

TYPE 3 PACKAGE AGENCY AGREEMENT

This is a legally binding agreement. You are advised to consult with an independent attorney concerning your rights and obligations under this agreement.

The Department of Alcoholic Beverage Services ("DABS") and _____, DBA _____ ("CONTRACTOR"), enter into this Type 3 Package Agency Agreement ("Agreement") on the date of execution below and hereby agree as follows.

RECITALS

WHEREAS, the Alcoholic Beverage Services Commission desires to have CONTRACTOR independently operate a Type 3 Package Agency to sell alcoholic beverages.

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WHEREAS, pursuant to Utah Code §§ 32B-2-202 and 32B-2-601, and subject to the entry of a written agreement between the DABS and CONTRACTOR, the Commission authorized CONTRACTOR on _____ to operate a Type 3 Package Agency at _____ and directed the DABS to enter into an agreement concerning the Package Agency with CONTRACTOR.

WHEREAS, Utah Code § 32B-2-605 prohibits CONTRACTOR from operating the Package Agency until CONTRACTOR and the DABS enter into an agreement concerning the Package Agency.

NOW THEREFORE, by entering into this Agreement, the DABS and CONTRACTOR intend to memorialize the conditions of their agreement, and the terms by which CONTRACTOR will operate the Package Agency.

DEFINITIONS

As used in this Agreement:

- A. "Commission" means the Alcoholic Beverage Services Commission created in Utah Code § 32B-2-201.
- B. "CONTRACTOR" means the person identified in the opening paragraph of this Agreement. Additionally, "CONTRACTOR" is a "Package Agent" as that term is defined in Utah Code § 32B-1-102.
- C. "Package Agency" means the same definition set forth in Utah Code § 32B-1-102, and specifically a Type 3 retail liquor location operated under this Agreement pursuant to Utah Code § 32B-2, Part 6.
- D. "Type 3" means a Type 3 Package Agency as described in Utah Administrative Code R82-2-301.

TERMS OF AGREEMENT

I. Operational Requirements

- A. Applicable Law. CONTRACTOR acknowledges that the Package Agency is established by statute. Accordingly, CONTRACTOR shall operate the Package Agency in accordance with federal and state law, including Utah Code, Title 32B, Chapter 2, Part 6, Package Agency, Utah Administrative Code R82-2-301 through 310, and the policies and procedures of the DABS. In the event the terms of this Agreement conflict with federal or state law or administrative rule, the law or rule prevails.
- B. Independent Contractor. This Agreement does not establish an employment relationship between CONTRACTOR and the State of Utah, including the DABS. CONTRACTOR acknowledges that the

Package Agency is created by statute, which requires the DABS to regulate and provide oversight. However, the DABS's regulatory oversight may not be construed as employment oversight of CONTRACTOR's day-to-day performance with Package Agency. While this Agreement establishes duties, covenants, and restrictions on the parties, each party agrees that nothing in this Agreement is intended nor may be construed to create an employment relationship between them. As an independent contractor, CONTRACTOR is responsible for its own tax withholdings, payments, retirement, health insurance, and all other responsibilities and benefits commonly provided by a traditional employer. Additionally, CONTRACTOR is responsible for all costs and expenses associated with running a merchant business, such as payroll, lease of premises, utilities, point of sale transaction costs and fees, credit card merchant fees, surcharges, etc.

