

- 1.1. **Alcoholic Beverage** means a beverage containing more than 115% alcohol by volume, whether fermented (completely or partially), distilled or chemically modified and whether or not containing added fruit or vegetable juice, sugars, honey or spices, including but not limited to wine, cider, liqueur, spirits and their products.
- 1.2. **Approved Wholesaler** means the wholesaler that is approved by Suntory to sell the Products. Products under this Agreement are only sold via Approved Wholesalers.
- 1.3. **Back Bar Glass Spirit** means any Suntory product itemised under Part 2, Schedule 3 placed in the back shelving area of the bar of a Venue, which is stocked and ranged in a visually prominent position.
- 1.4. **Business Day** means a day that is not a Saturday, Sunday or any other day that is a public holiday in Sydney, New South Wales, Australia.
- 1.5. **Competitor** means any manufacturer, producer, distributor, wholesaler, retailer or online direct to consumer website of products substantially the same as or similar (whether by function, composition, category or look and feel of the product) to any Product.
- 1.6. **Competitor Product** means any product produced or sold by a Competitor.
- 1.7. **Confidential Information** means all confidential or proprietary information, documents or materials disclosed directly or indirectly by a party to the other including without limitation; any information relating to the disclosing party's employees, customers, operations, shareholders, intellectual property rights, trade secrets, recipes, market opportunities and business affairs, including any summary or compilations of the foregoing, and the existence and terms of this Agreement.
- 1.8. **Commencement Date** means the date as stipulated in Part 2.
- 1.9. **Control** has the meaning given by the *Corporations Act 2001* (Cth), or when applied to a Venue, means that rights to its business or in the land on which it is located.
- 1.10. **Customer** means the Customer outlined in Part 1, Parties, and their employees, workers, contractors or affiliates.
- 1.11. **Customer Commitments** (if applicable) means the Customer commitments (detailed in Part 2, Schedule 3 (including First Pour, Ranging, Volume Targets, and Sales Drivers) and any obligations detailed in Part 2 or agreed by the parties in writing.
- 1.12. **Discount** means a deduction of money provided off-invoice, detailed in Part 2, Schedule 2.
- 1.13. **Draught Taps** means any alcoholic beverage including RTD Products, Non-Alcoholic Beverages or RTD Beverages served from a large container, especially a barrel.
- 1.14. **First Pour** means the customer initially dispenses and sells the applicable first pour Products to each patron who requests a drink within the relevant product category without specifying any particular full bottled spirit that should comprise that drink.
- 1.15. **FBS Products** means full strength bottle spirits Products.
- 1.16. **Force Majeure Event** means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented.
- 1.17. **GST** means the goods and services tax, or similar value added tax levied or imposed under the *A New Tax System (Goods and Services) Act 1999* (Cth).
- 1.18. **Integrated Venues** means any retail venue that has an on premise bar/pub connected to a Venue.
- 1.19. **Intellectual Property** means any present or future intellectual property or other property of a creative, branding, or innovative nature whether or not registrable or registered.
- 1.20. **Landed Unit Cost (LUC)** means the Approved Wholesalers purchase price of the Products- including all fees and taxes minus Discounts as offered under the Agreement, and excludes GST, duty and any Approved Wholesaler fees or costs. The Landed Unit Cost is an illustrative estimate only.
- 1.21. **Non – Alcoholic Adult Beverages or RTD Beverages** means a beverage or RTD with no alcohol content of less than 0.5% alcohol by volume content or that is propositioned as an alternative or substitute for an Alcoholic Beverage.
- 1.22. **NPD** means new product development.
- 1.23. **On-premise** with reference to this Agreement means any Product which is consumed or designed to be consumed within the Venues. All Products purchased must be validated by an Approved Wholesaler prior to sale.
- 1.24. **Products** means beverage products sold by Suntory in Australia, including those products specified in Part 2.
- 1.25. **Ranging** means the inclusion, selection, or assortment of Suntory products and brands offered, distributed, marketed, promoted or sold within the Venue, featured at eye level

and in the most prominent position practically available within a Venue's bars (including at multiple bar areas if a Venue has more than one bar area).

