

Supplier Agreement and Appointment of Agent Form Consignment Program

To: Liquor Control Board of Ontario ("LCBO")

SUPPLIER	
Corporate Name:	Telephone:
Address:	Contact Name:
Email:	

SUPPLIER'S APPOINTED AGENT ("AGENT")	
Corporate Name: Buyers & Cellars Wine Purveyors Inc.	Telephone: 647.409.3689
Address: 327 Somerset St W, Ottawa On K2P 0J8	Contact Name: Margaret Hobbs
Email: margaret@buyersandcellars.ca	

This Agreement is made effective as of the 1st day of November 2021 between _____
[and the LCBO (the "Agreement" or "Appointment"). Capitalized terms used in this Agreement are defined as follows:

- (a) **"Customers"** means actual or potential customers of the LCBO regarding Products;
- (b) **"Effective Date"** means the date first above written;
- (c) **"Premises"** means one or more warehouses designated by the LCBO where Products are received and stored;
- (d) **"Products"** means the liquor products of the Supplier that are approved by the LCBO for sale under the Program;
- (e) **"Program"** means the LCBO's consignment (regular and seasonal), and high-volume consignment (HVC) program, as applicable and as determined by the LCBO from time to time; and
- (f) **"Program Guidelines"** means the guidelines established by the LCBO for the operation of the Program as they may be amended from time to time by the LCBO in its sole discretion. A copy of the Program Guidelines can also be found on the LCBO website www.doingbusinesswithlcbo.com under Specialty Services.
- (g) **"vendor of record"** means the Supplier or authorized designate and recorded in LCBO financial systems (including without limitation, the applicable purchase order) to engage in all financial activity with the LCBO, including submitting and receiving payments.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Supplier agrees with the LCBO as follows:

Article 1: Supplier Appointment & Agent Relationship

- 1.1 The Supplier appoints the Agent as its sole representative in the Province of Ontario to solicit orders through the LCBO's Program for the Products identified on the Supplier Confirmation of Products submitted to the LCBO (the form of which is attached). Notwithstanding the Supplier Confirmation of Products form, the Supplier must ensure that only one Product is represented by one Agent at any one time in the province of Ontario. Accordingly, by signing this Agreement, the Supplier represents and warrants that the Agent is the sole representative for the Product(s) described in the Confirmation of Products form and shall remain the sole representative unless the Supplier notifies the LCBO of a change of Agent in accordance with the terms of this Agreement.
- 1.2 The LCBO may rely on this Appointment and the Supplier's Confirmation of Products form without further inquiry until the LCBO receives written notice to the contrary from the Supplier. The Supplier shall be deemed to ratify whatever the Agent does or causes to be done on its behalf in respect of the subject matter of this Agreement. Without limiting the generality of the foregoing, the Supplier authorizes the Agent to (i) register its Products as part of the Program and agree to financial commitments relating thereto, on behalf of the Supplier; and (ii) sign or complete any form or documents or do whatever the Agent deems useful (or as the LCBO requires) with the same effect as having been completed, done or signed by the Supplier.
- 1.3 The Supplier acknowledges that, notwithstanding anything contained in this Agreement or the Consignment Program Agreement

(defined below), it (together with the Agent) is jointly and severally liable for any financial commitment entered into by the Agent with LCBO in connection with this Agreement and the Consignment Program Agreement. Consequently, the Supplier waives the right to invoke any defect on the part of the Agent to refuse to honour any financial commitment entered into by the latter with the LCBO.

