



## BROWNING PUBLIC SCHOOL DISTRICT BEVERAGE SALES AGREEMENT

This sets forth the agreement ("**Agreement**") between Admiral Beverage Corporation, a Wyoming corporation, and its affiliates and/or respective subsidiaries with an office located at 821 Pulliam Avenue, Worland, Wyoming 82401 ("**Admiral**") and Browning Public School, a corporation, with its principal place of business at (the "**Customer**") 129 1<sup>st</sup> Ave. SE, P.O. Box 610 Browning MT 59417 relating to the purchase by the Customer from of the Products. Customer will cause each of its locations to participate in the exclusive beverage requirements set forth under this Agreement.

### Definitions

As used in this Agreement, the following capitalized terms shall have the respective meanings assigned below.

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

"**Gallons**" shall mean the number of gallons of the Postmix Products purchased by the Customer from Admiral.

"**Outlets**" shall mean the Customer facilities identified on Exhibit A, including any restaurant, outlet or other facility in the Customer's system that may be opened or acquired and operated by the Customer 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.

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

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

"**Products**" shall mean Postmix Products, Packaged Products and LCT manufactured, bottled, sold and/or distributed by Admiral.

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



## 1. Term

The term of this Agreement shall commence on June 1, 2022 and expire upon the later of May 31, 2029, or at such time as Customer's collective purchases of Products meets or exceeds a volume threshold (the "Volume Threshold") of N/A Gallons and Cases (the "Term"). For the purposes of measuring the Volume Threshold only, 1 Case of Product shall be deemed equal to 1 Gallon of Product. Thus, in the event the Volume Threshold is not met on or before the date indicated above, then the Term shall automatically extend for the period of time necessary until the Volume Threshold has been met (the "Automatic Extension"). Except for applicable Support Funds, Admiral shall not provide any other consideration to Customer. When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination.

## 2. Scope.

- (A) **Exclusive Pouring Rights.** During the Term of this Agreement Admiral 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.
- (B) **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 Admiral.

## 3. Performance

This Agreement, including all of Admiral's support to the Customer as described below, is contingent upon the Customer complying with all of the following performance criteria:

- (A) **Exclusivity.** Customer will cause the Products to be the exclusive Beverage of their respective types sold, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted at or in connection with the Outlets and by any method or through any medium whatsoever (including without limitation print, broadcast, direct mail, coupons, handbills, displays and signage), whether public or private. In no event shall there be served, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted, beverage products licensed by, or produced by bottlers licensed by, The Coca-Cola Company or any affiliate thereof, or any other supplier of competitive nonalcoholic Beverages.
- (B) **Product Mix.** The Customer represents that it shall purchase and shall cause its Outlets and its franchisees' outlets to purchase Products exclusively from Admiral and that it shall use reasonable efforts to maintain a mix of Packaged Products at each of the Outlets throughout the Term.
- (C) **Fountain Products.** If applicable, Customer shall only use the Postmix Products for use in preparing the fountain beverage products (the "**Fountain Products**"): (i) in accordance with the standards established by Admiral; and (ii) only for immediate or imminent consumption and shall not resell the Postmix Products either to nonaffiliated outlets or to consumers in any form other than the Fountain Products.
- (D) **Brand ID.** If applicable, Customer shall have appropriate brand identification, as identified by Admiral, for each Product served on all menus (including catering), menuboards and postmix dispensing valves at each of the Outlets throughout the Term.





- (E) **Changes in Outlet(s).** The Customer agrees that it shall promptly notify Admiral, in writing, of each new Outlet which is opened or acquired during the Term, as well as of any Outlet which is closed, sold or otherwise disposed of during the Term.

**4. Consideration**

In consideration of the exclusive rights granted to Admiral by Customer over the Term of this Agreement, and provided Customer is not in breach of this Agreement, Admiral shall provide Customer with the following:

(A) **Support Funds. Exhibit A**

- (B) **Free Equipment Loan and Service.** As further outlined in Section 5 below, Admiral shall provide at no cost to Customer or the Outlets necessary dispensing/selling Equipment for Beverages at the Outlets. Such Equipment shall be in sufficient quantities (in light of sales volume) as determined by Admiral to satisfy the Outlet's reasonable needs.

**5. Equipment**

Admiral will loan each Outlet, at no charge, appropriate equipment for dispensing the Products during the Term ("**Equipment**"). Customer agrees that the Equipment shall be exclusively used to display and merchandise the Products, and the Customer shall not use the Equipment to display, stock, advertise, sell or maintain any other products (including on the exterior of the Equipment). Admiral will also provide, at no charge to the Customer, service to the Equipment. Title to such Equipment will remain vested in Admiral or its affiliate and all such Equipment will be returned to Admiral upon expiration or earlier termination of this Agreement. Each Year during the Term or at Admiral's request, Customer shall provide Admiral 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.

Admiral will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. Admiral will also provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours. Admiral will promptly respond to each applicable Customer request, and will use reasonable efforts to remedy the related Equipment problem as soon as possible.