- 1.26. **RTD Beverages (or RTD)** means ready to drink Alcoholic Beverage that is sold in a prepared form, ready for immediate consumption without any additional preparation, including but not limited to:
  - a) product which refers to a packaged beverage (regardless of the packaging or delivery) where an alcohol base is combined with non-alcoholic ingredients;
  - b) beverages that are marketed as a ready to drink Alcoholic Beverages; and
  - c) a beverage subject to excise duty for spirits and other excisable beverages under the Excise Tariff Act 1921 (Cth), excluding full strength spirits such as FBS Products.
- 1.27. **Schedule** means a schedule to this Agreement.
- 1.28. **Sufficient Stock** means Sufficient stock means that Products will generally be available at all times while a Venue remains open for business (particularly during weekends and major events, for e.g. The Melbourne Cup, various televised Australian sporting finals fixtures, and televised international sporting fixtures).
- 1.29. **Term** means the term of this Agreement as set out in Part 2, Key Terms.
- 1.30. **Venue** means each individual Venue listed in Part 3 and a new Venue acquired, created, operated or controlled by the Customer will be a Venue for the purpose of this Agreement, including any venues acquired, created or operated by the Customer after the Commencement Date.
- 1.31. **Volume Target** (if applicable) means the amount of Product agreed to be purchased from the Customer and measured as follows: 9LE for packaged stock, 9LE equivalent for RTD, 9LE for glass Product and 49.5L for Kegs. For avoidance of doubt RTD is not applicable for Integrated Venues.

## 2. INTERPRETATION

In this Agreement, unless the contrary intention appears, (a) headings are for convenience and do not affect interpretation, (b) wording implies the singular includes the plural and vice versa, (c) the word "including" or any other form of that word is not a word of limitation, (d) reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including but not limited to, persons taken by novation), and permitted assignees, (e) a reference to a document is to that document as varied, novated, ratified or replaced from time to time, (f) a reference to a party, clause, schedule, part, attachments or annexure is a reference to that component of this Agreement, (g) a reference to a statue

includes any regulations or other instruments made under it and includes consolidations, amendments, re-enactments and replacements, (h) a reference to \$ or dollar is to Australian currency, (i) if a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be done on the following Business Day and (j) this Agreement comprises of the Key Terms, Schedules and General Terms. In the event of any inconsistency between these terms, the order of priority will be the Key Terms, the Schedules and then the General Terms.

## 3. DISCOUNTS (IF APPLICABLE)

- 3.1. If applicable, in consideration for the Customer's compliance with the Customers Commitments, Suntory agrees to provide the Discounts.
- 3.2. If applicable, Part 2, Schedule 1 (Investment Summary) outlines the total investment. This section is indicative and non-binding on Suntory, and does not represent any actual or potential amount (in cash or in-kind) that Suntory is obligated to provide.
- 3.3. Discounts are only applicable to Products purchased by Venues covered by this Agreement and does not extend to any other venue or store.
- 3.4. In the event that you fail to reasonably remediate your failure to comply with any of the terms and conditions outlined within this Agreement, Suntory reserves the right to revoke any Discounts previously applied to your account.
- 3.5. Suntory makes no undertaking in this Agreement to supply the Products to the Customer, and the terms and conditions of the supply of Products is a matter solely between the applicable Approved Wholesaler and Customer.

## 4. CUSTOMER COMMITMENTS

If applicable, the Customer agrees that it will ensure it has all necessary licences required to undertake the commitments specified in this Agreement.