- 1.4 The Supplier confirms that it has appointed the Agent as its agent in Ontario to facilitate sales of the Products and agrees, represents and warrants to the LCBO that:
 - (a) to the best of the knowledge of the Supplier, the Agent is the holder of a valid licence to represent the Supplier issued under the *Liquor Licence Act* (Ontario) or under the succeeding *Liquor License and Control Act, 2019*, (as applicable) as may be amended or supplemented from time to time (the "**Agent's Licence**");
 - (b) to the best of the knowledge of the Supplier, the Agent shall continue to be the holder of the Agent's Licence during the term of its appointment as the Supplier's agent under this Agreement;
 - (c) to the best of the knowledge of the Supplier, all information which the Agent has provided or will provide to the LCBO is true, complete and correct; and
 - (d) it shall cause the Agent to comply with:
 - i. the Program Guidelines (as defined below), the Agent's Licence and this Agreement; and
 - ii. all applicable laws, regulations, orders, licenses, permits or other government requirements, including without limitation, all license obligations relating to the cartage or transportation of goods including beverage alcohol and any other requirements relating to its activities under the Program.
- 1.5 The Supplier acknowledges and agrees that the LCBO may in its sole discretion provide information regarding the Supplier to the Agent and may provide information regarding the Agent to its Supplier; provided always that the LCBO shall not be under any obligation to do so.
- 1.6 Where the LCBO provides the Supplier with written notice that the Agent is no longer eligible to participate in the Program or the Supplier provides the LCBO with written notice that the Agent is no longer entitled to act as the Supplier's Agent, for the purposes of the Program, the Supplier shall designate in writing another person or entity as its candidate as an Agent. Written notice must be provided by mail or email to the LCBO at the address set out above. For each new appointment, the Supplier will be required to execute a new Agreement, setting out the new Agent Appointment. Any Agent appointed by the Supplier must meet the Program requirements for admission by Agents. If the Supplier does not appoint another Agent who meets the requirements of the Program, the Supplier hereby acknowledges and agrees that the LCBO may undertake any actions in accordance with the Program Guidelines.
- 1.7 If the Supplier notifies the LCBO in writing that the Agent is no longer authorized to act as its Agent, the Agent will not have any access to Products except those which are subject to an LCBO customer invoice at or prior to the date on which the LCBO is so advised in writing.
- 1.8 The Supplier agrees that it shall not accept any payments or other benefits from an Agent that might directly or indirectly affect in any way the price at which the Products are sold to the LCBO. The Supplier shall, upon request in writing from the LCBO, provide the LCBO with an affidavit of an officer of the Supplier, which confirms compliance with the preceding sentence. The Supplier shall comply with all applicable laws, regulations, orders, licenses, permits or other government requirements, including without limitation, any requirements relating to its activities under the Program and applicable LCBO policies.
- 1.9 The Supplier acknowledges and agrees that the LCBO will require an Agent to enter into a written agreement with the LCBO in the form required by the LCBO from time to time (the "**Consignment Program Agreement**"). The Supplier acknowledges having received copies of the Consignment Program Agreement between the Agent (or the form of such Agreement) and the LCBO and the Program Guidelines and has read and understood the terms and conditions set out in those documents.

Article 2: Program Guidelines

- 2.1 The Supplier acknowledges and agrees that the Supplier's continued participation in the Program is dependent on the Supplier complying with the Program Guidelines, including without limitation, meeting the requirements set by the LCBO for the Products in accordance with Program Guidelines. This Agreement shall be subject to, and the Supplier and the Agent shall comply with, Program Guidelines. In the event of any conflict between this Agreement and Program Guidelines at any time, the Program Guidelines shall govern.
- 2.2 The LCBO may at any time revise the Program Guidelines, including the fees or charges contained therein, or may impose additional fees under this Agreement. Notwithstanding anything contained elsewhere in this Agreement or in the Consignment Program Agreement, the Agent and the Supplier are jointly and severally liable to the LCBO for all fees and charges which are payable by the Supplier or the Agent to the LCBO under this Agreement or under the Consignment Program Agreement.

