

Bill No. 599  
2017

By-law No. A.-\_\_\_\_\_

A by-law to authorize and approve an Agreement between The Corporation of the City of London and PepsiCo Beverages Canada to supply cold beverages at the City's three municipal golf courses and for the vending machines at City of London Arenas, Community Centres, Dearness Home, and City Hall, substantially in the form attached and satisfactory to the City Solicitor and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* S.O. 2001, c.25 as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London to enter into an Agreement with PepsiCo Beverages Canada;

AND WHEREAS it is appropriate to authorize the Mayor and the City Clerk to execute the Agreement on behalf of The Corporation of the City of London;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "A" to this by-law, being an Agreement between The Corporation of the City of London and PepsiCo Beverages Canada is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Agreement authorized and approved under Section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on October 17, 2017.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading – October 17, 2017  
Second Reading – October 17, 2017  
Third Reading – October 17, 2017

## Schedule "A"



### BEVERAGE SALES AGREEMENT

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

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

#### Definitions

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

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

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

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

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

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

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

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

#### **1.0 Term**

1.1. The term (the "Term") of this Agreement shall commence on May 1, 2017 (the "Commencement Date") and, unless earlier terminated in accordance herewith, shall terminate on April 30, 2020. Prior to the end of the Term, Customer has the option to extend the Term of this Agreement, at its sole discretion (the "Extended Term").

1.2. Prior to the end of the Term, or Extended Term, if applicable, if Customer determines that it wishes to renew this Agreement based on its review, which will include criteria such as performance, milestone achievement, value added attributes and pricing, Customer shall, in its sole discretion, renew this Agreement for a period of two (2) years, on the same terms and conditions.

#### **2.0 Exclusivity**

2.1. During the Term, except as otherwise set forth in this Agreement, the parties agree the Products shall be the exclusive Beverages sold and dispensed through the Equipment (as defined below). In no event shall there be any beverage products produced or licensed by The Coca-Cola Company, or its bottlers, or any affiliate there, or any other supplier of competitive Beverages in the Equipment.

2.2. PBC acknowledges that the Customer rents space within the Outlets to third parties for short and long term periods. During these periods, if such third parties serve and/or distribute products that are competitive to the Beverages, Customer will not be found in breach of Section 2.1.

#### **3.0 Pricing and Distribution**

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

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

3.3. PBC shall increase Prices by 1.5% 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. 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. Customer or its Authorized FS Distributor shall report and submit to PBC velocity reports indicating volume of and type of products purchased by Outlet and name of Outlet's supplying

distributor (the "Purchase Summary Report"). The Purchase Summary Report shall be submitted to PBC for each quarter not later than 60 days past the close of that quarter.

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

#### **4.0 Funding, Rebates and Financial Commitments**

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

#### **5.0 Additional Customer Performance Requirements**

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

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

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

5.4. At all times during the Term, the Customer agrees to maintain a reasonable distribution of all PBC Products at each of the Outlets.

#### **6.0 Equipment and Service**

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

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

6.3. PBC will provide, at no charge to the Customer, preventative maintenance and service to the Equipment during the Term. PBC will also provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours. PBC will promptly respond to each applicable Customer request, and will use reasonable efforts to

remedy the related Equipment problem as soon as possible. Customer will be responsible for all Equipment costs (including service fees) resulting from Customer's willful or negligent damage or abuse.

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

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

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

## **7.0 General Terms**

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

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

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

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

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

7.4. **Trademarks.** PBC reserves the right to final approval, in its sole discretion, of any and all promotional or other materials utilizing PBC trademarks, and no documents, point of sale, coupons, sell sheets, etc. shall be released without PBC's prior written approval. Any and all trademarked, copyrighted or other material in which a party claims or has proprietary rights shall remain the sole and exclusive property of that party and shall be used by the other solely for the purposes listed and to the extent allowed by this Agreement. Upon Termination or expiry of this Agreement each party shall immediately cease all use of the others trademarks, trade names, slogans, and or other identification of the other party or its products.

