

- N. **Compliance with Laws** - The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract, including, but not limited to, the Federal Alcohol Administration Act..
- O. **Rights and Remedies** - Failure by the PLCB to exercise any of its rights and remedies under this Contract shall not constitute a waiver of those rights or remedies.
- P. **Recycled Content Provisions** – The Contractor shall comply with the Post-Consumer Recycled Content Provisions as set forth in Appendix E of PLCB RFP 20080318, as incorporated herein by reference.
- Q. **Warranty** – The Contractor warrants that all services performed and/or delivered by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. The Contractor shall correct any problem with the service/delivery and/or replace the service/delivery with a service/delivery of equivalent or superior quality without any additional cost to the PLCB.
- R. **Patent, Copyright and Trademark Indemnity** – The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any

product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report, document or other material provided to the PLCB under the contract. The Contractor shall defend any suit or proceeding brought against the PLCB on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the PLCB shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the PLCB may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the PLCB at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the PLCB harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the PLCB may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the

Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the PLCB, only those items of equipment or software which are held to be infringing, and to pay the PLCB: 1) any amounts paid by the PLCB towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the PLCB for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

S. **Ownership Rights**

The PLCB shall have unrestricted and sole authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated

documentation that are designed or developed and delivered to the PLCB as part of the performance of the Contract.

Except as otherwise provided in this Subparagraph 13.S, the Contractor shall not publish or make public any of the results of the work without first obtaining the written permission of the Contracting Officer.

- T. **Assignment of Antitrust Claims** – The Contractor and the PLCB recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the PLCB. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the PLCB all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Contract.
- U. **Officials Not to Benefit** - No member of the General Assembly of the Commonwealth of Pennsylvania or any individual employed by the PLCB/Commonwealth on a full-time basis shall be admitted to any share or part of the Contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Contract if made with a corporation for the corporation's general benefit.

- V. **Taxes** - The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under Registration No. 23740001-K.

With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this Subparagraph 13.V is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

- W. **HAZARDOUS SUBSTANCES** - The Contractor shall provide information to the PLCB about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with

Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 4 Pa. Code § 301.1 *et seq.*

1. Labeling - The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Subparagraphs (a) through (d) below:

a. Hazardous Substances:

- i) The chemical name or common name,
- ii) A hazard warning, and
- iii) The name, address, and telephone number of the manufacturer.

b. Hazardous Mixtures:

- i) The common name, but if none exists, then the trade name,
- ii) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
- iii) The chemical or common name of hazardous substances consisting 1.0% or more of the

mixture,

- iv) A hazard warning, and
- v) The name, address, and telephone number of the manufacturer.

c. Single Chemicals:

- i) The chemical name or the common name,
- ii) A hazard warning, if appropriate, and
- iii) The name, address, and telephone number of the manufacturer.

d. Chemical Mixtures:

- i) The common name, but if none exists, then the trade name,
- ii) A hazard warning, if appropriate,
- iii) The name, address, and telephone number of the manufacturer, and
- iv) The chemical name or common name of either the top five (5) substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of

Hazardous Industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

2. Material Safety Data Sheet - The Contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The PLCB must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the Contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The Contractor shall also notify the PLCB when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the PLCB at the time of shipment.

14. **PLCB HELD HARMLESS** - The Contractor shall be responsible for and agrees to indemnify, defend, save and hold harmless the PLCB and the Commonwealth, its officers, agents and employees from damages to property or injuries to any person(s), including the Contractor's employees or agents, and from any other losses, damages, expenses, claims, demands, suits, and actions by any party against the PLCB and/or the Commonwealth which arise from or are related or connected to the conduct or operation by the Contractor or arising out of the performance or non-performance by the Contractor under this Contract.

15. **DISADVANTAGED BUSINESS PARTICIPATION AND ENTERPRISE ZONE SMALL BUSINESS PARTICIPATION** -

The Contractor agrees to meet and maintain those commitments made to Disadvantaged Businesses and/or Enterprise Zone Small Businesses at the time of proposal submittal or Contract negotiation, unless a change in the commitment is approved by the Bureau of Minority and Women Business Opportunities ("BMWBO") of the Department of General Services. All Small Disadvantaged Business subcontractors, Enterprise Zone Small Business subcontractors, and Small Disadvantaged Businesses or Enterprise Zone Small Businesses in a joint venture must perform at least fifty percent (50%) of the subcontract or Small Disadvantaged Business/Enterprise Zone Small Business portion of the joint venture.

Commitments to Disadvantaged Businesses and/or Enterprise Zone Small Businesses made at the time of proposal submittal or Contract negotiation must be maintained throughout the term of this Contract. Any proposed change must be submitted to BMWBO, which will make a recommendation as to a course of action to the PLCB. The PLCB shall retain final approval authority for any change to this Contract.

If the Contract is assigned to another contractor, the new contractor must maintain the Disadvantaged Businesses participation and/or Enterprise Zone Small Business participation of the original Contract.

The Contractor shall complete the Prime Contractor's Quarterly Utilization Report (or similar type document containing the same information) and submit it to the Contracting Officer of the PLCB and BMWBO within ten (10) workdays at the end of each quarter the Contract is in force. If there was no activity, the form must also be completed, stating "No activity in this quarter." This information will be used to determine the actual dollar amount paid to Small Disadvantaged Business and/or Enterprise Zone Small Business subcontractors and suppliers, and Small Disadvantaged Businesses and/or Enterprise Zone Small Businesses involved in Joint Ventures. Also, it is a record of fulfillment of the commitment the Contractor made and for which it received Disadvantaged Business and Enterprise Zone Small Business points.

NOTE: EQUAL EMPLOYMENT OPPORTUNITY AND CONTRACT COMPLIANCE STATEMENTS REFERRING TO COMPANY EQUAL EMPLOYMENT OPPORTUNITY POLICIES OR PAST CONTRACT COMPLIANCE PRACTICES DO NOT CONSTITUTE PROOF OF DISADVANTAGED BUSINESS STATUS OR ENTITLE A PROPOSER TO RECEIVE CREDIT FOR DISADVANTAGED BUSINESS UTILIZATION.

16. **DOMESTIC WORKFORCE UTILIZATION** - The Contractor agrees to use and maintain the percentage of domestic workforce as set forth in Appendix K of PLCB RFP 20080318 as completed by the Contractor and is incorporated herein by reference.

