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Q. **Warranty** – The Contractor warrants that all services performed and/or delivered by the Contractor, its agents and subcontractors shall be performed in a professional and workmanlike manner. The Contractor further warrants that the portions of the wine kiosks created by Contractors, its agents and subcontractors shall, for a period of one year from the date they are delivered (the “Warranty Period”), be free and clear of any material defects in workmanship or materials. Contractor shall pass on to the PLCB all manufacturers’ warranties for any third party parts or products provided hereunder by the Contractor to the PLCB. The Contractor shall correct any material defects in workmanship or materials discovered in the portions of the wine kiosks created by Contractor, its agents and subcontractors during the Warranty Period and/or replace the defective portion with a deliverable of equivalent or superior quality without any additional cost to the PLCB. The foregoing shall not apply to defects or damages that are the result of (1) changes to deliverables made by the PLCB or its agents, (2) negligence, misuse or abuse of the PLCB or its agents, (3) reasonable wear and tear or (4) defects with any equipment, software, resources or materials provided by the PLCB.

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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 claiming that the services or deliverables infringe any patent, copyright or trademark infringement in the United States. 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 and expense, 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 any United States services or deliverables provided by Contractor. If any of the

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deliverables 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 the deliverable, or, at the option of the PLCB, only those portions of the deliverable which are held to be infringing, and to pay the PLCB: 1) any amounts paid by the PLCB towards the purchase of the deliverable, 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.

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S. **Ownership Rights**

As between the parties, all worldwide right, title and interest in and to all deliverables, together with any and all intellectual property rights inherent in any deliverables, including all patent rights, copyrights, trademarks, know-how and trade secrets, shall belong exclusively to Contractor perpetually. Contractor hereby grants the PLCB, subject to the PLCB's continued payment of the

fees described below, a license to use the deliverables in connection with the PLCB's use of the wine kiosks during the term of this Contract. The PLCB shall have unrestricted and authority to reproduce, distribute, and use any submitted reports or data that are delivered to the PLCB as part of the performance of the Contract. The PLCB shall not (and shall not allow its agents to) reverse engineer, decompile, disassemble, modify or enhance any of the deliverables or any parts thereof or, otherwise attempt to create any derivative works of any of the deliverables or any part thereof. The PLCB shall not install any additional software on to any of the wine kiosks without the express written consent of the Contractor. Upon any expiration or termination of this Contract, the Contractor will arrange for the pick up and removal of each wine kiosk.

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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. INTENTIONALLY DELETED, [NOTE: CONTRACTOR BELIEVES THIS IS COVERED ABOVE]

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

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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

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 (except as otherwise authorized by the PLCB) 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. **[TO BE DISCUSSED]**

18. **INTENTIONALLY DELETED.**

19. **INVOICING/PAYMENT** -

A. The PLCB shall pay to Contractor as a lease fee for each wine kiosk and the maintenance services to be provided by Contractor hereunder an annual fee of \$20,000 per wine kiosk. This fee will be paid in 12 equal monthly installments of \$1,666.67 (the "Monthly Lease Fee").

B. In addition to the payments identified above, in consideration for the development, maintenance and related services provided by Contractor hereunder, Contractor shall receive the following fees

(1) Three dollars (\$3.00) per bottle of wine sold from each wine

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kiosk (the "Per Bottle Fee"). This fee shall be paid for by suppliers of the wine sold in the wine kiosks. This fee is for the hardware, software and additional diagnostic testing performed as part of the purchase of wine through the wine kiosk.

(2) Two dollars (\$2.00) per Transaction conducted at each wine kiosk (the "Transaction Fee"). The two dollar (\$2.00) transactional charge shall be paid directly by consumers. For example, if a consumer purchases a bottle of wine for a total of \$20.00 the consumer's credit card will be charged \$22.00. If a consumer purchases three bottles of wine for a total of \$60.00 the consumer's credit card will be charged \$62.00. [TRANSACTION TO BE DEFINED]

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C. Within five (5) days of the end of each month a wine kiosk is used, the PLCB shall create a summary report which shall contain total gross sales (for all wine kiosks), gross sales (per wine kiosk), total Transactions (for all wine kiosks), Transactions (per wine kiosk), Monthly Lease Fees, Per Bottle Fees, Transaction Fees and total fees due to Contractor and such additional information as the parties shall otherwise agree. The PLCB shall remit the total fees (including all Monthly Lease Fees, the total Per Bottle Fees and the total Transaction Fees) for the previous month to the Contractor within 30 days of end of the month.