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

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

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

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

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

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

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

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

7.13. **Insurance.** Customer 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.

PBC shall at its own expense obtain and maintain until the termination of the contract, and provide the City with evidence of:

a) Comprehensive general liability insurance on an occurrence basis for an amount not less than five million (\$5,000,000.00) dollars and shall include the City as an additional insured with respect to the successful Proponents operations, acts and omissions relating to its obligations under this Agreement, such policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective, products and completed operations, contingent employers liability, cross liability and severability of interest clauses.

c) Automobile liability insurance for an amount not less than two million (\$2,000,000.00) dollars on forms meeting statutory requirements covering all vehicles used in any manner in connection with the performance of the terms of this Agreement.

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

7.15. **Construction.** If any covenant, obligation or provision contained in this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or provision to persons or circumstances other than those as to which it is held invalid or

unenforceable shall not be affected thereby and each covenant, obligation and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

7.16. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

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

**If to PBC:**

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

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

**If to Customer:**

The Corporation of the City of London  
300 Dufferin Avenue  
P.O. Box 5035  
London, Ontario  
N6A 4L9  
Attn: William C. Coxhead /designate  
Managing Director- Parks and Recreation

7.18. **Representations and Warranties.** Each party represents and warrants to the other that it has full power and authority, corporate and otherwise, and has been duly authorized, to enter into and perform its obligations under this Agreement and that neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor compliance with or performance of any of the provisions hereof, will: (a) violate or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with the giving of notice or the passage of time or otherwise, would constitute such a default) under any of the terms, conditions or provisions of any existing agreement or other instrument or obligation to which it is a party, or by which it or any of its properties, assets or operations may be bound or affected; (b) violate any order, writ, injunction, decree, or any statute, rule or regulation, applicable to it or any of its properties, assets, or operations; or (c) require any action, or consent or approval of, or review by, any other party, including without limitation any third party, court or governmental body or other agency, instrumentality or authority, except as shall have been duly obtained and effective as of the date of this Agreement.

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

**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 London**

By:   
Paul Walton

By: \_\_\_\_\_  
Name: Matt Brown

Title: Foodservice Sales Representative

Title: Mayor

Date: 09.08.17

Date: \_\_\_\_\_

(I have authority to bind the corporation)

(I have authority to bind the corporation)

By:   
Melissa Moore

By: \_\_\_\_\_  
Catherine Saunders

Title: Foodservice Sales Manager

Title: City Clerk

Date: 08.06.17

Date: \_\_\_\_\_

(I have authority to bind the corporation)

(I have authority to bind the corporation)

