# Supplier Inventory Buyback Agreement between the Washington State Liquor Control Board and Insert Supplier Name

The Washington State Liquor Control Board, hereinafter referred to as the WSLCB, headquartered at 3000 Pacific Avenue SE, Olympia, WA, 98504, and Insert Supplier Name, hereinafter referred to as the Supplier, headquartered at Insert Supplier address, enter into this agreement under the authority of RCW 66.08.050 and Initiative 1183, for the purpose of establishing a Supplier Inventory Buyback Agreement.

# DEFINITIONS

**WSLCB Distribution Center –** WSLCB building located at 4401 East Marginal Way South, Seattle, Washington 98134

**Saleable condition -** For the purposes of this agreement, this shall mean Liquor that is in a condition to be resold. Conditions that would not be saleable would include broken/cracked bottles, torn or damaged bottle labels, leaking bottles, or broken/cracked bottle seals.

**Normal Business Hours** – 6:00 a.m. to 2:30 p.m. PST, Monday-Friday, excluding observed State holidays

**Business Days** – Days of the week including Monday through Friday, excluding observed State holidays

**Brand Code** – Unique WSLCB identifier for each Liquor Stock Keeping Unit (SKU)

**Bailment Products** – Brand codes provided by a supplier under a bailment agreement, where the products are stored in the Distribution Center and not purchased by the WSLCB until the product is shipped by the WSLCB to retail locations.

**Non-bailment Products** – Products purchased by the WSLCB using a Purchase Order, where Title transfers to the Board upon receipt at the WSLCB Distribution Center, including products ordered through the special order process.

# PURPOSE

The purpose of this Agreement is to promote an orderly transition of retail and distribution operations from the WSLCB to the private sector while ensuring compliance with the requirements of I-1183 and minimizing risk to the State.

# SCOPE

Suppliers entering into this agreement agree to buy-back all quantities of all Liquor product Brand Codes provided to the WSCLB by them (“Liquor”) as listed in this agreement, which remain unsold as of May 31, 2012. The WSLCB shall ship all Liquor from WSLCB State Retail Outlets and participating Contract Liquor Stores to the WSLCB Distribution Center. The Liquor will be sorted into full and partial cases by Brand Code at the WSLCB Distribution Center. The WSLCB will palletize supplier product in full and partial cases in accordance with industry standards.

The Liquor will be available for pick-up at the WSLCB Distribution Center by the Supplier or their Authorized Representative. The WSLCB will provide an itemized packing slip consisting of the number of items shipped, by Brand Code, and the applicable shipping and handling charges associated with the transportation of product from the WSLCB State Retail Outlets and participating Contract Liquor Stores to the WSLCB Distribution Center. WSLCB will issue an invoice for the product to the Supplier for payment within 30 days from date of invoice.

# IDENTIFICATION OF PRODUCTS

The following Liquor products shall be included under this agreement:

* Insert Brand Code/Description/Size, or include as Attachment A

For Bailment products, this agreement shall only include Liquor currently located in State Stores and participating Contract Liquor Stores. For non-bailment products, this agreement shall also include Liquor owned by the WSLCB located in the WSLCB Distribution Center.

# PERIOD OF PERFORMANCE

This agreement shall commence upon execution of this agreement by all parties and shall remain in effect until all Liquor is removed from the WSLCB Distribution Center by the Supplier or its Authorized Representative, and the Board has received full payment from the Supplier for all Liquor covered under this agreement.

# TRANSFER OF TITLE

Effective 11:59 p.m. PST on May 31, 2012, title to Liquor covered under this agreement shall transfer to Supplier, unless the effective date of I-1183 is changed by court order.

# PRICING

Estimated costs associated with shipping and handling of Liquor from WSLCB retail outlets to the WSLCB Distribution Center shall be an at cost pass-through to the Supplier identified herein as a per case shipping and handling charge plus a per pallet charge.

The Supplier buyback price for Liquor under this agreement shall be equal to the cost per unit effective January 1, 2012 plus a shipping and handling charge of $9.41 per case (or partial case), plus $8.00 per pallet. The WSLCB will take all reasonable efforts to minimize the quantity of cases and pallets.

# PACKAGING

Liquor covered under this agreement will be packaged in full cases whenever possible by Brand Code. When enough product is not available to complete a full case, the product will be put into a partial case of a single Brand Code.