## 5. PRODUCTS

- 5.1. Products must only be bought and sold by the Customer (or Venue) in Australia.
- 5.2. The Customer must not engage in any parallel sale, importing or similar activity (**Parallel Sale Activity**) and must ensure that they notify Suntory immediately of any Parallel Sale Activity or any suspected Parallel Sale Activity.
- 5.3. If Suntory determines that the Customer has engaged in Parallel Sale Activity, Suntory may immediately terminate this Agreement (without prejudice to any rights or remedies it may have).
- 5.4. The Customer must not make any claims, representations, statements, warranties or guarantees regarding the Products (other than

in marketing material provided or approved in writing by Suntory).

## 6. APPROVED WHOLESALERS

- 6.1. The Customer is able purchase Products via an Approved Wholesaler at prices and terms (including any delivery costs) as set by the Approved Wholesaler.
- 6.2. The Customer will notify Suntory immediately should the Customer choose to change their Approved Wholesaler.

## 7. PROHIBITION ON SALES TO WHOLESALERS

This Agreement applies only to the Venue or such other Venues operated or franchised by the Customer or as may be agreed in writing by Suntory. The on-sale of Products by the Customer or any operator to other venues, businesses or distributors is strictly prohibited. Suntory, in its absolute discretion reserves the right to terminate these terms or to restrict or limit supply to any of the Venues that it knows or reasonably suspects to have engaged in on-selling, with prior written notice to the Customer.

## 8. PROHIBITION ON SALES TO INTEGRATED VENUES

This Agreement applies only to the Venue or such other venues operated or franchised by the Customer as agreed in writing by Suntory. All Discounts under this Agreement will only be applicable to On-premise Venue volumes and will not include any Integrated Venue volumes.

## 9. NEW VENUES

- 9.1. Unless otherwise agreed, you will provide Suntory with written notice within 30 days:
  - 9.1.1. If you operate or control a new Venue where the Products are to be sold;
  - 9.1.2. If you withdraw or cease to be part of a banner group; or
  - 9.1.3. If you cease to operate or otherwise control any Venue where the Products were sold.
- 9.2. You must operate or control any new Venue under clause 9.1 in line with the obligations and Customer Commitments.
- 9.3. If you cease to operate or otherwise control one or more of the Venues supplied by Suntory during the Term, Suntory may proportionally reduce the benefits it provides to you under this Agreement to reflect in Suntory's reasonable opinion, the reduction in the benefits Suntory is receiving as a result of clause 9.2 or 9.3 above.

## 10. INTELLECTUAL PROPERTY

Each party grants the other a revocable, non-exclusive, non-transferable, personal and royalty free licence for the term to use the other party's approved logos and assets in advertising and marketing materials upon prior consent from the other party.

## 11. TERMINATION

- 11.1. Either party immediately terminate this Agreement with written notice to the counterparty:
  - 11.1.1. A party is in breach of this Agreement, which is not capable of remedy or if it fails to remedy such breach within 14 Business Days of receiving notice from the other party requesting for the breach to be remedied;
  - 11.1.2. If a party enters into insolvency, bankruptcy, receivership or liquidation or any composition or arrangement for the benefit of its creditors;
  - 11.1.3. If there is a change of Control of a party, of any of its holding entities, or a Venue, after the Commencement Date of this Agreement;
  - 11.1.4. If a party fails to procure any registration or license to maintain registration or licence required by legislation;
  - 11.1.5. If a party ceases to carry on business as it related to the supply of beverages;
  - 11.1.6. If a party does anything or any act which, in the counterparty's opinion has brought, or will bring that counterparty into disrepute including sale of any beverages.
- 11.2. Any termination of this Agreement will be without prejudice to any accrued rights and remedies of the parties.
- 11.3. Termination of this Agreement shall not affect provisions which are intended to continue after the term.
- 11.4. Upon termination or expiration of this Agreement, Suntory is only obligated to provide the Customer with Discounts in respect of volume sold or term lapsed prior to the date of termination.

