance coverage in an amount not less than Five Million (\$5,000,000) Dollars per occurrence during the Term of this Agreement naming the City as an "Additional Named Insured". Upon execution of this Agreement, Meyers shall provide the City with evidence of such insurance coverage in the form of a Certificate of Insurance.
- (b) Meyers shall provide fire, theft, vandalism and liability insurance to cover their equipment or property (if any) while on any City Property. Upon execution of this Agreement, Meyers shall provide the city with evidence of such insurance coverage in the form of a Certificate of Insurance. Meyers further covenants that it shall not make a claim against the City nor shall it hold the City responsible for loss or damage caused by fire, vandalism, or theft to such equipment or property.
- (c) During the Term and thereafter, Meyers agrees to indemnify and save harmless the City, its officers, directors, agents or employees, from and against all actions, causes of action, interest, claims, demands, costs, damages, expenses or loss whatsoever (including attorney's fees and expenses)

which the City may bear, suffer, incur, become liable for, or be put to by reason of, arising out of or in consequence of:

- i. the breach and/or violation of non-performance by Meyers, its partners, licensed brands and affiliates and their respective directors, officers, employees and agents of any provision of this Agreement, its breach of its obligations as a Third Party Operator pursuant to the City/Pepsi Agreement that causes damages/injuries to the City or its breach of its obligations pursuant to the Meyers/Pepsi Agreement that causes damages/injuries to the City;
- ii. any act, neglect or default by Meyers or any of its partners, licensed brands and affiliates and their respective directors, officers, employees and agents.

Meyers further covenants that the indemnity herein contained shall extend to all claims, losses, costs and damages by reason of or arising out of improper or faulty erection of equipment or property erected or installed in connection with this Agreement by Meyers, its servants or agents, whether or not these have been approved by the City, its servants or agents. The rights to indemnity contained in this paragraph shall survive any termination of this Agreement notwithstanding anything in this Agreement to the contrary.

- (d) Meyers shall obtain all necessary approvals and authorizations and comply with all laws, by-laws, rules and regulations of any governing body with respect to the work required to be performed by Meyers and any other matters arising directly and indirectly from this Agreement. Meyers shall save harmless and fully indemnify the City from and against all losses, costs, damages and expenses, of every kind or nature (including attorney's fees and expenses) which the City may suffer, incur, become liable for, or be put to by reason of, arising out of or in consequence of noncompliance by Meyers with such laws, by-laws, rules and regulations and failure by Meyers to obtain such approvals and authorizations.

7. NOTICES AND ADDRESSES

All notices required to be given under this Agreement shall be given by personal delivery or email and service shall be deemed given same day as given by email or personal delivery.

In the case of notice to Meyers:

Meyers Munchies
Attention: Curtis Meyers
696 Old Garden River Road, Sault Ste. Marie, ON P6A 6J8

In the case of notice to the City:

Mr. Brent Lamming
Director, Community Services
The Corporation of the City of Sault Ste. Marie
99 Foster Drive, Sault Ste. Marie, Ontario P6A 5X6
Email: b.lamming@cityssm.on.ca

8. INTERFERENCE, WASTE OR NUISANCE

Meyers shall not do or cause to be done, any action which would damage, waste disfigure or injure any property owned by the City. Meyers shall further conduct itself and perform the work set out in this Agreement in a manner which does not interfere with the operation of the City or otherwise cause a nuisance.

Any costs incurred by the City to repair any property owned by the City resulting from such waste and nuisance as set out herein shall be payable by Meyers to the City immediately upon demand by the City.

9. PROPRIETARY RIGHTS

The parties hereto acknowledge and agree that this Agreement in now way confers any rights, benefits or title in any property owned by the City to Meyers and that any and all property and part thereof owned by the City is the property, title and right of the City.

