

**DROP SHIP SUPPLIER**  
**TERMS AND CONDITIONS / AGREEMENT**

These **Drop Ship Supplier Terms and Conditions**, together with its exhibits, attachments, schedules, and documents incorporated by reference (each of which may be amended from time to time) (collectively, the “**Drop Shipment Supplier Agreement**” or “**Agreement**”), constitutes an agreement by and between **LEGENDS HOSPITALITY, LLC** and/or its parent, subsidiaries, and/or affiliates (“**Legends**”) and each drop ship supplier (“**Supplier**”) with respect to Supplier’s sale, order processing, packaging, shipment, and delivery of Goods in connection with the fulfillment of Orders placed on or through the Online Store or otherwise through Legends as further defined and set forth below. Any shipments by Supplier against an Order Communication shall be considered further acceptance by Supplier of this Agreement, including its agreement to sell the specific Goods and fulfill the Order pursuant hereto. Each party may be referred to herein each as a “**Party**” or collectively as the “**Parties**.” Any attempted deviation from the Agreement or request or demand for additional or different terms or any statement made in an invoice or otherwise attempting to make acceptance conditional on Legends’ assent to additional or different terms shall be of no effect and is expressly objected to and rejected. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties further agree as follows:

1. **DEFINITIONS.** The following definitions shall apply for the purposes of the Agreement:
  - A. “**Applicable Laws**” means all applicable laws, statutes, regulations, rules, directives, orders, legally binding codes of practice, and industry standards and best practices.
  - B. “**Business Day**” means a day other than a Saturday, Sunday, or public holiday.
  - C. “**Client**” means Legends’ third-party client(s) for which Legends is authorized to perform certain merchandising services, including, but not limited to, operation of an Online Store.
  - D. “**Customer**” means the consumer who places an Order.
  - E. “**Customer Data**” means the Customer records (excluding payment card information) transmitted between the Parties pursuant to the Agreement.
  - F. “**Delivery Location**” means the delivery location for the Goods as provided by Customer via an Order.
  - G. “**Effective Date**” means the earlier of the first date upon which Legends has provided Supplier with an Order Communication or the date upon which the Parties otherwise agreed for Supplier to supply, process, and ship Goods to Customers.
  - H. “**Goods**” means the goods and/or merchandise supplied by Supplier under the Agreement (including, without limitation, all containers, packaging, labels, swing tags, bar codes, wrapping material, and statements used in connection therewith and all associated costs). The specific Goods that Supplier is to supply shall be mutually agreed upon by the Parties and set forth in the Order Communication.
  - I. “**Intellectual Property**” means the Names and Marks and any other intellectual property rights, such as, without limitation, copyrights, know-how, database rights, registered designs, design rights, patents and patent applications, rights in respect of confidential information (including know-how), trade secrets, rights of publicity, rights of privacy, business names, and domain names.
  - J. “**Names and Marks**” means the registered and unregistered trademarks, trade names, service marks, logos, designs, images and branding for use with the Goods, details of which will be provided to either Party from time to time for purposes of offering for sale and selling the Goods.
  - K. “**Online Store**” means a Client- and/or Legends-branded website, which Legends is authorized to develop, design, build, host, and maintain and through which Legends is authorized to fulfill Orders.
  - L. “**Order**” means a valid e-commerce order for Good(s) placed by a consumer on the Online Store to be fulfilled by Supplier pursuant to the Agreement.
  - M. “**Order Communication**” means a written communication provided by Legends to Supplier with Order details, provided in a manner and format as determined by Legends in its sole discretion, including, without limitation, a purchase order submitted to Supplier via EDI, SFTP, and/or other means.
  - N. “**Supplier Guidelines**” means Legends’ requirements for e-commerce, packaging, labelling, logistics, and routing of Goods and Legends’ data exchange requirements, as provided by Legends to Supplier in writing (including, without limitation, via Legends’ Supplier resource pages located at [www.legends.net/lgm/suppliers/](http://www.legends.net/lgm/suppliers/) (“**Supplier Resource Page**”) and updated by Legends from time to time, each of which is expressly incorporated herein by reference.