17. **KIOSK LEASING DETAILS** – To be determined, but shall include comprehensive maintenance details and liability for damage, down time and loss of sales.

18. **CLAIMS** – The Contractor agrees that all undisputed claims presented by the PLCB to the Contractor shall be paid within thirty (30) days from the claim date. Failure to make such payments will result in the PLCB deducting the claim amount from monies owed the Contractor. The Contractor agrees that any dispute of a claim presented by the PLCB shall be submitted by the Contractor in writing within thirty (30) days of the claim date to the PLCB Claims and Statistics Section, Room 308, Northwest Office Building, Harrisburg, PA 17124-0001. Failure to

submit timely a dispute to the claim shall be considered the Contractor's agreement to the propriety of the claim and a waiver of the Contractor's rights under Paragraph 23, Contract Controversies. If a timely dispute is filed to a claim presented by the PLCB, the Contractor may present evidence to the PLCB in support of its dispute. The PLCB will respond in writing to the Contractor's dispute within thirty (30) days from the filing date of the Contractor's dispute. The Contractor must pay the remaining amount of the disputed claim within fifteen (15) days of the PLCB's written response to the Contractor's dispute or the PLCB shall deduct the amount of the remaining claim from monies owed the Contractor. The PLCB's written response to the Contractor's dispute shall be final, conclusive, binding and non-reviewable in all respects unless the Contractor files a claim in the Commonwealth Board of Claims within thirty (30) days of the date of the PLCB's written response to the Contractor's dispute.

19. **INVOICING/PAYMENT** - To be determined.

20. **DISCHARGE** - Notwithstanding any other notice provisions contained in this Contract, if during the term of the Contract, or any additional period or extension thereof, the PLCB is required to discontinue operations through actions taken by the courts, the state or federal government, or by action or inaction of the General Assembly of the Commonwealth of Pennsylvania, or some other cause beyond the control of the PLCB, this Contract shall immediately expire and both

parties are discharged from all terms, conditions and covenants in this Contract. However, a final settlement of this Contract is required and shall survive expiration of this Contract.

21. DEFAULT -

A. The PLCB may, subject to the provisions of Paragraph 22, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Paragraph 24, Termination Provisions) the whole or any part of this Contract for any of the following reasons:

1. Failure to begin work within the time specified in the Contract or as otherwise specified;
2. Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the Contract terms;
3. Unsatisfactory performance of the work;
4. Failure to deliver the awarded item(s) within the time specified in the Contract, or as otherwise specified;
5. Improper delivery;

6. Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract;
7. Delivery of a defective item;
8. Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
9. Discontinuance of work without approval;
10. Failure to resume work which has been discontinued within a reasonable time after notice to do so;
11. Insolvency or bankruptcy;
12. Assignment made for the benefit of creditors;
13. Failure or refusal within ten (10) days after written notice by the Contracting Officer to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
14. Failure to protect, to repair, or to make good any damage

or injury to property; or,

15. Breach of any provision of this Contract.

- B. In the event that the PLCB terminates this Contract in whole or in part, as provided in Subparagraph 21.A above, the PLCB may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Contractor shall be liable to the PLCB for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.

- C. If the Contract is terminated as provided in Subparagraph 21.A above, the PLCB, in addition to any other rights provided in this Paragraph 21, may require the Contractor to transfer title and deliver immediately to the PLCB in the manner and to the extent directed by the PLCB, any property of the PLCB and such partially completed work, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by the PLCB shall be at the Contract price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the

PLCB shall be in an amount agreed upon by the Contractor and the Contracting Officer. The PLCB may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the PLCB against loss.

D. The rights and remedies of the PLCB provided in this Paragraph 21 shall not be exclusive and are in addition to any other rights and remedies provided by law or at equity or under this Contract.

E. The PLCB's failure to exercise any rights or remedies provided in this Paragraph 21 shall not be construed to be a waiver by the PLCB of its rights and remedies in regard to the event of default or any succeeding event of default.

F. Following exhaustion of the Contactor's administrative remedies as set forth in Paragraph 23, Contract Controversies, the Contractor's exclusive remedy shall be to seek damages in the Commonwealth Board of Claims.

22. **FORCE MAJEURE** - Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war; changes in controlling law, regulations,

orders or the requirements of any governmental entity; severe weather conditions; civil disorders; natural disasters; fire; epidemics and quarantines; acts of terrorism; general strikes throughout the trade; and freight embargoes.

The Contractor shall notify the Contact Person orally immediately, but not later than close of business next business day, and in writing within ten (10) days, of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect(s) on performance, (ii) state whether performance under the Contract is prevented or delayed, and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of providing that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the PLCB may reasonably request. After receipt of such notification, the PLCB may elect either to cancel the Contract or to extend the time for performance, as reasonably necessary, to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the PLCB, by notice to the Contractor, may suspend all or a portion of the Contract. During such emergencies, the PLCB may adopt any available means to provide for the services required without any obligation to the Contractor.

23. CONTRACT CONTROVERSIES –

- A. In the event of a controversy or claim arising from the Contract, the Contractor must, within six (6) months after the cause of action accrues, file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.

- B. The Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within one hundred twenty (120) days of the receipt of any claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within one hundred twenty (120) days (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the PLCB.

- C. Within fifteen (15) days of the mailing date of the determination denying a claim or within one hundred thirty-five (135) days of filing a claim, if no extension is agreed to by the parties,

whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the Contracting Officer, and the PLCB shall compensate the Contractor pursuant to the terms of the Contract.

24. TERMINATION PROVISIONS - Termination of this Contract shall be effective upon written notice to the Contractor. The PLCB has the right to terminate this Contract for any of the following reasons:

- A. Termination for Convenience: The PLCB shall have the right to terminate the Contract upon written notice to the Contractor for the PLCB's convenience if the PLCB determines termination to be in its best interest. The Contractor shall not be paid for work completed prior to the effective date of the termination, and in no event shall the Contractor be entitled to recover loss of profits.

- B. Non-Appropriation: The PLCB's obligation to make payments during any PLCB fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the PLCB shall have the right to

terminate the Contract.

- C. Termination for Cause: The PLCB shall have the right to terminate the Contract for Contractor default under Paragraph 21, Default, upon written notice to the Contractor. The PLCB shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the PLCB erred in terminating the Contract for cause, then, at the PLCB's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 24.A.

