

THIS AGREEMENT dated effective the _____ day of _____, 2022 (the “Effective Date”)

**AGREEMENT RELATING TO THE OPERATION OF
A WAREHOUSE UNDER THE LIQUOR WAREHOUSE PROGRAM**

BETWEEN: **HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, AS REPRESENTED BY THE GENERAL MANAGER OF THE LIQUOR DISTRIBUTION BRANCH**

(the “LDB”)

AND: _____ (Inc. No. _____)

[NAME] (the “Operator”)

WHEREAS:

- A. The LDB has approved the Operator to operate the Warehouse, store Product, conduct customs clearance and transfer Product to a Distribution Centre, subject to and in accordance with terms and conditions set out in this Agreement.
- B. As part of LDB’s Private Liquor Warehouse Program, the Operator may be authorized by one or more Agents on behalf of Manufacturers to store Product in the Warehouse, thus facilitating the importation and storage of Product pending its transfer to a Distribution Centre.
- C. This Agreement is intended to be the entire agreement between the parties with respect to its subject matter and to supersede and replace any prior agreements, authorizations and orders of the General Manager with respect to the subject matter of this Agreement, if any, except as otherwise provided herein.
- D. This Agreement is authorized under Section 5 of the *Liquor Distribution Act*.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

ARTICLE 1 – INTERPRETATION

1.1 In this Agreement unless the context requires otherwise:

- (a) “**Agent**” means a person (which, for certainty, may be the Operator) that holds a valid agent’s license issued by the Liquor and Cannabis Regulation Branch, and that is authorized by a supplier of Product to handle certain matters concerning the sale of the Product in British Columbia, in accordance with an authorization which has been provided to the LDB in the LDB’s prescribed form;
- (b) “**Applicable Laws**” means all laws, statutes, regulations, bylaws, orders, directives, policies and procedures imposed by any governmental authority,

including the LDB, which affect the importation, storage, customs clearance, sale or transfer of Product or in any way relates to the Authorized Activities or the Operator's obligations under this Agreement, including the *Liquor Distribution Act*, *Liquor Control and Licensing Act*, the *Financial Administration Act*, the *Customs Act (Canada)*, the *Excise Act (Canada)*, the *Excise Act (2001) (Canada)*, the *Food and Drugs Act (Canada)* and any regulations thereunder;

- (c) “**Application**” means the application that was submitted by the Operator to the LDB for approval to operate the Warehouse, and includes all information, statements, documents, materials, drawings and floor plans submitted by the Operator to the LDB in connection with such application;
- (c.1) “**Audit Period**” means the time period, as determined in accordance with such LDB audit policy and/or procedures as may be in effect from time to time, the reporting for which is under review when the LDB conducts an inventory count or a review of Warehouse inventory and/or Records;
- (d) “**Authorized Activities**” means the activities the LDB has authorized the Operator to do in accordance with this Agreement, including operation of the Warehouse, storage of Product, customs clearance and transfer of Product to a Distribution Centre;
- (e) “**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in British Columbia;
- (f) “**Distribution Centre**” means either of the LDB's distribution centres, located at 7003 – 72nd Street in Delta, BC and 9881 Dallas Drive in Kamloops, BC, or such other location as may be specified in writing by the LDB;
- (g) “**General Manager**” has the meaning given to it in the *Liquor Distribution Act*;
- (h) “**Lost Product**” means Product which was under the Operator's possession or control, and which cannot be accounted for by the Operator as and when required by the LDB;
- (i) “**Prime**” means the prime lending rate of the principal banker of his Majesty the King in right of the Province of British Columbia;
- (j) “**Product**” means registered liquor that is imported from outside of Canada pursuant to a Purchase Order and stored in the Warehouse under agreements between the Operator and Agents;
- (k) “**Protected Information**” means any and all
 - i. information and records of information the Operator is required to treat as confidential under this Agreement; and
 - ii. records, the integrity or availability of which are to be preserved by the Operator under this Agreement, which in the case of records not falling within paragraph (i) above, are marked or instructed by the LDB to be so

preserved or otherwise treated as “Protected Information” under this Agreement;