- C. Package Agency Operator. The DABS shall allow CONTRACTOR to operate the Type 3 Package Agency contemplated in this Agreement. CONTRACTOR or an employee designated by CONTRACTOR in the Package Agency application shall operate the Package Agency in accordance with Utah Code § 32B-2-605. All conduct of the designated employee is attributable to CONTRACTOR. CONTRACTOR shall provide written notice to and obtain approval from the DABS of any change to the designated employee responsible for operating the Package Agency.
- D. Inventory to be Sold. The Package Agency may sell liquor, as defined in Utah Code § 32B-1-102, to the public for off-premise consumption. In accordance with Utah Code § 32B-2-605, CONTRACTOR may not purchase the liquor it intends to sell from any source whatsoever other than the DABS. The DABS is the exclusive provider of alcohol for CONTRACTOR's Package Agency under Utah law.
- E. Pricing. In accordance with Utah Code § 32B-2-605, CONTRACTOR, through the Package Agency, shall sell all liquor at the price fixed by the Commission. The DABS agrees, in its capacity as the agency responsible for enforcing the alcohol laws of the state of Utah, to provide a price list to CONTRACTOR at least monthly and communicate any change in prices to CONTRACTOR.
- F. Point of Sale System. CONTRACTOR shall install on the Package Agency's premises and, at its sole expense, use a point of sale system capable of receiving payments from customers, managing sales, inventory, customer data, and generating reports.
- G. Monthly Sales Detail Reporting. In accordance with Utah Administrative Code R82-2-306, CONTRACTOR shall submit a monthly sales report to the DABS that specifies the variety and number of alcoholic products sold by the Package Agency during the preceding DABS fiscal month. CONTRACTOR shall submit the monthly sales report on or before the 10th day of each calendar month on a form provided by the DABS unless the 10th day is a Saturday, Sunday, or state or federal holiday, in which case CONTRACTOR shall submit the monthly sales report before the end of the next business day after the 10th day of the calendar month. On or before July 1 of each year, the DABS shall provide CONTRACTOR the dates of the DABS fiscal months for the subsequent 12 calendar months and the form that CONTRACTOR shall use for the monthly sales reports.
- H. Product Consumption on Premises. CONTRACTOR shall make reasonable efforts to ensure that, in accordance with Utah Code § 32B-2-605, alcoholic products are for off-premise consumption only and will not be opened or consumed on the premises of the Package Agency.
- I. Trade Fixtures, Equipment, and Displays. Solely at its own expense, CONTRACTOR shall furnish and install suitable shelving, display counters, storeroom space, cash registers, and other fixtures and equipment necessary to operate the Package Agency. In accordance with Utah Code § 32B-2-605, CONTRACTOR shall prominently display the record issued by the Commission designating the Package Agency. If CONTRACTOR displays or stores liquor at a location visible to the public, then CONTRACTOR shall prominently display the sign attached hereto as Exhibit "A" at the Package Agency.
- J. Floor Plan Modifications. Before CONTRACTOR makes significant changes to the Package Agency floor plan, CONTRACTOR shall consult the DABS and obtain approval for the changes. In accordance with Utah Administrative Code R82-2-306, the Package Agency must have at least 100 square feet of space

devoted to liquor sales.

- K. Alcohol Storage. CONTRACTOR shall securely lock all approved storage areas outside of hours of operation.
- L. Advertisement of Products. CONTRACTOR shall follow and adhere to all advertising laws, including Utah Code § 32B-1-206 and Utah Administrative Code R82-1-104 and R82-2-302.
- M. Hours of Operation. In accordance with Utah Administrative Code R82-2-306, the Package Agency shall be easily accessible to the general consuming public. **The Package Agency's hours of operation must conform to and be compliant with Utah Code § 32B-2-605 and Utah Administrative Code R82-2-306, including those provisions that either allow or disallow operation on holidays and Sundays with respect to this Package Agency type.** For DABS's records, CONTRACTOR warrants that, by its own choice, it will operate the Package Agency on the following days at the following times:
- Sunday: _____ to _____
 - Monday: _____ to _____
 - Tuesday: _____ to _____
 - Wednesday: _____ to _____
 - Thursday: _____ to _____
 - Friday: _____ to _____
 - Saturday: _____ to _____

If CONTRACTOR desires to change the above hours of operation, it shall deliver a written request to DABS requesting the change. CONTRACTOR may not make changes to the above hours of operation until DABS approves the request.

- N. Closure. In accordance with Utah Code § 32B-2-605, CONTRACTOR may not close the Package Agency or cease operations for a period longer than 72 hours unless CONTRACTOR notifies the DABS in writing at least seven calendar days before the closure or cessation of operations, or in the case of emergency closure, immediately by telephone, and the DABS approves the closure or cessation of operations. CONTRACTOR shall include in any written notice of closure or cessation of operations the dates of and reason for closure or cessation of operations and the date the Package Agency will reopen or resume operations.

The DABS may authorize a closure of cessation of operations for a period of up to 60 calendar days and may extend the 60-day period for an additional 30 calendar days upon written request by CONTRACTOR and a showing of good cause. CONTRACTOR may not close the Package Agency or cease operations for more than 90 calendar days without approval of the Commission.

