

Retail/Wholesale Agency Contract

This agreement is made as of _____ by and between the Department of Commerce, Division of Liquor Control of the State of Ohio, (hereinafter called "Department"), and (*contract liquor agent*) of (*contract agent's address*), (thereinafter called "Agent"),

WITNESSETH:

WHEREAS, the Department, pursuant to authority granted it by Revised Code Section 4301.17, may appoint a person, firm or corporation engaged in a mercantile business to act as Agent for the Department for the sale of spirituous liquor; and

WHEREAS, the Agent is engaged in a mercantile business as required by said section at the above address,

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Department and the Agent hereby agree as follows:

1. This agreement shall remain in effect for a period of five years beginning (*commencement date*) and ending (*ending date*) unless terminated pursuant to this agreement. Thereafter, the agreement shall be automatically renewed annually, provided that Agent is satisfactorily performing the duties set forth herein.
2. The Department agrees to furnish, within its discretion, to the Agent, spirituous liquor for the purpose and with the objective that the same shall be sold by the Agent on behalf of the Department in accordance with and in consideration of the stipulations and terms hereinafter provided, the Ohio Revised Code, and any other applicable rules.
3. The Agent shall carefully store in his place of business at the above address all such spirituous liquor as may be delivered to the Agent by the Department.
4. In managing and conducting said Agency, the Agent may sell spirituous liquor to retail customers on credit and/or gift certificates.
5. Agent, at his own expense, hereby agrees to keep a fire extinguisher on site and to maintain it in accordance with the standards established by the Department and in accordance with any applicable state regulation, or other applicable law.
6. In conducting said Agency, the Agent shall conform to and be governed by such regulations, orders, instructions and directions as he may from time to time receive from the Department.
7. The Agent shall account for and pay to the Department the proceeds derived from the sale of said spirituous liquor sent to the Agent under this agreement and shall keep accurate records of all business done pursuant to this agreement in the manner and form prescribed by the Department, on forms supplied by the Department. All such records shall be kept in a safe place by the Agent and shall be available for inspection at all times upon request by representatives of the Department, or the Auditor of the State of Ohio. Upon the termination or expiration of this agreement, said records shall be surrendered to the Department.
8. The Agent shall obtain, pay the premium for, and maintain a blanket surety bond in compliance with Revised Code Section 4301.17 in an amount designated by the Department based upon the volume of spirituous liquor inventory. In the event that the Agent fails to timely pay any such premium, the Department may pay the premium directly and deduct the amount of such premium from the Agent's next commission payment.

9. All the expense of conducting the business of said Agency, including among other things, light, heat, water, rent, bond, insurance, assessments and taxes both State and Federal, shall be borne by the Agent save and except for postage.

10. The Agent shall be liable for any loss of or damage however caused to any spirituous liquor which may come into his care and custody pursuant to this agreement including, but not limited to, shoplifting, employee theft, robbery, etc; except that the Agent shall not be held liable for any stock loss due to fire, flood or other natural disaster or incurred as the result of a breaking and entering.

11. The Agent shall not otherwise engage in the business of trafficking in spirituous liquor for his own profit or in competition with the Department, either on his own account or for any other person or persons without the express written consent of the Department. The Agent shall not keep, have, or possess on his premises, or in any place other than his own home for his personal use, any spirituous liquor other than that belonging to the Department and received by the Agent for sale under this contract or in connection with activities previously approved by the Department.

12. The Agent may keep, possess, or have on his premises beer, wine or mixed beverages which are lawfully being sold for consumption off the premises. Agent shall abide by all statutes, rules, and regulations relating to the possession and sale of such beverages by holders of such permit or permits.

13. The Agency shall be carried on and conducted only in the place of business operated by Agent at the address as stated herein and said Agency shall not be moved from said address without the written permission of the Department.

14. In consideration of the true and faithful performance of the covenants herein contained, the Department hereby agrees to pay to the Agent, and the Agent shall be entitled to receive as compensation for his services performed pursuant to this agreement an amount equal to six percent (6%) of the gross retail receipts excluding the Ohio sales tax portion thereof derived from the sale of spirituous liquor during the term of this contract. The compensation paid by the Department shall be paid to the Agent within thirty (30) days of the end of each semi-monthly accounting period of the Department. Said compensation is to be determined from the periodic reports of the Agent.

15. In consideration of the true and faithful performance of the covenants herein contained, the Department hereby agrees to pay to the Agent, and the Agent shall be entitled to receive as compensation for his services performed pursuant to this agreement an amount equal to four percent (4%) of the gross wholesale receipts excluding the Ohio sales tax portion thereof derived from the sale of spirituous liquor during the term of this contract. The compensation paid by the Department shall be paid to the Agent within thirty (30) days of the end of each semi-monthly accounting period of the Department. Said compensation is to be determined from the periodic reports of the Agent. Liquor permit holder accounts may only be assigned or transferred upon written approval of the Department pursuant to a written request of a liquor permit holder. In no event shall the Agent solicit liquor permit holder accounts nor shall the Agent be entitled to the above-referenced commission for any wholesale sales to liquor permit holder accounts which have not been previously assigned to the Agent by the Department in writing.