The Contractor is not entitled to any fees, payments or damages upon termination of this Contract.

25. INSOLVENCY - In addition to any other provisions of this Contract, regardless of any order of court, and not by way of limitation, if at any time during the term of this Contract, pursuant to any statute either of the United States or of any state, bankruptcy proceedings, voluntary or involuntary, and including Chapter XI - Reorganization of the Federal Bankruptcy Act; appointment of a receiver of all or a portion of the Contractor's property; or if the Contractor makes an assignment for the benefit of the creditors; or the Contractor assigns the Contract voluntarily or involuntarily by judicial sale or otherwise; and the same are not withdrawn, settled or disposed within thirty (30) days of filing,

appointment or assignment, this Contract, at the option of the PLCB, exercised within a reasonable period of time of notice of the happening of any one (1) or more such events, may be cancelled and terminated and the Contractor shall be in default of the terms of this Contract. This provision shall in no way limit any other rights of the PLCB in the event of the Contractor's default of any other terms of this Contract.

26. **INDEPENDENT CAPACITY OF THE CONTRACTOR** - The Contractor and any agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers, employees or agents of the PLCB. Nor shall they, for any purpose, be deemed or considered officers, employees or agents of the PLCB.

27. **ASSIGNABILITY AND SUBCONTRACTING** -

- A. Subject to the terms and conditions of this Paragraph 27, this Contract shall be binding upon the parties and their respective successors and assigns.
- B. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

- C. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

- D. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

- E. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor; provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly-traded company.

- F. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being

assigned.

G. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

28. **DOCUMENTATION** - The Contractor shall provide documentation as required by the PLCB or PLCB RFP 20080318, as incorporated herein by reference.

29. **EXAMINATION OF RECORDS** - The Contractor agrees to maintain books, records, documents and other evidence pertaining to the conduct of the contracted services. The Contractor agrees to make available at the office of the Contractor, at all reasonable times during the term of this Contract, any of those records pertinent to the physical performance of the contracted services, for inspection, audit or reproduction by any authorized representative of the Commonwealth. The Contractor agrees to provide audited financial statements to the Contact Person within ninety (90) days of the end of the Contractor's established fiscal year during the term of this Contract.

30. RESPONSIBILITY FOR PROPERTY DAMAGE –

- A. The Contractor is responsible for damage, loss, breakage, shortage, burglary or theft of the PLCB's equipment or merchandise or other Commonwealth property.
- B. The Contractor shall be responsible for any and all damage to PLCB premises and/or property or third party property caused by the Contractor while performing under this Contract.
- C. The PLCB reserves the sole right to determine liability under this Paragraph 30. Should a loss be incurred under this Paragraph 30, such loss may be charged against any monies due the Contractor from the PLCB. The terms and conditions of Paragraphs 12, Insurance and Surety, and 18, Claims, are applicable.

- 31. CONFIDENTIALITY -** The PLCB deems its documents, data, records and other information provided to the Contractor under this Contract as "Confidential Information." The Contractor agrees not to disclose to any third party individual or organization the confidential information of the PLCB unless disclosure of such information is approved in writing by the PLCB or to the extent necessary for the Contractor to perform its obligations or exercise its rights under this Contract or is directed by a court or other tribunal of competent jurisdiction. The Contractor's use of such confidential information shall be limited to use for its internal

business purposes and such information shall not be disclosed to third parties without the PLCB's written approval. The Contractor shall protect the confidentiality of the confidential information of the PLCB in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, which shall be at least a commercially reasonable manner. Nothing in this Contract shall prohibit or limit the Contractor's use of information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (i) previously known to it without an obligation of confidence, (ii) independently developed by or for it, (iii) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of this Contract.

32. **AUDIT PROVISIONS** - In addition to any rights provided within this Contract, the Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, records, and documents that relate to costs or pricing data for the Contract for a period of three (3) years from the date of the final payment. The Contractor shall give full and free access to all records described herein to all representatives of the Commonwealth

and/or its authorized representatives.

33. INTEGRATION -

- A. The Contract, including all referenced documents and any purchase order, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the PLCB or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate Commonwealth form.
- B. To the extent possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law; but if any portion or provision of this Contract shall be held to be invalid, illegal or unenforceable, such portion or provision shall be ineffective only to the extent of such invalidity,

illegality or unenforceability without rendering invalid, illegal or unenforceable the remainder of such provision or the remaining provisions of this Contract.

- C. It is expressly understood that any practice between the Contractor and the PLCB that may deviate from the terms and conditions hereof, whether a single incident or arising out of a course of dealing, shall not be construed as a modification to this Contract, as prevailing over the terms and conditions hereof, or as a waiver of any provisions or terms contained herein.

- D. All headings in this Contract are for reference only and shall not be deemed as part of this Contract.

- E. If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence for resolution shall be:
 - 1. The Contract.
 - 2. Any riders or amendments to the Contract.
 - 3. Any change orders.
 - 4. The PLCB's RFP 20080318.
 - 5. The Contractor's Response to the PLCB's RFP 20080318.

34. **APPLICABLE LAW** - This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

35. **NOTICES** – The parties agree that all legal notices pursuant to this Contract shall be sufficient if in writing and mailed certified United States mail, Return Receipt Requested, and all other communications shall be sufficient if in writing, and mailed prepaid first class United States mail, to the following addresses of the parties or such other addresses as may be designated from time-to-time by the parties in writing:

A. **As to the Commonwealth:**

Pennsylvania Liquor Control Board
Chief, Procurement Division
Room 413, Northwest Office Building
Harrisburg, PA 17124-0001

B. **As to the Contractor:**

IN WITNESS WHEREOF, the PARTIES to this Contract 20080318 have executed it through their respective duly authorized officers. This Contract shall not be fully executed and will not be binding on the PARTIES unless and until all signatures required below are affixed hereto and Purchase Order No. _____ has been fully executed by the PLCB/Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained.