## 12. DISPUTE RESOLUTION

- 12.1. If a dispute arises between the parties in respect of any matter arising out of this Agreement then the parties must first use their best endeavours to resolve the dispute themselves in good faith.
- 12.2. No dispute arising shall give cause to either party to suspend their obligations under this Agreement.

## 13. WARRANTIES & INDEMNITY

- 13.1. The Customer warrants that it:
  - 13.1.1. has exclusive rights to manage each venue and will procure compliance by each Venue; and
  - 13.1.2. has authority to enter into this Agreement and holds all applicable

liquor licenses where the Venue is located.

## 14. INDEMNITY AND LIABILITY

14.1. Each party agrees to indemnify and keep indemnified the other party against any loss, damage, claim or otherwise in connection with a breach or non-compliance of this Agreement, non-performance of any obligations under this Agreement, breach of intellectual property rights, loss or damage to property, death or personal injury to any person and must pay to the other party on demand an amount incurred as a direct or indirect result of that breach.

14.2. Neither party shall be liable for any loss, damage, claim or otherwise whether indirect, incidental, special, consequential or otherwise related to loss of profits or anticipated profits, reputational loss, loss of revenue, loss of savings, loss of business opportunity.

14.3. Nothing in this clause excludes any rights a party may have at law.

## 15. CONFIDENTIALITY

Each party shall at all times keep confidential, the Confidential Information and not directly or indirectly, make or allow, any disclosure or use any information relating to the other party or the existence or subject matter of this Agreement, except to a party's related bodies corporate, upon consent from the other party or to the extent required by law.

## 16. FORCE MAJEURE

16.1. If either party is prevented or delayed in the performance of any of its obligations under this Agreement by a Force Majeure Event, that party must as soon as reasonably practicable, notify the other party in writing of the details of the Force Majeure Event.

16.2. Provided a party has complied with clause 16.3, that party is not in breach of this Agreement for any failure or delay in the performance of such obligations as the time for performance of such obligations is extended accordingly;

16.3. If either party is prevented from performance of its obligations for a continuous period in excess of three (3) months, the other party may terminate this Agreement on written notice.

## 17. INSURANCE

Each party must at its own cost have appropriate insurances in place with a reputable insurance company, and provide evidence of this upon request.

## 18. GST

All amounts payable under this Agreement are exclusive of GST (unless it is expressed to be GST inclusive). If GST is payable in respect of any supply made under this Agreement (GST amount), the applicable party must pay an

amount equal to the GST payable on the supply, as specified in a tax invoice issued under this Agreement.

## 19. ANY PARTY AS TRUSTEE

If any party (trustee) enters into this Agreement in the capacity as trustee of any trust (trust) under any trust deed, deed of settlement or other instrument, and whether or not the other parties have notice of the trust, then that party and/or the trustee enters into this Agreement both in its personal capacity and as trustee of the trust.

## 20. NOTICES

Receipt of notice: Each notice or other communication under this Agreement is to be in writing, by way of personal delivery, post, or email to the party as listed in Part 1.

## 21. ASSIGNMENT

Neither party can assign, novate otherwise transfer its rights under this Agreement without obtaining the prior written consent of the other party.

## 22. ENTIRE AGREEMENT

This Agreement is the entire Agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

## 23. ELECTRONIC EXECUTION

Each party consents to the signing of this Agreement by electronic means.

## 27. WAIVER

If a party exercises or fails to exercise or delays exercising any right or remedy available to it, this will not prejudice a party's rights in exercising that or any other right or remedy unless expressly specified and agreed in writing and signed.

## 24. SEVERABILITY

If one or more of the provisions of this Agreement is, or becomes illegal, invalid or unenforceable for any reason, the remaining provisions of this Agreement shall not be affected and shall continue in full force and effect.

## 25. GOVERNING LAW

This Agreement is governed the laws of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of the courts of New South Wales in respect of all matters arising out of or relating to this Agreement.