- (l) “**Purchase Order**” includes an import purchase order, an excise purchase order (for import wine, spirits, and refreshment beverages), release purchase order (for import beer) and any other purchase order generated by the LDB relating to Product that the LDB may issue;
- (m) “**Records**” means those records described in section 4.2, and all other records that would be kept by a prudent owner of the Operator’s type and size of business that would enable the Operator to accurately and at all times account for the Product and how it is disposed of;
- (n) “**Systems**” means any systems, subsystems, equipment, infrastructure, networks, management networks, servers, hardware and software the Operator uses in relation to this Agreement, but excluding any the LDB owns or makes available to the Operator for the Operator’s use in relation to this Agreement (if any);
- (o) “**Term**” means the period of time commencing on the Effective Date and ending when this Agreement is terminated in accordance with its terms;
- (p) “**Warehouse**” means any and all locations operated by the Operator that are authorized in writing by the LDB to be used as a warehouse under this Agreement, in which the Operator stores Product pending its transfer to the LDB; and
- (q) “**Wholesale Price**” means the LDB wholesale price applicable to wholesale customers and hospitality customers.

ARTICLE 2 – OPERATOR’S REPRESENTATIONS, WARRANTIES AND COVENANTS

- 2.1 The Operator represents and warrants to the LDB that, at the date of execution and throughout the Term:
- (a) all information, statements, documents and reports furnished or submitted by the Operator to the LDB in connection with the Application and this Agreement are in all material respects true, correct and complete;
 - (b) the Operator has sufficient trained staff, facilities, materials, appropriate equipment and sub contractual or other agreements in place and available to enable the Operator to fully perform the Authorized Activities and the Operator’s obligations under this Agreement;
 - (c) the Operator holds all permits, licenses, approvals and statutory authorizations issued by any government or government agency that are necessary for the performance of the Authorized Activities and the Operator’s obligations under this Agreement;
 - (d) either (i) the Operator owns in fee simple the land on which the Warehouse is located, or (ii) the Operator leases the land on which the Warehouse is located

and the lease is in good standing and in full force and effect, the Operator is not in default under the lease, and the use of the land for a Warehouse is permitted under the lease;

- (e) the Operator operates the Warehouse and carries out the Authorized Activities and all of its obligations under this Agreement in compliance with all Applicable Laws; and
- (f) if the Operator is not an individual:
 - (i) the Operator has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, the Operator;
 - (ii) this Agreement has been legally and properly executed by, or on behalf of, the Operator and is legally binding upon and enforceable against the Operator in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; and
 - (iii) all of the legal and beneficial owners, and the officers and directors, of the Operator are as set out in the Application, if required, subject to any changes referred to in section 2.2(i).

2.2 The Operator covenants and agrees with the LDB at all times during the Term:

- (a) to take all steps necessary to ensure that the representations and warranties in section 2.1 are true and correct at all times;
- (b) to comply with and fulfill all of its obligations under this Agreement at all times during the Term;
- (c) to carry out the Authorized Activities and all of its obligations under this Agreement to the highest commercially reasonable standard of care, skill and diligence, unless otherwise specified in this Agreement;
- (d) to ensure that all persons employed or retained to carry out the Authorized Activities and the Operator's obligations under this Agreement are qualified and competent to perform them and are properly trained, instructed and supervised, and to only permit individual personnel to have access to Records or Product if, after
 - (i) verifying their identity and relevant education, professional qualifications and employment history;
 - (ii) completing a criminal record check;
 - (iii) requiring personnel to proactively disclose criminal offences to the Operator unless prohibited by applicable law;
 - (iv) performing any additional screening this Agreement or any Applicable Laws require; and

- (v) performing any additional background checks the Operator considers appropriate,

the Operator is satisfied that the individual does not constitute an unreasonable security risk;

