SHOPTOCOOK RETAILER PROGRAM

TERMS AND CONDITIONS

Any Retailer's participation in the ShoptoCook Retailer Program shall be subject to this Program Document, whether or not such Retailer has executed and delivered an Order Form.

ARTICLE 1 – CERTAIN TERMS

1.1 Definitions. All capitalized terms which are not otherwise defined in this Program Document are defined in Appendix A of this Program Document.

ARTICLE 2 - SOFTWARE LICENSE

2.1 Software License. Subject to the terms herein, during the Term, ShoptoCook grants to Retailer, and Retailer accepts, a limited, nonexclusive, Fee-bearing, nontransferable, non-sublicensable license (the "License") to allow Retailer to:

a. use the Software at any Kiosk located in any Store solely in connection with the operation of its business at the Store;

b. commercially display the ShoptoCook Content in digital display in the Kiosks and otherwise use the ShoptoCook Content through the Kiosks, solely in connection with the operation of its business at the Stores;

c. allow its Shoppers to access the Software solely at the Kiosk(s) located in its Store(s) for their individual use and to print recipes and coupons from the Kiosks; and

d. if the web site service is selected; use the Software on the Retailer web site.

2.2 Limitations. Retailer acknowledges and agrees that (a) the License does not grant to Retailer any right, title or interest of any kind other than as explicitly set forth in this Program Document, and (b) Retailer shall not have any right of any kind to grant, directly or indirectly, in whole or in part, any sublicense or any other right of any kind, in or under, or to transfer, the License.

2.3 Restrictions. Retailer agrees not to, directly or indirectly:

a. reverse engineer, disassemble, deactivate, decompile or otherwise recreate or attempt to derive source code or object code from, the Kiosk, any Hardware or Software;

b. except as expressly provided in Section 2.1, expropriate, extract, copy, replicate, reproduce, duplicate, change, upload, transmit, publish, commercially exploit, modify, create derivative works, seize, drain, draw off, redistribute, sell, transfer, lease, sublicense, provide commercial hosting services with respect to, or use in any way, in whole or in part, for any purpose of any kind:

(1) the ShoptoCook Content, the Software, the License, the Services or the ShoptoCook Confidential Information; or

(2) any data, data fields, documents, images, Marks or any other information of any kind in or available including, without limitation:

(i) the sale of access to or use of any such data, data fields, documents, images, Marks or any other information of any kind by ShoptoCook, the Wholesaler, Retailer or any other Person; and

(ii) any act granting Retailer the ability to terminate its need for the License or the Services hereunder;

c. allow any Person to remarket or resell the ShoptoCook Content, the Software, the License, the Services, the Retailer ShoptoCook Web Site or the ShoptoCook Confidential Information in any way;

d. allow any Person other than the Shoppers (and then only as provided in Section 2.1c) to access or use the ShoptoCook Content, the Software, the License, the Services or the ShoptoCook Confidential Information in any way; or

e. use the ShoptoCook Content, the Software, the License, the Services or the ShoptoCook Confidential Information in conjunction with any other service or in any way or for any other purpose of any kind, other than solely and exclusively in conjunction with the Services.

2.4 No Marks. Notwithstanding anything to the contrary contained herein, Retailer shall not have any right of any kind to use any ShoptoCook trademark, trade name, service mark, logo or commercial symbol (or any other intellectual property right related thereto), whether or not registered, with respect to the ShoptoCook Content, the Software, the Services, or the License, including, without limitation, any sales brochures, any electronic media or any other advertising material, without the prior written consent of ShoptoCook.

2.5 Recipes/Coupons. During the Term, Retailer grants to ShoptoCook the exclusive, royalty-free right to display the phrase "Powered by ShoptoCook" on each recipe or coupon printed by any Shopper using any Kiosk.

ARTICLE 2A – KIOSK
2A.1 Kiosk. The Kiosk includes a touch screen, printer and stand. ShoptoCook will provide Retailer with a limited license for the Term only (defined below) to use the Kiosks solely in the manner contemplated by this Program Document.

2A.2   Delivery and Inspection. ShoptoCook shall deliver each Kiosk to the Store(s) designated by Retailer in the Order Form for installation by Retailer at such Store.   Retailer shall be responsible for providing a location as close as possible to meat or perishables at each Store for the installation and use of the Kiosk. Retailer shall inspect each Kiosk upon delivery and shall notify ShoptoCook within 72 hours following delivery of the Kiosk of any defect or failure to operate. Unless Retailer notifies ShoptoCook of a defect or failure within such 72-hour period, the Kiosk shall be deemed to have been accepted by Retailer and determined by Retailer to be in proper working condition.