- O. Expenses. CONTRACTOR is responsible for all expenses relating to the operation of the Package Agency, including employee payroll, utilities, insurance, transactional costs and fees, surcharges, taxes, and the cost of inventory. The DABS is not responsible for any costs or expenses incurred by CONTRACTOR in operating its business and premises, and selling liquor. CONTRACTOR is responsible for all breakage, spillage, loss, and damage, however caused, to any liquor it receives from the DABS under this Agreement.
- P. Transportation of Product. The DABS agrees to pay reasonable transportation costs on liquor shipped or delivered to the Package Agency by the DABS. The DABS shall deliver only the liquor ordered by CONTRACTOR and it shall deliver the orders to the address of CONTRACTOR included in this Agreement. If, through no fault of CONTRACTOR, the DABS erroneously delivers the wrong liquor product or quantity, then the DABS shall pay for all return shipping and delivery costs. However, CONTRACTOR shall pay for all shipping and delivery costs for all other liquor returns, including returns of unopened saleable liquor upon termination of this Agreement.
- Q. Employees. In accordance with Utah Code § 32B-2-605, CONTRACTOR shall not employ an individual under 21 years of age to work at the Package Agency.

- R. Audits and Inspections. Pursuant to Utah Code § 32B-2-602, authorized representatives of the Commission, the DABS, and any law enforcement officer have an unrestricted right to enter the Package Agency's premises. The DABS or the state auditor may, at any time, after reasonable notice to CONTRACTOR, conduct an audit or inspection of any books or records of CONTRACTOR concerning the Package Agency operations, inventory, or money on hand. CONTRACTOR shall fully cooperate in any such audit or inspection.
- S. Covert Investigation. In accordance with Utah Code § 32B-2-605, the Package Agency is subject to covert law enforcement investigations for selling an alcoholic product to a minor or engaging in any other act or omission constituting a violation of Utah laws and regulations or breach of this Agreement. CONTRACTOR being found in violation of Utah law may result in the termination of this Agreement under Section V. C. below.
- T. Entity Status. CONTRACTOR shall ensure that all required ownership entity and organizational documents filed with the Utah Department of Commerce are current and up to date for the duration of this Agreement.
- U. Local Permits. CONTRACTOR shall ensure that all required permits and licensing for the city, county, or other municipality within which the Package Agency is located are current and up to date for the duration of this Agreement.
- V. Taxes. CONTRACTOR shall have a valid Utah tax identification number, and be current in all registrations and filings with the Utah Tax Commission for the duration of this Agreement. CONTRACTOR shall collect all sales tax due on any item sold through the Package Agency, account for all taxes, and timely submit all taxes to the Utah Tax Commission and any applicable local government. CONTRACTOR is solely responsible for any tax delinquency of the Package Agency.
- W. Insurance. CONTRACTOR shall carry general public liability insurance in an amount of not less than \$1,000,000 per incident and \$2,000,000 in the aggregate amount for the duration of this Agreement. CONTRACTOR shall ensure the insurance policy states the address of the Package Agency referenced in this Agreement and the DABS as the certificate holder. CONTRACTOR is required to provide the DABS with proof of insurance coverage within seven (7) business days after the DABS requests the proof. CONTRACTOR shall name the DABS as an additional insured on the policy. CONTRACTOR shall ensure that its insurance coverage requires all insurers to provide the DABS with not less than 30 days notice of any cancellation or change of insurance.
- X. Bonds. In accordance with Utah Code § 32B-2-604, CONTRACTOR shall furnish to the DABS a cash or surety bond in the sum of \$1,000 payable to the DABS, and a consignment surety bond in the amount of any consignment liquor inventory provided to the Package Agency under Section II payable to the DABS. CONTRACTOR shall maintain the cash or surety bond and the consignment surety bond for as long as the Package Agency operates under this Agreement. The cash or surety bond and the consignment surety bond shall be conditioned upon CONTRACTOR's faithful compliance with Utah Code, Title 32B, Alcoholic Beverage Control Act, the administrative rules of the Commission, and this Agreement. The consignment surety bond shall be conditioned upon CONTRACTOR's return of the unsold consignment liquor inventory at the termination of this Agreement. CONTRACTOR is required to provide the DABS with proof of bond required under this Section within seven (7) business days after the DABS requests the proof.