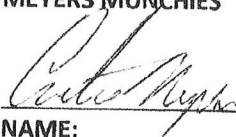
10. GENERAL

- (a) Meyers acknowledges that the City is bound by the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, which may require the release of this Agreement or the terms thereof upon request. The Act gives persons a right of access to information held by the City. The right of access is subject to the exemptions contained in the Act.
 - (b) The parties shall not assign or transfer this Agreement without the prior written consent of the other party.
 - (c) The parties hereby acknowledge and agree that any future amendments to this Agreement must be made in writing and signed by both parties.
 - (d) This Agreement shall enure to the benefit of and be binding upon the parties hereto and to their respective successors and permitted assigns.
 - (e) In the event that any provision of this Agreement or the schedules attached thereto is found to be illegal or be unenforceable under the law now or hereafter in effect, such illegality or unenforceability shall not affect the validity of the remaining provisions of this Agreement.
 - (f) This Agreement, including schedules, contains the entire understanding of the parties with respect to the subject matter contained herein and supersedes all previous agreements or understandings between the parties with respect to the subject matter herein, whether written or oral, expressed or implied.
 - (g) 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 is or shall be deemed to be an associate, partner, principal or agent of the other party.
 - (h) Meyers covenants that he has good right, full power, and absolute authority to grant this Agreement to the City and this Agreement shall be binding upon and shall ensure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, assigns and subsequent purchasers.
 - (i) This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Courts in the Province of Ontario shall have the exclusive jurisdiction to adjudicate any matter which may arise in connection with this Agreement, and the parties hereby accept, submit and attorn to the non-exclusive jurisdiction of such courts and all courts competent to hear appeals therefrom.
-

IN WITNESS WHEREOF the parties hereto have signed this Extension Agreement this 8th day of August, 2022.

MEYERS MUNCHIES

PER:

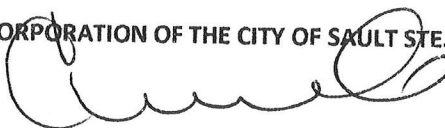


NAME:

Authorized Representative for MEYERS MUNCHIES
I have authority to bind the Corporation

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

PER:



MAYOR – CHRISTIAN PROVENZANO

PER:



CITY CLERK – RACHEL TYCZINSKI

APPROVED BY
CITY OF SAULT STE. MARIE

BY-LAW# 2022-149

Schedule "A"



BEVERAGE SALES AGREEMENT

This sets forth the agreement ("**Agreement**") between PepsiCo Beverages Canada, a business unit of PepsiCo Canada ULC, and its affiliates and subsidiaries ("**PBC**") and The Corporation of the City of Sault Ste Marie] (the "**Customer**"), on its own behalf and on behalf of its affiliates and subsidiaries, and on behalf of its individual franchisees and licensees, if any, relating to the purchase by the Customer from PBC of the Products.

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, and terms defined elsewhere in this Agreement shall have the meanings ascribed to them in this Agreement.

"**Authorized FS Distributor**" if applicable, shall mean a food service distributor as designated by Customer and prior approval by PBC.

"**Beverage**" or "**Beverages**" means all carbonated and non-carbonated, non-alcoholic beverages, however dispensed, during the Term including but not limited to, (i) colas and other flavored soft drinks; (ii) fruit juice, fruit juice containing other ingredients and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) milk based drinks; (vii) protein drinks and smoothies; (viii) energy drinks; (ix) water (including but not limited to: flat, plain, sparkling, carbonated, spring, mineral and/or purified); (x) kombucha and sparkling fermented beverages; and (xi) any future categories of nonalcoholic beverage products that may be distributed by PBC.

"**Cases**" shall mean the number of "raw" cases of Packaged Products purchased by the Customer from PBC, delivered in quantities of 8, 12, 15 and 24 bottles/cans, and thereafter in such other size, quantity and type of containers as determined by PBC, from time to time.

"**Gallons**" shall mean the number of US gallons of the Fountain Products purchased by the Customer from PBC during the Term and used to prepare the Fountain Products.