- (e) to supply and pay for all labour, materials, equipment, tools, facilities, approvals and licenses necessary or advisable to carry out the Operator's obligations under this Agreement;
- (f) not to assign, transfer or mortgage its interest in the land on which the Warehouse is located without prior written notice to the LDB;
- (g) if the Operator holds a leasehold interest in the land on which the Warehouse is located, not to do or omit to do anything that would cause it to be in default under the lease;
- (h) without limiting any other obligation of the Operator under this Agreement, to comply with all Applicable Laws in the performance of the Operator's obligations under this Agreement;
- (i) if the Operator is not an individual, immediately notify the LDB in writing of any change in control referred to in section 12.2, and any change in the officers or directors of the Operator;
- (j) if at any time the Agent is an affiliate of the Operator, as defined in the *Business Corporations Act*, or is otherwise not at arms' length with the Operator, the Operator will immediately notify the LDB of the same and provide such information as the LDB may request; and
- (k) to bear and be solely responsible for all costs associated with the Operator conducting the Authorized Activities unless the parties expressly agree otherwise in writing.

ARTICLE 3 – CONDITION OF THE WAREHOUSE AND PHYSICAL SECURITY

3.1 The Operator agrees to:

- (a) maintain the Warehouse with the configuration, layout, condition and security features approved by the LDB;
- (b) not make any changes to the physical configuration, layout, condition or security of the Warehouse as described in the Application or as approved by the LDB in accordance with this Agreement, unless the Operator first submits to the LDB a request for approval together with detailed drawings and specifications showing the requested changes, and the LDB has approved such changes in writing, such approval to be in the discretion of the LDB; and
- (c) immediately notify the LDB and seek inspection of the Warehouse by the LDB upon substantial completion of any changes referred to in paragraph (b) above.

- 3.2 The Operator must ensure that adequate physical controls and processes are implemented to ensure that only authorized persons have physical access to the Warehouse, Products and Systems.
- 3.3 The Operator must develop, document and disseminate a physical and security policy that it reviews at least annually.
- 3.4 The Operator must review physical access logs for one rolling year and review at least once quarterly to ensure all users are up to date and authorized.
- 3.5 The Operator must ensure that physical security of the Warehouse and Systems meets a standard as would reasonably be expected to provide adequate protection based on the nature and value of the Records being protected and the environment in which the Systems and Products are located. At minimum, this should include:
 - (a) hardening of the perimeter of the Warehouse;
 - (b) physical separation of public and restricted spaces;
 - (c) intrusion alarm system partitioned to ensure areas containing Protected Information and Products are protected at all times;
 - (d) access control systems and/or key management processes;
 - (e) visitor and identity management processes, including access logs and identification badges; and
 - (f) a CCTV system with a mandatory 60 day retention of the bonded area or Warehouse if there is not a caged area.

ARTICLE 4 – STORAGE AND TRANSFER OF PRODUCT

- 4.1 All Product in the Operator's possession or control must be imported into the Province under a Purchase Order issued by the LDB.
- 4.2 On a daily basis, the Operator must create Records recording Product in the Operator's possession or control as inventory in the Warehouse, showing the appropriate tax status and including a reference to the Purchase Order under which the Product was imported.
- 4.3 On a daily basis, the Operator must report the Warehouse inventory to the LDB, in the form and manner required by the LDB, indicating the appropriate tax status and a reference to the Purchase Order under which the Product was imported.
- 4.4 The Operator must maintain damaged Product in an identifiable location where it can be made available for inspection and confirmation by the LDB, if required by the LDB.

- 4.5 On behalf of Agents, the Operator must accept Excise Purchase Orders and Release Purchase Orders issued by the LDB and transfer Product to the LDB as specified in the Purchase Orders.
- 4.6 On behalf of Agents, and following the required procedures as set out in the Applicable Laws, the Operator may export Product out of British Columbia or transfer Product to another appropriately licensed warehouse in another Canadian liquor jurisdiction or outside of Canada.