2A.3   Use, Operation and Maintenance. Retailer shall use the Kiosk solely at the Store to which it is delivered by ShoptoCook, and solely for purposes of operating the ShoptoCook System in accordance with this Program Document. Retailer shall notify ShoptoCook promptly, but in any event within twenty-four (24) hours if Retailer shall observe any damage to, need for repair of, or malfunctioning of, the Kiosk or the Software and ShoptoCook shall, at its own cost and expense service and repair such Kiosk and/or Software; provided, however, that Retailer shall be responsible for any damage to the Kiosk caused by Retailer's, or its employees', gross negligence or intentional wrongdoing. Retailer shall not use the Kiosk for any unlawful purpose or make any alterations or modifications to the Kiosk unless expressly approved in advance by ShoptoCook. Retailer acknowledges that ShoptoCook is not the manufacturer of the Kiosk and makes and provides no warranty or guaranty with respect thereto.

2A.4   Risk of Loss and Damage. Retailer assumes and shall bear the entire risk of loss and damage to the Kiosk from any and every cause. No loss of or damage to the Kiosk or any part thereof shall impair or relieve Retailer from any of its obligations under the ShoptoCook Retailer Program, all of which, including, without limitation, Retailer's obligation to pay the Fees, shall continue in full force and effect without diminution or abatement.

2A.5   Ownership of Kiosk; UCC Filings. The Kiosk is, and shall remain, the personal property of ShoptoCook. ShoptoCook at all times retains ownership of and title to the Kiosk and control over Retailer's right to use the Kiosk in accordance with the terms of the ShoptoCook Retailer Program. Retailer shall protect and defend, at its own expense, ShoptoCook's title to the Kiosk against all claims and liens, and shall keep the Kiosk free and clear of all such claims, liens or other encumbrances.   Retailer irrevocably authorizes ShoptoCook to file and record, and appoints ShoptoCook as Retailer's attorney-in-fact to execute (if applicable), file and record UCC financing statements, amendments thereto, and other lien recordation documents with respect to the Kiosk. Retailer agrees that it shall not file any corrective or termination statement with respect to any UCC financing statement filed or recorded for the benefit of ShoptoCook with respect to the Kiosk without ShoptoCook's prior written consent. In order to secure the payment and performance in full of Retailer's obligations under the ShoptoCook Retailer Program, Retailer grants to ShoptoCook a security interest in the Kiosk and all parts, accessories and attachments thereto, all replacements and substitutions therefor, and all products and proceeds thereof.

2A.6   Disclaimer of Warranties.   SHOPTOCOOK MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION, AND RETAILER IRREVOCABLY WAIVES ALL RIGHTS AGAINST SHOPTOCOOK WITH RESPECT TO ANY WARRANTY, REPRESENTATION OR OBLIGATION WITH RESPECT TO THE QUALITY, DESIGN, CONDITION, CAPACITY, VALUE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE OR WORKMANSHIP OF THE KIOSK, IT BEING AGREED THAT THE KIOSK IS BEING PROVIDED "AS IS".

2A.7   Return of Equipment. At the end of the Term, or upon any earlier termination of Retailer's participation in the ShoptoCook Retailer Program for any reason other than a termination by ShoptoCook pursuant to Section 6.2, ShoptoCook shall retrieve the Kiosk from Retailer's Store(s) at its sole cost and expense. Upon any termination of Retailer's participation in the ShoptoCook Retailer Program by ShoptoCook pursuant to Section 6.2, Retailer shall at its cost and expense return the Kiosk to ShoptoCook. If the Kiosk is not returned or is not returned in working condition, ShoptoCook shall invoice the Retailer, and the Retailer shall pay, for the cost of the Kiosk(s) in the amount of two thousand five hundred dollars ($2,500.00) for each Kiosk, which sum shall be due and payable within thirty (30) days of receipt of such invoice. In any instance, the Kiosk shall be returned to ShoptoCook in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted.