"**Fountain Products**" shall mean Beverages sold and/or distributed by PBC and used to create and dispense fountain beverages and/or frozen carbonated and non-carbonated beverages. A current list of PBC's Fountain Products is listed in the attached Exhibit B which may be amended by PBC from time to time.

"Outlets"

shall mean the existing Customer facilities owned, operated or managed by the Customer under the trade name/trademark in the attached Exhibit A (and/or any related or similar trademarks, including any successor trademarks/tradenames) in Canada operated by duly authorized franchisees of Customer, a current list of which is attached as Exhibit A, and shall include any other outlet or other facility in Canada in the Customer's system that may be opened, acquired, operated, owned, managed, controlled or franchised by the Customer under such trademarks during the Term. In the event that Customer acquires, owns or operates facilities under a different concept and/or trademark during the Term, Customer will purchase Products pursuant to the terms of this Agreement for service in such facilities, which will be considered Outlets under this Agreement. In the event that new Outlets are added during the Term of this Agreement, the parties shall create an updated Exhibit A and attach it hereto. The Outlets shall include the parking garages or other Customer-owned/controlled/operated surrounding areas located at or within those facilities.

OR buying groups: "means customers of or facilities operated, managed, licensed, by (i) Customer or any of its Affiliates, (ii) companies with whom Customer or any of its Affiliates have entered into an agreement to provide procurement services, and (iii) such additional operations of Customer or any of its licensees, franchisees, or affiliates as Customer may choose to add from time to time.

OR Use for Golf course type of customer: "**Outlet**" shall mean the existing Customer facilities operated under in Exhibit A trade name/trademark or related trade names/trademarks, located at in Exhibit A and shall include (without limitation) all areas thereof, whether indoors or outdoors, sit-down and take out locations, concessions, restaurants, banquet rooms, clubhouse, carts and kiosks, which are now or in the future opened, acquired, operated, owned managed, controlled or franchised by the Customer during the Term

"**Packaged Products**" shall mean Beverages that are sold and/or distributed by PBC in pre-packaged form (e.g., bottles and cans) by PBC. A current list of PBC's Packaged Products is listed in the attached Exhibit B which may be amended by PBC from time to time.

"**Products**" shall mean Fountain Products and Packaged Products manufactured, bottled, sold and/or distributed by PBC.

"**Third Party Operator**", if applicable, includes those persons or entities operating businesses selling or otherwise distributing Products from a location within the Outlets.

"**Year**" will mean a term of 13 financial periods coinciding with PBC's financial periods (each a "Financial Period" typically consisting of four weeks) during the Term, beginning the first day of the Term and each period of 13 Financial Periods thereafter. Term "quarter" or "quarterly" will mean a consecutive period of approximately 3 months coinciding with PBC's Financial Periods each Year during the term of this Agreement.

1.0 Term

1.1. The term (the "**Term**") of this Agreement shall commence on **August 1, 2022** (the "**Effective Date**") and shall expire on **July 31, 2025**. The Customer may extend the Term of the Agreement by a period of (2) years, on the same terms and conditions, upon providing PBC with sixty (60) days prior written notice before the expiry date.

2.0 Exclusivity

2.1. Exclusive Beverage Rights. During the Term of this Agreement, PBC shall have the exclusive right to make all Beverages (including Fountain Products and Packaged Products) available for sale and distribution within the Customer's Outlets, including at all locations located within the Outlets where beverages are sold and catering operations for Customer or its Outlets. Accordingly, the Products shall be the only Beverages of their respective type sold, dispensed or served anywhere at the Outlets, and Customer will cause the purchasing representative for each of the Outlets to purchase all its respective requirements (including a Third Party Operator, if applicable) for such Products directly and exclusively from PBC. In no event shall there be served, dispensed or otherwise made available Beverage products licensed, produced or otherwise distributed by Nestle S.A., Nestle Canada Inc., Coca-Cola Ltd. or Coca-Cola Enterprises or any of their respective affiliates.