**Exhibit A  
Customer Outlets**

| Cust ID | Cust Name                           | Cust Street                | Cust City | Cust State/Prov | Cust Zip/Postal |
|---------|-------------------------------------|----------------------------|-----------|-----------------|-----------------|
| 3572194 | STORYBOOK GARDENS (FSV)             | 1958 STORYBOOK LANE        | LONDON    | ON              | N6K 4Y6         |
| 9673518 | ARGYLE ARENA FSV                    | 1948 WAVELL ST.            | LONDON    | ON              | N5V 4B7         |
| 9673529 | SILVERWOODS FSV                     | 50 SYCAMORE ST             | LONDON    | ON              | N5Z 1K8         |
| 9673531 | GLEN CAIRN ARENA FSV                | 370 CHIPPENDALE CRESCENT   | LONDON    | ON              | N5Z 3G2         |
| 9673536 | EARL NICHOLS ARENA FSV              | 799 HOMEVIEW RD            | LONDON    | ON              | N6C 5J4         |
| 9673538 | LAMBETH COMMUNITY CENTRE FSV        | 7112 BEATTIE ST            | LONDON    | ON              | N6P 1A2         |
| 9673541 | OAKRIDGE ARENA FSV                  | 825 VALLETTA ST            | LONDON    | ON              | N6H 2Z2         |
| 9673544 | MEDWAY ARENA FSV                    | 119 SHERWOOD FOREST SQUARE | LONDON    | ON              | N5V 4B7         |
| 9673546 | CARLING ARENA (FSV)                 | 675 GROSVENOR ST           | LONDON    | ON              | N5V 3T5         |
| 9673550 | FARQUHARSON ARENA FSV               | 411 TECUMSEH AVE           | LONDON    | ON              | N6C 1T4         |
| 9673554 | KINSMEN ARENA FSV                   | 20 GRANVILLE AVENUE        | LONDON    | ON              | N6H 2C4         |
| 9673558 | NORTH LONDON OPTIMIST COMM. CTR FSV | 1345 CHEAPSIDE ST          | LONDON    | ON              | N5V 3N9         |
| 9673561 | CANADA GAMES AQUATIC CENTRE (FSV)   | 1045 WONDERLAND RD N       | LONDON    | ON              | N6G 2Y9         |
| 9673564 | SOUTH LONDON POOL FSV               | 585 BRADLEY AVE.           | LONDON    | ON              | N6E 3Z8         |
| 9673568 | SOUTH LONDON COMMUNITY CENTRE FSV   | 1119 JALNA BLVD            | LONDON    | ON              | N6E 259         |
| 9673571 | CARLING HEIGHTS OPTIMIST CENTRE FSV | 656 ELIZABETH ST.          | LONDON    | ON              | N5V 6L3         |
| 9673575 | KIWANIS SENIOR CENTRE FSV           | 78 RIVERSIDE DR.           | LONDON    | ON              | N6H 1B4         |
| 9673577 | DEARNESS HOME FSV                   | 710 SOUTHDALE RD           | LONDON    | ON              | N6E 1R8         |
| 9673581 | CITY HALLCAFETERIA FSV              | 300 DUFFERIN AVE           | LONDON    | ON              | N6A 4L9         |
| 9674560 | STRONACH ARENA FSV                  | 1221 SANDFORD STREET       | LONDON    | ON              | N5V 2J8         |
| 9677460 | CITY OF LONDON - MARKET TOWER FSV   | 151 DUNDAS ST 3RD FLOOR    | LONDON    | ON              | N6A 4L6         |
| 9690600 | BOYLE COMMUNITY CENTRE (FSV)        | 530 CHARLOTTE ST           | LONDON    | ON              | N5W 4A4         |
| 9690610 | BYRON OPTIMIST RECREATION CTR (FSV) | 1308 NORMAN AVE            | LONDON    | ON              | N6K 2A3         |

**Exhibit B  
Products and Prices**

| Package  | Price   |
|--|---------|
| <b>CSD / NCB</b> (*CSD incl Brisk; NCB incl Trop & Prem Tea) |         |
| 1L CSD (1/15)  | \$15.00 |
| 1L NCB (1/15)  | \$15.00 |
| 2L CSD (1/8)   | \$12.77 |
| 355ml CN 12pk CSD  | \$5.93  |
| 355ml CN 12pk NCB  | \$5.93  |
| 355ml CN 24pk CSD  | \$11.85 |
| 591ml CSD (1/24)   | \$23.55 |
| 591ml Brisk (1/24)   | \$23.55 |
| 355ml Glass  | \$21.25 |
| <b>Juice / Tea</b>   |         |
| 340ml Dole (1/12)  | \$10.15 |
| 450ml Dole/O Spry (1/12)                                     | \$16.40 |
| 547ml Lipton Pure Leaf                                       | \$21.25 |
| PACT   | \$21.25 |
| <b>Water</b>   |         |
| 1.5L Aqua (1/12)   | \$15.00 |
| 1L Aqua (1/15)   | \$15.00 |
| 500ml Montelier (1/24)                                       | \$18.00 |
| 591ml Aqua (1/24)  | \$13.75 |
| 591ml Aqua Plus (1/12)                                       | \$16.25 |
| <b>AMP / Gatorade / Rockstar / SOBE / Starbucks</b>          |         |
| 250ml CN Rockstar (1/24)                                     | \$28.00 |
| 405ml Frapp (1/12)   | \$21.22 |
| 444ml CN Rockstar (1/12)                                     | \$26.78 |
| 444ml CN Starbucks (1/12)                                    | \$21.22 |
| 473ml CN AMP (1/12)  | \$25.60 |
| 473ml CN Rockstar (1/12)                                     | \$25.60 |
| 591ml Gator (1/12)   | \$16.52 |
| 591ml Gator G2 (1/12)  | \$16.52 |
| 591ml SoBe (1/12)  | \$14.00 |
| 710ml CN Rockstar (1/12)                                     | \$30.00 |
| 710ml Gator (1/24)   | \$36.75 |
| 710ml Gator G2 (1/24)  | \$36.75 |
| M Dew Kickstart  | \$11.43 |
| 355ml 12L Glass ZZE  | \$21.25 |
| <b>Other / Innovation</b>                                    |         |
| Muscle Milk - Pro  | \$33.25 |
| Muscle Milk - Genuine  | \$39.25 |