Upon termination of this Agreement, any remaining cash or surety bond not used as payment for a fine or fee owed to the DABS or the Commission, and the consignment surety bond will be returned to CONTRACTOR if:

1. CONTRACTOR complies with the terms of this Agreement and applicable state law and administrative rule, including Utah Code, Title 32B, Chapter 2, Part 6, Package Agency, and Utah Administrative Code R82-2-301 through 310, and the policies, procedures, and directives of the DABS; and
2. At its own expense, CONTRACTOR returns any saleable liquor to the DABS or pays the DABS the

current retail price of all liquor not returned.

II. Liquor Inventory

- A. Inventory Size. In accordance with Utah Administrative Code R82-2-306, the Package Agency must maintain at least 50 code numbers of inventory at a retail value of at least \$5,000 and a representative inventory by brand, code, and size.
- B. Inventory Accounting. CONTRACTOR shall maintain an accurate inventory count of all liquor received under this Agreement, whether purchased by CONTRACTOR or transferred on consignment. The DABS may review the inventory count in-person using the sales detail reporting described in Section I.G to determine discrepancies as necessary.
- C. Consignment. In accordance with Utah Code § 32B-2-605, the DABS may provide, at the request of the Package Agency, and the Package Agency acknowledges receipt of, a consignment liquor inventory in the amount of \$ _____. CONTRACTOR acknowledges that title to any consigned liquor inventory provided to the Package Agency belongs to the DABS until sold to the purchaser. The DABS may, in its discretion, request CONTRACTOR return all consignment liquor inventory to the DABS. For the duration of this Agreement, CONTRACTOR agrees to have either the consignment liquor inventory or the equivalent value in cash on hand to return to the DABS upon request. If CONTRACTOR fails to maintain or keep the consignment liquor inventory or its equivalent value in cash, or if it fails to return the consignment liquor inventory or pay its cash value to the DABS upon request, CONTRACTOR may be subject to civil prosecution by the DABS for conversion of state property or criminal prosecution for the theft and misuse of state funds.
- D. Change in Consignment. In accordance with Utah Administrative Code R82-2-308, the DABS may make adjustments to the consignment inventory amount from time to time based on the Package Agency's monthly average sales. Upon deciding to make such a change, the DABS shall notify CONTRACTOR in writing of the decision and the effective date of the change. The DABS may lower the consignment amount only if the Package Agency's 12-month average sales are lower than the Package Agency's current consignment amount. If the DABS chooses to lower the consignment amount, CONTRACTOR shall pay the difference through a cash payment or returned inventory to the DABS.
- E. Inventory Receiving Process. CONTRACTOR is responsible for ensuring the accuracy of the liquor inventory delivered to the Package Agency by the DABS. CONTRACTOR agrees to do the following on the same day the DABS delivers liquor to the Package Agency:
1. verify that paperwork and invoices are attached to the shipment with the Package Agency number;
 2. before unwrapping any shipment, verify the shipment belong to the Package Agency and check for tampering;
 3. if tampering is suspected, call the DABS immediately to report the suspected tampering;
 4. sign the bill of lading and check the manifest to confirm the number of cases received is accurate; and
 5. verify the shipment on the invoice or shipment paperwork and notify the DABS of any discrepancies within 72 hours on forms provided by the DABS.
- F. Return of Consignment and Other Inventory. In accordance with Utah Code § 32B-2-607, upon termination of this Agreement, CONTRACTOR:
1. is liable for the entire consignment liquor inventory amount;
 2. shall return to the DABS all unsold liquor in the possession of the Package Agency; and
 3. shall pay the DABS the current price, as listed by the DABS and fixed by the Commission, of all or any part of the consignment liquor inventory that is not returned to the DABS.

Any liquor the Package Agency previously purchased from the DABS that remains unsold and in saleable condition upon termination of this Agreement and in excess of any consignment made to the Package

Agency, will be returned to the DABS for a refund at the current price of the liquor as listed by the DABS and fixed by the Commission. Any liquor inventory or cash on hand that exceeds money owed to the DABS will be credited to CONTRACTOR upon approval of a disbursement of funds by the Division of Finance within the Department of Government Operations.

- G. Destruction of Unsaleable Inventory. CONTRACTOR shall record the broken, damaged, or otherwise unsaleable liquor inventory on a form provided by the DABS. CONTRACTOR shall submit the completed form to the DABS for approval to destroy the broken, damaged, or otherwise unsaleable liquor inventory. If liquor inventory is missing from a box or carton, the Package Agency shall report the discrepancy on a form provided by the DABS as soon as the discrepancy is discovered.