ARTICLE 3 – SERVICES; RETAILER DUTIES

3.1 ShoptoCook Services. Subject to the terms herein, during the Term, ShoptoCook, at its sole expense, shall perform the following duties and obligations, all in accordance with Applicable Law (collectively, the "Services"):

a. If the Applications are selected on the Kiosk:

(1). upload and install remotely on the Kiosk Hardware at each Store, each Software Application selected for such Store (as set forth in the Order Form) and the ShoptoCook Content that ShoptoCook allocates, in its sole discretion, for all such Applications selected;

(2). provide ShoptoCook Content management at the Kiosks by remotely monitoring Kiosk wellness on a routine basis (as to paper, application and Hardware status), which monitoring shall include Software status and the functionality of certain Hardware and electronically notifying the designated

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representative of Retailer, as the case may be, promptly upon identifying any Kiosk operational problem;

(3). provide such telephone support for use of the Software pursuant to the License during ShoptoCook's normal business hours which are 9:00 am to 5:00 pm EST as ShoptoCook deems appropriate and make all reasonable efforts to rectify any Software problems as soon as reasonably practical.

b. If the web site is selected on the Order Form:

(1) provide periodic touch screen button changes to accommodate seasonality;

(2) provide artwork and design for the following web pages and/or drop down boxes (home page, contact, locations, recipes, weekly circular, and community events);

(3) hosting the web sites;

(4) provide the ability to have circular items added to the shopping list;

(5) provide web site backup for security;

(6) provide such telephone support for use of the Software pursuant to the License during ShoptoCook's normal business hours as ShoptoCook deems appropriate and make all reasonable efforts to rectify any Software problems as soon as reasonably practical.

3.2 Retailer Duties. During the Term, Retailer, at its sole expense, shall perform the following duties and obligations, all in accordance with Applicable Law:

a. obtain, assemble, install and maintain in good working condition in each Store all Kiosks that Retailer shall use pursuant to the License and the ShoptoCook Retailer Program, including, without limitation, all related Hardware;

b. take all necessary steps to interface and connect the Hardware to ShoptoCook's Software programs and operating systems used by ShoptoCook (the "ShoptoCook System"), to the extent necessary to allow for ShoptoCook to provide the Services, using interface specifications provided by ShoptoCook, including, without limitation, the making of any necessary modifications to the Hardware and the purchasing of any necessary additional equipment and the making of the Hardware to be compatible with and ready for uploading and installation of the Software Applications and the ShoptoCook Content by ShoptoCook;

c. position the Kiosks in the agreed upon Store location;

d. provide power to each Kiosk in advance of the date scheduled for ShoptoCook's uploading and installation of the Software Applications and the ShoptoCook Content;

e. provide paper and paper replacement for all Kiosks;

f. use the ShoptoCook Content, the Software, the License, and the Services in full compliance with Applicable Law and any manuals or user guides provided by ShoptoCook;

g. install, operate and maintain all equipment as necessary to fulfill Retailer's duties and obligations hereunder; and

h. secure and protect the Software and copies thereof in a manner consistent with the maintenance of all ShoptoCook rights therein.

ARTICLE 4 – FEES

4.1 License/Services Fees. Subject to the terms herein, as consideration for the License and the Services, during the Term, Retailer agrees to pay the Wholesaler the fees set forth on the Order Form (the "License/Services Fee).

4.2 Invoicing and Payment. Retailer authorizes Wholesaler to collect all amounts due and owing under the ShoptoCook Retailer Program ("Retailer Payment Obligation") by an invoice issued by Wholesaler for the Services provided to Retailer by ShoptoCook pursuant to the supply agreement or similar agreement between Wholesaler and Retailer ("Supply Agreement"). The Retailer will pay the amount of any such invoice in accordance with the Supply Agreement between Wholesaler and Retailer. If Retailer disputes the amount of any Retailer Payment Obligation set forth in any invoice, it shall so notify Wholesaler, in writing, of the dispute and such dispute shall be resolved directly between Retailer and ShoptoCook. Wholesaler shall have no obligation to either party in connection with the resolution of any such dispute and/or payment of any Retailer Payment Obligation. Upon resolution of the dispute to the satisfaction of Retailer and ShoptoCook, and written notice of same to Wholesaler, Wholesaler will make an appropriate adjustment to the next invoice it issues to Retailer for the services provided to retailer pursuant to the terms of the Supply Agreement. In the event that the agreement between Wholesaler and ShoptoCook shall terminate for any reason, ShoptoCook shall so notify Retailer in writing and shall invoice Retailer directly for the Retailer Payment Obligation. Upon from and after the receipt of such notice from ShoptoCook, Retailer shall not remit payment for any Retailer Payment Obligation accruing after the date of such notice to Wholesaler.