2.2. Ancillary Products. During the Term, Customer will cause the purchasing representative for each of the Outlets to purchase all its respective requirements for carbon dioxide and branded disposable cups ("Ancillary Products") exclusively from PBC, provided that the Ancillary Products comply with municipal, provincial and federal legislation. PBC shall ensure the Ancillary Products comply with all applicable municipal, provincial and federal legislation.

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 Effective Date, are listed in Exhibit B and are exclusive of any applicable product deposits, fees or sales/excise taxes (local, provincial or federal). Pricing may vary in territories where PBC bottler rights apply.

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

3.4. 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).

3.5. During the term, if Customer is receiving Products through Direct to Store delivery and would like to move to

purchase the Products through an Authorized FS Distributor, Customer must first obtain PBC's prior written approval. If approval is granted, then 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.

3.6. Subject to Section 3.5 above, if Customer is purchasing Products through an Authorized FS Distributor then such 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.

3.7. During the term, if Customer is purchasing Products through an Authorized FS Distributor and would like to move to purchase the Products through Direct Store Delivery, Customer must first obtain PBC's prior written approval. If approval is granted, then PBC will use reasonable commercial efforts to transfer Customer to its Direct Store Delivery system in a timely fashion, in its sole discretion.

3.8. 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.

4.2. PBC will not accrue, pay or otherwise provide any funding or support set out in Exhibit C in respect of: (i) any Products for which PBC has not received payment in full; or (ii) any Outlet that is in breach of any of the terms this Agreement.

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 the terms of 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. Customer acknowledges that funding is generally being made available to Customer under this Agreement to enable Customer to promote and encourage sales of PBC Products at the Outlets. All marketing and promotional activities relating to the Products will be as mutually agreed to by the parties and will specifically include the following:

Branding on menu boards & custom P.O.S.

5.4. 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.

5.5. 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.

5.6. 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"): *Pepsi, Diet Pepsi, 7UP, Mountain Dew, Crush, Mug Root Beer, Dr Pepper, Dole, Gatorade, Brisk, Lipton Iced Tea, Aquafina, Evian, Frappuccino, Naked, Rockstar, Tropicana*, and such other beverage products, whether in addition to or in substitution therefor, as PBC may offer for sale from time to time. Customer will reinforce compliance with agreed upon PBC plan-o-grams at all Outlets., which may include, without limitation, the addition of listings of new and/or innovative Products."

5.7. Customer understands that the Products provided hereunder are perishable. PBC will not replace stale or spoiled Products. Customer agrees that no Product shall be sold past the code date, and that it shall abide by policies on product handling and quality control periodically advised by PBC.

6.0 Equipment and Service

6.1. PBC will loan each Outlet, at no charge, appropriate equipment for dispensing and cooling 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. Except to the extent attributable to the intentional and/or negligent acts or omissions of Customer, its employees, or its agents, PBC will be responsible for and will bear the risk of loss or damage to unit(s) of Equipment placed and installed upon Outlets and arising as a result of theft and/or vandalism upon the Outlets; provided, however, that in the event of repeated (defined as two or more occurrences) or significant theft, vandalism, destruction or loss, without limitation, PBC will have the right, at its sole discretion, to move or remove any applicable unit of such Equipment from the Outlets.

6.5. 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.

6.6. In respect of all Equipment that is vending equipment, if applicable, 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.

6.7. Customer acknowledges and agrees that PBC shall have the right to delegate its obligations in respect of the administration, installation and maintenance of vending services, including payment of vending commissions, to a third party vending operator ("**Third Party Vending Operator**"), which as of the date of agreement is [insert name] PBC shall have the right to change its Third Party Vending Operator at any time during the Term, subject to Customer's prior approval, which approval shall not be unreasonably withheld. Notwithstanding such delegation, PBC shall remain subject to all of its obligations pursuant to this Agreement for the Term. All Third-Party Vending Operator shall comply with the terms and conditions of the City's Contractor Prequalification Program before being permitted to be a Third-Party Vending Operator.