CONTRACTOR

ATTEST:

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

FED ID NO: _____

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LIQUOR CONTROL BOARD**

ATTEST:

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

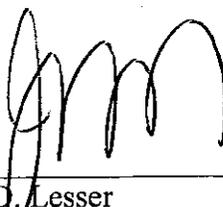
TITLE: _____

**PROPOSAL COVER SHEET
PENNSYLVANIA LIQUOR CONTROL BOARD
ROOM 413 NORTHWEST OFFICE BUILDING
910 CAPITAL STREET
HARRISBURG, PA 17124-0001
RFP# 20080318
WINE KIOSKS**

Enclosed in three separately sealed submittals is the proposal of the Proposer identified below for the above-referenced RFP:

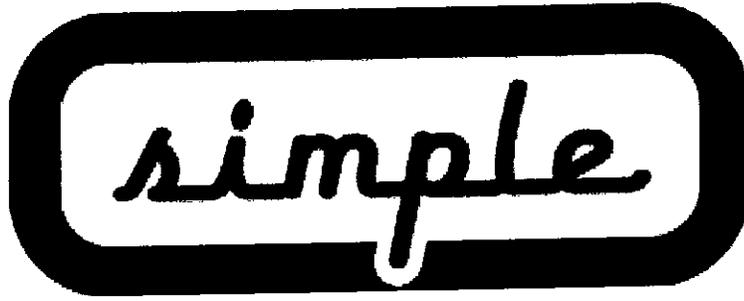
| Proposer Information: | |
|-----------------------------------|--|
| Proposer Name | SIMPLE BRANDS, LP. |
| Proposer Mailing Address | 190 PRESIDENTIAL BLVD. BALA CYNWYD, PA. 19004 |
| Proposer Website | |
| Proposer Contact Person | JAMES LESSER |
| Contact Person's Phone Number | 610-812-6228 |
| Contact Person's Facsimile Number | 610-602-5784 |
| Contact Person's E-Mail Address | jlesser@simplebrands.net |
| Proposer Federal ID Number | [REDACTED] |

| Submittals Enclosed and Separately Sealed: | |
|---|---|
| <input checked="" type="checkbox"/> | Technical Submittal |
| <input checked="" type="checkbox"/> | Disadvantaged Business Submittal |
| <input checked="" type="checkbox"/> | Domestic Workforce Utilization Certification (If seeking consideration) |

| Signature | |
|--|---|
| Signature of an official authorized to bind the Proposer to the provisions contained in the Proposer's proposal: |  |
| Printed Name | James D. Lesser |
| Title | President |

FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSER'S PROPOSAL

*D. Briner
5/18/08
R. Miller
5/18/08*



Simple Brands, LP.
SUBMITTAL RESPONSE TO RFP 20080318 WINE
KIOSKS II-1
April 14th, 2008

Abstract

This paper provides a technical response to Sections II-1 through II-12 of RFP 20080318. This document is based on the information gathered from the RFP 20080318 Wine Kiosks, the April 16th Mandatory Proposes Meeting & the published responses to those questions submitted April 8th 2008.

Authorized Representative of Simple Brands, LP.

James D. Lesser,
President, Simple Brands, LP.

II-1 SUMMARY OF STATEMENT OF THE PROBLEM

The PLCB is interested in deploying a self service kiosk network capable of dispensing bottled wines to consumers through an automated secure kiosk.

The PLCB recognizes an opportunity through this kiosk network to increase its installed base, reach, and profitability and to serve underserved areas at a fraction of the cost of building and operating a full size store and without compromising the PLCB's ability to monitor and control sales. The proposed kiosk network is aimed at providing convenience to the everyday consumer. All functions associated with restocking and fulfillment will be carried out by PLCB employees.

In many cases the Kiosk will be placed in areas that would not warrant a tradition Wine & Spirits Shoppe from a population density standpoint.

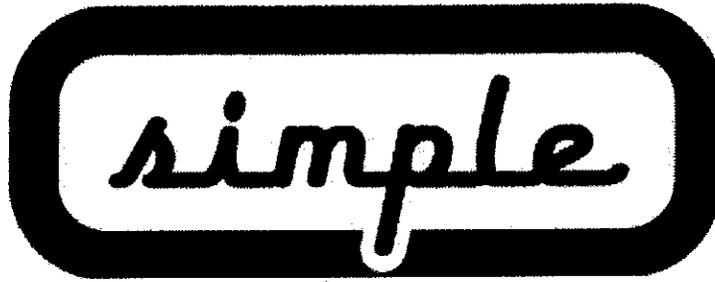
- ✓ The PLCB is seeking a qualified contractor capable of developing and producing a kiosk that's meets the PLCB's performance criteria.
- ✓ Safety and security are the top priorities; therefore the network kiosks must be equipped with safeguards to prevent access to alcohol by minors as well as access to alcohol by intoxicated consumers.
- ✓ The PLCB expects that the chosen proposer will provide a means to positively verify the identity and age of each consumer.
- ✓ The PLCB expects that the chosen proposer will provide a means for accurately testing each consumer's blood alcohol content (BAC) in a safe, sanitary, and rapid manner.
- ✓ The PLCB expects that the chosen proposer will utilize the latest security technologies available in an attempt to prevent identity fraud and attempts by unscrupulous consumers who may attempt to bypass or "spoof" safeguards in an effort to gain access to alcohol while underage or intoxicated.
- ✓ The PLCB expects that chosen proposers POS (Point of Sale) and inventory software will integrate and communicate seamlessly with the PLCB's existing POS and inventory software.
- ✓ The PLCB expects the chosen proposer will utilize state of the art locking mechanisms which prevent access to inventory areas by unauthorized individuals.
- ✓ The PLCB plans for the kiosks to accept credit cards only

- ✓ The PLCB plans call for placing kiosks in a public setting which may from time to time have a heavier population of minors than other times, therefore the PLCB is seeking a solution that results in the ability to prevent the viewing of wine at times determined by the PLCB.
- ✓ The PLCB anticipates that the chosen proposer will utilize a customer service center manned by PLCB employees to monitor registration transactions remotely via a video link.
- ✓ The PLCB anticipates having to change prices regularly and therefore expects that proposers kiosk will be capable of changing inventory pricing remotely.
- ✓ The PLCB expects that the chosen proposer's solution will allow for real time viewing of the following data by authorized PLCB employees:
 - ❖ Gross sales by year, quarter, month, week, day, minute.
 - ❖ Gross sales by category, brand/label.
 - ❖ Gross sales by unit, region, and state.
 - ❖ Net sales by year, quarter, month, week, day.
 - ❖ Net sales by unit, region, and state.
 - ❖ Inventory by brand/label and date SKU deployed (how long product was in unit).
 - ❖ Instant email alerts for the reporting of low inventory, suspicious transactions, unusually high or low sales, malfunction, etc...

