LCBO WHOLESALE PROMOTIONAL PROGRAMS

TERMS AND CONDITIONS

The LCBO and the applicant ("Applicant") will be deemed to have entered into a binding agreement (the "Agreement") when the Liquor Control Board of Ontario (the "LCBO") accepts an application for participation in an LCBO Wholesale Promotional Program (the "Application"). The following terms and conditions ("Terms and Conditions"), together with the Application, form the Agreement governing the Applicant's participation in the applicable LCBO Wholesale Promotional Program identified in the Application (the "Program"). In the event of a conflict or inconsistency in any provisions in the Agreement, the Terms and Conditions govern over the Application.

The LCBO reserves the right to change the Terms and Conditions at any time by posting revised Terms and Conditions on the www.doingbusinesswithlcbo.com website (the "LCBO Trade Website"). The Applicant is advised to review the LCBO Trade Website regularly for any changes to the Terms and Conditions.

1. **Right to Reject or Amend:** The LCBO reserves the right, in its sole discretion, to accept or reject the Application, in whole or in part. The LCBO also reserves the right to modify, amend or terminate the Program at any time, in whole or in part, upon prior notice to the Applicant, or without notice where reasonably necessary due to operational, legal, regulatory or policy requirements.

2. **Program:** The LCBO agrees to administer the Program specified in the Application and any related Program overview document available on the LCBO Trade Website in accordance with the terms and conditions of this Agreement.

3. **Term:** The term of the Agreement ("**Term**") shall commence on the date the Application is accepted and shall continue until the Applicant's participation in the Program has ended, which shall not occur until the Applicant has paid all fees, charges and other amounts payable under the Agreement, unless terminated earlier in accordance with the provisions of this Agreement. The term of this Agreement is subject to any and all rights of the LCBO to terminate this Agreement pursuant to the terms of the Agreement or otherwise available to the LCBO at law or in equity.

4. **LCBO Trade Website Terms Incorporated:** The Program descriptions, fees, charges and other terms and conditions applicable to LCBO Wholesale Promotional Programs that are described at the LCBO Trade Website are incorporated into and form part of this Agreement. In the event of any inconsistency among the documents, this Agreement (including the Terms and Conditions) shall prevail.

5. **Fees and Charges:** The Applicant shall pay all fees, charges, and other amounts applicable to its participation in the Program, including any rebates, discounts or similar amounts funded by the Applicant under the Program, as determined by the LCBO in accordance with the Application, the Program requirements and the applicable rates published by the LCBO from time to time. Unless otherwise specified in the Application or by the LCBO in writing, all amounts payable under this Agreement

shall be due and payable in accordance with the payment terms established by the LCBO.

6. **Set-Off:** Without limiting any other right of set-off available to the LCBO, the LCBO may deduct, set-off or otherwise recover any amounts payable by the Applicant under this Agreement, including any administrative fees, rebates, discounts and similar amounts funded by the Applicant under the Program, from any amounts owing by the LCBO to the Applicant or its appointed agent.

7. **Instructions to Bill Third Party:** If the Applicant has provided instructions to invoice a third party for the fees, charges and other amounts under the Program: (i) the Applicant represents and warrants to the LCBO that it is the duly authorized agent of such third party with full authority to assume such liability by and for such third party, (ii) the Applicant continues to be responsible for such fees and charges; and (iii) the Applicant shall pay such fees, charges and other amounts to the LCBO if the LCBO is unable to obtain payment from such third party for any reason, including without limitation, if the third party disputes its liability to pay such amount.

8. **Non-Exclusive:** The Program will be provided on a non-exclusive basis. The LCBO reserves the right to contract with other parties for the same or similar Program activities as those that the Applicant has applied to obtain.

9. **Ownership of Materials:** If applicable to the Program, the LCBO shall be the sole owner of everything that the LCBO develops or creates in the course of administering the Program ("**Materials**"), and the LCBO shall have the sole right to use, sell, licence, publish or otherwise disseminate or transfer rights in such Materials. The LCBO shall be the sole owner of all intellectual, industrial and other proprietary rights of any type in any form protected or protectable under the laws of Canada, any foreign country or any political subdivision of any country ("**Intellectual Property Rights**") in the Materials.

10. **Supplier Content:** If applicable to the Program, any content to be supplied by the Applicant in connection with the Program ("**Supplier Content**") must meet the LCBO's specifications and the specifications of any third party that may distribute the Supplier Content, if applicable. The Applicant shall supply final versions of any Supplier Content to the LCBO prior to the date specified by the LCBO, failing which the LCBO may, at its sole discretion: (i) defer the Applicant's participation in the Program to the earliest practicable date after the Applicant delivers the Supplier Content to the LCBO; (ii) incorporate its own content in place of the content to be provided by the Applicant; or (iii) cancel the Applicant's participation in the Program, in whole or in part. The Applicant hereby grants to LCBO a non-exclusive, limited license to use the Supplier Content and the Applicant's trademarks and trade names in connection with the Program. The LCBO reserves the right to accept or refuse any Supplier Content that the LCBO deems, in the LCBO's sole discretion, to be inappropriate or that does not conform to the LCBO's reasonable specifications for promotional materials.