The WSLCB will take all reasonable efforts to mirror the Supplier case configuration as of January 1, 2012. Packaging will be labeled with Brand Code and quantity, as shown in Exhibit A. Product will be palletized for pick up by the Supplier.

All Liquor being sold back to the supplier under this agreement will be in Saleable Condition.

# NOTIFICATION OF PRODUCT AVAILABILITY AND SUPPLIER RETREVIAL OF PRODUCT

Supplier’s Authorized Representative will be notified when product is available for pick-up with a Notification of Product Availability, which will include the following information:

* Brand Code
* Description
* Quantity
* Number of Pallets
* DC Point of Contact
* Appointment Request Form

Supplier must submit the Appointment Request Form by e-mail or fax, to establish a mutually agreeable pick-up time and date. Product must be picked up at the WSLCB Distribution Center by the Supplier or their Authorized Representative within ten (10) Business Days unless otherwise mutually agreed to between the WSLCB and the Supplier.

Supplier has the right to inspect the Liquor according to the section RIGHT OF INSPECTION, prior to taking possession. Once the Liquor has left the WSLCB Distribution Center, the WSLCB is not responsible for any loss or damage.

If supplier fails to pick up the product within thirty (30) Business Days of Notification of Product Availability, or fails to make mutually agreeable arrangements otherwise, title to the Liquor will revert back to the WSLCB, and the WSLCB will dispose of the Liquor.

# INVOICING AND PAYMENT

The WSLCB will issue an invoice to the Supplier for payment within 30 days, for all Liquor covered under this agreement plus shipping and handling charges as outlined in the PRICING section.

Invoice details will include:

* Brand Code
* Description
* Quantity
* Shipping and Handling Charges

If supplier fails to pay for the Liquor as invoiced within 30 days, the Supplier’s Certificate of Approval (COA) may be revoked.

# AUTHORIZED REPRESENATIVE

All authorized communication regarding this Agreement shall occur between the Supplier’s Authorized Representative or designee and the WSLCB Agreement Administrator or designee.

|  |  |
| --- | --- |
| Supplier’s Authorized Representative  | WSLCB Agreement Administrator  |
| Insert Name**COMPANY****Address****City, State Zip**Phone: Insert # Email address: **Insert email**  | Debi Besser**Washington State Liquor Control Board****3000 Pacific Ave****Olympia, WA 98504**Phone: 360-664-1668 Email address:  **purchasing@liq.wa.gov** |

# RIGHT OF INSPECTION

The WSLCB shall provide right of access to its Distribution Center to the Supplier, in order to inspect Liquor covered under this agreement. Any inspections must be scheduled during normal business hours with at least twenty-four (24) hours notice in advance of the requested time.

# TREATMENT OF ASSETS

1. Title to all Liquor covered under this agreement, shall transfer to the Supplier at 11:59 p.m. PST on May 31, 2012.
2. The WSLCB shall be responsible for any loss or damage to Liquor covered under this agreement until it is in the possession of the Supplier or their authorized representative.
3. The WSLCB shall maintain the security of, and prevent damage to, Liquor covered under this agreement while in the possession of WSLCB.
4. Supplier may not take possession of the product until Notification of Product Availability has been issued to the Supplier.

# SHIPPING

The WSLCB shall ship all items under this agreement from WSLCB retail outlets to the WSLCB Distribution Center. The method of shipment shall be consistent with the nature of the products and hazards of transportation.

The Supplier shall be responsible for coordinating pickup and payment of all shipping related to the transport of product from the WSLCB Distribution Center to the Supplier-designated destination.

# ORDER OF PRECEDENCE

Each of the items listed below is hereby incorporated into this Agreement. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and State of Washington statutes and regulations
2. Special terms and conditions as contained in this Agreement instrument
3. Any existing Bailment Agreements on file with the WSLCB, if applicable
4. Any other provision, term or material incorporated herein by reference or otherwise incorporated

# ENTIRE AGREEMENT

This Agreement document and all subsequently issued amendments comprise the entire agreement between the WSLCB and the Supplier. No other statements or representations, written or oral, shall be deemed a part of the Agreement.

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled Supplier Commitments, understandings, agreements, representations, or warranties not contained in this Agreement or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or Specifications of this Agreement will be effective unless captured in writing.

# GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

# LIMITATION OF AUTHORITY

Only the Agreement Administrator shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement on behalf of the WSLCB. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing, and agreed to by both parties.