2. **INFORMATION / DATA EXCHANGE.** From time to time, Client and/or Legends may request and approve of certain Supplier-provided Goods to be offered for sale, promoted, sold, and fulfilled through the Online Store. Supplier shall provide Legends with all necessary cooperation, information, and materials to allow Legends to offer for sale, promote, sell, and, in cooperation with Supplier and pursuant to the Agreement, fulfill Orders through the Online Store, including, but not limited to, providing to Legends any corresponding Intellectual Property, product information (including, without limitation, product descriptions, near real-time inventory, and suggested pricing), shipment information (including, without limitation, carrier and shipment options, shipment confirmation, and order details), and all other reasonably-requested information and materials and complying with the Supplier Guidelines, including without limitation any Legends requirements for interfaces, applications, security and access. Such information shall be made available in a data exchange format and method as specified by Legends (including, without limitation, through a purchase order submitted to Supplier via EDI, API, SFTP, and/or other means) ("**Data Exchange**"); provided, Legends will consider and may approve other reasonably-suggested Data Exchange options on a case-by-case basis, in its sole discretion. Supplier may not modify any Data Exchange required under this Agreement without Legends express written authorization. Legends reserves the right to determine the resale, retail price of any Goods as they appear and are sold on the Online Store.
3. **ORDER COMMUNICATION.** Promptly following Legends' receipt of an Order, Legends shall provide Supplier with an Order Communication. Such Order Communication shall be made through the Data Exchange and shall include the following Order information (as Legends determines applicable): (A) Customer-provided name and address; (B) Customer-provided email and/or telephone number; (C) Delivery Location; (D) applicable Order details (i.e., SKU, size, and quantity); (E) requested shipping method; and (E) delivery date. Legends' submission of an Order Communication to Supplier shall constitute an offer by Legends to purchase the specific Goods for sale to Customer. Legends shall promptly correct any typographical, clerical, or other error or omission in any Order Communication upon discovery, without any liability on the part of Legends. For the avoidance of doubt, Legends is not required to purchase any specific Goods or a minimum quantity of Goods from Supplier.
4. **ORDER PROCESSING.** Except as set forth in Section 5, Supplier shall be fully responsible for all processing, handling, and shipment of Goods, including, without limitation, instructing the Carrier (defined below) where the Goods shall be delivered, picking and packaging all Goods, processing Goods for shipment, and all costs associated therewith, all in full compliance with all Supplier Guidelines. Time for processing and delivery of Orders is of the essence. Any shipments by Supplier against an Order Communication shall be considered further acceptance by Supplier of this Agreement, including its agreement to sell the specific Goods and fulfill the Order pursuant hereto. Promptly following Supplier's receipt of the Order Communication, Supplier shall process and ship the corresponding Goods to Customer to meet the required delivery date. Simultaneous to or otherwise immediately after Supplier's shipment of Goods to Customer, Supplier shall, through the Data Exchange, notify Legends of the following: (A) confirmation that it has processed and shipped the Goods to Customer, (B) tracking information for such Order shipment and anticipated delivery date, (C) confirmation of Order details (including, but not limited to, SKU and quantity information), and (D) such other information as reasonably requested by Legends (including, but not limited to, bill of lading, etc.) ("**Order Confirmation**"). Supplier shall only ship the specific quantity of Goods ordered and shall not make any substitutions.
5. **TRANSPORTATION CARRIER.** Unless otherwise agreed upon by the Parties, for all outbound shipments of Goods to a Customer, Supplier shall deliver such Goods to Legends' designated transportation carriers (as determined by Legends in its sole discretion) ("**Carrier**"), using a Legends-provided Carrier account and third-party billing number as set forth in the Supplier Guidelines. Legends may modify its Carrier(s) and corresponding account and billing number, in its sole discretion, upon written notice to Supplier. Except for the foregoing, Supplier shall be solely responsible for any and all freight, storage, accessorial, or demurrage charges assessed by a Carrier. Any act and/or omission by a Carrier shall not excuse, limit, and/or waive any obligation of Supplier under the Agreement.
6. **PACKAGING / LABELING.** Supplier shall be fully responsible for all packaging and labeling of the Goods and ensuring that such packaging and labeling fully complies with all Supplier Guidelines and Applicable Laws, including, but not limited to, the following requirements:
  - A. All packaging materials shall be clean and safe and comply with and present no hazard to any person as required under all Applicable Laws;