6.8. 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.

6.9. 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.

6.10. 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.

- (a) 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's volume declines by more than 25% from the average annualized volumes, 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 renegotiate funding in Exhibit C and/or terminate this Agreement upon five (5) days prior written notice.

- (b) Without prejudice to any other remedy available to PBC at law or in equity in respect of any event described above, this Agreement may be terminated in whole or in part by PBC upon thirty (30) days' advance written notice to Customer if (i) any of the Products are not made available at the Outlets as required in this Agreement, (ii) any of the rights granted to PBC herein are materially restricted or limited during the Term; or (iii) a final judicial opinion or governmental regulation prohibits, or materially impacts or impairs (e.g., beverage tax or package size restriction) the availability or cost of Beverages, whether or not due to a cause beyond the reasonable control of Customer. Before PBC exercises its right to terminate as described in this Section, PBC agrees to engage in good faith renegotiations with Customer to adjust the funding offered to Customer herein on an equitable basis to neutralize any negative impact such change may have on the economics of the original Agreement.
- (c) 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).
- (d) From time to time, factors outside of PBC's control may lead to certain Products being out of stock, which shall not be deemed as breach of this Agreement.

7.2. **Remedies / Expiration.** Without limiting any of the other remedies available to PBC, 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. **Transition Period.** Upon termination or expiration of this Agreement, if Customer has not entered into a further agreement with PBC for the purchase of Products, PBC may, upon request by the Customer, continue to provide Products to the Customer to ensure the uninterrupted supply of beverages, for a transition period not to exceed 120 days (unless otherwise mutually agreed upon) following expiration or termination of the Agreement (the "Transition Period"). During the Transition Period, the parties will continue to perform pursuant to the terms and conditions of this Agreement, except that Customer shall not be required to comply with any exclusivity requirements set forth herein and PBC shall not be obligated to provide any funding or other consideration as set forth in this Agreement. During the Transition Period, Customer will provide PBC with reasonable access to the Outlets, free from any claims of trespass and on a mutually agreed upon schedule, for the purposes of removing Equipment. For clarity purposes, although Customer shall no longer be required to comply with the exclusivity requirements of this Agreement, Customer acknowledges and agrees that, except as specifically agreed by PBC in writing, Equipment must be used exclusively to display and/or dispense PBC beverage products, even during the Transition Period.

7.4. **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.

7.5. **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 other trademarks, trade names, slogans, and or other identification of the other party or its products.

7.6. **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.

7.7. **Product Changes.** PBC reserves the right to change or supplement Products offered for sale to Customer at its

discretion, upon notice.

7.8. **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.

7.9. **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 ensure to the benefit of, and be binding upon, the successors and permitted assigns of PBC and Customer.

7.10. **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.

7.11. **Tax.** Customer will remain responsible for any applicable taxes, fees or other tax liability incurred in connection with Customer's receipt of funding and/or Equipment provided by PBC under this Agreement. In addition, Customer will neither assess nor impose upon PBC any common area maintenance fees, taxes or other charges based on occupation of the space allocated to Equipment, nor with respect to the ownership or usage thereof.

7.12. **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, pandemic/epidemic, 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, a "Force Majeure Event"). 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 a Force Majeure Event and the effect of a Force Majeure Event on such party's ability to perform its obligations hereunder. The affected party shall promptly resume performance after it is no longer subject to a Force Majeure Event. In the event Customer's performance obligations are suspended pursuant to a Force Majeure Event as set forth herein, PBC's funding obligations will be suspended for the duration of Customer's nonperformance; once the Force Majeure Event has concluded and Customer resumes performance or in the event Customer is able to perform some but not all of its obligations herein, any fixed or guaranteed funding will be adjusted commensurate with the decline in volume associated with the suspended or partial performance.

