

TERMS AND CONDITIONS FOR LCBO MERCHANDISING

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 LCBO Merchandising Program promotional services (“Application”). The following terms and conditions (“Terms and Conditions”), together with the Application and with any Promotional Services Agreement that may be required of the Applicant by the LCBO, form the Agreement regarding the promotional services specified in the Application (the “Promotional Services”). In the event of a conflict or inconsistency in any provisions in the Agreement, (i) the main body of any Promotional Agreement governs over the Terms and Conditions and (ii) 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 <https://www.doingbusinesswithlcbo.com> website (the “LCBO Trade Web Site”). The Applicant is advised to review the LCBO Trade Web Site 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 at any time to modify or amend any Promotional Services specified in the Application in whole or in part upon prior notice to the Applicant.
- 2. Services:** The LCBO agrees to provide the Customer the Promotional Services specified in the Application and any related Promotional Overview document 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 expire upon completion of the Promotional Services, 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 Web Site Terms Incorporated:** The LCBO Merchandising Program descriptions, fees, charges and other terms and conditions applicable to LCBO Merchandising Programs that are described at the LCBO Trade Web Site 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 the LCBO for all Promotional Services provided according to the applicable LCBO rates for such services that are in effect at the date the Promotional Services are provided. Fees shall be calculated according to the rates specified on the LCBO Trade Web Site, unless a different fee has been approved by the LCBO in writing. If the Agreement does not specify the time(s) at which the fees and charges will be due and payable, all fees and charges are due and payable upon when the Promotional Services are performed, unless other payment terms have been approved by the LCBO in writing.
- 6. Instructions to Bill Third Party:** If the Applicant has provided instructions to invoice a third party for the fees and charges for the Promotional Services, (i) the Applicant represents and warrants to the LCBO that it is the duly authorized agent of such third part 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 and charges 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.

7. **Non-Exclusive:** The Promotional Services will be provided on a non-exclusive basis. The LCBO reserves the right to contract with other parties for the same or similar services as those that the Applicant has applied to obtain.
8. **Ownership of Materials:** The LCBO shall be the sole owner of everything that the LCBO develops or creates in the course of performing Promotional Services (“**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.
9. **Customer Content:** Any content to be supplied by the Applicant in connection with the Promotional Services (“**Customer Content**”) must meet the LCBO’s specifications and the specifications of any third party that may distribute the Customer Content. The Applicant shall supply final versions of any Customer Content to the LCBO prior to the date specified by the LCBO, failing which the LCBO may, at its sole discretion, (i) defer the Promotional Services to the earliest practicable date after the Applicant delivers the Customer Content to the LCBO; (ii) incorporate its own content in place of the content to be provided by the Applicant; or (iii) cancel the Promotional Services, in whole or in part. The Applicant hereby grants to LCBO a non-exclusive, limited license to use the Customer Content and the Applicant’s trademarks and trade names in connection with the provision of the Promotional Services. The LCBO reserves the right to accept or refuse any Customer 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 Customer Content complies with all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, licences, authorisations, including those of the Alcohol and Gaming Commission of Ontario (the “**Applicable Laws**”). The LCBO’s approval of any Customer Content is conditioned upon Customer’s compliance with such Applicable Laws and, as such, the LCBO’s approval of any Customer Content shall not imply a representation or belief that the LCBO believes that such Customer Content is compliant with Applicable Laws.

10. **Applicant’s Representations:** The Applicant represents and warrants to the LCBO that (i) the Applicant has full power and authority to enter into this Agreement; (ii) the Applicant’s entering into and performing this Agreement does not violate, conflict with, or result in a material default under any other contract or agreement to which the Applicant is a party, or by which it is bound; and (iii) the Applicant has the power and authority to grant the LCBO the licenses granted in section 7; and (iv) the Applicant has obtained all consents, approval and/or licenses required for the use of any third party rights in the Customer Content.