2.3 The Supplier agrees to comply with the terms and conditions of each purchase order issued by the LCBO.

Article 3: Title, Risk & Indemnity

- 3.1 Subject to Sections 3.3 and 3.4, all Products, while in the possession or under the control of the LCBO, shall be at the LCBO's risk. Title to and all risk regarding the Products will pass to the LCBO immediately upon the receipt of the Products at the Premises per shipping terms contained in the form of purchase order prescribed by the LCBO. Risk shall pass to the Customer upon the departure of the Products from the Premises and title shall pass to the Customer upon receipt by the LCBO of payment in full for the Products.
- 3.2 The LCBO shall, at its expense, carry insurance against loss or damage to the Products, whether by theft or otherwise, for their full replacement value.
- 3.3 The liability of the LCBO to the Agent and the Supplier in respect of any Products stolen, lost or damaged while at the LCBO's risk shall be limited to liability attributable to the negligence or willful misconduct of the LCBO and in such event payment by the LCBO to the Supplier of the lesser of:
- (a) the price payable to the Supplier as calculated under this Agreement for such Products at the time of their theft, loss or damage; and
 - (b) the amount of the proceeds received by the LCBO for such stolen, lost or damaged products under the policy of insurance described in Section 3.2.
- 3.4 In no event shall the LCBO be liable for any indirect, special, punitive, consequential, incidental or economic losses or damages of any kind, including loss of profits, even if the LCBO has been advised of the possibility of the same.
- 3.5 All accrued storage, handling and other fees and charges remaining unpaid on Products stolen, lost or damaged while at the LCBO's risk may be set off by the LCBO against amounts owing by the LCBO to the Supplier in respect of any payment provided for in Section 3.3 and, if and to the extent not so set off, must be paid by the Agent and/or the Supplier to the LCBO upon demand.
- 3.6 The Supplier shall indemnify and hold the LCBO, its members, officers, employees, contractors, agents and representatives harmless from and against any and all claims, losses, damages, liabilities, suits, demands, costs and expenses (including legal fees and expenses), arising out of:
- (a) the Agent's or Supplier's acts or omissions in connection with this Agreement, the Consignment Program Agreement or the Program;
 - (b) any claims by Customers regarding lost, damaged or stolen Products after the Products depart from the Premises;
 - (c) the breach by the Agent of the Consignment Program Agreement or the breach by the Supplier of this Agreement;
 - (d) the supply of Products including defective Products;
 - (e) any claim by the Agent for payment of monies which have been assigned by the Supplier to the Agent;
 - (f) the breach by the Agent or the Supplier of any law, regulation, order, licence, permit or other government requirement; and
 - (g) the infringement or violation of the rights of third parties by the Agent or the Supplier including trademarks, copyright, and other proprietary rights.

Nothing in this Section 3.6 shall be construed to affect terms relating to product defects or product liability in any sale of Products by the Supplier to the LCBO (including, without limitation, the terms of any purchase order issued by the LCBO to the Supplier).

Article 4: Termination & Default

- 4.1 Either party may terminate this Agreement, without cause, by giving thirty (30) days written notice to the other party.
- 4.2 Unless otherwise waived in writing by the LCBO, this Agreement will automatically and immediately terminate without any further notice or action taken on behalf of the parties upon the occurrence of any one of the following: (a) the Agent's Licence is revoked or expires; (b) pursuant to Section 5.7 herein; or (c) the Agent has not actively placed new purchase orders for Products on behalf of the Supplier for a consecutive period of twenty-four (24) months and there is no inventory of Supplier Product(s) on hand at the Premises.
- 4.3 The LCBO shall be entitled to immediately suspend or terminate this Agreement in whole or in part upon written notice to the Supplier:
- (a) upon the occurrence of any one of the events contemplated by the provisions of Section 4.6;
 - (b) if the Agent's Licence is suspended or the Agent is no longer in good standing with a regulatory or governing body in respect

of their Agent's Licence;

- (c) if the Consignment Program Agreement with the Agent is suspended or terminated in whole or in part; or
- (d) the Agent's authority to represent the Supplier is cancelled by the Supplier by written notice to the LCBO.

4.4 The Supplier acknowledges and agrees that the LCBO may terminate the Program in the LCBO's sole discretion and, that if the Program is terminated by the LCBO, this Agreement shall automatically terminate.

4.5 Termination of this Agreement, whether or not for cause, shall not release either party from any obligations under this Agreement incurred prior to the date of termination and those obligations shall be discharged promptly, provided however, that neither the LCBO nor the Supplier shall, by reason of the termination of this Agreement whether or not for cause, be liable to the other for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales, or on account of expenditures, investments, leases or commitments in connection with the business or goodwill of the LCBO or the Supplier or otherwise.