7.13. **Right of First Negotiation/Refusal.** As of the commencement of this Agreement until six(6) months prior to the expiration of the Term, Customer hereby grants PBC exclusive negotiation rights with respect to extending the current Agreement or entering into a new agreement for the supply of beverage products to the Customer and/or its Outlets upon expiration of the current Term. Thereafter, if the parties have not entered into a new agreement, the Customer shall be free to enter into discussions/negotiations with third parties.

7.14. **Dispute resolution.** If a dispute arises out of or relates to this Agreement, including any dispute about the existence of a breach of this Agreement, and if the dispute cannot be settled through direct discussions, the parties agree to attempt to settle the dispute in an amicable manner by mediation pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc. Such mediation must occur within sixty (60) days after a party's request for mediation. The place of mediation shall be Toronto, Ontario and the language of the mediation shall be English. Thereafter, any unresolved controversy or claim shall be settled by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc., and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitration brought under the terms of this Agreement shall be conducted in Toronto, Ontario, in the following manner: Each party shall appoint one person as an arbitrator. The two arbitrators so chosen shall select a third impartial arbitrator within ten (10) days of the date on which the second arbitrator is selected. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, such arbitrator shall be selected by the ADR Institute of Canada, Inc. The three arbitrators shall determine all questions presented to them by majority vote. The language of the arbitration shall be English. The decision of a majority of the arbitrators shall be final and conclusive on the parties hereto and shall be accompanied by written findings of fact and conclusions of law.

7.15. **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.

7.16. **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.

7.17. **Indemnity.** The Customer shall protect, indemnify and hold harmless PBC and its parent(s), subsidiaries and affiliates, and its and their officers, directors, employees, franchisees, licensees, representatives and agents, from and against any and all losses, liabilities, costs, expenses (including, without limitation, reasonable legal fees), damages, claims, actions, judgments and suits whatsoever arising from, based upon, in any way connection with or relating to: (a) the acts or omissions of the Customer and its franchisees and licensees, and its and their employees, servants, agents or representatives; (b) the breach by the Customer of any of its obligations, covenants, representations or warranties hereunder; or (c) any dispute of a third party in respect of the payments made by PBC to the Customer hereunder.

PBC will indemnify and hold Customer harmless against (i) any claim, loss or expense arising out of the death, disease or bodily injury of a consumer resulting from or caused by the chemical composition of the Products sold to Customer or any ingredient included by PBC in the Products; or (ii) any claim, loss or expense arising out of any patent or trademark infringement suit based on Customer's proper use or sale of the Products; to the extent that any such claim, loss or expense set forth under subsections (i) and (ii) was caused by the fault or negligence of PBC and further provided that the Products were handled under normal conditions of sale, and in accordance with applicable product handling requirements by Customer from the time of delivery until final sale to the consumer, and provided further that (1) Customer gives PBC timely written notice of the assertion or pendency of any such claim, (2) PBC has the right to defend any such claim, and (3) PBC has the right of approval prior to settlement of any such claim.

7.18. **Title.** Title and risk of loss to the Products purchased for the Outlets shall pass to the Customer immediately upon delivery of same.

7.19. **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.

7.20. **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.

7.21. **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.

7.22. **Notices.** All notices and other communications by the parties will be in writing and deemed to have been duly given when delivered in person, via an overnight courier delivery service of general commercial use and acceptance (such as Federal Express or UPS) or via certified or registered mail with return receipt (each, a "Primary Delivery Method"), in each case, with a confirmatory copy by email, addressed as follows (unless notification of change of address is given in writing by means of this Notice provisions), and shall be effective upon receipt via the Primary Delivery Method:

If to PBC:

PepsiCo Beverages Canada 2095
Matheson Blvd E Mississauga,
Ontario L4W 0G2 Attn: Director,
Foodservice

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

If to Customer:

The Corporation of the City of Sault Ste Marie
Attn: Karen Marlow (Manager of Purchasing)
99 Foster Drive – Level 2

Sault Ste Marie, Ontario, P6A 5X6

7.23. **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. There are no representations and warranties or conditions of sale other than those expressly set out herein.