ARTICLE 5 – RECORDS, INVENTORY COUNTS, INSPECTION AND AUDIT REQUIREMENTS

- 5.1 The Operator must:
- (a) create and maintain the Records, and preserve the integrity and availability of the Records;
 - (b) make reasonable security arrangements to protect the Records from unauthorized access, collection, use, disclosure, alteration or disposal for as long as they are required to be maintained;
 - (c) securely erase or destroy Records after they are no longer required by Applicable Laws or this Agreement to be kept, whichever is longer;
 - (d) securely erase Records that contain Protected Information when instructed in writing by the LDB, and any backups, transitory and extra copies of Records that contain Protected Information when no longer needed in relation to this Agreement;
 - (e) ensure that Protected Information on magnetic media are securely wiped by overwriting using procedures and adequate media wiping solutions, degaussing, or other method in line with security best practices for disposal of media.
- 5.2 The Operator must retain the Records for a period of six years, or such longer period as may be required by Applicable Laws. All of the Operator's obligations relating to storage, disposal and security of the Records will continue to apply during the period in which the Records must be retained and until the Records are disposed of in accordance with this Agreement, even if this Agreement terminates.
- 5.3 In addition to any obligation the Operator may have to notify or assist the LDB under Applicable Laws or this Agreement, if the Operator is required (including under an enactment or a subpoena, warrant, order, demand or other request from a court, government agency or other legal authority) to produce, provide access to or otherwise disclose any Protected Information, the Operator must, unless prohibited by applicable law, immediately notify and provide reasonable assistance to the LDB so the LDB may seek a protective order or other remedy to prevent or limit the disclosure.
- 5.4 In addition to any obligations the Operator may have under Applicable Laws, including the *Freedom of Information and Protection of Privacy Act*, or this Agreement, if, during or after the Term, the Operator discovers a suspected or actual unwanted or unexpected event or series of events that threaten the privacy or security of Protected Information (including its unauthorized access, collection, use, disclosure, alteration, storage or disposal) or Systems, whether accidental or deliberate, the Operator must:

- (a) immediately report the particulars of such incident to, and follow the instructions of, the LDB, confirming any oral report with a notice in writing to the LDB as soon as reasonably practicable (if unable to contact the LDB's contract manager or other designated contact for this Agreement, the Operator must follow the procedure for reporting and managing information incidents on the Province's website at <https://www2.gov.bc.ca/gov/content/governments/services-for-government/information-management-technology/privacy/privacy-breaches>; and
- (b) make every reasonable effort to recover the records containing Protected Information and contain and remediate such incident, following such reasonable instructions as the LDB may give;
- 5.5 Upon the LDB's request, the Operator must:
- (a) provide investigative support to the LDB to enable the LDB to conduct its own security investigations into incidents (including security breaches or compromises) affecting the Systems or Protected Information; and
- (b) provide the LDB with timely access via an on-line, real-time Graphic User Interface (GUI) facility to any security event logs for Systems to assist the LDB in conducting the LDB's security investigations, or in case of technical limitations, other method acceptable to the LDB (for example, on-site visits to enable direct access to those security event logs).
- 5.6 The Operator must work with and support the LDB if the LDB needs assistance in legal proceedings in relation to security investigations related to Protected Information or Systems.
- 5.7 The Operator must conduct inventory counts of all Product in the Operator's possession or control at least once annually, or when required by the LDB. Such counts must be performed at the Operator's cost, and if specifically requested by the LDB, must be conducted by a mutually agreed upon independent third party qualified to perform such services at the Operator's cost. The Operator must:
- (a) give the LDB at least 90 days' advance written notice of the date on which the count will occur;
- (b) cooperate with LDB on planning the count;
- (c) conduct the count in accordance with any requirements of the LDB;
- (d) permit the LDB to attend the count; and
- (e) permit the LDB to perform such count validation procedures as may be required.
- 5.8 The Operator must make the Records available to the LDB or its authorized representative, when required by the LDB, to the satisfaction of the LDB. If approval of any person with whom the Operator contracts to provide storage and delivery services is required in order to give the LDB access to the Records, the Operator will obtain such consent. Any of the LDB's authorized representatives may inspect, copy, or audit any Record at any time.

