

## BEER30 SOFTWARE TERMS AND CONDITIONS

The terms and conditions provided herein (as may be amended from time to time by The 5th Ingredient upon notice), including any attached exhibit(s), and the “Beer30 Software Agreement” (the “**Software Agreement**”) which references these “Beer30 Software Terms and Conditions”, constitute the entire agreement (the “**Agreement**”) between The 5th Ingredient and Customer for the provision of the Service. As used in this Agreement, the “**Service**” means The 5th Ingredient’s web-based application referred to as “Beer30”, which is provided as a “Software as a Service” and which permits breweries to track their data. This Agreement is effective as of the last signature date set forth on the Software Agreement (the “**Effective Date**”). The 5th Ingredient and/or Customer may individually be referred to herein as a “**Party**” and collectively as the “**Parties**.”

### 1. Confidential Information

a. Receipt of Confidential Information. Prior to execution of this Agreement each Party may have disclosed, and during the term of this Agreement each Party may disclose, certain confidential and/or proprietary information (“**Confidential Information**”) of such Party (the “**Discloser**”) to the other Party (the “**Recipient**”). Subject to Section 1(b) hereof, any and all information that has been or is in the future disclosed by either Party to the other that was or is labeled as “confidential”, “proprietary” or the like, or that was or is otherwise disclosed under circumstances such that the confidential nature of such information was or is apparent is and shall be treated as Confidential Information hereunder. The Confidential Information of The 5th Ingredient includes, without limitation, any inventions, scientific and technical data, information, analyses, forecasts, business plans, marketing information, pricing information, predictions or projections, software, code, demonstration programs, presentations, products, algorithms, computer systems, techniques, methods, procedures, formulae, documentation, designs, improvements, concepts, records, files, reports, drawings, plans, testing methods, and / or other intellectual property that has been or is disclosed by The 5th Ingredient to Customer or that Customer otherwise accesses or learns through its use of the Service. The Confidential Information of Customer includes, without limitation, all beer recipes, batch information, and other data that Customer may input into the Service (collectively, the “**Customer Data**”).

b. Exceptions to Confidentiality. Confidential Information shall not include any information that the Recipient can prove (i) was publicly available at the

time of disclosure by the Discloser; (ii) becomes publicly available without breach of this Agreement by the Recipient, its agents, employees, service providers, or representatives; (iii) was in the Recipient’s possession prior to disclosure, as evidenced by the Recipient’s written records, and was not the subject of an earlier confidential relationship with the Discloser; (iv) was or becomes rightfully acquired by the Recipient from a third party who is under no obligation to the Discloser to maintain its confidentiality; or (v) was or is independently developed by the Recipient without access to or use of the Confidential Information of the Discloser.

c. Agreement to Maintain Confidentiality. The Recipient agrees: (i) to hold any Confidential Information of the Discloser in confidence; (ii) to protect such Confidential Information from disclosure using the same degree of care that Recipient uses with its own like information (but in all events using at least reasonable care); (iii) not to use such Confidential Information except to exercise Recipient’s rights and perform its obligations under this Agreement; and (iv) to limit the disclosure of such Confidential Information only to those employees, agents, third party service providers, and other third parties of the Recipient who have a “need to know” such Confidential Information and who are bound by obligations of confidentiality no less protective to the Discloser than the terms and conditions contained herein.

d. Disclosure Required by Law. If a Recipient is required to disclose any Confidential Information of the Discloser pursuant to a judicial order or other compulsion of law, the Recipient shall: (i) limit the disclosure to only that information which is required to be disclosed by such order or legal requirement; (ii) provide to the Discloser prompt notice of such order; and (iii) reasonably assist the Discloser in obtaining a protective order for such Confidential Information if requested by the Discloser.

e. This Agreement. Subject to Section 12(k) hereof, the terms of the Software Agreement (but not the existence of this Agreement) are Confidential Information of both Parties, and may not be disclosed to any third party; provided, however, that (i) either Party may disclose the Software Agreement under a duty of confidentiality to its authorized advisors, or to a third party in connection the proposed financing, sale, transfer, or merger of the Party’s business or assets to which the Software Agreement relates, or as required by applicable laws or regulations; and (ii) all pricing information, including any specific pricing received by Customer, may be disclosed by The 5th Ingredient in its sole discretion.