- B. All poly bags shall contain childcare and safety warnings as required under all Applicable Laws;
  - C. Where practicable, Supplier shall use recyclable, organic, biodegradable, recycled and/or other eco-friendly packaging and packing materials (with Supplier solely responsible for all labelling and claims with respect thereto);
  - D. All shipments of Goods shall include all appropriate packaging, labelling, bar codes, hang tags, and wrapping material, as required by Applicable Laws and in accordance with industry standards;
  - E. All Goods shall be properly packed and secured so as to reach its destination in a safe, sanitary, and undamaged condition;
  - F. With the exception of return information and any Legends- or Client-branded material (as expressly approved by Legends in writing), Supplier shall not include any marketing material within any shipments.
7. **ELECTRONIC DATA INTERCHANGE.** Legends reserves the right, in its sole and absolute discretion, to require all or certain written notices and/or communications, transactions, and/or payments pursuant to the Agreement to occur via valid electronic data interchange transmission(s) and documentation (“**EDI**”); provided, Legends will consider and may approve other reasonably-suggested Data Exchange options on a case-by-case basis, in its sole discretion. The Parties agree to be bound by all such EDI or Data Exchange, which shall be subject to the Agreement and Supplier Guidelines. The Parties further acknowledge and agree that no written documentation nor any signatures are required to make any EDI or Data Exchange binding and that the confidential codes used by each Party with respect to EDI or Data Exchange shall satisfy any signature requirements. Each Party shall bear its own EDI- or Data Exchange related costs, including, without limitation, for equipment, software, and security measures and shall be solely responsible for ensuring that its access to and use of EDI or Data Exchange is secure and authorized in accordance with Information Technology, Security and Compliance best practice frameworks, such as NIST or ISO27001, and as otherwise required by Legends. To the extent that Supplier receives any personal information and/or credit cardholder data (CHD) in the course of carrying out its obligations hereunder, Supplier shall fully comply with all Applicable Laws and applicable Payment Card Industry requirements, guidelines, and standards and provide written proof to Legends upon request, no later than ten (10) business days follow such request.
8. **CANCELLATION.**
- A. Legends reserves the right, in its sole and absolute discretion to, upon written notification to Supplier and without liability, cost, and/or charge to Legends, **(i)** cancel, in whole or in part, any unshipped Order; **(ii)** terminate Supplier’s account and status as Legends’ authorized supplier of Goods, and/or **(iii)** cease selling any Goods at any time.
  - B. Upon termination or expiration, Supplier shall immediately cease use of Legends’ and Client’s Intellectual Property, promptly return all of Legends’ and Client’s Intellectual Property, destroy all Customer Data processed pursuant to this Agreement and provide written certification to Legends of the same (in a manner satisfactory to Legends), and fully comply with all disposal and/or return procedures required by Legends and/or Client as to any unfinished and/or undelivered Goods and Customer Data. Further, Supplier shall remain responsible for all damages or losses caused by Supplier and/or the Goods and any unpaid charges, costs or fees required hereunder.
9. **PAYMENT TERMS.** Prior to the inclusion of any Goods on the Online Store, the Parties shall mutually agree upon Legends’ cost of Goods and the applicable payment terms (as set forth in an Order Communication), which shall remain valid unless and until mutually agreed by the Parties in writing. Following and/or simultaneous to Supplier sending Legends an Order Confirmation, Supplier shall provide Legends with an invoice in a manner and format as determined by Legends in its sole discretion (such as via ACH and/or EDI). Supplier’s invoice shall specify all Goods included in the Order and Legends’ agreed-upon cost for such Goods, and Supplier shall supply Legends with sufficient supporting documentation for all charges contained therein upon request. Legends agrees to pay any undisputed amounts to Supplier in accordance with the Parties’ agreed-upon payment terms in a manner as determined by Legends, including, without limitation, via ACH, EDI, wire transfer, check, or otherwise. To the extent not otherwise agreed upon by the Parties in writing, Legends’ payment of any undisputed amounts to Supplier shall be due within sixty (60)

days of Legends' receipt an invoice as described herein. All fees are inclusive of all costs associated with the supply of Goods hereunder (including, without limitation, relating to processing, picking, labeling, packaging, shipping, and delivery) as well as all applicable sales, use, or excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, and/or local governmental entity. Supplier shall, promptly upon Legends' request, provide Legends with a valid tax exemption resale certificate. Legends may, in its sole discretion, set off any amounts owed to Legends by Supplier and/or its affiliates against payment of any amounts due to Supplier and/or its affiliates. Supplier shall have no set-off rights.