4.3 Taxes. All License/Service Fees do not include taxes. All taxes related to Retailer's participation in the ShoptoCook Retailer Program are to be paid by Retailer, including all taxes, if any, related to the provision of the Services and issuance of the License herein; provided that ShoptoCook shall pay all state and federal income taxes owed by ShoptoCook as a result of any income ShoptoCook derives from the payment of the

License/Services Fee.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES; DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

5.1 DISCLAIMER OF WARRANTIES. ALL RIGHTS ARE GRANTED TO RETAILER HEREIN AND ALL SERVICES ARE PROVIDED TO RETAILER HEREIN, "AS IS". NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, RETAILER ACKNOWLEDGES AND AGREES THAT AS TO RETAILER, ANY SHOPPER AND ANY OTHER PERSON, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED ABOVE IN THIS AGREEMENT, NEITHER SHOPTOCOOK NOR WHOLESALER MAKES NOR HAS MADE ANY REPRESENTATION, WARRANTY, OR GUARANTEE OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, ORAL OR WRITTEN, DIRECT OR INDIRECT, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION, WARRANTY, OR GUARANTEE OF MERCHANTABILITY, OF FITNESS FOR AN ORDINARY, GENERAL OR PARTICULAR PURPOSE, OF NON-INFRINGEMENT, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, OR OF LACK OF VIRUSES, WITH RESPECT TO THE SHOPTOCOOK CONTENT, THE SOFTWARE, THE SERVICES, THE LICENSE, THE SUBLICENSE, THE RETAILER SHOPTOCOOK WEB SITE OR ANY OTHER MATTER WHATSOEVER RELATING TO THE SHOPTOCOOK RETAILER PROGRAM.

5.2 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, UNDER NO CIRCUMSTANCES SHALL SHOPTOCOOK HAVE ANY LIABILITY OF ANY KIND TO RETAILER OR ANY OTHER PERSON FOR: (A) INDEMNITY; (B) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER INDIRECT LOSSES OR DAMAGES (EVEN IF SHOPTOCOOK, AS THE CASE MAY BE, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE); OR (C) ANY OTHER LOSSES, DAMAGES OR INJURIES OF ANY KIND, DIRECT OR INDIRECT, INCLUDING, WITHOUT LIMITATION, INJURY TO ANY PERSON OR ANY PROPERTY; RESULTING FROM OR ARISING OUT OF (WHETHER DIRECTLY OR INDIRECTLY) ANY OF THE FOLLOWING: (1) ANY ACT OR OMISSION OF ANY KIND HEREUNDER BY RETAILER, ANY SHOPPER OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY SUCH ACT OR OMISSION THAT VIOLATES ANY APPLICABLE LAW; (2) ANY ACCESS TO USE BY RETAILER, ANY SHOPPER OR ANY OTHER PERSON OF THE SHOPTOCOOK CONTENT, THE SOFTWARE, THE SERVICES, THE LICENSE, THE SUBLICENSE, OR THE RETAILER SHOPTOCOOK WEB SITE; (3) ANY PERFORMANCE OR NONPERFORMANCE BY SHOPTOCOOK OF ANY OF ITS DUTIES HEREUNDER; (4) ANY UNAUTHORIZED USE OF THE SHOPTOCOOK CONTENT, THE SOFTWARE, THE SERVICES, THE LICENSE, THE SUBLICENSE OR THE RETAILER SHOPTOCOOK WEB SITE, BY ANY PERSON OTHER THAN RETAILER OR ANY SHOPPERS, ARISING FROM ANY RETAILER BREACH OF THE OBSERVANCE OF ANY RETAILER AGREEMENT IN THIS PROGRAM DOCUMENT; OR (5) ANY REPRESENTATION OR WARRANTY RELATED TO SUBSECTIONS (1)–(4) ABOVE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, UNDER NO CIRCUMSTANCES SHALL THE AGGREGATE LIABILITY OF SHOPTOCOOK TO RETAILER AND ANY OTHER PERSON FOR LOSSES OR DAMAGES OF ANY KIND ARISING OUT OF OR PURSUANT TO THIS AGREEMENT EXCEED THE AGGREGATE OF ALL FEES PAID BY RETAILER TO THE WHOLESALER IN RESPECT OF THE LICENSE AND THE SERVICES.