III. Payments

- A. Automated Clearing House (ACH) Payment System. In accordance with Utah Administrative Code R82-2-308, CONTRACTOR shall set up an ACH payment account with the DABS within thirty (30) days after the last party signs this Agreement using a form provided to CONTRACTOR by the DABS.
- B. Payments to DABS. CONTRACTOR shall pay the DABS the retail price of the liquor delivered to the Package Agency within 30 days after the Package Agency orders the liquor. In accordance with Utah Administrative Code R82-2-308, the DABS shall withdraw payments due to the DABS via the Package Agency's ACH payment account on the day on which the payment is due, unless CONTRACTOR remits payment to the DABS before the due date using another method or CONTRACTOR and DABS agree in writing to payment through another method.
- C. Invoices. In accordance with Utah Administrative Code R82-2-308, the DABS shall email CONTRACTOR a statement showing the Package Agency's unpaid debts and applied credits before the end of each week. The weekly statement shall reflect payment due dates, payments the DABS received against the oldest outstanding invoices first, and payments received over previous statement balances credited chronologically against ordered liquor inventory due after previous statements. CONTRACTOR is responsible for reviewing the weekly statements and contacting the DABS with any discrepancies before a payment is due. In accordance with Utah Administrative Code R82-2-308, the DABS and CONTRACTOR shall resolve any discrepancies using an LQ9 form or other form provided to the Package Agency by the DABS.
- D. Extension of Time for Payment. If CONTRACTOR requires an extension of the time required to remit payment to the DABS under this Section III, CONTRACTOR shall apply to the DABS for an extension on a form and in a manner determined by the DABS. The DABS may at its sole discretion grant one extension to CONTRACTOR, upon proper request and for good cause, in a fiscal year (July 1 through June 30).
- E. Past Due Payment. In accordance with Utah Administrative Code R82-1-103 and R82-2-308 and pursuant to Utah Code Title 15, Contracts and Obligations in General, the DABS may assess the legal rate of interest on any amount owed to the DABS under this Agreement that is past due. If CONTRACTOR has past due payments under this Agreement, the DABS may refuse to deliver liquor ordered by CONTRACTOR.
- F. Return of ACH Payments: If two (2) or more of CONTRACTOR's ACH payments are returned within a rolling 12-month period, the DABS may, at its sole discretion, revoke ACH authorization and require that all future payments be made by certified funds. Certified funds include cashier's checks, money orders, and wire transfers. The rolling 12-month period will be calculated from the date of the most recent returned ACH payment.
- G. Restoration of ACH Authorization: The DABS may, at its sole discretion and upon review of all of the circumstances surrounding the revocation of CONTRACTOR's ACH payment authorization, reinstate the ACH authorization after a period of twelve (12) consecutive months have lapsed with no returned ACH payments.

IV. Compensation

- A. Compensation. In consideration of the true and faithful performance of this Agreement, the DABS shall pay CONTRACTOR an annual amount of \$_____ disbursed monthly in the sum of \$_____. In accordance with Utah Code § 32B-2-605, payment to the Package Agency under this Section may be amended upon written supplement to this Agreement, signed by both parties.

V. Other Terms

- A. Duration. This Agreement begins on the date the last party signs this Agreement and continues until the end of the DABS' fiscal year on **June 30, 2028**, unless otherwise terminated in accordance with this Agreement. This Agreement will not automatically renew. CONTRACTOR may re-apply to operate the same Package Agency contemplated under this Agreement when the new application period begins. The DABS makes no guarantee, warranty, or representation, express or implied, that CONTRACTOR will be awarded a new contract to operate the same Package Agency.
- B. Amendment. This Agreement may be amended only by mutual written agreement by the parties.
- C. Termination and Suspension. Upon 30 days written notice delivered to the DABS, CONTRACTOR may terminate this Agreement for any reason. Upon 30 days written notice delivered to CONTRACTOR, the DABS may terminate this Agreement in whole or in part, including if the DABS reasonably determines that a change in federal or state legislation or applicable laws, including changes in legislative appropriations, materially affects the ability of either party to perform under the terms of this Agreement.