- 5.9 Without limiting section 5.7, the LDB may at any time in its sole discretion conduct an inspection or audit in the Warehouse to verify inventory in the Warehouse or any other location where Product is stored or under the Operator's possession or control, and to verify that inventory is being accurately reported in accordance with section 4.3. The Operator will give the LDB and its employees, contractors and agents full and unrestricted access to the Warehouse for the purpose of conducting any such inspection or audit.
- 5.10 If any inspection or audit of the Warehouse or Records discloses that the Operator has acted in a manner contrary to the terms and conditions of this Agreement, the Operator must pay the LDB upon demand the expenses associated with the inspection or audit, and any payment assessed as due and owing as a result of the Operator's failure to comply, as determined by the LDB using reasonable audit standards.

ARTICLE 6 – PRODUCT NOT ACCOUNTED FOR

- 6.1 If the LDB determines after an inventory count or a review of Warehouse inventory and/or Records that there are overages related to Product under the Operator's possession or control, such Product must be brought back into Warehouse inventory in accordance with Purchase Orders issued by the LDB to the Agent
- 6.2 If the LDB determines after an inventory count or a review of Warehouse inventory and/or Records, that there is Lost Product, the Operator will pay to the LDB an amount equal to:
- (a) mark-up calculated based on the Lost Product having been sold at the Wholesale Price, as applicable in the Audit Period;
 - (b) interest on the mark-up charged on the Lost Product, calculated at a rate of three percentage points above Prime, compounded monthly for the duration of the Audit Period;
 - (c) the container deposits and container recycling fees associated with the Lost Product; and
 - (d) any applicable taxes.

The LDB will issue you an invoice for these amounts, after which interest may be charged on any outstanding accounts in accordance with Applicable Laws.

- 6.3 The Operator must also pay to the LDB any amounts owing for Warehouse shortages resulting from the Operator's voluntary disclosure of such shortages or arising as a result of Canada Border Services Agency audits or Canada Revenue Agency excise duty audits.
- 6.4 Amounts owing for Lost Product under section 6.2 or section 6.3 may be collected by the LDB by way of set off from any amounts the LDB owes the Operator, howsoever arising.

- 6.5 All amounts payable by the Operator to the LDB under this Article will be payable upon demand.

ARTICLE 7 – INSURANCE AND INDEMNITY

- 7.1 The Operator must purchase and maintain sufficient insurance, as a reasonably prudent business operator, to protect the Operator's operations, Warehouse and other facilities, and the Product under the Operator's possession or control, to cover the Operator's liabilities under this Agreement and to ensure the Operator's ability to indemnify the LDB in accordance with the terms of this Agreement. The Operator must provide the LDB with a copy of the Operator's Certificate of Insurance upon request.
- 7.2 The Operator must indemnify and save harmless the LDB and the LDB's employees, agents and contractors from any loss, claim (including any claim of infringement of third-party intellectual property rights), damage award, action, cause of action, cost or expense that the LDB or any of the LDB's employees, agents or contractors may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends (each a "Loss"), to the extent the Loss is directly or indirectly caused or contributed to by:
- (a) any breach of this Agreement by the Operator, or any act or omission by the Operator or by any of the Operator's agents, employees, officers, directors or contractors in connection with this Agreement; or
 - (b) any representation or warranty of the Operator being or becoming untrue or incorrect.
- 7.3 Without limiting the generality of the Operator's obligations to comply with Applicable Laws, the Operator must comply with, and must ensure that any of its contractors comply with, all applicable occupational health and safety laws in relation to the performance of the Operator's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.
- 7.4 The Operator must apply for and maintain personal optional protection insurance (consisting of income replacement and medical care coverage) during the Term at the Operator's expense if:
- (a) the Operator is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* or similar laws in other jurisdictions; and
 - (b) such personal optional protection insurance is available for the Operator from WorkSafe BC or other sources.
- 7.5 Within 10 Business Days of being requested to do so by the LDB, the Operator must provide the LDB with evidence of the Operator's compliance with sections 7.3 and 7.4.