ARTICLE 6 – TERM; TERMINATION

6.1 Term. The initial term of Retailer's participation in the ShoptoCook Retailer Program shall commence on the date that ShoptoCook first provides the Services pursuant to this Program Document and shall expire thirty-six (36) months thereafter unless earlier terminated as provided in Section 6.2 below ("Initial Term"). Upon expiration of the Initial Term, Retailer's participation in the ShoptoCook Retailer Program shall automatically renew for successive One (1) year renewal terms ("Renewal Terms"); provided, however, such participation shall not automatically renew in the event that not later than Ninety (90) days prior to the end of the current Initial Term or Renewal Term, either Retailer or ShoptoCook shall give the other written notice of its intention to terminate Retailer's participation in the ShoptoCook Retailer Program at the end of such current term. (The Initial Term and each Renewal Term, if any, shall be collectively referred to as the "Term").

6.2 Termination by ShoptoCook. ShoptoCook shall have the right, but not the obligation, to terminate Retailer's participation in the ShoptoCook Retailer Program upon the occurrence of any breach or default by Retailer of any term or obligation of the ShoptoCook Retailer Program, which breach or default is not cured within Thirty (30) days after notice thereof to Retailer.

6.3 Termination by Retailer. Retailer shall have the right, but not the obligation, to terminate Retailer's participation in the ShoptoCook Retailer Program (a) upon any breach or default by ShoptoCook of any term or obligation of the ShoptoCook Retailer Program, which breach or default is not cured within Ninety (90) days after notice thereof to ShoptoCook, and (b) as provided in Section 8.9 hereof.

6.4 Effect of Expiration/Termination. Upon the expiration or earlier termination of Retailer's participation in the ShoptoCook Retailer Program, the License and all rights and interests granted to Retailer under the ShoptoCook Retailer Program shall terminate and Retailer shall not make any further use of any kind of the Software or the ShoptoCook Content.

ARTICLE 7 - INDEMNIFICATION

7.1 Indemnification by Retailer. For purposes of this Article 7, "Damages" means the aggregate of any and all claims, losses, costs, judgments, deficiencies, penalties, obligations, liabilities,

damages, fines and expenses (including, without limitation, reasonable attorneys' fees and disbursements) of any kind. Retailer agrees to indemnify, defend and hold harmless: (a) ShoptoCook and its Affiliates, and their respective directors, officers, employees, shareholders and agents (collectively, the "ShoptoCook Indemnities"); and (b) the Wholesaler and its Affiliates, and their respective directors, officers, employees, shareholders and agents (collectively, the "Wholesaler Indemnities"); with respect to the aggregate of any and all Damages incurred or suffered by any ShoptoCook Indemnities or any Wholesaler Indemnities, as the case may be, arising out of or relating to:

a. any breach of or default in the observance or performance of any duty or obligation of Retailer in this Program Document or the failure of Retailer to fulfill any other obligation which it is required to perform or observe in this Program Document;

b. any breach of or false or fraudulent, representation or warranty made by Retailer to Wholesaler or ShoptoCook in connection with Retailer's participation in the ShoptoCook Retailer Program;

c. any act or omission of any kind by Retailer or any Shopper, or any of their respective officers, directors, shareholders, employees or agents;

d. any access to or use by Retailer or any Shopper of the ShoptoCook Content, the Software, the Services, the Sublicense or the Retailer ShoptoCook Web Site;

e. any unauthorized use of the ShoptoCook Content, the Software, the Services, the License, or any Retailer ShoptoCook Web Site, arising from any Retailer breach of or default in the observance of any duty or obligation of Retailer in this Program Document; or

f. the investigation or defense of any claim relating to any of the foregoing.

ARTICLE 8 - MISCELLANEOUS

8.1 ShoptoCook License. Retailer grants to ShoptoCook and Wholesaler, a nonexclusive, worldwide, perpetual, royalty-free, nonrevocable license (the "ShoptoCook License"), directly or indirectly, for any purpose, in any way, to:

a. aggregate, correlate, assemble, copy, reproduce, duplicate, download, print, commercially display, exploit and use, the Kiosk Usage Data and Web Usage Data, in whole or in part, in any media of any kind, including, without limitation, in print or digital display in any media of any kind, including, without limitation, kiosks, digital signage, Internet web sites and any other media;

b. display, broadcast, publish, transmit, sell, remarket, transfer and distribute the, Kiosk and Web Data in whole or in part, to any Person; and

c. create abstracts, summaries and other derivative works of the Kiosk Usage Data and Web Usage Data and (d) authorize any third party of Wholesaler and ShoptoCook to do all or any of the foregoing on behalf of Wholesaler and ShoptoCook.

