



TOP IT OFF BOTTLING

BLENDING, BOTTLING & BARREL CARE

General Terms and Conditions

This agreement (“Agreement”) is entered as of the date of Customer’s signature on page six of this Agreement by and between the following parties:

Parties and Information	“TIOB”	“Customer”
<i>Legal Name of Company</i>	Top It Off Bottling, LLC	
<i>Company Address</i>	2747 Napa Valley Corporate Drive Napa, CA 94558	
<i>Company Telephone No.</i> <i>Company Facsimile No.</i> <i>Contact E-mail Address</i>	707-252-3330 707-252-0339 dcrawford@topitoffbottling.com	

WHEREAS, Customer has retained or may retain TIOB to provide services to Customer (each separate instance in which TIOB provides services will be referred to as a “Project”);

WHEREAS, TIOB’s facility is located at 2731 and 2747 Napa Valley Corporate Drive, Napa CA 94558;

WHEREAS, Customer and TIOB are collectively referred to as the “Parties” throughout this Agreement;

WHEREAS, for each Project these General Terms and Conditions will apply and will remain in full force and effect; and

WHEREAS, Customer acknowledges that for each Project a separate agreement with specific Project based guidelines, fees, rates, specifications and requirements (“Project Agreement”) will be fully executed by the Parties.

IT IS THEREFORE AGREED AS FOLLOWS:

- 1. Term of the Agreement.** The term of this Agreement shall commence on the first date written above and shall apply to each Project provided to Customer by TIOB, until the business relationship between the Parties terminates pursuant to Paragraph 2.
- 2. Termination of the Business Relationship.** If either Party wishes to terminate the business relationship between the Parties, for any reason and at any time, it may do so by giving prior written notice of such termination to the other Party specifying the effective date thereof at least thirty (30) days prior to the effective

date. The termination of the business relationship will not relieve the Parties of their obligations under the specific Project Agreement if the terms of the Project Agreement have yet to be fulfilled.

- 3. Obligations Extending Beyond Term.** The obligations of the Parties under Paragraphs 10 (Attorney's Fee), 11 (Insurance), 12 (Hold Harmless/Defense/Indemnification), and 18 (Confidentiality) shall continue in full force and effect after the termination in relation to acts or omissions occurring prior to such dates during the term of this Agreement.
- 4. Definitions.** For purposes of this Agreement the terms (i) "Project" shall include each separate instance in which TIOB provides services to Customer. A Project can include, but is not limited to, barrel storage, mobile wine bottling, wine bottling at the TIOB facility, crossflow filtration, wine blending, labels and storage; and (ii) "Project Agreement" shall include each specific Project based guidelines, fees, rates, specifications and requirements.
- 5. Scope of Services.** TIOB shall provide services for each Project as set forth in the Project Agreement(s) entered into by the Parties, which shall incorporate by reference this Agreement.
- 6. Compensation.** In consideration of TIOB's fulfillment of the promised work, Customer shall pay TIOB at the rates and within the timeset forth in the Project Agreement. Interest shall accrue on any past due obligation after the date due at one and one half percent (1.5%) per month.
- 7. Relationship of Parties.** It is understood, agreed, and intended by the Parties that in performing this Agreement, the Parties are each separately and independently carrying out their respective business, that this Agreement does not and shall not create or constitute a partnership or joint venture between them, or a principal/agent relationship and that each is and shall be as to each other an independent contractor and not an employer/employee.
- 8. Limitation.** As separate consideration for the services to be performed by TIOB under this Agreement, the Parties have agreed to limit TIOB's liability to Customer in accordance with the provisions of this paragraph. TIOB shall not be liable to Customer, or any other person whatsoever, for any injury or damage that may result to any person or persons or any property by or from any cause whatsoever, arising out of the services provided under this Agreement, unless such loss or liability is due to an intentional breach of this Agreement by TIOB or the negligence, willful misconduct or more culpable act or omission on the part of TIOB, its managers, members, officer, directors, employees, agents, representatives, successors and assigns.

In no event will TIOB be liable for any special, incidental, indirect, exemplary or consequential damages (including but not limited to loss of Profits) or for any amount greater than the actual price or fee paid to TIOB by Customer for the services rendered pursuant to this Agreement regardless of whether such damages are based in contract or tort, even if advised of the possibility of such damages.