# RETENTION OF RECORDS

The Supplier shall maintain all books, records, documents, data, and other evidence relating to this Agreement.

Supplier shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review, or audit by the WSLCB, personnel duly authorized by the WSLCB, the Washington State Auditor’s Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

# SURVIVORSHIP

All activities performed pursuant to the authority of this Agreement shall be bound by all of the terms and conditions set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms and conditions contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Agreement shall so survive.

# SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, or part thereof if such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

# FORCE MAJEURE

The term “force majeure” means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Agreement if, and to the extent that, such party's performance of this Agreement is prevented by reason of force majeure.

Notification: If either party is affected by force majeure, said party shall provide notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Performance of Contractual duties shall resume as soon as practicable and written notification of same shall likewise be provided.

Rights Reserved: The WSLCB reserves the right to authorize an amendment to this Agreement. Either party may request termination of the Agreement during the time of force majeure.

# LIMITATION OF LIABILITY

Except as otherwise provided for within this agreement, the parties agree that neither Supplier or the WSLCB shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement. This section does not modify any sections regarding any damages or other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Supplier nor the WSLCB shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Supplier or the WSLCB. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the WSLCB acting in either its sovereign or Contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Supplier, the WSLCB, or their respective employees or agents.

Neither party shall be liable for personal injury to the other party or damage to the other party’s property except personal injury or damage to property proximately caused by such party’s respective fault or negligence.

# DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with the WSLCB Administrative Director or designee.  Disputes shall be resolved as quickly as possible.

The request for a dispute hearing must:

* be in writing;
* state the disputed issue(s);
* state the relative positions of the parties;
* state the Supplier’s name, address, and contract number; and
* be mailed to the WSLCB Administrative Director or designee within 3 working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requester’s statement to both the agent and the requester within 5 working days. The WSLCB Administrative Director shall review the written statements and reply in writing to both parties within 10 working days. The WSLCB Administrative Director may extend this period if necessary by notifying the parties. The determination of the WSLCB Administrative Director shall be final. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

WSLCB and Supplier agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this contract which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.”

# TERMINATION BY MUTUAL AGREEMENT

The WSLCB and the Supplier may terminate this Agreement in whole or in part, at any time, by mutual agreement.

# TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the WSLCB’s authority to perform any of its duties relating to this Agreement is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, the WSLCB may terminate this Agreement, in whole or in part, by seven (7) calendar day’s written notice to Supplier. Supplier shall have no right of appeal when this clause is exercised by the WSLCB.

# ASSURANCES

WSLCB and the Supplier agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

# ATTORNEYS’ FEES

In the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney fees and costs.

# INDEMNIFICATION

To the fullest extent permitted by law, Supplier shall indemnify, defend, and hold harmless the WSLCB and all officials, agents and employees of the WSLCB, from and against all claims for injuries or death arising out of or resulting from its performance, or the performance of its agents or representatives under this Agreement. “Claim,” as used in this Agreement, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney’s fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting there from.

Supplier’s obligations to indemnify, defend, and hold harmless includes any claim by Supplier’s agents, employees, or representatives.

Supplier expressly agrees to indemnify, defend, and hold harmless the WSLCB for any claim arising out of or incident to Supplier’s performance or failure to perform the Agreement. Supplier’s obligation to indemnify, defend, and hold harmless the WSLCB shall not be eliminated or reduced by any actual or alleged concurrent negligence of WSLCB or its agents, agencies, employees and officials.

Supplier waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless WSLCB and its agencies, officials, agents or employees.

# PERSONAL LIABILITY

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the WSLCB when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

# WAIVER

Failure or delay of the WSLCB to insist upon the strict performance of any term or condition of the Agreement or to exercise any right or remedy provided in the Agreement or by law; or the WSLCB’s acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Supplier from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the WSLCB to insist upon the strict performance of the entire agreement by the Supplier. In the event of any claim for breach of Agreement against the Supplier, no provision of this Agreement shall be construed, expressly or by implication, as a waiver by the WSLCB of any existing or future right and/or remedy available by law.

# APPROVAL

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

***In Witness Whereof***, the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

|  |  |
| --- | --- |
| Insert Supplier Name *Signature*  *Date*  | Washington State Liquor Control Board *Signature Date* |
| Print Name  |  | Print Name | **Randy Simmons** |
| Title |  | Title | **Director of Administrative Services** |

**Exhibit A:**

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