**6. Pricing**

Admiral will provide Customer/Outlets a complete supply of Products during the Term of this Agreement and shall deliver such Products in a timely manner (based on mutually agreed upon delivery schedules). The Packaged Products shall be purchased by the Customer from Admiral at prices established by Admiral. The current pricing schedule for Products is set forth on attached



Exhibit B. Admiral shall provide thirty (30) days' notice of any price increases during the Term.

7. **General Terms**

- (A) **Termination.** Either party may terminate this Agreement 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 party has failed to remedy or cure the breach within thirty (30) days of such notice. If for any reason the Customer closes one or more of its Outlets for a period of ten (10) business days or more, then such event shall be deemed a material breach of this Agreement, and Admiral shall have the right to immediately terminate this Agreement upon five (5) days prior written notice.

In the event of breach of this Agreement by one or more Outlet(s), the parties agree that Admiral 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).

- (B) **Remedies.** If Admiral terminates this Agreement as a result of default by Customer or its Outlets, or if Customer terminates this Agreement other than due to Admiral's failure to cure a breach hereof, then Customer and its Outlets will surrender to Admiral all Equipment provided by Admiral and shall forfeit all funding not paid as of the date of termination. In addition, without prejudice to any other right or remedy available to Admiral, Admiral shall have the right to immediately seek reimbursement from Customer and the Outlets for the following:

(i) An amount reflecting reimbursement for all funding previously advanced by Admiral but not earned by the Customer pursuant to the terms of this Agreement. With regard to the Support Funds, the amount of such reimbursement shall be determined by multiplying the Support Funds by a fraction, the numerator of which is the number of months remaining in the Term at the time such termination occurs and the denominator of which is the total number of months in the Term;

(ii) An amount reflecting reimbursement for the cost of installation, service and refurbishing of Equipment provided during the Term and the cost of removal of all Equipment that has been installed in the Outlets, if applicable; and

(iii) An amount as liquidated damages, for lost sales suffered by Admiral as a result of such termination, equal to the sum of: (a) product of \$5 multiplied by the projected number of Gallons of Postmix, LCT and FB Products that Customer would have been expected to purchase during the remainder of the Term based on the Volume Threshold and the Customer's average annualized purchase rate and (b) the product of \$10 multiplied by the projected number of 24-pk case equivalents of Packaged Products that Customer would have been expected to purchase during the remainder of the Term based on the Volume Threshold and the Customer's average annualized purchase rate.

- (C) **Expiration.** Upon expiration of this Agreement, if Customer has not entered into a further agreement with Admiral for the purchase of the Products, Customer shall surrender to Admiral all Equipment installed in the Outlets, whether leased, loaned or otherwise made available by Admiral.

- (D) **Right of Offset.** Admiral reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer or its Outlets for Products ordered from and delivered by Admiral pursuant to this Agreement.





- (E) **Non-Disclosure.** Except as may otherwise be required by law or legal process, neither party shall disclose to unrelated third parties the terms and conditions of this Agreement without the consent of the other.
- (F) **Indemnification.** Admiral will indemnify and hold the Customer harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; (ii) product liability suits resulting from the use or consumption of the Products; and/or (iii) the negligence or willful misconduct of Admiral. The Customer will indemnify and hold Admiral, its subsidiaries, affiliates or assigns harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the Customer.
- (G) **Assignment.** In the event that a third party acquires Customer or all or a group of the Outlets, or if Customer is acquired or 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, the Customer will be in breach of this Agreement and Admiral may, at its option, terminate this Agreement effective immediately and Customer will pay to Admiral all sums specified in Section 7(B) herein. The Agreement shall not be otherwise assignable without the express written consent of Admiral.
- (H) **Governing Law.** This Agreement shall be governed by the laws of the State of Montana without regard to conflict of laws principles.
- (I) **Price Discrepancy.** Any price discrepancy claim must be submitted to Admiral within 365 days of the date of the invoice in question. This request should be addressed to:
- Accounts Receivable  
Admiral Beverage Corporation  
821 Pulliam Avenue  
Worland, Wyoming 82401
- (J) **Force Majeure.** Admiral will not be responsible for any delay or lack of delivery resulting directly or indirectly from any foreign or domestic embargo, product detention, seizure, act of God, insurrection, war and/or continuance of war, the passage or enactment of any law ordinance, regulation, ruling, or order interfering directly or indirectly with or rendering more burdensome the purchase, production, delivery or payment hereunder, including the lack of the usual means of transportation due to fire, flood, explosion, riot, strike or other acts of nature or man that are beyond the control of Admiral. Subject to the provisions below, this Agreement will be suspended as to both Product and delivery during any of the above force majeure contingencies. Any and all suspended deliveries will resume after such contingencies cease to exist, if possible, and this Agreement will resume in accordance with its terms, unless otherwise provided for herein.
- (K) **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.