ARTICLE 8 – BUSINESS CONTINUITY AND FORCE MAJEURE

- 8.1 The Operator must ensure that it has a documented business continuity plan, a disaster recovery plan, and a security incident management policy and response plan, each of which is reviewed at least annually.
- 8.2 The Operator must ensure that the Warehouse and Systems are protected from loss, damage or other occurrence, including fire and environmental hazards and power interruptions, that may result in any Warehouse or Systems being unavailable or that may result in unauthorized access to the Warehouse or Systems.
- 8.3 In this Article 8,
- (a) “**Event of Force Majeure**” means one of the following events:
- (i) a natural disaster, fire, flood, storm, epidemic or power failure,
 - (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy, excluding any event involving unauthorized access to the Systems;
 - (iii) a strike (including illegal work stoppage or slowdown) or lockout, or
 - (iv) a freight embargo
- if the event prevents a party from performing the party’s obligations (excluding an obligation to pay money) in accordance with this Agreement and is beyond the reasonable control of that party; and
- (b) “**Affected Party**” means a party to this Agreement that is prevented from performing the party’s obligations (excluding an obligation to pay money) in accordance with this Agreement by an Event of Force Majeure.
- 8.4 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party’s obligations under this Agreement (excluding an obligation to pay money) resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 8.5.
- 8.5 An Affected Party must immediately notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party’s obligations under this Agreement as soon as possible.

ARTICLE 9 – DEFAULT AND TERMINATION

- 9.1 In this Agreement,
- (a) “**Event of Default**” means any of the following:
- (i) an Insolvency Event,
 - (ii) the Operator fails to perform any of the Operator’s obligations under this Agreement, or

- (iii) any representation or warranty made by the Operator in this Agreement is untrue or incorrect; or
 - (iv) the Operator stores Product in a manner that is not expressly authorized by this Agreement; and
- (b) “**Insolvency Event**” means any of the following:
- (i) an order is made, a resolution is passed or a petition is filed, for the Operator’s liquidation or winding up,
 - (ii) the Operator commits an act of bankruptcy, makes an assignment for the benefit of the Operator’s creditors or otherwise acknowledges the Operator’s insolvency,
 - (iii) a bankruptcy petition is filed or presented against the Operator or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Operator,
 - (iv) a compromise or arrangement is proposed in respect of the Operator under the *Companies’ Creditors Arrangement Act* (Canada),
 - (v) a receiver or receiver-manager is appointed for any of the Operator’s property, or
 - (vi) the Operator ceases, in the LDB’s reasonable opinion, to carry on business as a going concern.

9.2 On the happening of an Event of Default, or at any time thereafter, the LDB may, at its option, elect to do any one or more of the following:

- (a) by written notice to the Operator, require that the Event of Default be remedied within a time period specified in the notice;
- (b) require that all or any of the Product located at the Warehouse be transferred to another private warehouse approved by the LDB, within a time frame set by the LDB, at the Operator’s cost;
- (c) pursue any remedy or take any other action available to it at law or in equity; and
- (d) by written notice to the Operator, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 9.2(a).

9.3 No failure or delay on the part of the LDB to exercise its rights in relation to an Event of Default will constitute a waiver by the LDB of such rights.

9.4 In addition to the LDB’s right to terminate this Agreement under section 9.2(d) on the happening of an Event of Default, the LDB may terminate this Agreement in its discretion by giving at least 90 days’ written notice of termination to the Operator.

9.5 The Operator hereby fully releases and discharges the LDB and its employees, agents and contractors from any costs, expenses, liabilities or losses the Operator may suffer as a result of any termination or suspension of this Agreement or the exercise of any rights or remedies by the LDB.

9.6 If the Operator becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Operator must promptly notify the LDB of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the

Operator proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Operator proposes to take to prevent the occurrence of the anticipated Event of Default.