- 9. Inconsistent Terms and Conditions.** Any term or condition inconsistent with those stated herein which may appear on any written document, purchase order, or other like instrument, shall be void and shall be superceded by the terms and conditions set forth herein.
- 10. Attorney's Fee.** If the services of an attorney are required by any Party to secure the performance of this Agreement or otherwise upon the breach or default of another Party to this Agreement, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement or the rights and duties of any person in relating thereto, or proceeding in bankruptcy is necessary to enforce this Agreement or to obtain relief

from stay, the prevailing Party will be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such Party may be entitled.

- 11. Insurance.** TIOB maintains the following types of insurance coverage, in commercially reasonable amounts: (i) workers' compensation insurance; (ii) commercial general liability and property insurance; (iii) commercial umbrella liability insurance in excess of the general liability; and (iv) professional liability or errors & omissions insurance or product quality insurance.

Customer is responsible for obtaining and maintaining in full force and effect during the term of this Agreement the following insurance coverage: (i) workers' compensation insurance with satisfactory limits as required by the California Labor Code covering all personnel furnished by Customer during the performance of this Agreement; (ii) comprehensive general liability ("CGL") insurance, issued by a company admitted to do business in California and with an A.M. Best rating of A:VII or better, or equivalent self-insurance. CGL insurance coverage (personal injury and property damage) shall be not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of Customer or any officer, agent, employee of Customer under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit; and (iii) Special Form Property Coverages insuring all of Customer's possible risk of loss or liability arising out of or relating to the services provided under this Agreement. Customer shall fully insure its wine, equipment, barrels, and supplies of whatever description for their full replacement value.

Notwithstanding the limitations on liability set forth in Paragraph 8 of this Agreement, TIOB neither accepts nor assumes any responsibility whatsoever for Customer's property at any owned, leased, contracted or used facility for the purposes of making, storing, bottling, or handling Customer's wines for any purpose. Customer is fully responsible for ensuring that it has obtained adequate insurance for its wines, including the obligation to insure the wine at any and all locations that it may be located under this Agreement, including, but not limited to TIOB's Facility, wine in transit, and such insurance shall include coverage for leakage.

Customer's obligations and its release of TIOB from liability under this Agreement shall not be affected by Customer's breach of its obligation to provide such insurance. Under no circumstances shall TIOB have any obligation to insure Customer's wines, and Customer shall indemnify, defend and hold TIOB harmless, for Customer's failure to obtain adequate insurance for Customer's own wines as required under this Agreement.

Customer shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either Party in connection with any damage covered by any policy. TIOB shall not be liable to Customer for any damage caused by fire, acts of God or any of the risks insured against under any insurance policy required by this Agreement. If any insurance policy cannot be obtained with a waiver of subrogation without payment of an additional fee, Customer shall pay such additional premium or otherwise obtain a replacement policy meeting the requirements of this Agreement. Notwithstanding the foregoing, Customer, by executing this Agreement, expressly waives any and all rights of subrogation and those of its insurance carrier against TIOB for any loss to Customer's property.

Customer shall provide to TIOB evidence of coverage an endorsement from the insurance provider naming TIOB, its officers, employees, and agents as additional insureds. Either copies of the original policies or certificates of insurance thereof shall be placed with TIOB, and the insurance carrier shall be required to notify TIOB in writing thirty (30) days prior to any cancellation or substantial modification of the policy.

- 12. Hold Harmless/Defense/Indemnification.** To the full extent permitted by law, Customer shall protect, defend at its own expense, hold harmless and indemnify TIOB and its managers, members, officers, directors,

employees, counsel, agents, representatives, successors, and assigns (collectively, "Indemnitee") from and against any and all claims, losses, liens, demands, damages, liabilities, costs, obligations, penalties or expenses (including, but not limited to imposition of any fines or penalties by any governmental agency), causes of actions, suits and/or costs of investigations, including reasonable attorney's fees (collectively, "Losses") incurred by Indemnitee, known or unknown, contingent or otherwise, directly or indirectly arising from or related to suits, actions, threats of suit brought against Indemnitee including, but not limited to: claims for damages arising from personal injury or wrongful death, property damage, arising out of (i) the services, acts or omissions provided and/or performed by Customer under this Agreement, (ii) breach by Customer of this Agreement, or (iii) the negligence, willful misconduct or more culpable act or omission on the part of Customer, its managers, members, officer, directors, employees, agents, representatives, successors and assigns, unless, in each case, such Losses are due to gross negligence or intentional misconduct of TIOB or its managers, members, officers, directors, employees, counsel, agents, representatives, successors, and assigns.