| Package                     | Price    |
|-----------------------------|----------|
| <b>Fountain</b>             |          |
| Juice                       |          |
| 12L Dole Cranberry          | \$72.37  |
| 12L Margareta               | \$67.62  |
| 12L Dole Orange Juice       | \$89.18  |
| 12L Motz Clamato            | \$70.17  |
| 12L CSD                     | \$35.09  |
| 12L Tea                     | \$44.95  |
| 20L CSD                     | \$56.44  |
| CO2                         | \$25.71  |
| 3.79L Juice Tyne 3/1        | \$109.30 |
| 11.36L Dole Apple Juice     | \$89.18  |
| 11.4L Dole Straw /Kiwi      | \$44.95  |
| BB 3.79L Dole               | \$36.43  |
| BB 3.8L Flavour Shots       | \$25.75  |
| <b>Cups / Lids</b>          |          |
| MAUI                        |          |
| Cups 12 OZ                  | \$108.21 |
| Cups 16 OZ (1200C)          | \$63.65  |
| Cups 24 OZ                  | \$80.63  |
| Cups 32 OZ                  | \$49.66  |
| Cups 44 OZ                  | \$64.08  |
| Lids 12/16/21/24 OZ (2400C) | \$63.65  |
| Lids 32 OZ                  | \$44.56  |
| Lids 44 OZ                  | \$64.08  |

A \$3.25 per raw case rebate will be applied to all current and futur Products...

**Exhibit C**  
**Funding and Support**

**Purchase Rebate** – PBC will accrue the amount of \$3.25 for each raw Case of Product, as specified in Exhibit "B", purchased by the Customer and the Outlets (the "Purchase Rebate"). The Purchase Rebate shall be calculated and paid by PBC to the Customer on a PBC quarterly basis, within sixty (60) days of the end of the applicable PBC quarter. Where Products are purchased from an Authorized FS Distributor, the Purchase Rebate shall be paid after receipt and verification of the Purchase Summary Report (as defined in section 3.6). PBC shall not accrue or pay any Purchase Rebates for sale to Outlets that are in breach of the terms of this Agreement.

**Signing Bonus** – PBC will pay to the Customer a one-time signing bonus of \$20,000.00 (the "Signing Bonus"). The Signing Bonus shall be earned pro rata over the Term, 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 \$17,000.00 (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 (1<sup>st</sup>) day of the applicable Year.

**Upfront Marketing Support Funds** – PBC will provide the Customer with annual marketing support payment in the amount of \$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 will also include golf passes and the parties will mutually agree on a number of passes provided by PBC for each Year during the Term.

**Vending Commissions** – PBC will pay to the Customer a vending commission (the "Vending Commission") in an amount equal to 40% 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 PBC to the Customer on a PBC quarterly basis within thirty (30) days of the end of the applicable PBC 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.