The PLCB expects that the chosen proposers kiosk will allow for the uploading and downloading of video advertising (via a high speed connection) that can be displayed on monitors attached to the kiosk.

All proposals must be accompanied by an opinion letter from a qualified attorney(s) specializing in federal TTB law and commonwealth of PA liquor code law stating that all activities contained within their proposal comport with federal and state law.

All proposals that suggest a means of compensation must be accompanied by an opinion letter from a qualified attorney(s) specializing in federal TTB law and commonwealth of pa liquor



Simple Brands, LP.

SUBMITTAL RESPONSE TO RFP 20080318 WINE KIOSKS

II-2 Management Summary

April 14th, 2008

Abstract

This paper provides a technical response to Sections II-1 through II-10 of RFP 20080318. This document is based on the information gathered from the RFP 20080318 Wine Kiosks, the April 16th Mandatory Proposes Meeting & the published responses to those questions submitted April 8th 2008.

Authorized Representative of Simple Brands, LP.

James D. Lesser,
President, Simple Brands, LP.

II-2 Management Summary

On behalf of Simple Brands, LP we are pleased to submit our proposal for RFP
20080318 WINE KIOSKS.

Pennsylvania Liquor Control Board
Wide & Spirits

PREMIUM COLLECTION

simple



Self-Check



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Mission

Simple Brands aims to build, and license/lease (the PLCB) a state of the art Satellite Wine shop network capable of providing the PLCB the ability to significantly increase their reach, installed base and profitability while avoiding the capital investment and infrastructure requirements associated with the opening and ongoing management of a full size Wine & Spirit shop.

Guidelines

Simple Brands understands the sensitive nature of developing or relocating Wine and Spirits shops as well as the importance placed on assuring minors and/or intoxicated customers do not have access to alcohol. Simple Brands has designed a Satellite Wine shop network equipped with a system of checks and balances stricter than those currently in effect at existing Wine & Spirit shops.

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Registration

The PLCB will own/license and place Alcohol Distribution Modules "A.D.A.M.®" within designated supermarkets and warehouse stores statewide.

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Registration (Continued)

Each A.D.A.M.® requires customer to register in advance of utilization.

Upon each A.D.A.M.® installation a PLCB clerk will be on hand for two (2) months to register new customers. Should customers wish to participate after the two (2) month period has expired he/she may register on site at any A.D.A.M.® through the In-Roll™ registration program.

At registration each customer will be responsible for providing or allowing for the following while simultaneously being monitored by a PLCB clerk through a video and audio feed:

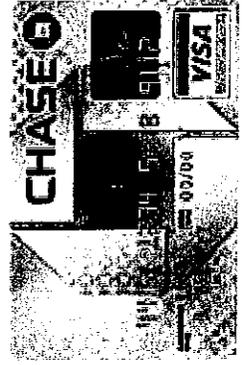
- 1) Providing several fingerprints (via a biometric sensor)
- 2) Allowing a non invasive infrared scan of their forearm
- 3) Providing a valid credit card
- 4) Providing a Pennsylvania issued identification card or drivers license with mag stripe (all of which will be stored for future comparison in a secured database at a designated network operating center).
- 5) Verification of age - Customer must fill out 931 Identify verification card (when applicable)



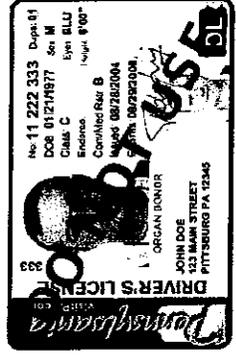
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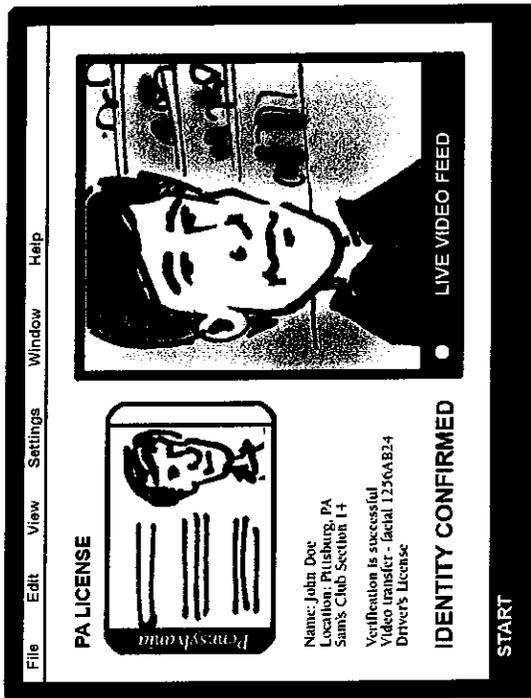
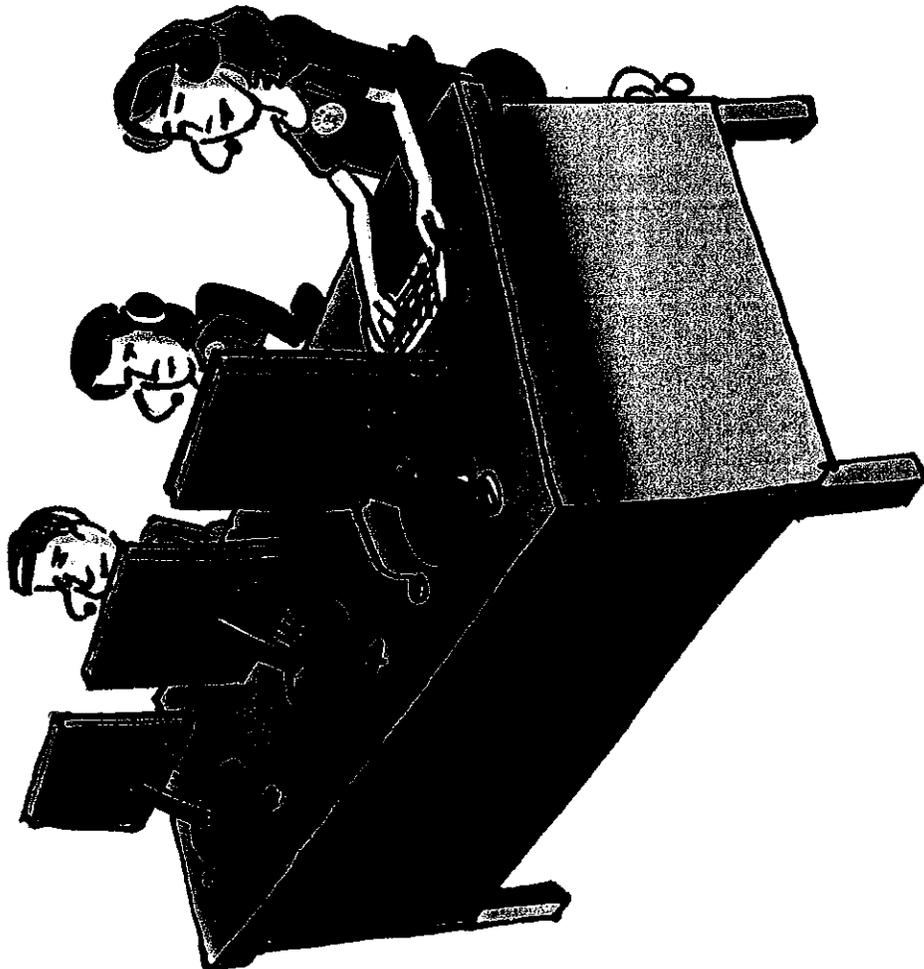
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Once the registration is complete he/she is registered and authorized to utilize any A.D.A.M.® statewide.