7.24. **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 contrat 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**

**The Corporation of the City of Sault
Ste Marie – Community Development
& Enterprise Services**

By: _____

By: _____

Print Name: Matthew Miller

Print Name: Christian Provenzano

Title: Unit Sales Manager

Title: Mayor

Date: June 3, 2022

Date: _____

(I have authority to bind the company)

By: _____

By: _____

Print Name: _____

Print Name: Rachel Tyczinski

Title: _____

Title: City Clerk

Date: _____

Date: _____

**Exhibit A
Customer Outlets**

1.	GFL Memorial Gardens	14 Towers equipped with auto-pour heads; 4 Concourse Level Concessions each equipped with 3 towers; 1 Event Level Concession equipped with 1 tower; 1 Suite Level Concession equipped with 1 tower
2.	Northern Community Centre	2 Single Door Floor Model Coolers (main concession & upstairs concession); 2 Towers equipped with auto-pour heads (main concession & upstairs concession)
3.	Bellevue Park	1 Single Door Counter Top Model Cooler; 1 Single Door Floor Model Cooler
4.	Roberta Bondar Park	2 Towers equipped with auto-pour heads; 1 Single Door Counter Top Model Cooler; 1 Double Door Floor Model Cooler
5.	John Rhodes - Field House	1 Double Door Floor Model Cooler
6.	John Rhodes – Pool	1 Single Door Floor Model Cooler
7.	John Rhodes – Community Centre	Concession – 1 Post Mix Machine with 2 towers (auto pour); 1 Single Door Counter Top Model Cooler;

**Exhibit B
Products and Prices**

Product	Package Price	Unit Price
355ml 24pk CSD/NCB	\$10.08	\$.42
591ml 24pk CSD Bottles	\$26.76	\$1.12
591ml 24pk NCB Bottles	\$26.76	\$1.12
591ml 24pk Aquafina Bottles	\$17.28	\$0.72
591ml 12pk Gatorade and G2	\$15.66	\$1.31
710ml 24pk Gatorade and G2	\$47.73	\$1.99

Product	Price	Unit Price
547ml 12pk Pure Leaf	\$23.27	\$1.94
405ml 12pk Starbucks Frappuccino	\$33.87	\$2.82
450ml 12pk Dole Juice	\$18.66	\$1.56
473ml 12pk Rockstar	19.44	\$1.62

Product	Price
20L Bag of Syrup (CSD) Pepsi	\$72.46
12L Bag of Syrup (CSD)	\$43.50
12L Bag of Syrup (NCB)	\$55.74
CO2 -20LB Tank	\$33.67
22oz Cups (1200 units)	\$83.39
32oz Cups (480 units)	\$65.32
22oz Lids (2400 units)	\$83.39
32oz Lids (960 units)	\$58.37

Exhibit C Funding and Support

Exclusivity Rebate – PBC will accrue the amount specified in Exhibit “B” under the “Rebate” column (the “**Exclusivity Rebate**”) for each “raw” Case of Product, as specified in Exhibit “B”, purchased by the Customer and the Outlets. The Exclusivity 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 Exclusivity 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 Exclusivity Rebates for sale to Outlets that are in breach of the terms of this Agreement.

Signing Bonus – PBC will pay to the Customer a one-time signing bonus of \$5,000.00 (the “**Signing Bonus**”). The Signing Bonus shall be earned pro rata and shall be paid within sixty (60) days of execution of this Agreement.

Annual Exclusive Beverage Rights Fee – PBC will pay to the Customer an annual exclusive beverage rights fee of \$12,000.00 (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.

Managed Marketing Support Funds – PBC will allocate an annual marketing support fund in the amount \$3,000.00 (the “**Marketing Support Funds**”) each Year during the Term, which shall be used for such marketing programs as may be mutually agreed by PBC and the Customer with the objective of increasing Product sales in the Outlets. The Marketing Support Funds shall be managed by PBC on a declining basis each applicable Year. Proof of performance and invoice are required in order for PBC to remit any Marketing Support Funds to Customer. Any unspent portion of the Marketing Support Funds in any Year may not be carried over to a subsequent Year.