## 2. Beer30 Service

a. Service Access. The Service is provided through an access restricted website and related databases and servers (collectively, the “**Site**”). Subject to the terms of this Agreement, including payment of the Service Fees (if any), The 5th Ingredient hereby grants to Customer a non-transferable, limited, non-exclusive right (without the right to sublicense), solely during the term of this Agreement, to permit Authorized Users to access and use the Service through the Site solely for Customer’s internal brewing operations. Customer will take all steps necessary to protect the confidentiality and security of any authentication credentials and will not share any authentication credentials with any third parties. User permissions may be specified for different Authorized Users, and Customer is responsible for properly specifying the appropriate user permissions for its Authorized Users. As used in this Agreement, “**Authorized Users**” means employees of Customer and any other individuals or entities who have a need to access and use the Service and who have been approved by The 5th Ingredient. Use of the Service by Authorized Users may also be subject to additional terms and conditions of The 5th Ingredient’s applicable click-through end user license agreement(s), incorporated herein by reference and made available to Authorized Users at the Site.

b. Restrictions. Customer acknowledges that the Service and the Site contain valuable trade secrets of The 5th Ingredient and its suppliers. Accordingly, except as permitted under Section 2(a) above, Customer agrees that it and its Authorized Users may not: (i) modify, adapt, alter, translate, or create derivative works of the Service or the Site; (ii) create Internet “links” to the Service or “mirror” any data, information, content, or other material of The 5th Ingredient that is provided to Customer or its Authorized Users through the use of the Service; (iii) build a product or service using similar ideas, features, functions, or graphics of the Service; (iv) sublicense, resell, rent, lease, transfer or assign (except as permitted in Section 12(i) hereof) the Service or its use, or offer the Service on a time share basis to any third party, or otherwise permit any person or entity that is not an Authorized User to access or use the Service or the Site; (v) merge the Service or the Site with other software or data; (vi) reverse engineer, decompile, decode, or disassemble the Service or the Site; or (vii) otherwise attempt to derive the source code for the Service or the Site or attempt to gain access to any underlying code used to implement

or deploy the Service or the Site or any data of any other customer of the Service.

c. Customer Responsibilities. The Service requires accurate and complete data to be input by Customer and its Authorized Users. Customer is responsible for checking and verifying all data input into the Service and all parameters that are being recorded. **Customer acknowledges that while the Service enables the tracking of brewing data Customer is ultimately responsible for production, and Customer agrees that production failures may result from, without limitation, false, inaccurate, or incorrect data; corruption of software; viruses, bugs, errors, or defects (whether on Customer’s computer systems or with the Site or Service), internet transmission errors, data breaches, and other causes. The 5th Ingredient will not be liable under any theory arising out of or relating to any of the forgoing.** Customer agrees to notify The 5th Ingredient immediately in the case of serious failures of Service, or as soon as possible in the case of minor failures or problems regarding the Service.

d. Compliance with Laws. To the extent Customer is using the Service as a tool to comply with applicable laws or regulations, such as those enforced and/or promulgated by the U.S. Tobacco Trade and Tax Bureau, the U.S. Food and Drug Administration, the California Department of Alcoholic Beverage Control, and/or the Canada Revenue Agency, it is Customer’s responsibility to comply with such laws and regulations. Any information, alerts, and reports provided by The 5th Ingredient are for Customer’s convenience only. Without limiting the forgoing, the “Brewers Reports of Operations” and “TTB Reports” made available by the Service provide advisory data only, and Customer is responsible for preparing and providing all data required to be submitted to any governmental authorities.

e. Intellectual Property; No Implied Licenses. The Service and the Site and all intellectual property rights therein are exclusively owned by The 5th Ingredient and its suppliers. All rights in and to the Service and the Site not expressly granted to Customer are reserved by The 5th Ingredient and its suppliers. There are no implied licenses granted under this Agreement.