- 11. Indemnity:** The Applicant is responsible for all damages occasioned wholly or in part by any act or omission of the Applicant or its directors, officers, employees, agents or representatives. 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, actions, claims, demands, lawsuits, or other proceedings, by whomever made, sustained, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, that are in any way based upon, occasioned by or attributable to (i) a breach of any of the Applicant's representations or warranties hereunder; or (ii) anything done or omitted to be done by the Applicant, its representatives or subcontractors, or their respective directors, officers, employees, agents or representatives in the course of performance of the Applicant's obligations under, or otherwise in connection with, this Agreement.
- 12. Customer Content Indemnity:** The Applicant is responsible for all Customer Content. The Applicant shall defend, indemnify and save harmless the LCBO, its members, officers, representatives, agents and employees (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 Customer Content infringes or violates any Intellectual Property Right.
- 13. 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 the Promotional Services will have any material effect or impact upon the sales of any products that are the subject of the Promotional Services.
- 14. Limitation of Liability:** In no event will LCBO, its directors, officers and employees be liable to the Applicant for any special, incidental or consequential damages, whether based on breach of contract, tort (including negligence) or otherwise, whether or not LCBO has been advised of the possibility of such damage. LCBO's liability for damages or alleged damages hereunder, whether in contract, tort or any other legal theory, is limited to, and will not exceed, the fees paid by the Applicant to LCBO for the Promotional Services.
- 15. Termination Without Cause:** The LCBO may, without liability, cost or penalty, terminate this Agreement, without cause, at any time upon written notice.
- 16. 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 an 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 or 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 promoted in connection with the Promotional Services 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 retail sale by the LCBO by time the Promotional Services are scheduled to commence.

17. **Payments upon Termination:** If this Agreement is terminated for any reason, the Applicant shall be responsible for the fees for all Promotional Services performed 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 any Promotional Services that have not been performed as of the date of termination (including, but not limited to, the LCBO's purchase price, transportation costs, taxes, duties, or other charges for any products ordered by the LCBO in reliance on the Applicant's sales forecasts for the Promotional Services, and the value of the LCBO's lost sales based on sales forecasts submitted by Applicants and relied upon by the LCBO in allocating the Promotional Services) and the LCBO may pursue all other remedies available at law or in equity.
18. **Assignment:** The Applicant shall not assign this Agreement or any part therefor, without the prior written consent of the LCBO. This Agreement is binding upon the parties and their successors and permitted assigns.
19. **Time:** Time is of the essence in this Agreement.
20. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement. All prior agreements, representations, statement, negotiations, and undertaking, whether oral or in writing, are superseded in their entirety by this Agreement. No additions, deletions or modifications to the provisions of this Agreement shall be effective unless expressed in writing and duly signed by both parties.
21. **Governing Law:** This Agreement in electronic form shall be equivalent of an original written paper agreement between the Applicant and the LCBO. The LCBO, this web site, the LCBO Trade Web Site and its server are physically located in the Province of Ontario. This Agreement is governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein. The United Nations Convention on the International Sale of Goods (the "Vienna Convention"), and applicable laws of Ontario or Canada giving effect thereto, shall have no application to this Agreement. With respect to any disputes arising hereunder, the parties consent to the exclusive jurisdiction of the courts of the Province of Ontario.
22. **Waiver:** No waiver of any breach of any provision of this Agreement is effective unless expressed in writing and signed by the party granting such waiver.
23. **Force Majeure:** Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Agreement where such delay or failure is caused by any event beyond its reasonable control. An event shall not be considered beyond one's reasonable control is a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without

limiting the generality of the foregoing, force majeure events include natural disasters and acts of war, insurrection and terrorism but do not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Agreement due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Agreement by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Agreement, at law or in equity.

24. **Severability:** If any term or condition of the Agreement, or the application thereof to the parties or to any person or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
25. **Survival:** Sections 6, 8, 9, 11, 12, 13, 14 and 17 continue in force indefinitely, even after this Agreement ends.
26. **Set-Off:** If the Applicant fails to pay the LCBO any amounts owing pursuant to this Agreement, the LCBO may set off any amounts owing from any future order places with the Applicant.
27. **Rights Cumulative:** The express rights and remedies of the LCBO set out in the Agreement are in addition to and shall not limit any other rights and remedies available to the LCBO under the Agreement, at law or in equity.
28. **Parties Independent:** The LCBO and the Applicant are mutually independent. This Agreement does not create or constitute a partnership, joint venture, agency or other form of joint enterprise between the parties. 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.