## **10. SUPPLIER OBLIGATIONS.**

### **A. Representations / Warranties. Supplier represents and warrants that:**

- i.** it has the full power and authority to perform its obligations, grant the rights granted hereunder, and bind Supplier to this Agreement;
- ii.** it has the necessary skills, experience, expertise, and capabilities to supply the Goods;
- iii.** it (including any and all of its subcontractors and suppliers) shall act and the Goods shall be manufactured, assembled, tested, processed, picked, packaged, shipped, and otherwise provided in accordance with the highest industry standards, the Agreement, and all Applicable Laws;
- iv.** it will use the Intellectual Property of Legends and Client only for the purposes of this Agreement;
- v.** Supplier, the Goods, and any and all text, photographs, videos, and/or other materials provided to Legends in connection with the Goods will not infringe, misappropriate, and/or otherwise violate any third-party rights (including, but not limited to, any Intellectual Property);
- vi.** all statements, descriptions, claims, demonstrations, illustrations, and endorsements with respect to the Goods are true, accurate, and not misleading;
- vii.** it has obtained all valid consents, licenses, authorizations, and approvals as necessary to supply the Goods hereunder; and
- viii.** the Goods shall **(a)** conform to their descriptions and specifications; **(b)** be free from defects in design, material, and workmanship and fit for its intended use; **(c)** be new, of high quality, undamaged, safe, and free from any adulteration; **(d)** be free from any hazardous material; **(e)** be free from any liens, security interests, adverse title, and/or encumbrances; **(f)** bear the accurate country of manufacture in compliance with Applicable Laws; **(g)** be correctly declared as to their origin and imported in compliance with Applicable Laws; and **(h)** not be imported, manufactured, assembled, and/or otherwise supplied in violation of Applicable Laws, including, without limitation, from any countries sanctioned by the Office of Foreign Asset Control or other government authority.

**B. Notification. Supplier shall immediately notify Legends to the extent that **(i)** the Goods and/or the manner that the Goods are featured on the Online Store requires any warning, notification, and/or other information under Applicable Law (including, but not limited to, requirements under California's Proposition 65) and/or **(ii)** any of the Goods are defective, subject to any voluntary or legally-required recall (by Supplier, Applicable Law, or otherwise), present a safety hazard, and/or otherwise non-saleable. Without limiting Supplier's obligations hereunder, Legends may determine (in its sole discretion) to cease selling and/or recall the Goods due to the actual or suspected occurrence of (i) or (ii), in which case, Supplier shall fully cooperate (at its own expense) to develop (to Legends' satisfaction) a process to correct, replace, and recall all affected Goods. Supplier shall be solely responsible for compliance with the foregoing requirements, immediately instructing Legends in writing as to any actions required by Legends under Applicable Law, and reimbursing Legends for its actual costs in connection with any such required action. Any Goods returned as a result of any of the foregoing occurrences shall be returned directly to Supplier by Customer, in the manner set forth in Section 17.**

**C. Certifications. Supplier shall execute or supply upon Legends' request any certificates and/or other**

reasonable documents in a form satisfactory to Legends or laboratory results that Legends may require to demonstrate Supplier's compliance hereunder. Supplier shall, upon request, furnish a continuing guaranty filed with the Federal Trade Commission or Consumer Product Safety Commission indicating that the Goods are properly labeled in accordance with Applicable Laws.

- D. Legends Policies. Supplier shall comply with Legends's terms of engagement, code of ethics, code of conduct, and/or similar policies provided by Legends to Supplier in writing, including, without limitation, via the Supplier Resource Page, and as updated by Legends from time to time, each of which is expressly incorporated herein by reference.
- E. Client Requirements. Supplier acknowledges and agrees that, from time to time, a Client may, as a condition to doing business with Legends and/or Supplier, require Supplier to comply with certain additional requirements specific to its manufacturing and/or distribution of Goods. In the event of the foregoing, Supplier agrees to fully comply with such requirements and cooperate with Legends with respect to the same, including, without limitation, executing documentation and/or providing requested information.