To the full extent permitted by law, TIOB shall protect, defend at its own expense, hold harmless and indemnify Customer and its managers, members, officers, directors, employees, counsel, agents, representatives, successors, and assigns (collectively, "Indemnitee") from and against any and all claims, losses, liens, demands, damages, liabilities, costs, obligations, penalties or expenses (including, but not limited to imposition of any fines or penalties by any governmental agency), causes of actions, suits and/or costs of investigations, including reasonable attorney's fees (collectively, "Losses", incurred by Indemnitee, known or unknown, contingent or otherwise, directly or indirectly arising from or related to suits, actions, threats of suit brought against Indemnitee including, but not limited to claims for damages arising from personal injury or wrongful death, property damage, arising out of (i) intentional breach by TIOB of this Agreement, or (ii) the negligence, willful misconduct or more culpable act or omission on the part of TIOB, its managers, members, officer, directors, employees, agents, representatives, successors and assigns, unless, in each case, such Losses are due to gross negligence or intentional misconduct of Customer or its managers, members, officers, directors, employees, counsel, agents, representatives, successors, and assigns.

Each Party shall notify the other Party immediately in writing of Losses related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of Losses arising out of the activities under this Agreement.

13. Schedule Changes and/or Cancellation(s). TIOB requests written notice of changes in scheduling at least 30 days prior to scheduled contracted Project dates in order to avoid any cancellation penalties. Less than 30 days' notice - 10% of the daily minimum will be charged, less than 21 days' notice - 25% of the daily minimum will be charged, less than 14 days' notice - 50% of the daily minimum will be charged, and less than 7 days' notice - 100% of the daily minimum will be charged. TIOB will do its best to re-book the time with another winery and if TIOB is able to re-book the time, the canceling winery will not be charged.

14. Notices. All notices required or authorized by this Agreement shall be in writing and shall be deemed properly given if e-mailed, provided that the email is acknowledged by a return e-mail from the Party receiving the notice e-mail, by facsimile if the transmitting machine generates an error-free notice of transmission, by personal delivery, or registered or certified mail, return receipt requested. If notice is sent by e-mail or facsimile it shall be deemed to have been received one (1) business day after date sent. If the notice is delivered personally, it shall be effective immediately. If notice is sent by registered or certified mail it shall be deemed to have been received on the date noted on the return receipt or five (5) days following the date of deposit, whichever is earlier. Either Party may change its address, e-mail, or facsimile number for notice in accordance with this provision. Any notices to be given to TIOB or Customer shall be to the address, e-mail, or facsimile identified on page 1 of this Agreement.

15. No Waiver. No failure or omission by either Party to insist upon or enforce any of the terms hereof shall be deemed a waiver of such terms unless the same shall be in writing and signed by the waiving Party. Waiver of a term or default at any time shall not be deemed a waiver of any other term or default at another time.

16. No Assignment. This Agreement may not be assigned or transferred, whether voluntarily or by operation of law, in whole or in part, by either of the parties, without the prior written consent of the other. Any purported assignment or transfer without such consent shall be null and void at the option of the nonassigning Party. Notwithstanding the foregoing, Customer or TIOB may assign and transfer this Agreement to any subsidiary, affiliate or legal successor in interest and title of a Party to this Agreement, which shall agree in writing to assume all of the obligations of such Party.

17. Confidentiality. TIOB agrees that it will not use Customer's name in its marketing efforts unless it has obtained Customer's prior written consent to do so. Either Party may disclose the existence of this Agreement and the other Party's role without the prior consent of the other Party.

Customer acknowledges that confidential, proprietary information of TIOB relating to TIOB's trade secrets, inventions, processes and the application of its processes ("TIOB Confidential Information") may be accessible to or may become known to Customer, its agents, or employees during the course of TIOB's provision of services under this Agreement. Correspondingly, TIOB acknowledges that confidential proprietary information of Customer relating to Customer's trade secrets, inventions, processes and the application of its processes ("Customer Confidential Information") may be accessible to or may become known to TIOB, its agents, or employees during the course of TIOB's provision of services under this Agreement. Each Party agrees that it shall keep confidential the other's Confidential Information. Each Party further agrees that it will not use the other's Confidential Information itself or otherwise use it for profit and that it will take no less than a reasonable degree of care to prevent disclosure of the other Party's Confidential Information to third parties.

Information that a Party is obliged to disclose by law, by any court order, or by governmental authority, will not be considered Confidential Information; provided, however, that the disclosing Party will use best efforts to give advance notice of any such disclosure to the other Party and will cooperate with the other Party in limiting such disclosure to prevent or minimize any loss of confidentiality.