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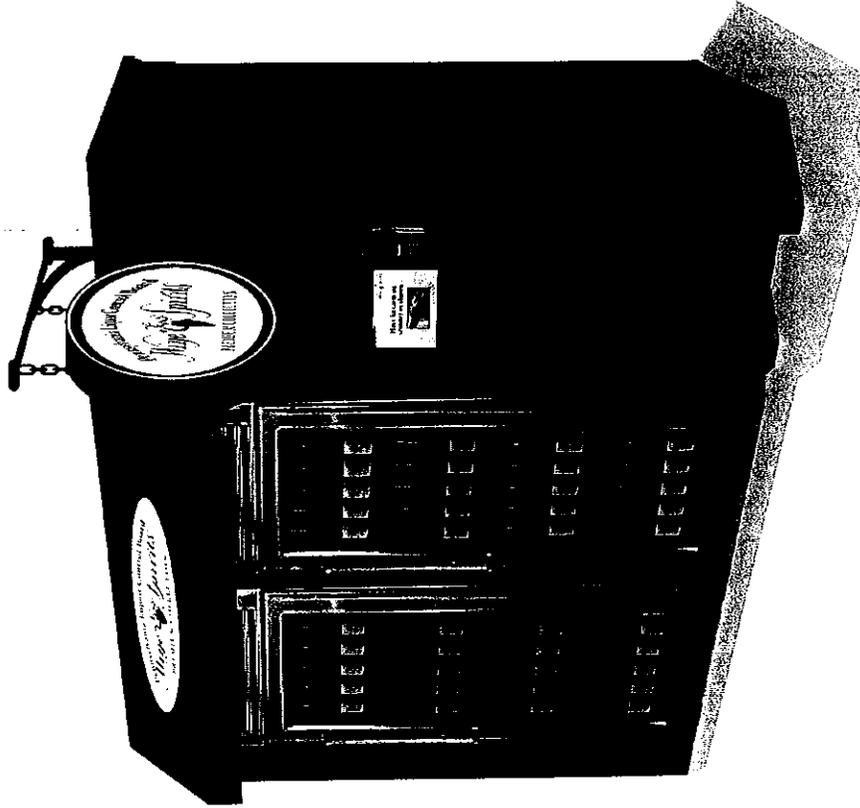
Registration (Continued)



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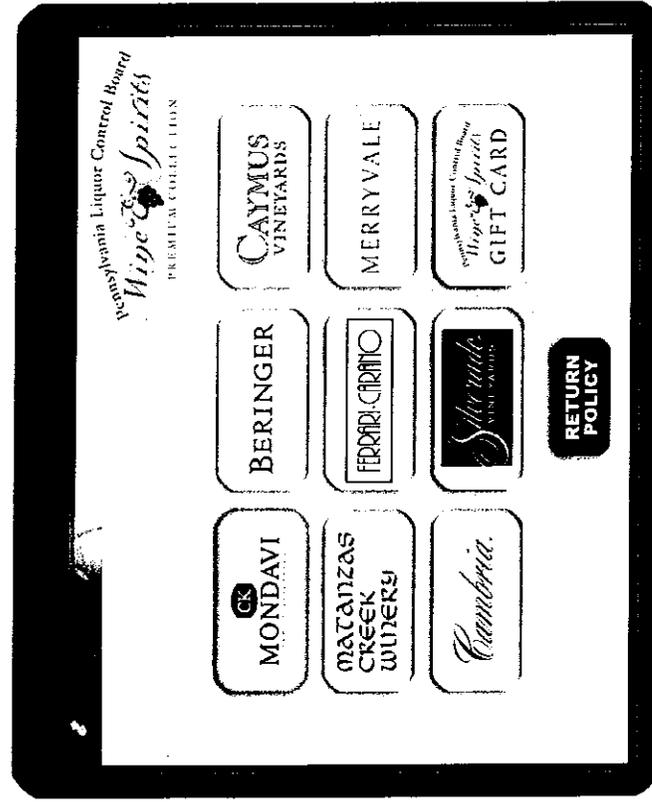
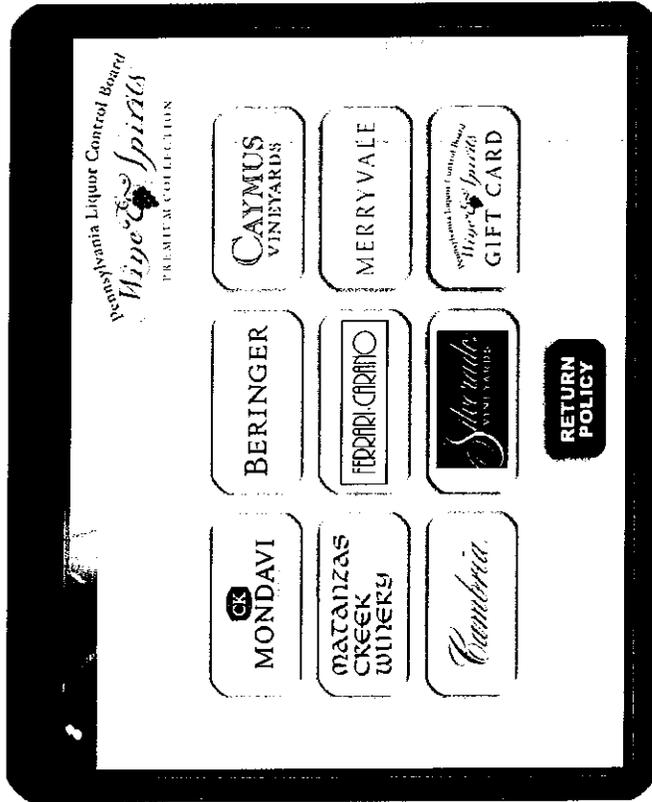
Using A.D.A.M.®