## 11. INTELLECTUAL PROPERTY.

- A. Supplier Intellectual Property. Supplier hereby grants to Legends and its parents, subsidiaries, affiliates, successors, licensees, and assigns and those working for any of them or on their behalf a non-exclusive, royalty-free, transferrable, worldwide license to reproduce, distribute, display, perform and otherwise use Supplier's Intellectual Property for purposes of advertising, promoting, offering for sale, selling, and/or fulfilling the Goods. Supplier shall immediately notify Legends in writing if it becomes aware of any actual or alleged infringement, misappropriation, and/or other violation of third-party Intellectual Property Rights by Supplier, the Goods, and/or Supplier's Intellectual Property.
- B. Third Party Rights. Supplier represents and warrants that the Goods do not infringe the Intellectual Property rights of any third party ("Third Party Rights"). Where Supplier incorporates material that is subject to Third Party Rights into any Goods (at Supplier's own expense), Supplier shall first obtain in writing all necessary licenses, consents, and permissions to do so, including rights arising pursuant to any Applicable Laws. Supplier shall not incorporate any material into the Goods that is subject to Third Party Rights until all such licenses, consents and permissions have been obtained and, by fulfilling any Order, represents and warrants that it has obtained all of the foregoing.
- C. Legends / Client Intellectual Property. Nothing herein shall be construed to authorize or permit Supplier, its affiliates, or any of their respective officers, directors, employees, representatives or agents to use, in connection with its business operations or for any other purpose, any material containing any Intellectual Property owned by or licensed by Legends and/or the Client or any of their affiliates, without Legends' and/or Client's prior written approval, in each instance. Supplier shall not register or attempt to register any Intellectual Property of Legends and/or Client and, to the extent that Supplier becomes the owner of any applications or registrations, it shall assign the same to Legends and/or Client, as the case may be. For any authorized use of such Intellectual Property, all goodwill associated therewith shall inure to the benefit of the owner of the Intellectual Property. Any use, or attempted use, of such Intellectual Property in violation hereof shall constitute a material breach of the Agreement and Legends, Client, and each of their respective affiliates shall maintain all remedies available via contract, at law, in equity, or otherwise, including the right to secure injunctive relief to prevent the unauthorized use of such Intellectual Property.

## 12. INSURANCE.

- A. For a period of at least two (2) years after Supplier's fulfillment of any Order, Supplier shall carry and maintain, at its sole costs and expense, policies of insurance with reputable insurers of the types typically maintained by businesses providing the same or substantially similar services and in the amounts to meet its obligations under this Agreement and such greater amounts as required by law, including the following minimum coverage and limits:
  - i. Commercial General Liability Insurance covering the liability of Supplier and the Goods for theft, damage to property, bodily injury and death of any individual or individuals, and personal and advertising injury in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate;

- ii. Products and Completed Operations Liability Insurance of not less than Two Million Dollars (\$2,000,000.00) annual aggregate;
  - iii. Business Auto Liability covering bodily injury and property damage in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence to include owned, hired, and non-owned automobiles;
  - iv. Workers' compensation of not less than One Million Dollars (\$1,000,000) per occurrence or as required by law;
  - v. Privacy/Cyber Liability Insurance with a limit not less than Two Million Dollars (\$2,000,000) per claim and Five Million Dollars (\$5,000,000) annual aggregate.
  - vi. Umbrella Liability insurance in the amount of not less than Five Million Dollars (\$5,000,000.00) as a combined single limit over and above the foregoing limits required under this Agreement.
- B. All such insurance shall be primary and non-contributory with respect to any insurance maintained by the Legends Indemnitees and must be issued by reputable insurers rated A- or better by A.M. Best and Co. Legends, its parent, subsidiaries, and affiliates, their respective successors and assigns, and each of the foregoing's respective directors, officers, employees, agents, assignees, and representatives shall be named as additional insureds on the foregoing policies (excluding workers' compensation). Supplier shall provide Legends with current certificates of insurance as evidence of such insurance promptly upon request by Legends. Supplier shall provide thirty (30) days prior written notice to Legends of any material change in any of the policies. The insurance coverage described in this Section shall not limit the extent of Supplier responsibilities and liabilities specified within this Agreement or by law.

### 13. INDEMNITY.

- A. Supplier shall indemnify, defend, and hold harmless Legends, its Client(s), their affiliates, and each of their respective officers, directors, employees, agents, representatives and permitted successors and assigns ("Legends Indemnitees") from and against any claims, actions, allegations, demands, proceeding, liabilities, losses, damages, costs, fines, payments, and expenses (including reasonable attorneys' fees) ("Claim") that arise from or results out of: (i) any actual or alleged infringement, misappropriation and/or other violation by Supplier of any Intellectual Property of any third party; (ii) any product liability (including any recall), personal injury, or property damage; (iii) any negligence or misconduct on the part of Supplier; (iv) any failure by Supplier to comply with any Applicable Law; (v) any statements, descriptions, claims, demonstrations, illustrations, and endorsements with respect to the Goods; (vi) any actual or alleged breach of any of Supplier's representations, warranties, obligations, or agreements hereunder; and/or (vii) the financial responsibility for debts owed by Supplier and/or its affiliates, provided such debts are not owed to Supplier by Legends.
- B. If any claim, action, allegation, demand, or proceeding (including any governmental investigation) is made or commenced by any third party (a "Third Party Claim") against any Legends Indemnitee, Legends shall promptly notify Supplier in writing that it is obligated to provide indemnification pursuant to this Section, provided that the failure to give such notice shall not affect the liability of Supplier except to the extent the failure materially and adversely affects the ability of Supplier to defend the Third Party Claim. Supplier shall have the right to assume the defense of the Third Party Claim, including the employment of counsel reasonably satisfactory to the Legends Indemnitee and the payment of all expenses, provided that: (i) the Legends Indemnitee shall have the right to participate in the defense of the Third Party Claim at its own expense through counsel of its choice (control of the defense will remain with Supplier), and (ii) Supplier shall not consent to the entry of any judgment or enter into any settlement that would require any act or forbearance on the part of the Legends Indemnitee or which does not unconditionally release the Legends Indemnitee from all liability in respect of the Third Party Claim without the prior written consent of the Legends Indemnitee. Without limiting the foregoing, each Party shall cooperate in making available such documents and/or witnesses as may be within their respective control and making available at reasonable times and for reasonable periods such of their personnel as may be helpful in terms of identifying defenses and counterclaims in any action and, through counsel, in identifying, developing and presenting all such defenses and counterclaims. The indemnity obligations hereunder shall survive termination and/or expiration.