8.2 Publicity. Retailer consents to Wholesaler's and ShoptoCook's use of Retailer's name as a reference and a customer, in ShoptoCook sales and marketing materials and efforts, including, without limitation, brochures, sales literature and the ShoptoCook Web Site.

8.3 Confidentiality. Retailer agrees to hold in strict confidence and to not use or disclose any Confidential Information of the Wholesaler and ShoptoCook (each, a "Disclosing Party"), except as expressly permitted herein. Retailer agrees that all Confidential Information of the Disclosing Party is and shall remain the proprietary and confidential information and sole property of the Disclosing Party. During the Term and after the expiration or earlier termination of Retailer's participation in the ShoptoCook Retailer Program, Retailer agrees to use the degree of care necessary to maintain and protect all of the Disclosing Party's Confidential Information as confidential, and in no event less than reasonable care, and to not disclose or allow the disclosure of any such Confidential Information to any Person other than its employees or agents who have a need to know such Confidential Information to carry out its obligations described in this Program Document. Retailer shall be liable for any breach of this provision by its employees or agents. Retailer shall use the Confidential Information only for the purpose of fulfilling its obligations hereunder. Upon the expiration or earlier termination of Retailer's participation in the ShoptoCook Retailer Program, Retailer shall destroy or return all documents, disks, notes and other tangible materials containing any Confidential Information of the Disclosing Party received from the Disclosing Party during the Term of Retailer's participation in the ShoptoCook Retailer Program. Retailer will not disclose the terms or other content of this Program Document without the prior written consent of ShoptoCook. Retailer acknowledges and agrees that notwithstanding anything to the contrary contained in this Section 8.3, ShoptoCook and Wholesaler shall have the right to use, publish and disclose the Kiosk Usage Data and the Web Site Usage Data, shopper data, the Retailer logged data and the Point-of-Sale data pursuant to the ShoptoCook License granted to ShoptoCook pursuant to Section 8.1 above; and/or to sublicense to ShoptoCook the right to use, publish or disclose said information and data; provided, however, such right shall be undertaken by Wholesaler and/or ShoptoCook, as the case may be, without disclosing any Store number or Store location.

8.4 Advertising. ShoptoCook reserves the right to provide ShoptoCook Content that includes advertising programs.

8.5 **Law**. This Program Document and participation in the ShoptoCook Retailer Program generally shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice or conflict of laws principles of such state.

8.6 **Disputes**. Any dispute arising hereunder shall be settled in an action commenced and maintained in any court sitting in Buffalo, New York. Retail irrevocably consents and submits to the personal jurisdiction of said courts and agrees not to challenge or assert any defense to the jurisdiction of said courts, including, without limitation, *forum non conveniens*. The nonprevailing party in any litigation hereunder shall be required to reimburse the prevailing party for all reasonable costs and expenses incurred in any such litigation, including, without limitation, reasonable attorneys' fees and costs.

8.7 **Adult Beverage Affidavit**. Retailer certifies that, (a) it remains free to exercise its own unilateral business judgment and reserves final authority over all decisions concerning (i) whether to purchase, stock, de-stock, or discontinue alcohol beverage products and (ii) regarding the placement or display of such products in its premises, and (b) in connection with promotional support for related alcohol beverage products, Retailer is under no obligation to (i) purchase such products, (ii) purchase any particular quantity of such products, or (iii) place such products in any particular space or display location within Retailer premises at any time.

8.8 **Notices**. All notices hereunder shall be in writing and shall be:

a.   sent by facsimile transmission (deemed effective when receipt is acknowledged unless received on a non-business day or after 5:00 p.m. on any business day, in which event notice shall be deemed received on the next business day);

b.   personally delivered (deemed effective upon personal delivery); or

c.   sent by a nationally recognized, commercial overnight delivery service with provisions for a receipt, delivery charges prepaid (deemed effective upon receipt); and shall be addressed to Retailer at the address set forth on the Order Form, or to ShoptoCook at the following address or number:

ShoptoCook, LLC.
190 Lawrence Bell Dr, Suite 100
Williamsville, New York 14221
Attn: John Thompson
Fax: (716) 362-3170
E-mail: jthompson@shoptocook.com

Notice of change of address shall be given in accordance with the terms of this Section 8.8 and shall be effective only upon receipt thereof.

8.9 **Entire Agreement**. This Program Document, as it may be amended, modified or replaced pursuant to Section 8.10, constitutes the entire agreement between Retailer and ShoptoCook relating to Retailer's participation in the ShoptoCook Retailer Program and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between or among Retailer, Wholesaler and ShoptoCook with respect to the ShoptoCook Retailer Program.

