

# TERMS AND CONDITIONS FOR ACCESS TO TRADING PARTNER WEB-BASED APPLICATIONS

The following terms and conditions govern the use of the Liquor Control Board of Ontario (“**LCBO**”) Trading Partner Web-Based Applications (“**Applications**”), including the New Item Submission System (“**NISS**”), the In-Store Experience Programs System, the Merchandising Promotions Tracking System (“**MPTS**”) and the Web-based Purchase Order System (“**WebPO**”).

In these terms and conditions, “**Trading Partner**” means the LCBO trading partner (such as, for example, an agent, supplier, freight forwarded or carrier) who is authorized by the LCBO to access an Application, and “**User**” means an individual who uses a Trading Partner’s user name and password for an Application. By using an Application, the Trading Partner agrees to be bound by the following terms and conditions.

## A. Terms and Conditions Applicable to Every Application

**The Terms and Conditions in Section A. apply to every Application.**

1. The Trading Partner may apply for user names and passwords for more than one individual. Each such user name and password is to be used by a single person in the Trading Partner’s organization. The Trading Partner confirms that it grants authority to each individual who is given a user name and password to legally bind the Trading Partner. The LCBO will consider all actions taken by an individual using a user name and password assigned to the Trading Partner to be duly authorized by the Trading Partner. The Trading Partner shall be bound by all information, applications, agreements and instructions submitted to the LCBO through the Application using a user name and password assigned to the Trading Partner.
2. The LCBO reserves the following rights, each of which it may exercise in its sole discretion at any time: (i) to limit the time period during which access to the Application will be made available; (ii) to modify the manner in which it makes information or services available through the Application; (iii) to modify the manner in which it reports and presents data in the Application; (iv) to modify the type of information or services that it makes available through the Application; (v) to discontinue providing information or services through the Application to the Trading Partner; and (vi) to cancel this agreement.
3. The Trading Partner shall keep its user names and passwords for the Application confidential. The Trading Partner is responsible for the security of its user names and passwords. The Trading Partner shall follow such procedures, controls, instructions and guides as the LCBO may reasonably require (and in the absence of any such requirements, the Trading Partner shall use commercially reasonable controls and procedures) in connection with the Application and for safeguarding the user names and passwords assigned to the Trading Partner. The Trading Partner’s user names and passwords will enable a User to obtain access to all of the information that the Trading Partner submits or is able to access through the Application or that the LCBO may make available from time to time and to make full use of all related Application features. The Trading Partner authorizes the LCBO to provide access to the Trading Partner’s information or applications to anyone using the Trading Partner’s user names and passwords.
4. The Trading Partner is responsible for: (i) all activities that occur using its user names and passwords, and (ii) notifying the LCBO of any unauthorized use of any of its user names or passwords. The Trading Partner shall notify the LCBO promptly of any changes in the Trading Partner information and User information submitted in connection with the Trading Partner’s application for access to the Application to ensure that it is kept accurate and complete. Without limiting the previous sentence, **the Trading Partner shall notify the LCBO promptly in writing**

**whenever a User ceases to be employed by the Trading Partner or the Trading Partner wishes to revoke a user name and password for any reason.**

5. The LCBO's records will, in the absence of obvious error or except as otherwise agreed by the LCBO, be conclusive evidence of the information the LCBO receives from the Trading Partner, and the transactions between the LCBO and the Trading Partner, resulting from the Trading Partner's use of the Application.
6. Any information provided by the LCBO is believed to be accurate and reliable. However, the LCBO does not guarantee that such information is accurate or complete or current or error-free at all times. Such information is provided for informational purposes only. The LCBO is not responsible for any error in such information. The Trading Partner's exclusive remedy against the LCBO for any error in such information is limited to the correction of any erroneous information.
7. USE OF THE APPLICATION IS AT THE TRADING PARTNER'S SOLE RISK. THE APPLICATION IS PROVIDED STRICTLY ON AN "AS IS", "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE LCBO DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS RELATING TO THE APPLICATION (INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.) LCBO DOES NOT WARRANT, REPRESENT, GUARANTEE OR COVENANT THAT THE APPLICATION WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES LCBO MAKE ANY WARRANTY, REPRESENTATION, GUARANTEE OR COVENANT AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE APPLICATION OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION OR SERVICE ON THE APPLICATION. THE LCBO SHALL NOT BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE ACCESS TO THE APPLICATION OR INFORMATION OR SERVICES AVAILABLE ON THE APPLICATION FOR ANY REASON WHATSOEVER INCLUDING, WITHOUT LIMITATION, SYSTEMS FAILURE OR TECHNOLOGICAL FAILURE OF THE LCBO'S WEB SITE OR THE WEB.
8. THE DOWNLOADING OF MATERIALS FROM THE APPLICATION IS DONE AT THE TRADING PARTNER'S OWN RISK. THE LCBO DOES NOT AT ANY TIME GUARANTEE, COVENANT, REPRESENT OR WARRANT THAT SUCH MATERIALS ARE FREE OF VIRUSES, WORMS, TROJAN HORSES OR OTHER DESTRUCTIVE CODE. THE TRADING PARTNER IS RESPONSIBLE FOR IMPLEMENTING SAFEGUARDS TO PROTECT ITS COMPUTER SYSTEM AND DATA.
9. IN NO EVENT WILL THE LCBO BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, COMPENSATORY OR PUNITIVE DAMAGES OR LOSSES, OR DAMAGES FOR LOSS OF INCOME, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, FAILURE TO REALIZE EXPECTED BUSINESS OPPORTUNITIES, LOSS OF DATA OR BUSINESS INFORMATION, OR LOSS OF OR DAMAGE TO PROPERTY, OR CLAIMS OF THIRD PARTIES, OR OTHER PECUNIARY LOSS, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OF THE APPLICATION, EVEN IF THE LCBO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.
10. The Trading Partner shall not access or try to access restricted areas of the LCBO's computer system or perform or try to perform functions that are not authorized under this agreement or to disrupt, impair or interfere with the LCBO's computer system. If the LCBO reasonably suspects that the Trading Partner is doing so or attempting to do so, then the LCBO may take such action as the LCBO considers appropriate, without notice to the Trading Partner, including suspending the Trading Partner's access to the Application, cancelling the Trading Partner's access to the Application and cancelling this agreement.