A.D.A.M.® is community conscious and has therefore been outfitted with over 100 issued and pending technology patents aimed at preventing minors from gaining access to wine, preventing intoxicated consumers from purchasing wine and preventing minors from viewing wine while on the retail premises. Below demonstrates how a consumer interacts with A.D.A.M.®



STEP 1 - Consumer places forearm on non-invasive biometric and blood alcohol level sensor.

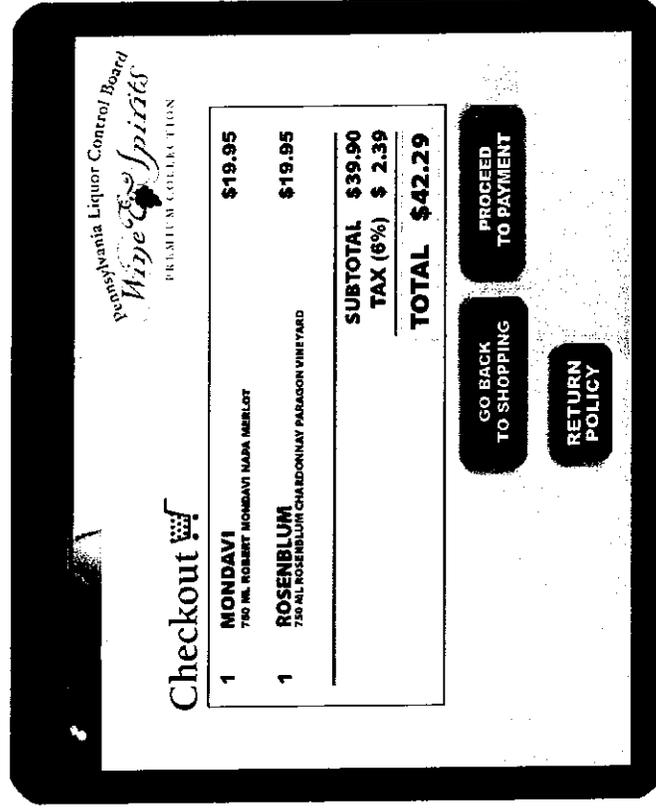
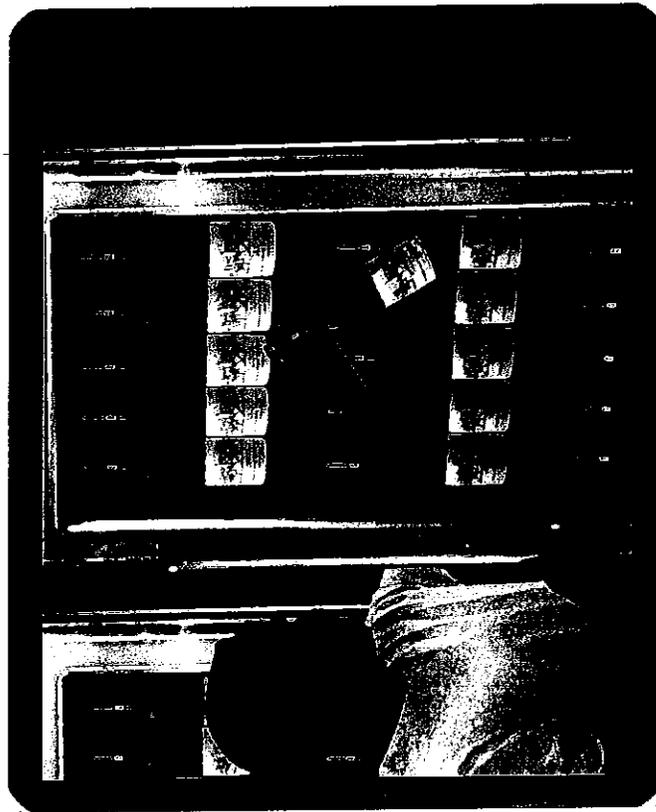
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Consumer views products on menu screen.