8.10 **Amendment**. ShoptoCook may amend, modify or replace this Program Document from time to time upon Ninety (90) days prior written notice to Retailer, provided, however, that is such amendment, modification or replacement shall result in any increased liability of Retailer or any material modification to the rights or duties of Retailer, Retailer shall have the option to terminate Retailer's participation in the ShoptoCook Retailer Program within such Ninety (90) day period by written notice provided to ShoptoCook.

8.11 **Waiver**. Failure by ShoptoCook to insist upon strict performance of any provision herein by Retailer shall not be deemed a waiver by ShoptoCook of its rights or remedies or a waiver by it of any subsequent default by Retailer, and no waiver shall be effective unless it is in writing and duly executed by ShoptoCook.

8.12 **Assignment**. Retailer shall not have the right, directly or indirectly, to assign, sublicense, transfer or pledge any of its rights, duties or obligations hereunder to any Person.

8.13 **Severability**. If any provision herein is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be automatically reformed and construed so as to be valid, legal, operative and enforceable to the maximum extent permitted by Applicable Law while preserving its original intent. The invalidity, illegality or unenforceability of any part of this Program Document shall not render invalid the remainder of this Program Document.

8.14 **Parties Bound**. This Program Document shall be binding upon and inure to the benefit of Retailer and ShoptoCook and their respective heirs, legal representatives, successors and permitted assigns, subject to the restrictions against assignment provided in Section 8.12.

8.15 **Headings**. The headings used herein are inserted for convenience only and do not describe, interpret, define or limit the scope, extent or intent of this Program Document.

8.16 **Cooperation**. Retailer agrees to take all such steps, execute and deliver such further documents and perform such acts as may be reasonably requested by ShoptoCook in order to effectuate Retailer's participation in the ShoptoCook Retailer Program.

8.17 **Third Parties**. Nothing herein expressed or implied is intended or shall be construed to confer upon or give any Person

(other than Retailer, ShoptoCook and their respective successors and permitted assigns), any right or remedy under or by reason of this Program Document.

8.18 **Inconsistencies**. If any provision of this Program Document is inconsistent with any provision of the Order Form or any other document delivered to Retailer in connection with Retailer's participation in the ShoptoCook Retailer Program, then the provision of this Program Document shall control.

APPENDIX A

DEFINITIONS

1. "Affiliate" of a Person means any Person that Controls, is Controlled by or is under common Control with, such first-mentioned Person.

2. "Application" means any Software application installed on any Kiosk in any Store, as set forth in an Order Form.

3. "Applicable Law" means all applicable: (a) laws, rules, regulations, statutes, orders and ordinances of any Government Authority; and (b) common law.

4. "Business Partner" means any Person with whom ShoptoCook or any ShoptoCook Affiliate transacts or has transacted business.

5. "Confidential Information" means all information, in whatever form, relating to any business of ShoptoCook or Wholesaler, or any Affiliate or Business Partner of ShoptoCook or Wholesaler, that is: (1) treated as confidential or proprietary by ShoptoCook or Wholesaler or any of their respective Affiliates; and (2) disclosed by ShoptoCook, Wholesaler or any of their respective Affiliates (the "Disclosing Party") to Retailer (the "Receiving Party") or is otherwise learned, observed or perceived by the Receiving Party at any time in connection with the ShoptoCook Retailer Program. "Confidential Information" includes, without limitation, all data, business, financial and other plans and records, name, contact information and requirements of customers and suppliers, drawings, blueprints (in any media form), equipment, prototypes, research and development, processes, business methods, procedures, customer leads, customer presentations, specifications, inventions, products, formulas, formulations, services, plans, specifications, market information, strategies, budgets, accounts, projections, computer hardware, software, systems, programs, source codes and object codes, forecasts, market information, pricing, costs, sales, pricing, revenues, technology, patent applications, licenses, trade secrets, know-how, techniques, original works of authorship and any other information of a similar nature, whether or not patentable or copyrightable. "Confidential Information" also includes, without limitation, all documents, compact discs, computer disks, notes and other tangible materials containing or relating to any such information and all observations, oral disclosures, visual disclosures, electronic disclosures and any other information (in whatever form) that may be perceived, reproduced, transmitted or communicated in any way, whether or not patentable or copyrightable. "Confidential Information" shall not include information that is: (1) generally known to the public prior to disclosure or after disclosure becomes generally known to the public through no act or failure to act of the Receiving Party; provided, however, to the extent that Confidential Information consists of a combination of elements individually generally known to the public, this exclusion shall not apply if such elements are not generally known to the public in said combination; or (2) rightfully furnished to the Receiving Party by a Person without breaching any agreement or confidential relationship between such Person and the Disclosing Party or any Affiliate or Business Partner of the Disclosing Party. The burden of proof of the application of the foregoing exceptions shall be on the Receiving Party.