## 3. Data.

a. Customer Data. In addition to the rights of The 5th Ingredient set forth in Section 1 hereof, and notwithstanding anything to the contrary set forth herein, Customer agrees that during and after termination of this Agreement: (i) The 5th Ingredient

may retain and use (but not share with any third party without Customer's consent) the Customer Data for purposes of improving, enhancing, and providing the Service, conducting research and development, engaging in marketing activities, and engaging in other lawful business activities of The 5th Ingredient; and (ii) The 5th Ingredient may use and share with third parties any Customer Data in aggregated or anonymized form such that the source of the Customer Data cannot be identified and so long as no recipes of Customer are disclosed. Such usage may be, for example, for purposes of providing analytics, benchmarking, and like tools or features as a part of the Service. **For clarity, this Section 3(a) does not permit The 5th Ingredient to share any recipes of Customer with any third party without Customer's consent.**

b. Usage Data. The 5th Ingredient may monitor the usage of the Service and Site and may collect and/or generate data and information relating to Customer's and its Authorized User's use of the Service and Site ("Usage Data"). For clarity, the Usage Data does not include any Customer Data (which at all times remains owned by Customer). All Usage Data will be owned by The 5th Ingredient and may be used for any lawful purpose. The 5th Ingredient may provide notices, alerts, or other messages to Customer or its Authorized Users based on the Usage Data and/or the Customer Data.

**4. Feedback.** To the extent Customer, its employees, or any of its Authorized Users provide The 5th Ingredient with any suggestions, ideas, enhancement requests, recommendations or feedback regarding the Service or the Site, or The 5th Ingredient otherwise conceives of or creates any ideas, enhancements, improvements, or modifications to the Service or the Site (collectively, "**Feedback and Improvements**"), The 5th Ingredient will be free to use, disclose, commercialize, and exploit such Feedback and Improvements without any restriction. Feedback and Improvements may also be used to improve the Site and Service for other customers of The 5th Ingredient.

**5. Third Party Services.** Customer acknowledges that the Service relies on the services of third parties. Without limiting the foregoing, the Service is hosted on and served from third party server services (for example, Amazon Web Services). Customer expressly consents to The 5th Ingredient making all Customer Confidential Information (including all Customer Data) available to such third parties for purposes of making the Service available to Customer. Customer further acknowledges that The 5th Ingredient has no right or ability to control the security measures of such third

party service providers and that The 5th Ingredient will not be responsible or liable for any data breaches suffered by such third party service providers.

**6. Hardware and Consulting Services.** From time to time, and in its sole discretion, The 5th Ingredient may provide Customer with hardware, such as computer tablets, for purposes of using the Service and/or may provide Customer with consulting services related to the operation of breweries. All terms and conditions regarding any such hardware or consulting services will be attached as an exhibit to this Agreement.

**7. Term and Termination.**

a. Paid Term. The paid term of this Agreement will begin on the Effective Date and will automatically continue and remain in force for the paid term and rates set forth in the Software Agreement, (collectively, the "**Paid Term**").

b. Termination for Cause. This Agreement may be terminated by either Party immediately upon written notice to the other Party if the other Party materially breaches this Agreement which breach remains uncured within forty-five (45) days after written notice of such breach is given by the aggrieved Party to the breaching Party. Customer will not owe any early termination fees to The 5th Ingredient if Customer terminates this Agreement for cause.

c. Effect of Termination. Upon termination or expiration of this Agreement for any reason: (i) the rights and licenses granted by The 5th Ingredient to Customer under this Agreement will immediately terminate, (ii) Customer and all Authorized Users will immediately cease all further use of the Service and the Site; (iii) any and all amounts owed to The 5th Ingredient under this Agreement shall immediately become due and payable; (iv) Recipient will, at the option of the Discloser, either return or destroy all Confidential Information of the Discloser in the Recipient's possession, and will certify in writing that such return or destruction has been accomplished. The provisions of Sections 2(b), 2(c), 2(d), 2(e), 3, 4, and 7-12 of these "Beer30 Software Terms and Conditions" shall survive termination or expiration of this Agreement for any reason. Recipient's obligations under Section 1 hereof with respect to Confidential Information shall survive for a period of termination or expiration of this Agreement and for a period of five (5) years thereafter.

**8. Payment Terms.**

a. Service Fees. During the Paid Term, Customer will pay The 5th Ingredient the service fees set forth in the Software Agreement (the "**Service Fees**") at the

time and in the manner set forth in the Software Agreement. Customer will have no right to setoff any amounts due under this Agreement and all payments are non-refundable. All payments are further subject to any additional terms and conditions set forth in the Software Agreement. **All Service Fees are the Confidential Information of The 5th Ingredient and may not be shared by Customer with other breweries, distributors, vendors, or similar persons or entities.**

b. Taxes. All Service Fees exclude any sales, use, excise, import, export, value added, universal service charge, withholding or other similar taxes or governmental charges, including any related penalties and interests however designated, other than taxes based on the net income of The 5th Ingredient (collectively "**Taxes**"), and Customer agrees to pay any Taxes imposed under this Agreement.

c. Late Payments. In the event Customer fails to make any payments when due under this Agreement Customer may be charged a late fee on any amount that is not paid when due at a rate of one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law, whichever is lower, calculated from the due date until the date paid. The 5th Ingredient may further suspend any or all access to the Service and Site (including access to Customer Data) until all amounts due and late fees are paid in full.