The DABS may terminate this Agreement for good cause. In such an event, the DABS shall deliver written notice to CONTRACTOR outlining the cause for termination and demanding that the violation(s) be corrected and ceased within a 10 calendar day cure period. After expiration of the 10-day cure period, the DABS may immediately terminate this Agreement if the violations have not been corrected.

Good cause for termination of this Agreement includes:

1. CONTRACTOR being adjudged bankrupt or insolvent, applying for or consenting to the appointment of a receiver, or making a general assignment for the benefit of creditors;
2. the physical or mental impairment of CONTRACTOR, rendering the proper performance of duties impossible either permanently or for an indefinite period in excess of 90 days;
3. a violation of state law or administrative rule, including Utah Code, Title 32B, Chapter 2, Part 6, Package Agency, and Utah Administrative Code R82-2-301 through 310, or the policies, procedures, or directives of the DABS;
4. a substantial or material breach of CONTRACTOR's obligation to manage and operate the Package Agency in accordance with this Agreement if CONTRACTOR has failed to correct such breaches within a reasonable time specified by the DABS;
5. CONTRACTOR's failure to collect, account for, or timely submit sales taxes due on any and all items sold in the Package Agency;
6. CONTRACTOR's intentional participation in the misappropriation of money or other property of the DABS;
7. CONTRACTOR's failure to provide proof of insurance coverage as required in Section I.W;
8. CONTRACTOR's failure to provide proof of bond as required in Section I.X; and
9. CONTRACTOR's failure to provide payment to the DABS for its product inventory as required in Section III.B.

Notwithstanding the above, the following actions by CONTRACTOR result in immediate and automatic termination of this Agreement pursuant to Utah Code § 32B-2-605. For any of the following violations, the DABS may unilaterally terminate this Agreement without issuance of a cure period and upon sending written notice to CONTRACTOR:

1. CONTRACTOR's failure to provide notice and to obtain the DABS' approval of a designated

- employee responsible for operating the Package Agency as described in Section I.C;
2. CONTRACTOR's failure to provide notice and to obtain the DABS' authorization before closure or cessation of operation as described in Section I.N;
 3. CONTRACTOR's failure to reopen or resume the Package Agency's operations by the date approved by the DABS as described in Section I.N.
- D. Lien. If CONTRACTOR violates any of the terms of this Agreement, the DABS shall have a lien on all property of CONTRACTOR used in the operation of the Package Agency in order to secure any amount due to the DABS under this Agreement or to secure performance of the terms of this Agreement. The DABS may enter the Package Agency at any time and take possession of the property to secure its interest.
- E. Remedies. If CONTRACTOR creates a partial or material breach of this Agreement, the DABS may elect one or more of the following remedies as permitted by law: (i) terminate this Agreement for cause; (ii) seize any alcoholic products remaining at the Package Agency and be reimbursed by CONTRACTOR for all costs associated with the seizure; (iii) seek directive from the Commission to revoke the Package Agency from CONTRACTOR; (iv) make a claim against the bond posted by CONTRACTOR for money owed to the DABS; (v) take legal action to collect money owed in excess of the posted bond; (vi) debar or suspend CONTRACTOR from being awarded future contracts with the DABS; (vii) withhold any portion or all of compensation paid by the DABS to CONTRACTOR and apply it to the owing amount; and (viii) pursue any other remedies available in law or equity.
- F. Survival. All rights and obligations under this Agreement cease upon termination of this Agreement, except for the rights and obligations that expressly survive termination of this Agreement, including this Section and Sections I.P, V.E, V.H, V.I, V.J, V.M, V.P, V.Q, V.S.
- G. Assignment. In accordance with Utah Code § 32B-2-605, CONTRACTOR may not sell, transfer, assign, exchange barter, give, or attempt in any way to dispose of the Package Agency, or any of the rights and obligations under this Agreement, to another person.
- H. Records Administration. In accordance with Utah Administrative Code R82-2-306, CONTRACTOR shall maintain or supervise the maintenance of all records necessary to properly account for CONTRACTOR's performance under this Agreement for a period of at least three (3) years after performance. Upon termination of this Agreement, CONTRACTOR is required to provide records of the Package Agency business to the DABS as requested, and those records become the property of the state.
- I. Indemnity. CONTRACTOR shall be fully liable for the actions of CONTRACTOR's agents, employees, officers, partners, and subcontractors, and, without limitation, shall fully indemnify, defend, and save harmless the DABS and State of Utah from any and all claims, losses, suits, actions, enforcement proceedings, judgements, court or administrative orders, fines, penalties, damages, and costs of every name and description arising out of CONTRACTOR's performance of this Agreement to the extent caused by any intentional wrongful act or negligence of CONTRACTOR, and CONTRACTOR's agents, employees, officers, partners, or subcontractors; provided, however, that CONTRACTOR may not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the DABS. This indemnity includes the obligation to pay for or reimburse the DABS for all costs and attorneys' fees incurred in responding to or defending any claim covered by this provision. CONTRACTOR shall have the right to settle any claim only with the consent of the DABS. The parties agree that if there are any limitations on CONTRACTOR's liability, including a limitation of liability clause for anyone for whom CONTRACTOR is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
- J. Immunity. The State of Utah and DABS hereby claim sovereign and governmental immunity for itself and its employees against any and all fines, penalties, fees, cancellation, termination, or commutation charges, or any other expenses as a result of early termination of this Agreement in accordance with Section V.C above.
- K. Anti-boycott Actions. In accordance with Utah Code, Title 63G, Chapter 27, Public Contract Boycott

Restrictions, CONTRACTOR certifies that neither it nor the Package Agency are currently engaged in any “economic boycott” nor a “boycott of the State of Israel” as those terms are defined in Utah Code § 63G-27-102. CONTRACTOR further certifies that CONTRACTOR has read and understands Utah Code, Title 63G, Chapter 27, Public Contract Boycott Restrictions, that CONTRACTOR will not engage in any such boycott action during the term of this Agreement, and that if CONTRACTOR does, CONTRACTOR shall promptly notify the DABS in writing.

- L. Political Activity. CONTRACTOR shall not promote, endorse, or oppose any candidate for any political office in verbal or printed form at the contracted Package Agency location.
- M. Public Information. This Agreement and documents relating to this Agreement are subject to public release in accordance with Utah Code, Title 63G, Chapter 2, Government Records Access and Management Act. If there is any information that CONTRACTOR submits to the DABS and desires it be withheld from a public record request, CONTRACTOR shall adhere to the requirements in Section 63G-2-309. Unless CONTRACTOR submits a valid confidentiality claim to the DABS pursuant to Section 309, the CONTRACTOR waives all claims, complaints, actions, suits, and disputes with the DABS concerning the release of records requested by the public.
- N. Force Majeure. Neither party to this Agreement will be held responsible for a delay or default caused by fire, riot, act of God, or war that is beyond that party’s reasonable control.
- O. Waiver. A waiver of any right, power, or privilege may not be construed as a waiver of any subsequent right, power, or privilege. The DABS expressly reserves any and all rights granted to it by statute that may not be included in this Agreement.
- P. Attorney Fees. In the event of any judicial action to enforce rights under this Agreement, the prevailing party shall be entitled to the party’s costs and expenses, including reasonable attorney’s fees incurred in connection with such action. Should CONTRACTOR become involved in any litigation pertaining to the establishment, operation, or termination of the Package Agency, the State assumes no liability for any legal expenses other than its own defense.
- Q. Dispute Resolution. Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute.
- R. Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable for any reason by any court of competent jurisdiction, the remaining provisions of this Agreement are not affected and shall remain in full force and effect, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had not been contained in this Agreement.
- S. Choice of Law. This Agreement is governed by the laws of the State of Utah. Any action to enforce the terms and provisions of this Agreement or to seek a declaration as to rights of any party shall be commenced in the courts of Salt Lake County.
- T. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The parties acknowledge there are no other agreements between the parties with regard to the subject of this Agreement, whether oral or written.
- U. Authority. CONTRACTOR represents that the individual who signs this Agreement has the authority to bind CONTRACTOR and Package Agency, and does, by signing this Agreement, bind the CONTRACTOR and Package Agency to the terms and conditions of this Agreement.

*** Signatures on the following page ***

SIGNATURE PAGE FOR TYPE 3 PACKAGE AGENCY AGREEMENT

(CONTRACT NO. _____)

By signing below, the parties hereby evidence their agreement to the terms expressed in this Agreement.

Signatures:

Date: _____

CONTRACTOR

By: _____

Title: _____

Date: _____

**DEPARTMENT OF ALCOHOLIC
BEVERAGE SERVICES**

By: _____

Title: _____