- (L) **Notices.** All notices, requests, demands, consents, and other communications shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, as follows:

If to Admiral:

Admiral Beverage Corporation  
1212 15<sup>th</sup> Street North  
Great Falls MT 59401  
Attn: Steve Ford

With a copy to:

Admiral Beverage Corporation  
821 Pulliam Avenue  
Worland, WY 82401  
Attn: Legal Department

If to Customer:

Browning Public School  
129 First Ave S.E.  
P.O. Box 610  
Browning MT 59417

- (M) **Right of First Negotiation/Refusal.** As of the commencement of this Agreement until ninety (90) days prior to the expiration of the Term, the Customer agrees to grant Admiral exclusive negotiation rights with respect to extending the current Agreement or entering into a new agreement for Beverage pouring rights at the 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 except that Customer shall grant Admiral the absolute right of first refusal to match any bona fide offers made by a third party with respect to Beverage pouring rights/sales at the Outlets. The Customer shall provide Admiral with details of any such bona fide offers, and Admiral shall have a fifteen (15) day window to decide whether it will match such offer and exercise its right of first refusal. The parties agree that beverage type/category and not brand names shall be considered for the purposes of determining a match. In the event that Admiral declines to match such offer or fails to respond within the fifteen (15) day period, then Customer shall be free to enter into an agreement with any third party based on terms and conditions equal or favorable to those presented to Admiral in connection with the notice specified herein. Seller and Buyer shall not be liable for delays or failure to perform directly or indirectly resulting from force majeure or events and causes beyond Seller's reasonable control, including but not limited to accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes,





storms, epidemics and pandemics), changes in the law, and delays in obtaining (or the inability to obtain) labor, fuel, supplies, power, materials or services through usual sources at, reasonable prices or in sufficient amounts. If Seller declares a force majeure event, Seller may allocate its supply of Products among its customers, including those not under contract, in any reasonable manner without liability, but the Agreement shall remain otherwise unaffected. Seller shall have no obligation to purchase supplies of the Product to enable it to perform this Agreement. If the force majeure event last for more than three (3) months, Seller may terminate this Agreement by providing the Buyer with at least thirty (30) days prior written notice.

- (N) **Limitations/Offset Rights.** Admiral reserves the right to limit quantities, withhold or deduct funding as an offset to amounts not paid by Customer or terminate this Agreement if the Customer (i) sells Products directly or indirectly for resale outside of the Admiral's exclusive territory where the Outlet operates, (ii) purchases Products outside Admiral's exclusive territory where the Outlet operates and resells such Products within Admiral's exclusive territory or (iii) does not comply with Admiral's payment terms or makes an unauthorized deduction from amounts due.
- (O) **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.
- (P) **Customer Representations.** Customer represents and warrants to Admiral that the execution, delivery and performance of this Agreement by Customer will not violate any agreements with, or rights of, third parties. The Customer and undersigned represent that the undersigned is duly authorized and empowered to bind the Customer to the terms and conditions of this Agreement for the duration of the Term.

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

Admiral Beverage Corporation

Browning Public School District

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



Exhibit B  
Products and Prices

FULL SERVICE VENDING

20oz. Carbonated Soft Drinks	\$1.75	25% commission
20oz. Water	\$1.50	25% commission
Kickstart	\$1.75	25% commission
16oz. Ocean Spray Juice	\$1.75	25% commission
20oz. Gatorade Zero	\$1.75	25% commission
20oz. Sobe Life Water	\$1.75	25% commission
12oz. Cans	\$1.00	25% commission

PACKAGED PRODUCTS PRICING

PRICING

20oz. Carbonated Soft Drinks	\$26.50
20oz. Gatorade	\$26.50
Propel Sport Water	\$26.50
20oz. Water	\$17.00
12oz. Cans	\$10.15
Ocean Spray Juice 12pk.	\$17.00
Sobe Life Water 12pk.	\$17.00
Mt. Dew Kickstart 12pk	\$17.00

PEPSI reserves the right to review these prices annually on the anniversary date of this agreement and to adjust the prices taking account of the same level of discounting from PEPSI'S wholesale prices then in effect. Price adjustments will reflect only cost increases of materials and labor for PEPSI and will not exceed the increases passed along to its other educational customers.





## EXHIBIT A EQUIPMENT & SERVICE

PEPSI shall provide all dispensing equipment necessary to dispense and sell the beverage products listed above. Locations will be determined jointly by representatives of Browning High School and Pepsi-Cola.

All vending equipment and concession equipment will remain the sole property of PEPSI, and equipment will be updated and maintained as needed.

### ESTIMATED CAPITAL ASSISTANCE & SUPPORT

	<u>Total</u>
Upfront payment	\$25,000.00
Softball Scoreboard and shot clocks for 2 gyms	
Scholarships Annually of \$1000	\$ 7,000.00
In kind product of \$150	\$ 1,050.00
\$3.00 per case annual rebate	<u>\$10,500.00</u>
( cases based on approximate 1500 cases annually )	
Total Value	\$43,500.00