16. The Department shall not be responsible for any of the costs or expenses incurred by the Agent in selling and distributing spirituous liquor for the Department save and except as provided elsewhere herein.

17. The Agent promises and agrees to pay to the Department at the time, place and for the periods designated by the Department the entire proceeds of all sales of the spirituous liquor delivered to and sold by the Agent as herein provided, and the Agent further agrees that said spirituous liquor shall be sold only at the prices fixed by the Department.

18. The Agent further agrees to make daily remittances of all monies received from the sale of spirituous liquor, no later than the next banking day, in the manner and form determined and designated by the Department. A 2% penalty or a minimum of \$40.00 will be assessed from an agent's commission for daily sales receipts deposited late. Agent shall establish a bank account in the name of the Department. At the termination of this agreement, the Agent shall pay to the Department in cash the total amount due the Department and remaining unpaid for spirituous liquor sold by the Agent, and return to the Department all spirituous liquor remaining unsold in the possession of the Agent. Recurrence of the aforementioned violation may result in immediate termination of an agency contract. Should the Division of Liquor Control deem that termination is necessary, all spirituous liquor will be removed from the contracted business site. In addition, the State Highway Patrol will be notified, and an investigation for possible criminal charges will be requested.

19. The Agent further agrees that no monies derived from the sale of spirituous liquor shall be used at any time by the Agent for his own use or for the payment of any of his creditors, and such monies will be kept separate and apart from any and all monies received by the Agent from any other source. Liquor sales cash receipt documents shall be maintained separate from all other mercantile business receipts through a separate cash register key.

20. The Agent agrees to furnish an electronic cash register and a minimum of a 486 IBM compatible computer, monitor and printer. The Agent further agrees that all computer related equipment shall be year 2000 compliant. The Agent shall provide sales and inventory information as required by the Department. The Department agrees to furnish and maintain, without charge or expense to the Agent, LiquorBase software and an external modem, required by the Department, as may be necessary to record data for computer use in the Department's Management Information Services Division; but the Department shall retain all ownership rights in and to said equipment. Agent agrees to use said equipment with reasonable care. Further, Agent agrees that one RJ11C modular telephone jack must be available for use for overnight polling, and if no such jack is available it will be installed at Agent's expense. Should the existing phone line for any reason be insufficient to accommodate the transmission of data, the Agent shall at his expense, have a sufficient phone line installed and shall maintain said line.

21. The Agent shall hold in confidence and shall not disclose any and all information, drawings and other materials, either in written or oral form, relating to LiquorBase software without the written consent of the State of Ohio Department of Commerce, Division of Liquor Control. It is understood that any information that is now or becomes public information need not be kept in confidence nor does such information that Agent already has in its possession from its own work or has received from a third party on a non-confidential basis and not derived from the State of Ohio Department of Commerce, Division of Liquor Control.

22. It is further understood that title to all spirituous liquor that is shipped and delivered to the Agent shall remain in the Department while in the custody and care of the Agent and that the Department does to transfer its title to such goods until the same shall have been actually sold by the Agent to a bona fide purchaser at the prices fixed by the Department pursuant to the provisions of this agreement.

23. It is further mutually agreed and understood by the parties that this agreement does not create an irrevocable or assignable agency and that this agreement is one of personal service.

24. It is further mutually agreed and understood that the foregoing agreement of Agency or any interest therein, cannot be directly or indirectly assigned, transferred, sold, or in any way alienated by the Agent unless expressly consented to by the Ohio Department of Commerce, Division of Liquor Control in writing. In the case of any proposed assignment, transfer, sale, alienation or the filing of probate, bankruptcy or other insolvency action, the Department of Commerce, Division of Liquor Control shall be

immediately notified and retains the option to terminate this agreement forthwith upon such notice or anytime thereafter.

25. This agreement shall not constitute or be an asset of the Agent in any proceedings or actions in any court whatsoever.

26. It is agreed that during the life of this agreement the Agent shall not discontinue his mercantile business, change the nature of said business, sell or otherwise alienate stock (if Agent is a corporation), delete or add partners (if Agent is a partnership), substantially reduce of his own volition the volume of said business, or the space it occupies, without the express consent of the Department in writing, under penalty of termination of this agreement.

27. The Department, upon written notice to the Agent, may immediately terminate this agreement whenever the Agent breaches any provision of this agreement or sells and disposes of spirituous liquor in any manner contrary to the provisions of this agreement, the Revised Code of Ohio, or the rules, regulations, orders or directives of the Department or Liquor Control Commission. It is further mutually agreed that said agreement may be terminated without regard to cause at any time by either party upon giving the other party ninety (90) days written notice.