Vending Commissions – Meyers Munchies (TPO) will pay to the Customer a vending commission (the “**Vending Commission**”) in an amount equal to \$9,000.00 of net revenue actually collected by PBC from vending equipment placed on the premises of the Outlets by PBC in each Year. The Vending Commission shall be calculated and paid by Meyers Munchies (TPO) to the Customer on a Meyers Munchies quarterly basis within thirty (30) days of the end of the applicable Meyers Munchies quarter. A detailed report outlining the calculation of the Vending Commission, the volume of Products sold through each piece of vending equipment by Outlet and an overall summary of the Vending Commission paid to date shall be delivered to the Customer on or about the same time as paying the Vending Commission.

Schedule "B"



June 2, 2022

BETWEEN:

PepsiCo Beverages Canada, a business unit of PEPSICO CANADA ULC, with its head office located at 5205 Statellite Drive, Mississauga, Ontario L4W5J7

- And -

Meyers Munchies, located at 696 Old Garden River Road, Sault Ste. Marie, Ontario P6A 6J8 ("TPO")

Attention: Curtis Meyers, Owner

Dear Sirs:

Re: Vending Supply Arrangements

The following summarizes the terms of our agreement regarding the supply of carbonated and non-carbonated, non-alcoholic beverages and vending equipment:

1. PepsiCo Beverages Canada, a business unit of PepsiCo Canada ULC ("**PBC**") shall sell and provide the carbonated and non-carbonated, non-alcoholic beverages (the "**Products**") to **Meyers Munchies** ("**Customer**") for resale by Customer through vending equipment loaned by PBC to Customer.
2. The term (the "**Term**") of this agreement shall commence on August 1, 2022 (the "**Commencement Date**") (notwithstanding the date of this letter) and, unless earlier terminated in accordance herewith, shall terminate on July 31, 2025.
3. PBC will loan to Customer, at no charge, appropriate equipment for dispensing the Products during the Term (the "**Equipment**"). Customer acknowledges and agrees that the Equipment shall be used solely to display and merchandise PBC's Products. Title to all Equipment shall remain vested in PBC or its affiliate and all Equipment will be returned to PBC upon expiration or termination of this agreement. Customer will be responsible for the full replacement cost of all Equipment not returned, damaged, lost or stolen.
4. PBC will annually provide Customer with a written listing of all Equipment supplied by it. Upon receipt of such listing, Customer will review and verify the location of all Equipment, in writing, to PBC. Failure to provide such verification of the location of all Equipment shall constitute a material breach of this agreement.
5. Meyers Munchies shall have the exclusive right to stock and re-stock, at no cost, 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 Meyers Munchies or its affiliate. The Product mix offered in each such vending machine shall be determined by Meyers Munchies.
6. Either party may terminate this agreement prior to the expiration of the Term: (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. From time to time, factors outside of PBC's control may lead to certain Products being out of stock, which shall not be deemed as breach of this Agreement.

7. Customer shall, at its sole cost and expense, place and maintain insurance throughout the Term in such amounts and types as are sufficient and consistent with prudent industry standards. Customer shall name PBC as a loss payee under its applicable insurance policies and will notify PBC of any loss or damage to the Equipment.
8. Each of PBC and Customer 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.
9. This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.
10. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

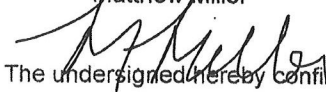
Please confirm your agreement to the above terms and conditions by signing and returning a copy of this letter. We look forward to working with you.

Yours truly,

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

Per:

Matthew Miller



The undersigned hereby confirms its agreement to the above terms and conditions this 2 day of June, 2022.

Meyers Munchies ("TPO")

Per:

Curtis Meyers

Title: Owner