4.6 For purposes of this Agreement, the Supplier shall be in default if:

- (a) it breaches a provision of this Agreement (including without limitation, the failure to perform any covenant or condition or agreement contained in this Agreement), or a provision of the Program Guidelines;
- (b) any representation or warranty made or deemed to be made by the Supplier in connection with this Agreement or in any report, certificate or other document furnished pursuant to or in connection with this Agreement shall prove to have been incorrect in any material respect when made or deemed to be made; or
- (c) it shall cease conducting its business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver or receiver and manager for its business or assets or any substantial part thereof, or shall avail itself of or become subject to any proceeding under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangement Act* (Canada) or any other statute of Canada or another jurisdiction applicable to it relating to insolvency or protection from its creditors.

4.7 In the event of termination of this Agreement (in whole or in part), whether or not for cause:

- (a) Products which are held by the LCBO under the Program shall not be sold to Customers except to the extent authorized by the LCBO in writing, and the Agent and the Supplier shall pay to the LCBO in any event the fees and charges set out in the Program Guidelines for the Products which are not sold to Customers in addition to, and not in lieu of, any other amounts specified in this Agreement, including the amounts specified in clause (e) below;
- (b) the Supplier and/or its Agent shall forthwith pay to the LCBO all amounts outstanding which are owing by the Supplier to the LCBO up to the date of such termination and all amounts which accrue after such date;
- (c) the LCBO may, as the LCBO determines and in accordance with the Program Guidelines, arrange for transportation of the Products to the Supplier or to a person outside Ontario as the Supplier or Agent directs (upon receipt by the LCBO of a purchase order from the receiving jurisdiction and Supplier and/or its Agent will be responsible for any importation requirements to final destination), the costs of which shall be borne solely by the Supplier and the Agent. Upon the departure of the Products from the Premises, title and all risk regarding the Products shall pass to Supplier. It is expressly agreed that during any period of storage following termination of this Agreement the provisions of this Agreement and the Program Guidelines shall continue to apply;
- (d) the LCBO shall, at such time as the LCBO determines, destroy the Products, at the expense of the Supplier or vendor of record (as applicable) and in accordance with the Program Guidelines;
- (e) the LCBO may sell the Products to Customers of the LCBO outside of the Program through the LCBO's usual retail outlets (in which case the purchase price payable by the LCBO to the Supplier for the Products shall be reduced by such amount as is determined by the LCBO in its sole discretion all as stipulated in the Program Guidelines), or otherwise deal with the Products as it sees fit, in any event at the expense of the vendor of record;
- (f) the LCBO shall not be liable to pay the Supplier for the purchase price for the Products except those Products which are sold to an LCBO Customer and the LCBO has received the sale price for the Products or as stipulated on the LCBO purchase order payment terms. In addition, the vendor of record shall pay the LCBO's then-prevailing removal, shipping, handling, destruction, administration and other charges (including duties and taxes which are non-refundable to the LCBO and any transportation costs paid by the LCBO to acquire the Products) and shall pay the freight, importation charges to deliver the Products from the Premises to the Supplier or any other person (the LCBO does not arrange freight for product returns to Suppliers); and
- (g) all provisions of this Agreement which expressly or by implication are intended to survive termination of this Agreement

(including all indemnification obligations), shall survive termination of this Agreement.

- 4.8 The rights and remedies provided to the parties in this Agreement shall not be deemed to be exclusive and are in addition to any other rights and remedies provided by this Agreement or by law or in equity.
- 4.9 Notwithstanding any other provision of this Agreement or any other agreement between the LCBO and the Supplier, the LCBO shall be entitled to set off all amounts owing by the Supplier under this Agreement against any amount presently or hereafter owing by the LCBO to the Supplier, whether under this Agreement or otherwise.
- 4.10 Subject to applicable law, Products remaining in storage at the Premises after any termination of this Agreement or after any date the LCBO requires them to be removed may be disposed of by the LCBO at the vendor of record's risk and expense.