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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. Insolvency or bankruptcy;

2. Assignment made for the benefit of creditors;

13. _____

B. Either party may, by giving notice to the other party, terminate this Contract as of a date specified in a notice of termination if the other party breaches in any material respect any of its material obligations under this Contract, which breach is not cured within 30 days after notice of breach from the non-breaching party.

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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; ¶
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3. Unsatisfactory performance of the work; ¶
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4. Failure to deliver the awarded item(s) within the time specified in the Contract, or as otherwise specified; ¶
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5. Improper delivery; ¶
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6. Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract; ¶
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7. Delivery of a defective item; ¶
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8. Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory; ¶
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9. Discontinuance of work without approval; ¶
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10. Failure to resume work which has been discontinued within a reasonable time after notice to do so; ¶

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Deleted: 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; ¶

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14. Failure to protect, to repair, or to make good any damage or injury to property; or, ¶

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15. Breach of any provision of this Contract.

C. In the event that the PLCB terminates this Contract in whole or in part, as provided in Subparagraph 21.A or 21.B 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, subject to the terms of this Contract, to the PLCB for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.

C. [DISCUSS] 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.

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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 (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, diseases, or elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of national, local or foreign governmental authorities or courts, national or state of emergencies, or changes in laws; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment, expropriation, condemnation of facilities or destruction, in

whole or part, of the equipment or property necessary to perform the Services; (f) delays or failures caused by third-party nonperformance (except that a party will not be excused for delays or failures caused by such party's subcontractors or agents unless the event or circumstance is a Force Majeure Event as to such subcontractor or agent) or (g) any other similar cause beyond the reasonable control of a party provided that such event could not have been prevented by reasonable precautions (each, a "Force Majeure Event").

Deleted: 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, if Contractor is not able to resume performance within forty-five dates 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. INTENTIONALLY DELETED.

24. TERMINATION PROVISIONS - The PLCB has the right to terminate this Contract for the following reason:

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.

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

~~Deleted: 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 c[... [2]

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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 inte[... [3]

~~Deleted: 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 Cont[... [4]~~

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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 not be unreasonably withheld. The PLCB consents to the Contractors use of the entities listed on Exhibit 1 as subcontractors to provide services under this Contract.

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- 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 not be unreasonably withheld. Notwithstanding the foregoing, Contractor may assign this Contract in connection with a merger, reorganization or sale of substantially all of its assets without any such consent.

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- 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.

Deleted: 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 PLCB agrees to maintain books, records, documents and other evidence pertaining to the use and operations of the wine kiosks. The PLCB agrees to make available at the office of the PLCB, at all reasonable times during the term of this Contract, any of those records pertinent to the use and operations of the wine kiosks, for inspection, audit or reproduction by any authorized representative of the Contractor during the term of this Contract and for a period of three (3) years thereafter. Additionally, the Contractor and its subcontractors shall be allowed to have remote secure access to

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Deleted: 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.

each wine kiosk and other technical components contained therein, to be allow Contractor to perform its maintenance and support functions and to access and view data relating to the wine kiosks and the sales of wine from such kiosks.

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30. INTENTIONALLY DELETED. [NOTE: CONTRACTOR BELIEVES THIS IS COVERED ABOVE]

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<#>The Contractor is responsible for damage, loss, breakage, shortage, burglary or theft of the PLCB's equipment or merchandise or other Commonwealth property. ¶

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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. The term "Contractor Confidential Information" shall mean all business strategies, plans and procedures, business information, proprietary information, data and trade secrets of Contractor, as well as any other information and materials that are deemed confidential or proprietary to or by Contractor (including, without

limitation, all information and materials of Contractor's licensors and service providers). In addition, all software shall be treated by PLCB as Contractor Confidential Information. PLCB acknowledges and agrees that a duty is owed to Contractor to maintain in strict confidence all Contractor Confidential Information provided to or learned or developed by PLCB during the course of this Contract. PLCB shall take all steps reasonably necessary to prevent the unauthorized disclosure or dissemination of such Contractor Confidential Information for any reason and to any person or entity, except with the prior written consent of Contractor. In addition, PLCB shall not use or copy any such Contractor Confidential Information, or authorize or permit others to use any such Contractor Confidential Information, for any purposes other than in connection with performance of the Services hereunder. Nothing in this Contract shall prohibit or limit the either party'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.

Deleted: Contractor's

32. **AUDIT PROVISIONS** - In addition to any rights provided within this Contract, the Commonwealth shall have the right, once per year upon reasonable notice during normal business hours 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

Deleted: at reasonable times

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. **LIMITATION OF LIABILITY**

A. Direct Damages. CONTRACTOR' TOTAL LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS RELATING TO OR ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL MONTHLY LEASE FEES PAID BY THE PLCB FOR THE SIX MONTH PERIOD PRECEDING THE EVENT THAT GAVE RISE TO THE LIABILITY.

