

# SAK AGREEMENT



TBS

Effective Date: December 8, 2015

**BREWERS RETAIL INC.  
SINGLE APERTURE KEG AGREEMENT**

**THIS AGREEMENT** is made this [redacted] day of [redacted], 202[redacted] (the “**Commencement Date**”) by and between:

**BREWERS RETAIL INC.**, a corporation existing under the laws of the Province of Ontario  
 (“**BRI**”)

OF THE FIRST PART

- and -

[redacted], a corporation existing under the laws of [redacted]  
 (“**Brewer**”)

OF THE SECOND PART

WHEREAS:

- (a) BRI owns and operates outlets for the sale of Beer in the Province of Ontario;
- (b) BRI purchases from time to time from the LCBO, draught Beer brewed by Brewer;
- (c) Brewer has signed a User Agreement with BRI;
- (d) Brewers sells at least 50% of its Ontario sales through BRI;
- (e) BRI owns a pool of 58.6 litre single aperture kegs for use in the sale of Draught Beer within the Province of Ontario; and
- (f) Brewer desires access to the BRI-owned 58.6 litre single aperture kegs for use in the sale of Draught Beer by the Brewer in the Province of Ontario;

NOW THEREFORE in consideration of the premises and their respective covenants and agreements herein contained, it is hereby covenanted, agreed and declared by and between the parties hereto as follows:

## ARTICLE ONE

### INTERPRETATION

#### 1. Definitions

Unless otherwise defined herein, all defined terms shall have the meaning ascribed thereto in the Brewers Retail Inc. User Agreement dated (“date”) between BRI and Brewer.

As used herein,

- (a) “Brewer” means a manufacturer of beer products who has entered into, or hereafter enters into, an agreement with BRI to have one or more of its beer products listed on the BRI General List;
- (b) “BRI Distribution System” means the system established and operated by BRI for distribution to licensees and other users of Draught Beer for sale to the public in the Province of Ontario including, without limitation, pick up and storage of empty Containers at BRI distribution Centres.
- (c) “BRI General List” means BRI’s general list of products offered for sale through the outlets operated by BRI for the sale and distribution of beer products in Ontario;
- (d) “BRI User Agreement” shall mean the Brewers Retail Inc. User Agreement dated between BRI and Brewer;
- (e) “Draught Beer” means a beer product manufactured by a Brewer which is distributed and sold in containers with a capacity equal to or greater than 18 litres, and which BRI has agreed or hereafter agrees to list on the BRI General List;
- (f) “SAK keg” means a BRI-owned 58.6 litre single aperture keg which is part of the SAK Pool and which is used to dispense Draught Beer’
- (g) “SAK Pool” means the pools of BRI-owned 58.6 litre single aperture kegs to which a brewer may gain access for use in the sale of Draught Beer in Ontario; and
- (h) “SAK Usage Fee” means a fee paid by Brewer to BRI for access to the SAK Pool and use of the SAK kegs.

## **ARTICLE TWO**

### **BRI AGREEMENTS**

#### **2.1 BRI User Agreement**

Brewer acknowledges that it is a party to, and agrees to observe and perform all terms, conditions and provisions to be observed and performed by it under the BRI User Agreement.

## **ARTICLE THREE**

### **ACCESS TO SAK POOLS**

#### **3.1 Right to use SAK Pool**

Subject to the provisions of this Agreement, BRI agrees to make SAK kegs from the SAK Pool available to Brewers on request for use in the sale of Draught Beer in the Province of Ontario.

#### **3.2 Limitation of Access**

Brewer agrees that BRI may, in its sole discretion, limit the number and size of SAK kegs made available to Brewer from time to time and nothing herein shall be construed to require BRI to purchase additional SAK kegs. BRI agrees to use reasonable efforts to allocate SAK kegs from the SAK Pool based on market shares of the Brewer and the other users of the SAK Pool.

#### **3.3 Restriction of Use**

**Brewer agrees that:**

- (a) no SAK keg shall be used for the sale of Draught Beer outside of the Province of Ontario;
- (b) no SAK keg shall be shipped outside of the Province of Ontario; and
- (c) where said product of draught is not sold through BRI, but produced in BRI kegs, BRI has the right to require that said product be sold through its outlets.

## ARTICLE FOUR

### **FEES, DEPOSITS AND OTHER COSTS**

#### **4.1 Service Fees**

Pursuant to the requirements of Section 5.1 of the BRI User Agreement, Brewer shall pay a fee to BRI for Basic Services for Draught Beer, such fee to be paid in the manner contemplated by Section 5.2 of the BRI User Agreement. A component part of this fee for Basic Services is the SAK Usage Fee. Brewer agrees that the SAK Usage Fee shall be that set forth in Schedule 'C' of the main BRI User Agreement

#### **4.2 Deposits**

Brewer agrees that it shall pay to BRI a deposit for each SAK keg (the "SAK Container Deposit") that Brewer obtains from BRI. The SAK Container Deposit shall be \$50.00 and shall be paid in the manner contemplated by Section 5.2 of the BRI User Agreement. The SAK Container Deposit may be changed at any time, at the sole discretion of BRI.

## ARTICLE FIVE

### **REPORTING AND VERIFICATION PROCEDURES**

#### **5.1 Reporting Procedure**

Brewer agrees to report to BRI all details of sales or other movement of a SAK keg or kegs which occurs other than through the BRI Distribution System. All such reports shall be: (a) submitted by Brewer to BRI on a monthly basis, such submission to be made by Brewer no later than the fifth working day of the following month; and (b) in the form attached hereto as Appendix "A". The report must be signed off by the recognized financial officer of the Brewer.

Where said Brewer fails to provide the applicable monthly reporting, BRI may cancel the use by the Brewer of the SAK Pool by giving 10 business days notice.

#### **5.2 Verification Procedure**

Brewer agrees that for the purpose of verifying Brewer's sales and inventory records (the "Brewer Records") respecting Brewer's use of the SAK kegs, any employee of BRI shall be permitted, upon request and reasonable notice (which both parties agree to be 48 hours) by BRI: (a) to review all sales and inventory records of Brewer pertaining to the SAK kegs (the "Brewer Records"); and (b) to access the facilities of Brewer to conduct a physical inventory review in respect of the SAK kegs (the "Inventory Review").

Where a Brewer has recorded an under-usage of the BRI keg float on the monthly reporting, Brewer must pay the amount owing plus interest charges, plus BRI may exercise its right to cancel this agreement effective immediately.

### **5.3 Liability for Loss**

Brewer agrees that where the review conducted by BRI pursuant to Section 5.2 hereof, discloses a lesser number of SAK kegs than that number of SAK kegs which the BRI Records indicate should be accounted for in the Brewer Records and/or Inventory Review, Brewer shall remit, upon demand by BRI, the full replacement value for such SAK keg or kegs, as specified by BRI to Brewer in writing, which were not accounted for in the Brewer Records and/or Inventory Review.

## **ARTICLE SIX**

### **HANDLING REQUIREMENTS**

#### **6.1 Brand Identification**

Brewer agrees that, subject to applicable laws or regulations,:

- (a) no marking shall be applied by Brewer to the body of an SAK keg, whether this marking is applied for purposes of identifying the brand of Draught Beer contained or to be contained within the SAK keg or otherwise, unless such marking is made by Brewer using laser jet style coding and applied using water soluble ink; and
- (b) no label shall be applied by Brewer to the body of an SAK keg, whether this label is applied for purposes of identifying the brand of Draught Beer contained or to be contained with the SAK keg or otherwise, and that such label may be applied only to the dust cap of a SAK keg.

#### **6.2 Cleaning**

Brewer agrees that:

- (a) all SAK kegs must prior to each use be cleaned using a caustic solution with a strength of no less than one (1) percent and no stronger than one and one-half (1.5) percent;
- (b) the SAK kegs shall be cleaned by Brewer prior to the Brewer refilling the SAK keg with Draught Beer and such cleaning shall remove all markings from the body of the SAK keg;
- (c) all equipment used by Brewer to clean the SAK kegs, and to fill the SAK kegs with Draught Beer, is subject to the approval of BRI and BRI may, in its sole discretion, refuse to supply SAK kegs to a Brewer whose equipment is not approved by BRI; and
- (d) Brewer agrees to allow BRI's Draught Services division access to the Brewer's equipment to ensure that it meets specifications in washing and filling of BRI's 58.6 litre SAK kegs.

### **6.3 Repairs**

BRI shall maintain the SAK kegs in serviceable condition. Brewer shall segregate kegs requiring repair and return said kegs to BRI identifying type of repair required by affixing a tag to the keg and returning the keg to the nearest BRI Distribution Centre. BRI reserves the right to charge the Brewer for the cost of repairs or for a replacement keg where, in its sole opinion, the damage to the keg was caused by the Brewer and was not the result of normal wear and tear.

## **ARTICLE SEVEN**

### **INDEMNIFICATION**

#### **7.1 Indemnification**

Brewer hereby indemnifies BRI and holds BRI harmless of and from every claim, demand, loss, expense, whether or not caused or contributed to by any negligence or alleged negligence on the part of BRI or BRI's employees or agents, in respect to the use by Brewer of the SAK Pool.

## **ARTICLE EIGHT**

### **TERMINATION**

#### **8.1 Termination**

This Agreement may be terminated if any of the following events occur:

- (a) Brewer ceases to be a party to the BRI User Agreement;
- (b) either BRI or Brewer terminate this Agreement upon thirty days written notice of termination to the other;
- (c) BRI, in its sole discretion, terminates this Agreement by written notice of termination to Brewer upon breach by Brewer of any term, condition or provision to be observed or performed by it under this Agreement; and
- (c) either party may terminate if the other party makes an assignment in bankruptcy or a petition in bankruptcy is filed against the other party, if the other party becomes bankrupt or insolvent or avails itself of any legislation that may from time to time be in force which is of advantage to a bankrupt or insolvent person, if a trustee, liquidator, receiver, receiver and manager or custodian is appointed with respect to any of the property or assets of any such party or if a writ of execution or similar process is obtained against the other party and is not satisfied within 30 days of the issuance thereof.

**8.2 Obligations upon Termination**

Upon termination of this Agreement, Brewer shall, within thirty (30) days of the date of termination, return to BRI that number of SAK kegs which the BRI Records indicate are to be in the possession of Brewer. Where Brewer fails to return to BRI that number of SAK kegs recorded in the BRI Records, Brewer shall, within thirty days of the date of termination, remit to BRI the full replacement value of the shortfall.

**8.3 Accounting**

Upon termination of this Agreement, a final accounting and report will be completed by BRI and delivered to Brewer within 30 days of such termination and BRI and Brewer shall make all necessary financial adjustments and payments to give effect to the termination of this Agreement with (30 days) following receipt of such accounting and report as prepared by BRI. (Any dispute or difference arising between the parties hereto as to the amount of any financial or other calculation or adjustment as prepared by BRI shall be settled in the manner specified in Section 8.2 of the BRI User Agreement).

**ARTICLE NINE**

**MISCELLANEOUS**

**9.1 Notices**

Any notice required or permitted to be given hereunder shall be in writing and shall be sufficiently given if personally delivered, mailed, postage prepaid and registered, or sent by fax or other means of electronic communication and addressed –

- (a) if to BRI, at:  
 The Beer Store  
 12258 Coleraine Drive  
 Bolton, Ontario  
 L7E 3A9  
 Attention: President  
 Email: roy.benin@thebeerstore.ca

- (b) if to Brewer, at:  
 Address:   
 Email:   
 Attention: ; or



- (c) to such other address as the Party to which such notice is to be given shall have notified (in accordance with the provisions of this Section) as its substitute address for the purposes hereof.

Any notice, waiver, direction or other instrument aforesaid if delivered personally shall be deemed to have been given on the day in which it was delivered, if mailed shall be deemed to have been given on the fourth Business Day following the day on which it was mailed and if sent by fax or other electronic means of communication, on the day of transmittal thereof. If the Party giving any notice knows or reasonably ought to know of any difficulty with the postal system which might affect the delivery of mail, such notice shall not be mailed but shall be given by personal delivery or fax or other electronic means of communication.

## **9.2 Force Majeure**

No party hereunder shall be responsible to the other party for any delay or failure to fulfill the terms of this Agreement if such failure or delay results from an act of God, an act of public enemy, an act of sabotage, riot, fire, flood, explosion or other catastrophe, an accident, a freight embargo or any other cause beyond the reasonable control of the party whose failure or delay is to be excused.

## **9.3 Legal Ownership**

Notwithstanding any other provision of this Agreement, BRI shall at all times have legal title to the SAK kegs.

## **9.4 Assignment**

Neither this Agreement nor any interest in it may be assigned by Brewer without the consent in writing of BRI. Any sale or other disposition or granting of any interest in Brewer or any series of transactions whereby a change in control in Brewer is effected shall be deemed to be an assignment of this Agreement to which this Section 8.4 applies; in the case of a corporation "control" shall have the meaning set out in the *Business Corporations Act* (Ontario). BRI shall be entitled to assign this Agreement without the consent of Brewer.

## **9.5 Governing Law and Attornment**

This Agreement shall be governed by the laws of Ontario. Brewer hereby attorns to the exclusive jurisdiction of the courts of Ontario.

Brewer agrees to comply at all times with all applicable laws, rules, directives, guidelines and policy statements issued by the Province of Ontario, the LCBO or by the Alcohol and Gaming Commission. Breaking or violating any or all of these regulations or directives may void this contract at BRI's discretion.

**9.6 Canadian Dollars**

All references herein to dollars are to the lawful currency of Canada.

**9.7 Successors and Assigns**

The provisions of this Agreement shall endure to the benefit of and be binding upon the successors and assigns of BRI and subject to the consent of BRI having first been obtained, the successors and assigns of Brewer.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement under seal as of the Commencement Date.

**BREWERS RETAIL INC.**

By: \_\_\_\_\_  
Name: Roy Benin  
Title: President

[REDACTED]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

c/s

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BREWER REPORT OF BRI OWNED  
S.A.K. MOVEMENT**

**BREWER**

**FOR THE MONTH OF**

**SECTION A: HOME CONSUMPTION**

**No. of Units**

1) Direct Sales from Brewer to Home Consumption	-58.6L Kegs	_____
2) Empties returned to Brewer by Home Consumer	-58.6L Kegs	_____

**SECTION B: LICENSEE**

1) Direct Sales from Brewer to Licensee	-58.6L Kegs	_____
2) Empties returned to Brewer by Licencee	-58.6L Kegs	_____

**SECTION C: ON SITE PHYSICAL  
INVENTORY**

1) Month-end Inventory (Full & Empty)	-58.6L Kegs	_____
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**NOTES**

- 1) Nil report is required
- 2) Only report BRI S.A.K.'s that are sold directly to customers or picked up directly from customers.  
Do not include any sales made through BRI or empties picked up from BRI Stores or Depots.
- 3) To be forwarded to BRI, Corporate Office Accounting Dept. by 5th work day of each month.