11. This agreement in electronic form is the equivalent of an original written paper agreement between the Trading Partner and the LCBO. The LCBO, this Web Site and its server are physically located in the Province of Ontario. This agreement shall be governed by, subject to, and interpreted in accordance with the laws of the Province of Ontario and the parties agree to submit any disputes arising in connection with this agreement to the jurisdiction of the courts of the Province of Ontario.
12. All obligations of the parties and provisions of this agreement (including, without limitation, obligations of indemnification and provisions with respect to disclaimers and limitations of liability) which expressly or by implication survive termination or expiration of this agreement survive termination or expiration of this agreement. In the event of termination, this agreement continues to apply and be binding upon the Trading Partner with respect to the Trading Partner's prior use of the Application.
13. The Trading Partner shall indemnify, defend and hold LCBO harmless from and against any and all claims, liabilities, damages, demands, suits, actions, losses or expenses (including all legal fees) (collectively "**Claims**") arising out of (i) the Trading Partner's use of the Application, (ii) any act or omission by the Trading Partner or its employees or agents that results in loss, damage, interference with or disruption to, the Application or the equipment or facilities of LCBO or any unauthorized or prohibited access to computer systems and data, or (iii) the Trading Partner's breach of this agreement.
14. The LCBO may change these terms and conditions at any time. Any change shall be effective immediately upon either a posting of such change on the Application or upon notification of the Trading Partner by electronic mail or conventional mail. Any use by the Trading Partner of the Application shall constitute the Trading Partner's agreement with any such change.
15. If any provision of this agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (ii) the remaining provisions shall remain in full force and effect.

## **B. Additional Terms and Conditions Applicable to NISS**

**The Terms and Conditions in Section B. apply to the NISS, in addition to the Terms and Conditions in Section A.**

1. With the user names and passwords issued to the Trading Partner for the NISS, the Trading Partner will be able to electronically access the LCBO's NISS. The Trading Partner understands that access to the NISS enables a User to view information regarding beverage alcohol products that the LCBO wishes to purchase at that time ("**Product Needs Information**"), to view letters issued by the LCBO to the Trading Partner (or to a supplier that the Trading Partner represents) regarding the terms under which the LCBO's may issue purchase orders to such party ("**Letters of Commitment**"), to accept or decline Letters of Commitment for the Trading Partner and to submit additional information that may be required by the LCBO in connection with Letters of Commitment.
2. No information communicated through the NISS (including, without limitation, a Letter of Commitment) constitutes an offer to buy products or an acceptance of an offer to sell products. The LCBO is not required to purchase any products described in a Letter of Commitment unless and until the LCBO issues a purchase order for such products. Any offer to purchase products is subject to the terms and conditions of any applicable contract or LCBO purchase order. Every LCBO purchase order is subject to and incorporates by reference the LCBO's [standard purchase order terms and conditions](#) for beverage alcohol products ("**Purchase Order Terms and Conditions**") in effect at the date of such purchase order. The terms and conditions in a Letter of

Commitment are in addition to those specified in a purchase order. The Trading Partner is responsible for reviewing the LCBO's Purchase Order Terms and Conditions prior to accepting any LCBO purchase order.

**C. Additional Terms and Conditions Applicable to the In-Store Experience Programs System**

**The Terms and Conditions in Section C. apply to the In-Store Experience Programs System, in addition to the Terms and Conditions in Section A.**

1. With the user names and passwords issued to the Trading Partner, the Trading Partner will be able to electronically access the LCBO's In-Store Experience Programs System. The Trading Partner understands that access to the In-Store Experience Programs System enables a User to submit applications for In-Store Tastings or Special Events Services that the LCBO makes available from time to time.
2. The Trading Partner may apply for In-Store Tastings or Special Events Services by submitting an application electronically using the In-Store Experience Programs System or any other application document that the LCBO specifies.
3. The LCBO reserves the right, in its sole discretion, to accept or reject, in whole or in part, any application for In-Store Tastings or Special Events Services submitted by the Trading Partner.
4. The In-Store Tastings or Special Events Services that are available, the terms and conditions that apply to the In-Store Tastings or Special Events Services, and the LCBO's fees and charges for In-Store Tastings or Special Events Services are available at [Doing Business with LCBO](#). The Trading Partner acknowledges that it has read and understands the current terms and conditions that apply to the In-Store Tastings or Special Events Services available from the LCBO.
5. The LCBO reserves the right, in its sole discretion, to modify the terms and conditions applicable to the In-Store Tastings or Special Events Services (including, without limitation, the applicable charges) at any time. Any changes in the terms and conditions applicable to In-Store Tastings or Special Events Services shall be deemed to be effective when they are published by the LCBO on the LCBO's Trade Resources Web Site or otherwise communicated to the Trading Partner in another document or format. The Trading Partner understands that it is responsible for reviewing the applicable terms and conditions whenever it submits an application for In-Store Tastings or Special Events Services.
6. Without limiting the provisions of section 5, the LCBO reserves the right to amend the fees and charges for In-Store Tastings or Special Events Services from time to time. Where an application for In-Store Tastings or Special Events Services submitted by the Trading Partner has been accepted by the LCBO, the Trading Partner agrees to pay all applicable fees and charges in effect at that time (unless other compensation arrangements have been mutually agreed upon).

**D. Additional Terms and Conditions Applicable to the MPTS**

**The Terms and Conditions in Section D. apply to the In-Store Experience Programs System, in addition to the Terms and Conditions in Section A.**

1. With the user names and passwords issued to the Trading Partner, the Trading Partner will be able to electronically access the LCBO's MPTS. The Trading Partner understands that access to the MPTS enables a User to submit applications for promotional services pursuant to the LCBO Merchandising Programs that are offered by the LCBO from time to time.
2. The Trading Partner may apply for Promotional Services by submitting an application electronically using the MPTS or any other application document that the LCBO specifies.

3. The LCBO reserves the right, in its sole discretion, to accept or reject, in whole or in part, any application for Promotional Services submitted by the Trading Partner.
4. The Trading Partner acknowledges and agrees that any Promotional Services provided by the LCBO are subject to the LCBO's standard terms and conditions applicable to the LCBO Merchandising Programs that are in effect at the date the Promotional Services are provided by the LCBO.
5. The Promotional Services that are available, the terms and conditions that apply to the Promotional Services, and the LCBO's fees and charges for Promotional Services are described at [Doing Business with LCBO](#). The Trading Partner acknowledges that it has read and understands the current terms and conditions that apply to the Promotional Services available from the LCBO.
6. The LCBO reserves the right, in its sole discretion, to modify the Merchandising Program and terms and conditions applicable to the Promotional Services (including, without limitation, the applicable charges) at any time. Any changes in the terms and conditions applicable to the Promotional Services shall be deemed to be effective when they are published by the LCBO on the LCBO's Trade Resources Web Site or otherwise communicated to the Trading Partner in another document or format. The Trading Partner understands that it is responsible for reviewing the applicable terms and conditions whenever it submits an application for Promotional Services.
7. Without limiting the provisions of section 6, the LCBO reserves the right to amend the fees and charges for Promotional Services from time to time. Where an application for Promotional Services submitted by the Trading Partner has been accepted by the LCBO, the Trading Partner agrees to pay all applicable fees and charges in effect at that time (unless other compensation arrangements have been mutually agreed upon).
8. If in any application for Promotional Services the Trading Partner has provided instructions to invoice a third party for the fees and charges for the Promotional Services, (i) the Trading Partner shall be deemed to have represented and warranted 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 Trading Partner continues to be responsible for such fees and charges; and (iii) the Trading Partner 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.

**E. Additional Terms and Conditions Applicable to the WebPO**

**The Terms and Conditions in Section E. apply to the WebPO, in addition to the Terms and Conditions in Section A.**

1. The user name and password assigned to the Trading Partner's designated administrator enables the Trading Partner to communicate requests to change its company information and to add or delete Users by issuing or cancelling user names and passwords for the Trading Partner. The Trading Partner agrees that any communication that the LCBO receives from a person using the Trading Partner's administrator user name and password is authorized by the Trading Partner and that the LCBO is authorized to act upon such communication.
2. With the user names and passwords issued to the Trading Partner, the Trading Partner will be able to electronically access the LCBO's WebPO. The Trading Partner understands that access to the WebPO enables a User to view, accept, decline and modify purchase orders issued by the LCBO to the Trading Partner.

3. Every LCBO purchase order is subject to and incorporates by reference the LCBO's [standard purchase order terms and conditions](#) for beverage alcohol products ("**Purchase Order Terms and Conditions**") in effect at the date of such purchase order. The Trading Partner is responsible for reviewing the LCBO's Purchase Order Terms and Conditions prior to accepting any LCBO purchase order.