### 14. CONFIDENTIALITY.

- A. Supplier acknowledges and agrees that it may come into possession of information and/or materials that comprise confidential information and/or valuable trade secrets of Legends and/or one or more third parties (including Client) and that is exclusively owned by or otherwise in the possession of Legends and that, without the prior written consent of Legends (“**Confidential Information**”), Supplier shall not disclose to any person or use (other than in performing this Agreement) such Confidential Information, which shall include (1) any information that is provided by or on behalf of Legends to Supplier in connection with Supplier’s obligations herein, (2) any information regarding the business or operations of Legends, Client, Client’s facility or operations, and/or any of their respective affiliates, employees, representatives, agents, contractors, clients or customers, (3) any information relating to the terms of the Agreement, (4) any analyses, compilations, studies, and/or other documents or materials prepared by or on behalf of Supplier reflecting the foregoing information, including drawings, specifications, designs, surveys, reports, budgets, proposals, financial data, models, sales, marketing, promotional and sales information, plans, programs, projections, customer lists, event plans and promotions, facility attendance figures, operating methods and procedures, compensation, and agreement negotiations.
- B. Confidential Information shall not include any information that (1) was, prior to Supplier’s receipt from Legends, in the possession of Supplier and not subject to any confidentiality restrictions; (2) is subsequently disclosed to Supplier by a third party without any confidentiality obligations, provided such third party has not derived such information directly or indirectly from Legends; or (3) is or becomes generally available to the public through no act or default of Supplier or its agents, employees, or affiliates. To the extent that Supplier is required to disclose Confidential Information by a court of competent jurisdiction or government regulatory agency, Supplier will immediately notify Legends of any such required disclosure to allow Legends to challenge such requirement and/or seek a protective order, for which Supplier shall reasonably cooperate and minimize the disclosure of Confidential Information to the extent legally permissible.
- C. Supplier’s confidentiality obligations hereunder shall survive termination and/or expiration and continue until such information ceases to be deemed “Confidential Information” hereunder. Supplier may share Confidential Information with its employees and agents that need to know such Confidential Information for the sole purpose of performing its obligations hereunder, provided that Supplier shall ensure that such employees and agents are bound by an obligation of confidentiality with respect to the Confidential Information substantially the same as those set forth above and remain fully responsible for any unauthorized disclosure of Confidential Information.

**15. TITLE / RISK OF LOSS.**

- A. **Risk of Loss.** Supplier shall bear the risk of loss in the Goods until the point of delivery to the Delivery Location. For the avoidance of doubt, Legends shall not be responsible for any Goods damaged, lost, and/or stolen in transit. To the extent that any Goods are damaged, lost, and/or stolen in transit and Supplier is notified by the Carrier, Supplier shall (i) promptly notify Legends and provide all reasonably requested information by Legends for it to notify Customer, (ii) fully cooperate with Legends with respect to shipping replacement Goods and provide such replacement Goods as soon as reasonably practicable, at its sole cost, (iii) be responsible for submitting any claim with the Carrier for such damaged Goods, at its sole cost. To the extent that any Goods are damaged, lost, and/or stolen in transit and Legends is notified by Customer, Legends shall promptly notify Supplier and instruct Customer to contact Supplier. As further set forth in Section 12, Supplier will, at its own costs, adequately and fully insure the Goods.
- B. **Title.** Supplier shall maintain title to the Goods until the point of shipment (Supplier’s distribution center), after which Legends shall maintain title until the Goods are delivered to the Delivery Location.