6. "Control", "Controls", and "Controlled by" each means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

7. "Fees" means any fees or other consideration of any kind due and payable by Retailer to ShoptoCook or Wholesaler hereunder.

8. "Force Majeure" means any event or circumstance beyond the reasonable control of the party affected that prevents or delays the performance of such party's duties hereunder, including, without limitation, natural disasters, wars, riots, sabotage, government action, lockout, strikes, labor disputes, acts of God or fire.

9. "Government Authority" means any foreign, federal, state, local or other government, government agency or authority or quasi-governmental body, including, without limitation, any arbitrator and any government department, board, commission, court or tribunal.

10. "Hardware" means all computer hardware, operating system software, printers, surge protectors and USB printer cables located in any Kiosk or used in conjunction with any Kiosk that comply with all of the ShoptoCook Software and Application requirements provided to Retailer.

11. "Kiosk" means any stand-alone structure containing the Hardware that is located in any Store upon which the Software Applications and the ShoptoCook Content has been uploaded and installed, through which Shoppers can access the ShoptoCook Content.

12. "Kiosk Usage Data and Web Site Usage Data" means the aggregate of all data and information of any kind, in whatever form, arising from or relating to the use of the Software at any Kiosk.

13. "Marks" means all ShoptoCook trademarks, service marks, trade names, commercial symbols and copyrights in or relating to the Software or any Services.

14. "Member" means any Person that is a member of the Retailer purchasing group.

15. "Order Form" means the form provided by Wholesaler for Retailer to elect to participate in the ShoptoCook Retailer Program.

16. "Person" means any individual, corporation, Government Authority, partnership, limited liability company or any other entity of any kind.

17. "Program Document" means this ShoptoCook Retailer Program Terms and Conditions, as the same may be amended, modified or replaced by ShoptoCook from time to time.

18. "Retailer" means any Person participating in the ShoptoCook Retailer Program.

19. "ShoptoCook" means ShoptoCook, LLC.,, a Delaware company.

20. "ShoptoCook Content" means all data, databases, content, information, photographs, illustrations, images, animations, audio clips, music clips, video clips, clip art, text incorporated therein, descriptions and depictions of any kind and in any form that are furnished or made available pursuant to the License relating to or constituting recipes, directions or instructions for the preparation or consumption of any type of food or drink, whether alone or in combination with any other food or drink, including, without limitation, dietary and nutritional information, product codes and information concerning ingredients, quantities, portions, preparation times and methods.

21. "ShoptoCook Retailer Program" means the program, subject to the Program Document, by which Retailers may obtain the License and the Services, and have access to the Kiosk, the Software, the ShoptoCook Content, and all other applications and services described in this Program Document.

22. "Shopper" means any shopper of Retailer at any of its Stores.

23. "Software" means the following:

    a. Software – ShoptoCook's proprietary software (in machine readable object code form) but only as to the Applications selected by Retailer in an Order Form;

    b. Content – all content offered in conjunction with any such software Application, including, without limitation, text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations and software;

    c. Media Elements – all photographs, images, animations, audio clips, music clips, video clips, clip art and text included in such software Applications;

    d. Upgrades – all upgrades relating to such software Applications and made available to Retailer hereunder, to the extent such an item is not accompanied by a separate license agreement.

24. "Store" means each Retailer place of business at which the License and Services will be used by Retailer and its Shoppers.

25. "Retailer" is a Member of the Retailer purchasing group who executes an Order Form to participate in the ShoptoCook Retailer Program.

26. "Taxes" means all domestic taxes, charges or other Government Authority assessments of any kind (including, without limitation, withholding taxes, sales taxes, use taxes, and any interest, fines or penalties thereon) levied or based on, directly or indirectly, with respect to any Fee paid hereunder, or the use of the License or any Services hereunder by Retailer, any Shopper or any other Person, whether levied against ShoptoCook, Retailer or any other Person.

27. "Wholesaler" means each wholesale distributor or solution services company which offers the ShoptoCook Retailer Program to its purchasing group.