**9. WARRANTY DISCLAIMER.** THE 5TH INGREDIENT AND ITS SUPPLIERS MAKE NO, AND HEREBY DISCLAIM ALL, REPRESENTATIONS AND WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICE, THE SITE, ANY HARDWARE OR CONSULTING SERVICES PROVIDED TO CUSTOMER, AND THIS AGREEMENT. THE SERVICE, THE SITE, AND ANY HARDWARE OR CONSULTING SERVICES ARE PROVIDED "AS IS" AND WITH ALL FAULTS, AND THE 5TH INGREDIENT AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, SUFFICIENCY, TITLE, NON-INFRINGEMENT, AND ANY IMPLIED INDEMNITY.

**10. LIMITATION OF LIABILITY.** EXCEPT FOR EITHER PARTY'S BREACH OF SECTION 1 HEREOF, CUSTOMER'S BREACH OF SECTION 2 HEREOF, OR FOR CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER

PARTY, OR THE 5TH INGREDIENT'S SUPPLIERS, BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF USE, LOST PROFITS, OR LOSS OF DATA ARISING OUT OF OR RELATED TO THE SERVICE, THE SITE, ANY HARDWARE OR CONSULTING SERVICES PROVIDED TO CUSTOMER, OR THIS AGREEMENT, HOWEVER CAUSED AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF THE 5TH INGREDIENT OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE CUMULATIVE LIABILITY OF THE 5TH INGREDIENT OR ITS SUPPLIERS FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICE, THE SITE, OR ANY HARDWARE OR CONSULTING SERVICES PROVIDED TO CUSTOMER EXCEED THE CUMULATIVE AMOUNTS PAID TO THE 5TH INGREDIENT BY CUSTOMER DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**11. Indemnification.** Customer agrees to indemnify, defend, and hold The 5th Ingredient and its suppliers, and their officers, directors, employees, agents, and customers harmless from and against any and all claims, damages, losses, liabilities, costs and expenses (including, but not limited to, court costs and reasonable attorneys' fees) arising out of or in connection with (a) Customer's or its Authorized Users misuse of the Service, the Site, or any hardware or consulting services provided by The 5th Ingredient to Customer; or (b) the Customer Data (including any claims that Customer or its Authorized Users did not or do not have the right to provide the Customer Data to The 5th Ingredient).

**12. Miscellaneous.**

a. Disclaimer of Other Relationships. This Agreement does not create a relationship of agency, partnership, joint venture between the Parties. The relationship hereunder is non-exclusive, and each Party acknowledges the other Party may enter into other similar activities and/or business relationships with third parties so long as neither Party breaches its obligations under this Agreement in connection therewith (including such Party's obligations under Section 1 hereof and Section 2 hereof).

b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California, without reference to conflicts of law principles. Any dispute or controversy arising from or relating to this Agreement must be arbitrated in San Diego, California before a single arbitrator who is jointly selected and mutually approved by the Parties or, if the Parties are unable to or fail to agree on the selection of the arbitrator within fifteen (15) days of the demand for arbitration being served, who is appointed by Judicial Arbitration and Mediation Services (JAMS) in accordance with its rules. The arbitrator shall serve as a neutral, independent and impartial arbitrator. The arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (and in accordance with the expedited procedures in those rules), or, if applicable, in accordance with the JAMS International Arbitration Rules. The results of the arbitration procedure will be considered the Confidential Information of both Parties. Any arbitration decision rendered will be final and binding, and judgment thereon may be entered in any court of competent jurisdiction. Notwithstanding the above, neither Party will be required to arbitrate a dispute relating to the misuse or misappropriation or any Confidential Information or the infringement of intellectual property rights, which dispute shall be brought in the federal and state courts in San Diego, California, and each Party hereby consents to the jurisdiction and venue of such courts for such disputes.