**16. DATA PROCESSING.** Each Party will use commercially reasonable security technology and protocols to protect Customer Data, including, but not limited to, with respect to the processing and transmission of such Customer Data. Subject to and in accordance with the Data Processing Addendum attached hereto and incorporated herein as EXHIBIT A, Supplier shall only use and process Customer Data for the sole and limited purpose of fulfilling Orders. Supplier acknowledges and agrees that it shall not own any Customer Data and that it shall not contact any Customer unless in response to Customer and to facilitate the return of any Goods, as further described in Section 17. In addition to the foregoing, Supplier shall comply with all additional security and access requirements communicated to it in writing by Legends, including, without limitation, via the Supplier Resource Page, and as updated by Legends from time to time, each of which is expressly

incorporated herein by reference. Supplier shall be solely responsible for all its costs, expenses, and liabilities in connection with its compliance with this Section.

17. **RETURNS.** Supplier shall be responsible for accepting any Goods returned by Customer. In the event that Customer contacts Legends directly and seeks to return any Goods, Legends shall instruct Customer to return the Goods directly to Supplier. In the event that Customer contacts Supplier directly and seeks to return any Goods, Supplier shall promptly notify Legends, instruct Customer to return the Goods directly to Supplier, and, at all times, provide professional and high-quality customer service support. Unless otherwise agreed upon by the Parties in writing, Customer shall bear the cost of shipment for any returned Goods. Supplier shall be solely responsible for accepting any Goods returned by Customer and processing all returned Goods. Following Supplier's receipt of any returned Goods, Supplier shall immediately notify Legends in a manner and format as determined by Legends in its sole discretion (including, without limitation, through a purchase order submitted to Supplier) and issue a credit and/or reimbursement to Legends (as determined by Legends in its sole discretion) for Legends' full cost of the returned Goods. Legends shall not be responsible for any costs associated with any returned Goods.
18. **SUBORDINATION.** This Agreement is subordinate to the terms, reservations, conditions, and restrictions of any agreement between Legends and a Client, together with any and all existing and future amendments thereto.
19. **PUBLICITY.** Supplier shall not, and shall ensure that its employees shall not, without the prior written approval of Legends in each case:
  - A. Represent, directly or indirectly, that any product or service provided has been endorsed or approved by or is in any way associated with Legends, Client, or any of their respective officers, directors or employees;
  - B. Display, exhibit or otherwise use at any time for any purpose including but not limited to, for any marketing, promotional or advertising purpose any Names and Marks of Legends, Client, or any of their officers, directors, or employees, or any other item belonging to, referring to or which may suggest any association whatsoever with Legends, Client, and/or any of their directors or employees; or
  - C. Publish or issue any statement (factual or otherwise) about Supplier's provision of Goods in relation to Legends, the Client, or each of their respective officers, directors, or employees. Notwithstanding anything to the contrary in the foregoing, Supplier may, make such statements about Supplier's provision of Goods to Legends if required by Applicable Law.
20. **MISCELLANEOUS.**
  - A. **Entire Agreement.** This Agreement, including each exhibit attached hereto and documents incorporated by reference, constitutes the entire agreement between Legends and Supplier. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions thereof unenforceable, invalid, or illegal.
  - B. **Waiver/Remedies.** No waiver of a breach of any provision of this Agreement by either Party shall constitute a waiver of any other breach of the provision or any other provision of the Agreement. Failure of either Party to enforce a provision of the Agreement at any time, or from time to time, shall not be construed as a waiver of that provision or of any other provision of the Agreement. The remedies contained in this Agreement shall be cumulative and additional to any other remedies in law or equity. Supplier shall be responsible for all of Legends' damages, costs, and expenses incurred as a result of Supplier's breach of the Agreement, including, without limitation, in connection with Legends' enforcing its rights hereunder.
  - C. **Client Solicitation.** Except as otherwise authorized pursuant to this Agreement, Supplier acknowledges and agrees that it shall not, directly or indirectly, produce, market, manufacture, distribute, or sell any goods and/or merchandise to Client or engage, offer, and/or solicit Client with respect to the same without Legends' prior written authorization.
  - D. **Audit/Inspection.**
    - i. Supplier will maintain complete and accurate records and ensure that its authorized suppliers keep and maintain adequate records with respect to the manufacturing, assembly, testing, processing, picking, packaging, shipment, and provision of the Goods. Legends (or its and/or Client's agent or representative) shall have the right to inspect, audit, and make copies of Supplier's records at Supplier's place of business during normal business hours (not later than three (3) business days

following Legends' written notice of its intent to inspect such records) for a period of two (2) years after Supplier's fulfillment of any Order. In addition, in the event of a regulatory inquiry or other audit, including any audit required or requested by Legends, Supplier will provide to Legends and any applicable third-party auditor(s) or government agency with any and all information reasonably necessary to comply with such inquiry or audit.