Article 5: General Provisions

- 5.1 The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the full rights to require such performance at any time thereafter. The waiver by either party of a breach of any provision hereof shall not be taken, construed, or held to be a waiver of the provision itself or a waiver of any breach thereafter or any other provision hereof.
- 5.2 Each party agrees to execute and deliver such further documents and to cooperate in such manner as may be necessary to implement and give effect to the agreements contained herein.
- 5.3 This Agreement shall be binding upon and shall enure to the benefit of each party, its heirs, successors and permitted assigns.
- 5.4 A judicial determination that any provision of this Agreement is invalid in whole or part shall not affect the enforceability of those provisions not found to be invalid.
- 5.5 This Agreement, any form submitted in connection herewith and accepted by the LCBO and the Program Guidelines constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, superseding any and all previous proposals, representations or statements, oral or written. Any previous agreements between the parties pertaining to the subject matter of this Agreement are hereby expressly cancelled and terminated as of the effective date of this Agreement. Where there is a conflict between the terms of this Agreement and the terms of any invoice or purchase order issued in connection herewith, such conflict shall be resolved with priority given to the terms of this Agreement. Any modifications of this Agreement must be in writing and signed by authorized representatives of both parties hereto.
- 5.6 Subject as provided below, additions, deletions or modifications to the provisions of this Agreement shall not be effective unless expressed in writing and duly signed by the parties to this Agreement. The LCBO may at any time amend the Program Guidelines in its sole discretion.
- 5.7 Neither this Agreement nor any right hereunder is transferable or assignable by the Supplier, either voluntarily or by operation of law and any attempted transfer or assignment shall entitle the LCBO to immediately terminate this Agreement without notice. Notwithstanding the foregoing provisions, the Supplier may assign monies payable to it by the LCBO (subject to LCBO's set-off rights) to a third party (including the Agent) effective upon notice in writing to the LCBO which provides complete payment instructions.
- 5.8 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same document. In the event that any signature is delivered by facsimile transmission or by electronic delivery of a scanned image, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or scanned image were an original thereof.
- 5.9 Any notices to be given or required under this Agreement shall be in writing and must be delivered by postage-prepaid envelope, personal delivery or email and must be addressed to the addresses and representatives set out on the first page of this Agreement or to such other addresses as may be provided by either party in accordance with the notice provisions hereof. Notices are deemed to have been given (i) in the case of notices given by postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (ii) in the case of notices given by personal delivery or email, will be deemed to be received on the Business Day that the email is sent or personal delivery is completed; provided that it is delivered before 5:00 pm ET, and, if sent after 5:00 pm ET, received on the next Business Day. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph. A party may change its address, email or designated representative for receipt of notices by providing notice to the other party.
- 5.10 This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Supplier hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of legal proceedings arising out of the subject-matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

LIQUOR CONTROL BOARD OF ONTARIO

By: 
Name: George Soleas
Title: President & Chief Executive Officer

Supplier Corporate Name:

Authorized Signature (*hand-signature*):

Name (*typed*):

Title (*typed*):

I have authority to bind the Supplier.

Supplier Confirmation of Products Consignment Program

Agent Name: Buyers & Cellars Wine Purveyors Inc.	
Supplier Name:	
New Confirmation <input checked="" type="radio"/>	Amendment <input type="radio"/>

The Supplier hereby confirms to the Liquor Control Board of Ontario (the "LCBO") that the above named Agent:

- (a) is the Supplier's sole representative in the Province of Ontario for all of the Supplier's Products
 (check this box if this applies) ☒

OR

- (b) is the Supplier's sole representative in the Province of Ontario for only the following liquor products (representing some but not all of the Supplier Products):

The Supplier may amend the foregoing confirmation from time to time by notice in writing to the LCBO. Amendments are not effective until the LCBO has confirmed receipt of such amendments. Where the Supplier submits an amendment, such amendment will supersede any previous Confirmation of Products submitted by the Supplier.