ARTICLE 10 – CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

- 10.1 The Operator must treat as confidential all information provided to it by or on behalf of the LDB in connection with this Agreement and all other information accessed or obtained by the Operator (whether verbally, electronically or otherwise) as a result of this Agreement, and not permit its disclosure or use without the Province's prior written consent, except:
- (a) as required to perform Authorized Activities or to comply with the Operator's obligations under this Agreement;
 - (b) as required to comply with Applicable Laws; or
 - (c) if it is information that is generally known to the public other than as a result of a breach of this Agreement.
- 10.2 Each of the Operator and the LDB acknowledges that it will have access to and receive information about each other and others as a result of this Agreement. The Operator acknowledges that this Agreement and information regarding this Agreement, including information that the Operator is required to keep under this Agreement, may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act* or governmental policy.
- 10.3 The Operator consents to the LDB disclosing any information related to this Agreement, including to other government ministries, and to entities that may have need of this information for the operation of their own programs, including but not limited to the Canada Revenue Agency, the Liquor and Cannabis Regulation Branch and provincial Consumer Taxation Branch, and will execute any further documents that may be requested by the LDB to allow such disclosure to occur.

ARTICLE 11 – NOTICES

- 11.1 Any notice, document or communication given pursuant to this Agreement must be in writing and delivered by prepaid mail within Canada (provided there is no work stoppage by Canada Post) or by hand, or transmitted by e-mail, as follows:

to the LDB:

Chief Financial Officer, Finance, LDB
3383 Gilmore Way
Burnaby, BC V5G 4S1
E-mail: regemail@bcldb.com

to the Operator:

Position Title _____

Address _____

E-mail _____

or to such other address in Canada as either party may advise by notice in writing.

- 11.2 Any notice, document or communication will be deemed to have been received on the fifth Business Day after mailing, or if delivered by hand or transmitted by facsimile or email, will be deemed to have been received on the day of delivery or transmission if delivered or transmitted prior to 4:00 p.m. on a Business Day and otherwise on the next Business Day.

ARTICLE 12 – ASSIGNMENT AND SUBCONTRACTING

- 12.1 The Operator must not assign or transfer this Agreement without the LDB's prior written consent, which consent may be withheld or given subject to conditions in the sole discretion of the LDB.
- 12.2 For the purpose of section 12.1, if the Operator is a corporation, a change in control (as that term is used in subsection 2(3) of the *Business Corporations Act*) of the Operator will be deemed to be a transfer of this Agreement.
- 12.3 Section 12.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 12.4 The Operator must not subcontract any material part of the Operator's rights or obligations under this Agreement to any person without the LDB's prior written consent, which consent may be withheld or given subject to conditions in the sole discretion of the LDB. No subcontract, whether consented to or not, relieves the Operator from any obligations under this Agreement.
- 12.5 The Operator will promptly provide the LDB with any information or documentation that the LDB may require in order to determine whether or not to provide the consent referred to in section 12.1 or 12.4.
- 12.6 The Operator must ensure that
- (a) any person retained by the Operator to perform obligations under this Agreement; and

- (b) any person retained by a person described in paragraph (a) to perform those obligations

does not do anything which may cause the Operator to be in default of any of its obligations under this Agreement.

ARTICLE 13 – MODIFICATIONS

- 13.1 This Agreement and its terms and conditions reflect current government policies. Government policies, however, may be changed without notice. Should such policies change, all or part of the terms and conditions in this Agreement may be revoked or unilaterally changed by the LDB to reflect the then current policies in place. The LDB will advise the Operator of changes in the terms and conditions that affect the Operator's operations in due course by written notice (a "**Change Notice**"). The Operator acknowledges that these changes may occur. If the Operator does not agree to the changes, the Operator may, by notice to the LDB delivered no later than 10 days after the Operator receives the Change Notice, terminate this Agreement, and this Agreement will terminate 30 days after such notice. If the Operator does not give such notice to terminate this Agreement, the changes referred to in the Change Notice will be deemed to apply effective as of the date of the Change Notice. The Operator hereby releases and saves harmless the LDB from any and all claims for losses, costs or expenses that the Operator may incur as a result of a change referred to in this section or the termination of this Agreement pursuant to this section.
- 13.2 Without limiting the foregoing, the LDB may unilaterally change, replace or add to any of the LDB policies and procedures at any time and may communicate such changes, replacements or additions to the Operator by notice in due course.