- ii. Supplier will grant Legends (or its and/or Client's agent or representative) the right to access Supplier's facilities (and ensure such access is granted for any of Supplier's authorized suppliers) for inspection during normal business hours (not later than three (3) business days following Legends' written notice of its intent to access such facilities) to confirm compliance with the Agreement. Legends may also request copies of any audit or inspection records from Supplier relating to any facilities in which the Goods are manufactured, assembled, tested, processed, picked, and/or packaged, complete and accurate copies of which will be provided to Legends within five (5) business days of Legends providing such request.
- E. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of New York as to contracts entered into and to be fully performed and satisfied in New York, without regard to New York's position on conflict of laws. Each Party hereto irrevocably agrees that any legal action, suit or proceeding against them arising out of or in connection with this Agreement or the transactions contemplated hereby or disputes relating hereto (whether for breach of contract, tortious conduct or otherwise) shall be brought exclusively in a court in New York County of the State of New York and hereby irrevocably accepts and submits to the exclusive jurisdiction and venue of the aforesaid courts in personam, with respect to any such action, suit or proceeding, and waives any claim that such forum is inconvenient, or any similar claim. Each of the Parties hereto hereby acknowledges and confirms that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth above shall be effective service of process for any action, suit or proceeding in New York in with respect to any matters for which it has submitted to jurisdiction pursuant to this Section.
- F. Delegation and Assignment.** Supplier may not delegate its duties (including via subcontractor) or assign its rights under this Agreement, either in whole or in part, without the prior written consent of Legends (which such consent shall be determined by Legends in its sole discretion), nor may any rights under this Agreement be transferred to any other Party by operation of law. Any delegation of duties or assignment of rights under the Agreement without the express written consent of Legends shall be null and void and shall constitute a breach for which the Agreement may be terminated. Any delegation or assignment approved by Legends shall be in the form of a subcontract or formal assignment, as applicable and such permitted assigns shall assume all of the liabilities of Supplier as set forth herein. Notwithstanding the foregoing, Legends shall have the right to assign and transfer this Agreement, without the consent of Supplier, to an affiliate or successor in interest provided such affiliate or successor is capable of fully performing the obligations and assuming all of the liabilities of Legends as set forth herein.
- G. Changes and Amendments.** Except as otherwise set forth herein, this Agreement may only be modified, supplemented, and/or amended (i) upon ten (10) days written notice by Legends to Supplier, including, without limitation, via the Supplier Resource Page, and/or (ii) by further written agreement duly executed between the Parties hereto.
- H. Notices.**
- i. All notices provided for in this Agreement shall be in writing and shall be deemed to have been properly given (a) upon receipt if delivered in person or by a nationally recognized overnight courier service or sent by electronic means with receipt confirmed (provided a copy is sent the same day by either overnight courier or certified mail); or (b) as of the third business day after being sent by registered or certified mail, return receipt requested, postage prepaid, addressed to Supplier at the address supplied to Legends and to Legends as set forth in subclause (2) below.
  - ii. 

<u>If to Legends:</u>	<u>With copy to:</u>
Dan Smith	Legends Legal Department
President	Legends Hospitality, LLC
Legends Hospitality, LLC	61 Broadway, Suite 2400
61 Broadway, Suite 2400	New York, NY 10006

New York, NY 10006

Email: LegalNotices@legends.net

or such other address as may be furnished in writing by either Party to the other. Either Party may change its address for the purpose of receiving notices under this Agreement by written notice to the other Party in the manner set forth above.

- I. Independent Contractor. Supplier shall at all times be acting as an independent contractor. The Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association as between Legends and Supplier. Supplier understands and agrees that all Supplier personnel who furnish services to Legends under this Agreement are not employees of Legends for purposes of workers' compensation liability or otherwise.
- J. Waiver of Jury Rights. BOTH PARTIES IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING. SUPPLIER HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST LEGENDS, AND AGREES THAT IN THE EVENT OF A DISPUTE SUPPLIER SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY IT AS FURTHER LIMITED BY THE PROVISIONS HEREOF.
- K. Survival. Any provision of the Agreement that contemplates performance or observance subsequent to termination or expiration will survive termination or expiration and continue in full force and effect.