28. The Agent agrees to keep the premises used for the sale of spirituous liquor open to the public for business purposes for the minimum number of hours prescribed by the Department. The Agent shall not, under any circumstances, sell spirituous liquor earlier than 9:00 A.M. nor later than 10:00 P.M., Monday through Saturday. The Agent shall not sell spirituous liquor on Sunday. The Agent is permitted to sell spirituous liquor during the aforementioned hours on the following holidays, so long as such holiday is not on a Sunday: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, and Thanksgiving Day. The Agent is also permitted to sell spirituous liquor on any election day. The Agent is not permitted to sell spirituous liquor on December 25. The Agent may operate the non-spirituous liquor sales portion of the Agent's business at the Agent's own discretion, so long as such operation is in compliance with any applicable provision of law.

29. The Agent further agrees that any person who at the effective date of this agreement will be conducting sales of spirituous liquor shall, at Agent's expense, satisfactorily attend and complete the Department's Alcohol Education and Certification Program. All such persons must successfully complete the above program as of the effective date of this agreement. Persons becoming involved in the sale of spirituous liquor after the effective date of this agreement shall satisfactorily complete an agency server training program approved by the Department prior to becoming involved in the sale of spirituous liquor, or within sixty (60) days thereafter or this agreement shall be subject to termination.

30. The Agent further agrees that he will not engage in any advertising with respect to the sale of any of the spirituous liquor delivered to him under this contract without the consent in writing of the Department, and that he will not by any manner or means whatsoever attempt to promote the sale of any particular brand or kind of spirituous liquor sold by him pursuant to this agreement, or permit any of his employees to do so, and that he will not receive or accept any gift of money, merchandise, anything of value or the equivalent thereof, from any person or persons interested in, or engaged in the sale of spirituous liquor during the term of this agreement, or permit any of his employees to engage in the sale of spirituous liquor, except on behalf of the Agent pursuant to this agreement.

31. Agent agrees to affix a Department of Commerce, Division of Liquor Control seal on a window of the Agent's premises so that it is visible to the general public. Said seal shall be supplied by the Department.

32. The Agent shall likewise furnish and abide by the following:

- A. The Agent shall provide such shelving space as required in the Agency application. Such shelves shall be no less than 16" in depth.
- B. Such shelving is to be constructed of wood or metal or both, and placed end to end or back to back or both, and assembled in the most compact manner possible, allowing for necessary aisle space between rows of shelves for the purpose of taking inventory and serving the public.
- C. No other items of merchandise or materials are to be stored on the above described shelving, which shall be reserved for storage of spirituous liquor.
- D. Each brand on the shelves is to be properly identified with code, name and price card attached to the lower front edge of each shelf section.
- E. No other stored merchandise or materials are to be intermingled with the reserve case stock.
- F. All deliveries by the Department's trucking contractor shall be tailgate deliveries where it is the responsibility of the Agent to take the spirituous liquor from the truck into the agency premises.

33. Agent agrees to keep agency premises clean and in good repair to the satisfaction of the Department and to maintain the premises in compliance with all applicable federal, state or local requirements including, but not limited to, all safety and health requirements, fire and building codes, the Americans with Disabilities Act of 1990, etc.

34. Agent further agrees to notify the Department of any changes in trade name or business name (known as dba).

35. Agent agrees to comply with all applicable state and federal laws regarding a drug free work place. Agent shall make a good faith effort to ensure that all agency employees, while working with state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

36. Agent shall notify the Department of Commerce, Division of Liquor Control immediately of any liquor, drug or other criminal violations he or his employees are cited with or arrested for regardless of whether or not these violations occurred on or off the agency premises.

37. An Agent disciplined by the Liquor Control Commission for conduct involving; 1) sales to underage persons, 2) sales to intoxicated persons, 3) sales involving drugs, 4) gambling, or 5) prostitution, more than once within a two year period, may be subject to immediate termination of their agency contract.

38. The Agent hereby acknowledges that pursuant to Revised Code Section 2909.33 (C), the State is prohibited from conducting business with any entity to which the aggregate compensation paid by governmental entities exceeds \$100,000.00 in any fiscal year, if the Agent has provided any material assistance to a terrorist organization or an organization that supports terrorism and is identified by and included on the United States Department of State Terrorist Exclusion List.

39. The Agent hereby affirmatively represents and warrants to the State that it has not provided any material assistance, as that term is defined in Revised Code Section 2909.33 (C), to a terrorist organization or an organization that supports terrorism and is identified by and included on the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization"

that is attached as Exhibit I. If this representation and warranty is found to be false, this Agreement is void *ab initio* and the Agent shall immediately re-pay to the State any funds paid under this Agreement.

This instrument contains the entire agreement between the parties on the subject matters hereof and there are no understandings, agreements, representations, or conditions in respect to such subject matters, except as herein contained and as contained in the Agency Application which is incorporated by reference herein as if fully written. No amendment hereof shall be valid, unless in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in duplicate, the day and year first above written.

WITNESSES FOR DOLC:

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF LIQUOR CONTROL

By _____
Terry W. Poole, Superintendent

WITNESSES FOR AGENT:

By _____
Agent's Signature

Agent's Name (Please Print)