c. Entire Agreement; Waiver. This Agreement (including the Software Agreement and all exhibits hereto) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous agreements and understandings between the Parties with respect to the subject matter hereof. This Agreement may not be modified or amended without the prior written consent of both Parties. Failure of a Party to demand compliance or performance of any term of this Agreement shall not constitute a waiver of the rights of such Party hereunder. References to sections of this Agreement refer to sections of these "Beer30 Software Terms and Conditions."

d. Authority; Counterparts. The individuals executing this Agreement on behalf of each Party are duly authorized to bind such Party. This Agreement may be executed in duplicate counterparts (and the Parties hereby adopt as original any facsimile or electronic copy of an original signature), each of which

shall be deemed an original and both of which together shall constitute but one and the same instrument.

e. Obligation of Non-Competition. Customer may not use the Confidential Information of The 5th Ingredient or the Service to produce by itself or to enable the production by any third party, of any of The 5th Ingredient's products, products similar thereto, or products derived therefrom.

f. Attorneys' Fees. In the event of an arbitration or litigation between the Parties with respect to this Agreement or the transaction contemplated hereby, the prevailing Party therein shall be entitled to recover from the losing Party all of its costs of enforcement, arbitration, and litigation, including, but not limited to, its reasonable attorneys' and paralegal fees, witness fees, court reporters' fees and other related costs.

g. Notice Requirements. All notifications under this Agreement must be in writing and signed. All notifications under this Agreement, except for notices regarding breach or indemnity, may be delivered electronically via electronic mail ("email"). All notifications under this Agreement may also be delivered via certified mail or overnight courier addressed (i) to the addresses set forth in the Software Agreement, or (ii) at such other address as may hereafter be designated by either Party in writing. All notifications shall be deemed to be effective and received upon proper delivery in accordance with this Section 12(g).

h. Force Majeure. The 5th Ingredient shall not be in default by reason of any failure in performance of its obligations if such failure arises out of causes beyond the control (whether caused directly or indirectly) of The 5th Ingredient. Such causes may include, but are not restricted to: Acts of God or of the public enemy; acts of government (including specifically but not exclusively any orders, rules, or regulations issued by any official or agency of any such government) in either its sovereign or contractual capacity; riots; fires; earthquake; floods; pandemics; epidemics; quarantine restrictions; embargoes; strikes; labor difficulties; delays or interruptions in performance by suppliers or subcontractors; unusually severe weather; shortages in labor, fuel, materials and supplies; internet connectivity problems; hacking of any facilities, resources, or infrastructure (whether of The 5th Ingredient or any third party service provider thereof); or any combination thereof.

i. Assignment; Subcontracting. Neither Party may assign this Agreement or any rights or obligations under this Agreement without the prior written consent

of the other Party, except that no consent shall be required for an assignment to an affiliate or an assignment made in connection with the sale of all or substantially all of the Party's business or assets related to this Agreement, whether by sale of assets, sale of stock, merger or otherwise. Any attempted assignment in violation of the foregoing is null and void. This Agreement will be binding upon and inure to the benefit of any permitted assigns and successors. The 5th Ingredient may subcontract any portion of the Service and its obligations under this Agreement, provided that The 5th Ingredient will be responsible for the delivery of the Service hereunder.

j. Equitable Remedies. Customer agrees that any actual or threatened misuse or misappropriation of the Service or the Site, or the infringement of any intellectual property or other proprietary rights of The 5th Ingredient or its suppliers stemming from Customer's use of the Service or the Site would cause irreparable injury to The 5th Ingredient and its suppliers for which no adequate remedy at law exists; therefore, Customer agrees that The 5th Ingredient shall be entitled to obtain injunctive relief, specific performance, and other equitable remedies, without the requirement of posting a bond (where applicable). The 5th Ingredient shall recover any out-of-pocket expenses incurred in seeking and enforcing any equitable remedies, including, without limitation, any legal expenses, including court costs and attorney's fees.

k. Marketing, Demo, and Co-marketing. The 5th Ingredient may use Customer's name, logo, and trademarks, in printed, audio, and digital formats and on The 5th Ingredient's websites, for the purpose of advertising and marketing the Service, provided that no quotes or other attributions will be made to Customer without Customer's prior written consent. Customer and The 5th Ingredient may publicly refer to the other Party as a service provider and customer, respectively.

l. Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, then such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.