18. Dispute Resolution. Except as provided in this Agreement, the Parties agree to mediate any dispute or claim arising out of or relating to this Agreement, including the interpretation or application of any provision in this Agreement. Mediation shall take place within thirty (30) days of written notice in accordance with the provisions in this Agreement for notice being served on the other Party. The mediator shall be a neutral mediator with commercial and wine industry experience, to be mutually agreed between the Parties from a recognized mediation service. The fees and expenses of mediation shall be borne evenly by the Parties. Evidence of anything said, any admission made, or any documents prepared in the course of mediation shall not be admissible in evidence, or subject to discovery in any arbitration or court action, pursuant to the California Evidence Code.

If any Party commences an arbitration or court proceeding based upon a dispute or claim to which this paragraph applies without first attempting to resolve the matter through mediation, then such Party shall not be entitled to recover attorneys' fees, even if it would otherwise be available to that Party in any such arbitration or court proceeding.

This mediation requirement shall not apply to actions by TIOB to collect amounts owed to TIOB for the services provided by TIOB under this Agreement or any matter that is within the jurisdiction of a bankruptcy court. Furthermore, the filing of a court action to enable an order for attachment or other provisional remedy shall not constitute a waiver or violation of this mediation provision.

- 19. Interpretation; Venue.** (i) The headings and titles used in this Agreement are for convenience and reference only and are not intended to give notice of all of the matter in the articles following such headings and titles. Said headings and titles do not constitute any part of this Agreement and are not to be considered in its interpretation. (ii) This Agreement is made in Napa County, California. The validity, performance and enforcement of this Agreement shall be construed in accordance with the laws of the State of California. Venue for any action arising out of or relating to this Agreement shall be in the state court of proper jurisdiction for the County of Napa, or if within the jurisdiction of the federal courts, Northern District of California. The appropriate venue for mediation, arbitration or similar legal proceedings under this Agreement shall be Napa County, California.
- 20. Compliance with Laws.** Each Party hereby represents and warrants that it shall remain in full compliance with all federal and state laws, rules, regulations and guidance applicable to the performance of its obligations under this Agreement and shall maintain all necessary federal, state and local licenses, permits and authorizations required to fulfill its obligations hereunder. Before delivering wine to the TIOB facility, Customer shall provide copies of all licenses and permits necessary to comply with state and federal laws. Such documents shall include, without limitation, a letter certifying the variety, vintage, alcohol percentage, the appellation from which the grapes used to make the wine originated and all additives that the wine has received. Customer assumes responsibility for the completeness and accuracy of such documentation.
- 21. Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.
- 22. Amendment.** Any changes in this Agreement that may be reasonably required to carry out the understanding and interaction of the Parties shall be promptly embodied in a supplement or amendment to this Agreement to be signed by both Parties, consent of either not to be unreasonably withheld. No change shall be valid unless it is in writing and signed by both Parties.
- 23. Failure to Perform Due to Certain Causes.** In the event either TIOB or Customer is compelled to reduce or suspend its operations or to cease performance of its obligations hereunder because of the passage of any laws or regulations, or because of any legal or administrative proceeding of any government or governmental agency, court or administrative agency order, strikes, boycotts, lockouts, other labor disturbances, interruption of power, TIOB's temporary or permanent lack or loss of processing capacity for reasons outside TIOB's reasonable control, fire, explosion, catastrophe, crop failure or shortage as a result of uncontrollable actions of the elements, or other Act of God, then the Party so affected shall, while and to the extent so affected, be relieved to the extent thus prevented from performing its obligations hereunder. In such event, such Party shall take all reasonable measures to remove disability, if possible, and resume full performance hereunder as soon as reasonably possible. If the inability to perform continues for more than thirty (30) days either Party may terminate this Agreement as set forth in Paragraph 2.
- 24. Binding Agreement.** This Agreement shall bind and benefit the representative heirs, assigns and successors in interest of each of the Parties.
- 25. Entirety of Contract.** This Agreement, including the Project Agreement(s), constitutes the entire agreement between the Parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

26. Warranty of Authority. Each person signing this Agreement on behalf of an entity warrants he/she has the power and authority to execute this Agreement on behalf of that entity on all the terms and conditions set forth herein.

IN WITNESS THEREOF, the Parties hereto have executed and approved this Agreement on the dates below their signatures.

Top It Off Bottling, LLC

By: _____

Print: _____
(Name and Title)

Date: _____

Customer

By: _____

Print: _____
(Name and Title)

Date: _____