ARTICLE 14 – MISCELLANEOUS

- 14.1 Time is of the essence of this Agreement.
- 14.2 This Agreement is the entire agreement between the parties with respect to the subject matter hereof and may not be modified except by subsequent agreement in writing or as provided in Article 13.
- 14.3 This Agreement supersedes and replaces any prior agreements between the parties, written or otherwise, authorizations, and orders of the General Manager, if any, that deal with the subject matter of this Agreement. Notwithstanding the foregoing and section 14.4, nothing herein releases the Operator from any of its obligations or liabilities under any such prior agreements, authorizations or orders arising prior to the Effective Date.
- 14.4 The General Manager hereby rescinds the orders referred to in section 14.3 effective as of the Effective Date.
- 14.5 Any sections of this Agreement which, by their terms or nature are intended to survive the termination of this Agreement will continue in force indefinitely, even after this Agreement ends. Without limiting the foregoing, any trust funds, debts or amounts payable by the Operator to the LDB, howsoever arising, will survive the termination of this Agreement, and all provisions of this Agreement in the LDB's favour and all of the

LDB's rights and remedies, either at law or in equity, will survive the termination of this Agreement.

- 14.6 No term, condition, covenant or other provision of this Agreement will be considered to have been waived by a party unless such waiver is expressed in writing by the party. The waiver by a party of any breach by the other party of any term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant or other provision and the consent or approval of a party to any act by the other party requiring the consent or approval of the party will not be considered to waive or render unnecessary such consents or approvals to any subsequent, same or similar act by the other party.
- 14.7 No remedy conferred upon or reserved to either party is exclusive of any other remedy in this Agreement or provided by law, but such remedy will be cumulative and will be in addition to any other remedy in this Agreement now or hereafter existing at law, in equity or by statute.
- 14.8 This Agreement is binding upon and enures to the benefit of the LDB and its successors and assigns and the Operator and its permitted successors and assigns.
- 14.9 The Operator acknowledges and agrees that the LDB may assign its rights and obligations under this Agreement without obtaining the consent of the Operator.
- 14.10 The Operator will perform such further acts and execute such further documents as may reasonably be required by the LDB to give effect to this Agreement.
- 14.11 The appendices to this Agreement form part of this Agreement.
- 14.12 This Agreement may be executed in counterparts and transmitted by facsimile or email transmission and if so executed and transmitted, this Agreement will be for all purposes as effective as if the parties had delivered and executed an original Agreement.
- 14.13 Nothing contained herein shall derogate from or fetter the discretion of His Majesty the King in right of the Province of British Columbia or the General Manager or affect the exercise of the functions of them pursuant to any applicable laws, whether statutory or other. In the event of any discrepancy between this Agreement and the *Liquor Distribution Act* and regulations thereunder, the Act and regulations will govern.
- 14.14 Any public announcement relating to this Agreement will be arranged by the LDB and, if such consultation is reasonably practicable, after consultation with the Operator.
- 14.15 This Agreement shall take effect on the Effective Date regardless of the date that it is signed by the parties.
- 14.16 A provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into any LDB policy or procedure, unless that conflicting provision expressly states otherwise.

ARTICLE 15 – INTERPRETATION

- 15.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the

plural or feminine or neuter form, as the case may be, and vice versa where the context or parties so require.

- 15.2 The captions and headings contained in this Agreement are for convenience only and do not define or limit the scope or intent of this Agreement.
- 15.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 15.4 Where there is a reference in this Agreement to an enactment of the Province of British Columbia or of Canada, that reference will include a reference to any prior or subsequent enactment of the Province of British Columbia or Canada, as the case may be, of like effect and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.
- 15.5 If any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section as the case may be, will be considered separate and severable and the remaining parts or sections as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.

The parties have executed this Agreement as of the dates set out below.

SIGNED on behalf of
**HIS MAJESTY THE KING IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA,**
as represented by the General Manager of the Liquor Distribution Branch
on the _____ day of _____, 20__

Print Name: Roger R. Bissoondatt
Title: Chief Financial Officer of the Liquor Distribution Branch

SIGNED on behalf of

[LEGAL NAME OF OPERATOR]
by its duly authorized signatories
on the _____ day of _____, 20__

Print Name:
Title:

Print Name:
Title: