

SPECIAL DISTRIBUTOR AGREEMENT

THIS AGREEMENT is made this «Day» day of «Month», «Year», between the Idaho State Liquor Division (hereinafter called “The Division”) and «LLCCorp» DBA «Name of Business» acting through «Principals», principal(s), hereinafter called “Special Distributor” and «Individually», individually, as guarantor(s) of performance by «LLCCorp». Based on the mutual covenants and conditions herein contained the parties hereby agree as follows:

(1) **APPOINTMENT OF SPECIAL DISTRIBUTOR.** The Division selects the Special Distributor to operate a nonexclusive retail liquor distribution station for the Division pursuant to Idaho Code § 23-301 et seq. Such station is to be known as Special Distributor No. «StoreNumber».

(a) Special Distributor recognizes that the Division is the sole entity with authority to import, traffic, transport, store, sell, and deliver alcoholic liquor in Idaho.

(b) Special Distributor recognizes that it has no property interest whatsoever in its status as a Special Distributor and that it serves in such capacity at the pleasure of the Division.

(c) As used herein, the term “liquor” means all alcohol, spirits, wine, beer or any other alcoholic beverage which the Division distributes, supplies or provides to the Special Distributor under the laws and rules of the State of Idaho.

(d) “Liquor or other merchandise” means liquor and any other items of property, whether or not held for sale, furnished by the Division to the Special Distributor.

(2) **LOCATION OF DISTRIBUTION STATION.** The location of the Distribution Station shall be «Store Address» premised in the City of «City of», County of «County of», State of Idaho. Special Distributor shall not change this premise location without first obtaining prior written approval of the Division. This contract shall authorize liquor sales only at the above premise and shall not be valid for any other facility operated by Special Distributor or any of its subsidiaries, partners, parent companies or any other affiliated or unaffiliated person or entity. Beer and wine sales are only allowed under this agreement for liquor distributed, supplied or provided from the Division. Any other sales for beer or wine not distributed, supplied or provided by the Division must be pursuant to concurrent licensure for such sales by the Bureau of Alcohol Beverage Control of the Idaho State Police. Special Distributor is solely responsible for pursuing issuance of such license, and the Division makes no representation or warranties as to the availability of such license. Further, no retail sale of liquor by the drink is allowed, nor shall any person be allowed to consume liquor on the premises pursuant to Idaho Code § 23-313.

(3) **DURATION OF THIS AGREEMENT, FEE, AND HOURS OF OPERATION.** The term of this Contract shall be from «Beg Date» to «End Date», with Division option to renew for additional one (1) year terms, at its sole discretion. The Division shall routinely evaluate the location, suitability, and performance of the Special Distributor in determining whether to renew the Agreement. Additionally, the Division may opt to not renew a contract for

the sole purpose of determining if the current special distributor is serving its community in an optimal manner. Division shall notify Special Distributor in writing of its lack of intent to renew this agreement at least 30 days prior to agreement expiration. Decision not to renew the agreement shall not be deemed termination of the agreement for cause.

The monthly contract fee paid by the Division to Special Distributor will be \$«Contract Fee». The hours of operation of the Special Distributor shall be in accordance with Idaho Code and Division Rules, or as specifically authorized by the Director of the Division.

(4) SPECIAL DISTRIBUTOR OPERATIONS.

(a) Special Distributor shall answer inquiries about its operations during reasonable business hours, upon demand of the Division. Special Distributor shall keep the Division informed of an authorized agent and an emergency contact number. Special Distributor and any assigned employees or agents agree to devote their best skills and efforts to perform the services for the Division in a courteous and businesslike manner in conformance with the Rules of the Idaho State Liquor Division and the provisions of the Idaho Liquor Act. Special Distributor shall inform all employees of such rules and statutes.

(b) The Special Distributor shall ensure that all merchandise sold to “by the drink” licensees under chapter 9, title 23, Idaho Code shall be properly marked with the Special Distributor number.

(c) The Special Distributor shall, at its sole cost and expense, furnish adequate, suitable and secure premises and shopping area, including proper shelving, display counters, and storeroom facilities, as determined at the sole discretion of the Division. These facilities may be distributed within the building. All such items shall be kept clean and presentable in appearance and in sanitary condition at all times as determined by the Division. Special Distributor shall also at its sole cost and expense, supply all necessary heat, light, water, sewer, telephone and other utilities for operations, and all office supplies, computers and any other items or costs incident and necessary to the operation of the Special Distributorship. Provided, however, the Division may, at its sole option and discretion and for its convenience only, provide the Special Distributor with reporting forms, retail liquor sacks, and/or computer paper.

(d) Product Optimization. Special Distributor shall cooperate with ISLD in maintaining product stock in a manner consistent with sales volume, shelf space and current demand. Removal of unproductive products will be performed by the ISLD District Manager based on sales review information. Inclusion of new or additional products will be at the discretion of the District Manager and Division’s Retail Department. Special Distributor shall stock products in accordance with the Division’s decisions.

(e) Shelf Management. Products shall be placed on shelves in order to merchandise the products responsibly and effectively. Upon instruction from the District Manager or Division’s Retail Department, Special Distributor shall modify product placement.

(f) Performance Initiative Premiums. The Division, at its sole discretion, may offer a premium payment program in addition to Special Distributors' base contract fee. Premium payments will be performance-based and have a finite term. The program details, performance qualifications, basis of compensation, and program term will be communicated to Special Distributors prior to implementation via email correspondence. The Division reserves the right to implement or cancel a premium program at any time.

(g) Special Distributor shall maintain the following minimum electronic connectivity requirements set by the Division for communication purposes:

- (i) High speed internet connection, minimum 256K upload and download speed.
- (ii) An email address used for business that is checked regularly (at least weekly). Special Distributor must notify ISLD (Customer Service Rep or District Managers) of changes to email address.
- (iii) Computer system with current operating system, (still under mainstream support from Microsoft as listed at support.microsoft.com/lifecycle).

(5) SPECIAL DISTRIBUTOR PERSONNEL. Special Distributor will employ sufficient personnel to operate the distribution station responsibly, efficiently, and conveniently to the public and in compliance with this Agreement and all applicable laws and regulations. Special Distributor's employees shall be of legal age to sell alcohol as provided in Idaho Code § 23-943.

(a) The Special Distributor shall submit names, social security numbers, addresses, dates of birth, and phone numbers of all persons whom they employ in operations pursuant to this agreement, upon request of the Division.

(6) SALE OF LIQUOR.

(a) All liquor or other merchandise held for sale will be provided to the Special Distributor by the Division at no cost. Special Distributor shall be responsible for and shall be accountable to the Division for all liquor or other merchandise furnished by the Division. Special Distributor shall not sell any liquor or other merchandise of the Division except for cash, check, money order, credit card, or debit card, except as otherwise provided by law. **NOTE:** Special Distributor may not assess any surcharge or convenience fee on any form of payment for any liquor or other merchandise of the Division.

Special Distributor shall not sell, attempt to sell or offer for sale any liquor product not listed or otherwise authorized for sale by the Division, nor shall Special Distributor sell, attempt to sell or offer for sale any liquor product at a price not authorized by the Division. The Special Distributor shall not sell liquor or other merchandise except in conformance with Division Rules and guidelines nor at any time other than during sales hours prescribed by the Division nor deliver any Division liquor or other merchandise off premises. Sales to Liquor by the Drink

Licensees shall be on terms and conditions as prescribed by the Division.

(b) Revenues Required to be Deposited into Designated Account or via Electronic Payment. All revenues resulting from the sale of liquor or other merchandise shall be paid over by the Special Distributor to the State Liquor Fund as required by Idaho Code § 23-401. The Division will not accept checks from Special Distributors. Special Distributors shall deposit all sales revenues (held in trust for the Division) directly into an Idaho State Treasurer's approved State Repository managed by Wells Fargo Bank, U.S. Bank, Zion's Bank, or Key Bank. With Division permission, Special Distributor may elect to submit payment via Electronic Funds Transfer. Special Distributor shall execute required authorization forms allowing the State of Idaho to debit Special Distributor's chosen bank account for this purpose.

Additionally, Special Distributor acknowledges familiarity with Idaho Code § 59-1014 and the provisions therein that require daily deposits of the receipt of state funds in excess of \$200, unless an allowance is made by the division to deposit less frequently i.e., weekly. Special Distributors may be assessed a penalty of \$25 per day for each day that deposits are not received beyond the expected deposit date.

(7) OTHER RESPONSIBILITIES OF SPECIAL DISTRIBUTOR.

(a) Special Distributor shall maintain inventory records, reports and forms as required by the Division and shall make and submit such reports, records and forms as required by the Division in the time frames established by the Division. Special Distributors must transmit weekly electronic sales reports to the Division within two (2) business days of the weekly close. Weekly banking deposit tickets must be submitted to the Division to arrive at the Division within six (6) calendar days after the weekly closing date designated by the Division. NOTE: Special Distributors that deposit via EFT are not required to submit deposit tickets to the Division but must transmit weekly Sales to the Division on the day following the weekly close. Distributors submitting sales reports or deposit tickets that arrive at the Division beyond the respective due dates may be assessed a late penalty of \$25 per incident. Late Submissions may be subject to additional late fees of \$50 for each successive five (5) day period. Late fees may be waived for good cause upon request of the Special Distributor made through the District Manager and approved by the Deputy Director or Director.

(b) The Special Distributor shall conduct such internal inventories as may be required by the Division.

(c) Special Distributor shall allow the Division to supply a sign that reads "LIQUOR STORE." The sign shall be of sufficient size as to be clearly readable from the street. The sign must be posted on the outside of the building or in a window of the building so that it is clearly readable from a car driving in front of the building where the liquor is available for sale.

(8) RESPONSIBILITY FOR SHORTAGES. Special Distributor shall pay to the Division immediately upon receipt of the request for payment from the Division showing its

calculation of the shortage, the current retail price of any shortage in excess of the shortage allowance, if any, as set by the Division annually as applicable to Special Distributors. The Special Distributor will not be responsible for any shortage which results from acts or omissions of the Division or its agents or employees, nor arising from crimes committed against Special Distributor, such as burglary or vandalism, provided, however, Special Distributor will be responsible for losses resulting from employee and customer theft where forced entry is not evident. Distributor agrees to use due care and diligence in securing and protecting State assets. The burden of proof is upon the Special Distributor in disputing the existence, amount of, or responsibility for liquor or other merchandise or cash shortages, and he/she may request a hearing before the Director. Any payment made by the Special Distributor may be refunded in whole or in part if the Special Distributor's position is upheld by the Director.

(9) AUDIT. The Division may at any time, conduct an audit or inspection of cash receipts, liquor or other merchandise, reports, records or forms pertaining to the Division which must be available at all times at the Special Distributor's place of business. Special Distributor will cooperate and assist in any such audit or inspection and the Division will use reasonable care to avoid interference with the Special Distributor's service to the public while carrying out any such audit or inspection.

(10) COMPENSATION. Other than any additional compensation earned through participation in a premium payment program pursuant to Section 4 (f), herein, the monthly compensation set forth in Paragraph 3 paid by the Division to the Special Distributor shall be full payment to the Special Distributor for the furnishing of all facilities, staffing, rent, light, heat, or any other expenses incidental to the operation of the Distribution Station, as well as full consideration for all services provided by the Special Distributor. Monthly compensation shall be paid by the Office of the State Controller and the Division shall not be responsible for any delays in payment due to the actions of the Office of the State Controller.

(11) RELATIONSHIP. Nothing in this agreement is to be construed as establishing an employee/employer or master/servant relationship between the Division and the Special Distributor.

(a) Special Distributor certifies that neither it nor its employees or subcontractors are employees of the State of Idaho.

(b) Special Distributor, its subcontractors, if any, and all employers working under this contract shall comply with any law which requires them to provide workers' compensation coverage for all their subject workers.

(c) As an independent contractor, Special Distributor shall and hereby agrees to protect, indemnify, defend, and hold the Division harmless from any and all claims for taxes, (including but not limited to Social Security taxes), attorney's fees, and costs, which may be made or assessed against the Division, arising out of Special Distributor's failure to pay all taxes, fees, or contributions that are Special Distributor's responsibility under this contract, including but not limited to taxes or contributions for unemployment insurance, pensions, benefits, or annuities now or hereinafter imposed by any federal, state, or local agency that are measured by

wages, salaries, or other remunerations paid or due persons employed in the performance of the work.

(12) **DISCLOSURE REQUIREMENTS.** While under contract, Special Distributors shall have an ongoing obligation to report, within three (3) calendar days, to the Director of the Division:

(a) Any filing of bankruptcy by Special Distributor or any guarantor(s) under this Agreement.

(b) If Special Distributor, a guarantor(s), or any Special Distributor personnel or employees are criminally charged with a misdemeanor or felony or are arrested for a misdemeanor or felony.

(13) **TERMINATION BY SPECIAL DISTRIBUTOR.** This Agreement may be voluntarily terminated by the Special Distributor upon 60 days written notice by certified mail or personal delivery to the Division or its representative specifying the date of termination. Special Distributor will allow reasonable time for the Division to conduct a final audit and inventory and to remove all liquor or other merchandise.

(14) **TERMINATION BY THE DIVISION.** Any other provisions of this Agreement notwithstanding, this agreement may be terminated for cause by the Division during the term of the agreement in accordance with its rules. In addition to good cause expressly set forth in Division rules, good cause for termination includes, but is not in any way limited to any of the following:

(a) Failure of Special Distributor or Special Distributor personnel to abide by any terms of this Agreement, such failure deemed a default and breach of the Agreement.

(b) Any material misstatement or misrepresentation of Special Distributor set forth in an application for special distributorship.

(c) Failure of Special Distributor to report a filing of bankruptcy or criminal charge or arrest as set forth in Section 12 of this Agreement.

(d) During the term of this Agreement or at any time prior to award of this Agreement, conviction of, or a guilty plea by Special Distributor to, any felony or to a misdemeanor involving moral turpitude (an element of which is fraudulent, deceptive, or dishonest conduct).

(e) Disqualification of Special Distributor by reason of no longer being a resident of the State of Idaho, as required by Idaho Code § 23-304.

(15) **INSURANCE AND BOND.** Each Special Distributor shall carry a minimum of \$500,000 premises liability insurance naming the Division as additional insured and shall furnish to the Division a Certificate of Coverage, Certificate of Insurance, notices of cancellation or change of limits and any other proof of insurance as required by the Division. Special

Distributor may be required to provide a payment bond in the amount of \$15,000 in a form acceptable to the Division with an insurance company licensed to do business in Idaho to protect the value of the inventory provided by the Division and cash receipts for sales made by Special Distributor. Failure to maintain said liability insurance or bond shall be grounds for immediate revocation of this Agreement without further notice.

(16) AMENDMENTS. This agreement shall not be altered, modified, supplemented or amended in any manner whatsoever, except by written instruments signed by the parties.

(17) COMPLIANCE WITH APPLICABLE LAW. The Special Distributor shall comply with all federal, state, and local laws, ordinances, rules and regulations applicable to the work to be done under this agreement.

(18) NONDISCRIMINATION. Special Distributor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

(19) ASSIGNMENT. Special Distributor shall not assign or transfer this agreement without the express written consent of the Division, which consent may be withheld for any reason. Further, any assignment or transfer by operation of law, including but not limited to divorce, dissolution, foreclosure, bankruptcy, receivership, or any other cause, shall not be effective without the same written consent as required in the previous sentence.

(20) SUCCESSORS IN INTEREST. Subject to the provisions of paragraph 19 above, the provisions of this agreement shall be binding upon the parties hereto, and their respective successors, if any.

(21) INDEMNIFICATION. Special Distributor shall indemnify and defend the Division from any loss arising from the Special Distributor's acts, omissions, or negligence or the acts, omissions or negligence of the Special Distributor's officers, directors, agents or employees, in conjunction with the terms of this contract.

(22) ATTORNEY FEES. In the event a lawsuit of any kind is instituted under this contract or to obtain performance of any kind under this contract, the prevailing party shall be awarded such additional sums as the court may adjudge for reasonable attorneys' fees and to pay all costs and disbursements incurred therein.

(23) FORCE MAJEURE. Special Distributor shall not be held responsible for delay or default caused by fire, riot, act of God and war which is beyond the Special Distributor's reasonable control.

(24) SEVERABILITY. The parties agree that if any term or provision of this contract is declared by a court competent jurisdiction to be illegal or in conflict of any law, the validity of the remaining terms and provisions shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

(25) WAIVER. The failure of the Division to enforce any provision of this contract shall not constitute a waiver by the Division of that or any other provision.

(26) APPEALS. Any appeals, disputes or other contested actions arising from this agreement shall be conducted pursuant to the Administrative Procedures Act, Idaho Code § 67-5201 et seq., and the Model Rules of Practice and Procedure of the Attorney General, IDAPA 04.11.01.000 et seq. as may be amended.

(27) GOVERNING LAW. The laws of the State of Idaho shall govern this agreement.

(28) VENUE. Any court proceeding arising from this agreement shall have as its venue the Fourth District Court of the State of Idaho, Ada County.

(29) MERGER CLAUSE. This agreement constitutes the entire agreement between the parties. No waiver, consent, modifications or change of terms of this agreement shall bind either party unless it is in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The parties by the signature below of their authorized representatives, hereby acknowledge that they have read this agreement, understand it and agree to be bound by its terms and conditions.

(30) AUTHORITY. The parties hereto, by setting their hands and signing below represent that they each have binding authority to execute this document.

(31) NON-LIABILITY. In no event shall any official officer, employee or agent of the State of Idaho be in any way liable or responsible for any covenant or agreement herein contained, whether express or implied. The sole responsibility and liability for performance of the Division shall be vested with the State of Idaho.

(32) NOTICE. Any notice given in connection with this agreement shall be in writing and shall be delivered either by hand to the other party, by certified mail, courier service, postage prepaid, return receipt requested, by facsimile transmission, or by email. Notice shall be deemed delivered immediately upon delivery by personal or courier service, facsimile transmission, email, or forty-eight (48) hours after depositing notice or demand in the United States mail. Special Distributor shall provide immediate written notice to the Division as set forth herein, whenever there is a change to its ownership or legal entity status, address, phone number, email address, facsimile number or contact person, as set forth below.

TO: IDAHO STATE LIQUOR DIVISION
1349 E. BEECHCRAFT COURT
BOISE, ID 83716
Email: barb.furrer@liquor.idaho.gov
Fax: 208.947.9401

WHEREFORE, the parties hereto set their hands the day and year first above written, «Guarantors0» has also set his/her/their hand(s), as guarantor(s) of the performance of «LLCCorp2» as to the foregoing covenants and conditions.

IDAHO STATE LIQUOR DIVISION

SPECIAL DISTRIBUTOR
«LLCCorp1»



Tony M. Faraca
Chief Deputy Director

By: «Contractor_Signature_Name»

DATE: _____ 09/03/2019 _____

By: «Contractor_Signature_Name_2»

DATE: _____

As Guarantors:

«Guarantor_Signature_1»

«Guarantor_Signature_2»

DATE: _____