The Applicant shall be solely responsible for ensuring that all Supplier Content complies with all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, licences, authorizations, including those of the Alcohol and Gaming Commission of Ontario (the "**Applicable Laws**"). The LCBO's approval of any Supplier Content is conditioned upon Supplier's compliance with such Applicable Laws and, as such, the LCBO's approval of any Supplier Content shall not imply a representation or belief that the LCBO believes that such Supplier Content is compliant with Applicable Laws.

11. **Applicant's Representations:** The Applicant represents and warrants to the LCBO that (i) the Applicant is not party to any agreement that prevents it from carrying out its obligations under the Agreement; (ii) the Agreement is legally binding and enforceable against the Applicant; (iii) the Applicant will at all times comply, and cause its directors, officers, employees, agents, consultants, advisers, contractors, subcontractors, partners, affiliates and other representatives ("**Representatives**") to comply, with all Applicable Laws in its performance of its obligations under the Agreement; (iv) all information provided by the Applicant or its Representatives to LCBO and its representatives in connection with the Agreement is, to the best of Supplier's knowledge, true and correct; (v) the Applicant has the power and authority to grant the LCBO the licenses granted in Section 9; and (vi) the Applicant has obtained all consents, approval and/or licenses required for the use of any third party rights in the Supplier Content.

12. **Indemnity:** The Applicant shall indemnify, defend and hold harmless the LCBO, its board members, officers, employees, customers, agents and representatives (the "**Indemnified Parties**") from and against all liabilities, losses, claims, damages, penalties, investigations, actions, proceedings, regulatory actions, suits, demands, levies, costs and expenses (including reasonable legal and advisory fees) of whatever kind or nature, including personal injury, bodily harm, death and property damage, related to: (i) any act or omission of the Applicant or its Representatives in connection with the performance of their obligations under this Agreement; (ii) Applicant's or its Representatives' fraud, negligence or willful misconduct; (iii) the Applicant's or its Representatives' breach of the terms of the Agreement; and (iv) any actual or alleged violation of Applicable Laws by the Applicant or its Representatives.

13. **Supplier Content Indemnity:** The Applicant is responsible for all Supplier Content. The Applicant shall defend, indemnify and save harmless the Indemnified Parties from and against any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and consultant fees), causes of action, action, claim, demand, lawsuit, or other proceeding in any way based upon, occasioned by or attributable to any claim that the Supplier Content infringes or violates any Intellectual Property Right.

14. **Disclaimer:** The LCBO makes no representation or warranty in connection with the subject matter of this Agreement. The LCBO hereby disclaims any and all implied warranties and conditions, including without limitation, all implied warranties of merchantability and fitness for a particular purpose regarding such subject matter. Without limiting the foregoing, the LCBO expressly disclaims any representation or

warranty that participation in the Program will have any material effect or impact upon the sales of any products that are the subject of the Program.

15. **Limitation of Liability:** In no event will LCBO be liable for any special, incidental, indirect, consequential, exemplary or punitive damages or any damages for loss of profits, loss of data, business interruption, or loss of business information relating to the Agreement. These limitations will apply regardless of the claim, and regardless of whether LCBO has been advised of the possibility of such damages. If circumstances arise where the Applicant is entitled to recover damages relating to the Agreement, the aggregate liability of LCBO, if any, will in no event exceed the administrative fees paid by the Applicant to the LCBO to participate in the Program.

16. **Termination Without Cause:** The LCBO may, without liability, cost or penalty, terminate this Agreement, without cause, at any time upon written notice.

17. **Termination With Cause:** The LCBO may, without liability, cost or penalty, terminate this Agreement immediately for cause, if any of the following occur: (a) the Applicant is adjudged bankrupt or is insolvent according to the provisions of the *Bankruptcy and Insolvency Act,* R.S.C 1985, c.B-3, as amended, and the regulations made thereunder; (b) a receiver or trustee of the Applicant's property and affairs is appointed; (c) the Applicant makes as assignment, proposal, compromise, or arrangement for the benefit of creditors, is petitioned into bankruptcy, or files for the appointment of a receiver; (d) the Applicant is in breach of any of the terms of this Agreement; (e) where there is any change in the ownership of control of the Applicant; (f) where the Applicant transfers or assigns any rights under this Agreement; or (g) the supplier of any products that are to be discounted in connection with the Program does not accept the LCBO's purchase order for such products or accepts such purchase order but fails to supply the LCBO such products in the quantity ordered in sufficient time for such product to be available for sale to wholesale customers by the LCBO by the time the Applicant's participation in the Program is scheduled to commence.

18. **Payments upon Termination:** If this Agreement is terminated for any reason, the Applicant shall be responsible for the fees, charges, and other amounts applicable to its participation in the Program, including any rebates, discounts or similar amounts funded by the Applicant under the Program, incurred prior to the termination. If this Agreement is terminated by the LCBO pursuant to Section 9 or Section 16, the Applicant shall also reimburse the LCBO for all expenditures and non-recoverable, non-cancellable obligations incurred by the LCBO in connection with the Applicant's participation in the Program as of the date of termination and the LCBO may pursue all other remedies available at law or in equity.

19. **Confidentiality**: The Applicant may obtain or receive Confidential Information in connection with the Agreement. The Applicant will keep such information confidential and only disclose it to those of its Representatives who need to know it for the sole purpose of performing its obligations under the Agreement, provided such Representatives are under written confidentiality obligations equivalent to those in the Agreement. The Applicant shall not use Confidential Information for any other purpose,

including but not limited to any competitive, commercial, or other strategic purpose unrelated to fulfilling the Agreement. Neither the Applicant, nor its personnel or Representatives, will disclose the Confidential Information, except as permitted by the Agreement, with LCBO's prior written consent, or as required by law. Copies of the Confidential Information may only be made if necessary to the performance of the Agreement. For greater certainty, "**Confidential Information**" means any commercially and/or competitively sensitive information (including, without limitation, pricing and sales information) that LCBO identifies as confidential or should reasonably be treated as confidential, regardless of how such information is communicated and whether or not marked as confidential. Confidential Information includes the terms of the Agreement, all Personal Information ("**Personal Information**"), as such term is defined in the *Freedom of Information and Protection of Privacy Act* (Ontario) and its associated regulations (collectively, "**FIPPA**"), all sales reports submitted by customers in connection with the Program and all information contained in or derived from such reports, and all non-public information related to LCBO's business, assets, customers, contractors, equipment, financials, intellectual property, inventory, ideas, data, software, strategies, operations, pricing, goods, suppliers, plans, services, techniques and specifications. Confidential Information does not include information that is: (i) or becomes publicly available other than through a breach of the Agreement; (ii) lawfully received from a third party without breach of a duty of confidentiality; or (iii) independently developed without reference to the Confidential Information and such development is adequately documented (provided that such exceptions may not apply to Personal Information in certain circumstances). In the event of any unauthorized use, disclosure or disposal of Confidential Information, the Applicant will: (a) immediately notify LCBO, in writing, of the unauthorized incident with full details; (b) provide regular and comprehensive updates about the unauthorized incident to LCBO; (c) take all reasonable steps to respond to, and prevent the recurrence of, the unauthorized incident; and (d) cooperate fully with LCBO and any regulatory body in any related investigation or response.

20. **Assignment:** The Agreement will enure to the benefit of and is binding upon each party and its respective successors and permitted assigns. The Applicant will not assign the Agreement, in whole or in part, without LCBO's prior written consent, which may be subject to such terms as LCBO may determine.

21. **Time:** Time is of the essence in for all of the Applicant's obligations under the Agreement.

22. **Entire Agreement:** The Agreement constitutes the entire understanding and agreement between the parties with respect to its subject matter and supersedes all prior oral and written agreements, negotiations, representations and understandings between the parties regarding such subject matter. This Agreement in electronic form shall be equivalent of an original written paper agreement between the Applicant and the LCBO.

23. **Governing Law:** The Agreement will be governed by the laws of the Province of Ontario and the applicable laws of Canada, without regard to any conflict of laws principles. The parties irrevocably attorn to the non-exclusive jurisdiction of the courts located in the Province of Ontario to determine issues arising from the Agreement.

24. **Waiver:** A party's waiver of any right, or failure to exercise a remedy, is not a continuing waiver of such right or remedy.

25. **Severability**: If any part of the Agreement is held to be invalid or unenforceable, such part will be severed and the rest of the provision and the Agreement will remain in full force and effect.

26. **Survival:** The following sections will survive expiration or termination of the Agreement: Sections 5, 6, 9, 12, 13, 15, 18, 19, 27 and any other provisions which by their nature or express terms are intended to survive expiration or termination of the Agreement.

27. **Remedies:** Notwithstanding any other provision of the Agreement, all rights and remedies of LCBO under the Agreement are in addition to LCBO's other rights and remedies and are cumulative, not alternative.

28. **Parties Independent:** The LCBO and the Applicant are independent contractors. Nothing in the Agreement creates a joint venture, partnership, agency, employment relationship, or appointment under the *Public Service of Ontario Act*. Neither the Applicant nor any of its Representatives has the authority, nor shall represent that they have the authority, to undertake any obligation of any kind on behalf of the LCBO.