STEP 2 - Consumer selects purchase

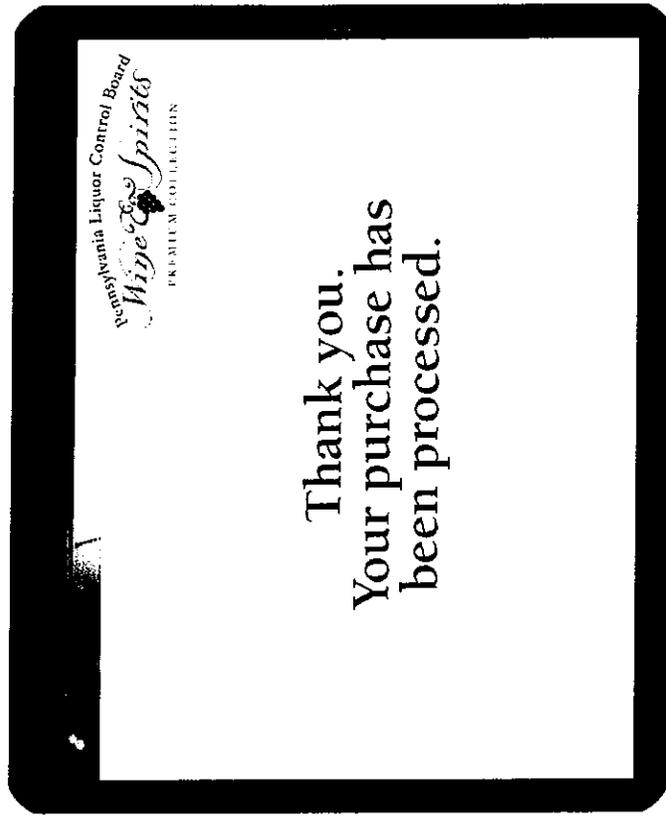
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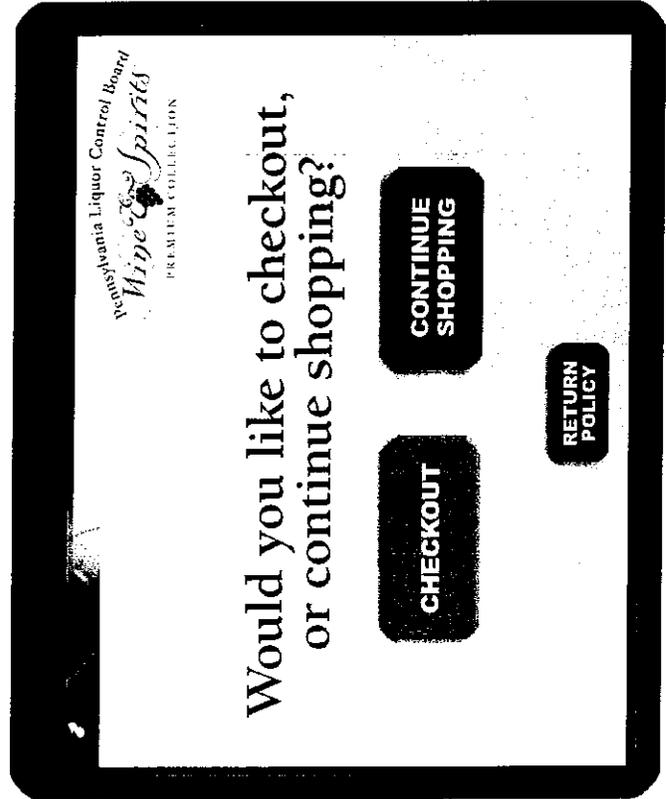
STEP 4 - Consumer opens door and removes selection (transaction is instantly displayed on touch screen upon removal of bottle).

STEP 5- Consumer confirms his/her purchase.

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STEP 7 - Consumer's purchase is processed and a printed receipt is dispensed out of the receipt slot.



STEP 6 - Consumer chooses to proceed to checkout.

Security Functions

Biometrics

Biomet Partners, Inc. is the developer of patented 3-dimensional two-finger geometry biometric technology for fast, accurate, low cost, and user-friendly verification of a person's identity. The technology has been highly successful in a wide range of "real-world" applications, including access control, time and attendance systems, enhanced security systems, season ticket control (for sports, theaters, theme parks), **passenger identity at airports**, and many more.

Two-finger geometry readers from Biomet Partners have been in commercial use since 1995, starting with the Digi-2 cameras. More than 50 million users have been enrolled on Biomet's finger geometry products. Many thousands of units are installed throughout the world, in a wide variety of applications.

Authorized vendor for The Department of Defense.

Security Functions (Continued)

Alcohol testing is currently achieved through blood and breath analysis technologies. Each method has limitations.

Blood testing represents the gold standard, but:

- Requires a trained phlebotomist to obtain the blood sample
- Exposes suspect and phlebotomist to risk of infection
- Requires a trained technician to run the blood analysis instrument
- Is expensive
- Involves significant delay between decision to measure and blood alcohol determination

Breath testing simplifies testing, but:

- Is sensitive to false positives due to the presence of "mouth alcohol"
- Requires a 15 – 20 minute mandated observation period before test can be administered
- Requires subject cooperation (deep-breath maneuvers)

The TruTouch® Noninvasive Alcohol Analyzer

TruTouch® has developed technology that utilizes near-infrared spectroscopy to noninvasively measure alcohol content in the body. The system provides police, safety personnel, researchers, and clinicians with noninvasive, rugged, and easy-to-use alcohol testing capability.

Advantages of TruTouch® Technology:

- Accurate and precise alcohol measurement
- Results available in less than 30 seconds
- Doesn't require special subject compliance
- No 20-minute waiting period
- No exposure to biohazards or bodily fluids such as needles or blood
- Automatic system calibration and set-up

Security Functions (Continued)

Noninvasive Technology

The TruTouch technology is a 100% noninvasive, touch-based alcohol measurement that offers significant improvements in safety and ease-of-use relative to existing measurement approaches. The noninvasive technology employs near-infrared (NIR) absorption spectroscopy to measure the concentration of alcohol by introducing NIR light into the skin and collecting the light that returns to the tissue surface (often referred to as diffuse reflectance).

Alcohol Sensitivity and Selectivity

An advantage of NIR spectroscopy is that the structure of a molecule dictates the specific manner in which it absorbs NIR light. Thus, the absorbance spectrum of each molecular species is unique, which allows the spectrum of alcohol to be discriminated from those of other molecules, such as water, that are commonly present in the body. In addition, Beer's Law states that the magnitude of the absorbance signal for a given substance (e.g. alcohol) is proportional to its concentration. Consequently, NIR spectroscopy provides noninvasive tissue measurements that are both sensitive and selective for alcohol.

Biometric Identity Verification

The skin is primarily comprised of the epidermis, dermis, and subcutaneous layers. Each layer has different characteristics that influence its relative contribution to the TruTouch spectroscopic measurement. For example, the subcutaneous layer is largely comprised of lipids (fats) while the dermal layer is composed primarily of water and collagen. The TruTouch measurement inherently contains contributions from each layer, which provides insight into both the chemical composition and structure of the tissue. Because all people have different tissue properties (dermal hydration, collagen density, and layer thicknesses), the TruTouch measurement captures these inter-personal differences and uses them as the basis for its unique biometric identity verification feature. Additional information regarding the TruTouch technology and its evaluation using clinical and laboratory studies can be found in the following peer reviewed journal articles.

Simple Brands, L.P. has been granted an exclusive license for over 100 patents issued and pending for the TruTouch product.