B. Consequential Damages. UNDER NO CIRCUMSTANCES SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING IN ANY WAY OUT OF THIS CONTRACT OR THE USE OF THE WINE KIOSKS, HOWEVER CAUSED AND WHETHER ARISING UNDER A THEORY OF CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF CONTRACTOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE DAMAGES EXCLUDED BY THIS SECTION SHALL INCLUDE, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, AND COSTS OF PROCUREMENT OF

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SUBSTITUTE SERVICE. THE LIMITATIONS ON LIABILITY SET FORTH IN THIS SECTION SHALL APPLY NOTWITHSTANDING ANY HOLDING BY ANY COURT THAT ANY OF THE LIMITED REMEDIES SET FORTH IN THIS CONTRACT MAY HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

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34. INTEGRATION -

A. The Contract, including all referenced documents, constitutes the entire agreement between the parties. The PLCB waives all terms and conditions contained in its order acknowledgment form, invoices or other documents that are different from or additional to the terms and conditions set forth in this Contract. No agent, representative, employee or officer of either the PLCB (except the Contract) 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.

Deleted: and any purchase order

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

)

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: _____

LIQUIDATED DAMAGES PROVISIONS -

- A. These liquidated damages provisions shall be in addition to and not in substitution of any other remedy or remedies available to the PLCB at law or in equity.
- B. By accepting this Contract, the Contractor agrees to the delivery and schedule requirements of this Contract. If the Contract schedule is not met or certain agreed deliverables are not delivered pursuant to the Contract requirements, the delay and/or failure to deliver will interfere with the PLCB's programs and operations. In the event of any such delay or downtime, it would be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. The PLCB and the Contractor, therefore, agree that, in the event of any such delay or failure to deliver, the amount of damage potentially assessable shall be the amount to be set forth in this Paragraph 9 and agree that the Contractor, at the PLCB's discretion, shall pay such amount as liquidated damages, not as a penalty. Such liquidated damages are in lieu of all other damages arising from such delay, failure or downtime. The Contractor agrees that the PLCB shall have the right to recover damages, in the amount equal to the damages incurred, by deduction from the Contractor's performance bond for

this Contract or from any other Commonwealth contract, or by direct billing to the Contractor.

- C. The parties agree that delays by the Contractor in meeting deadlines may result in damages to the PLCB.

- D. To the extent that the delay is caused by the PLCB or any third party (other than the Contractor's subcontractors), no liquidated damages will be applied.

- E. The Contractor shall not be liable for liquidated damages if the delay to the Contract arises out of causes beyond the control of and without the fault or negligence of the Contractor and/or its subcontractors. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, general strikes or work stoppages throughout the trade, freight embargoes, acts of terrorism, or unusually severe weather; but in every case, the delay must be beyond the control of, and without the fault or negligence of, the Contractor and/or its subcontractors. The Contractor shall notify the PLCB immediately in writing of its inability to perform because of a cause beyond the control of the Contractor and/or its subcontractors.

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.

- 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.

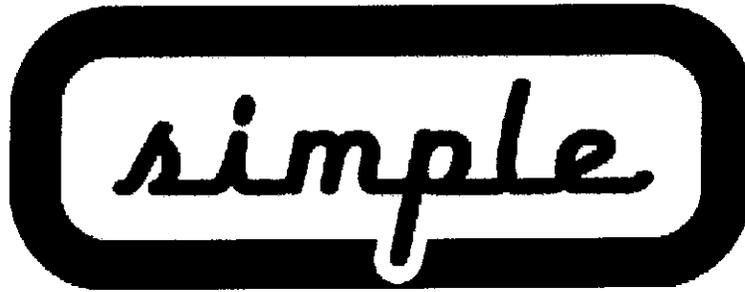
- C. Termination for Cause: The PLCB shall have the right to terminate the Contract for Contractor default under Paragraph 21, Default, upon written notice to the Contractor. The PLCB shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the PLCB erred in terminating the Contract

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for cause, then, at the PLCB's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 24.A.

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Simple Brands, LP.
SUBMITTAL RESPONSE TO RFP 20080318 WINE
KIOSKS II-10
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.

❖ RESPONSE TO II-10-A

Proposer agrees, to comply with all federal and state laws regarding fair employment practices and nondiscrimination (II-10-A)

❖ RESPONSE TO II-10-B

(See following Page)

❖ RESPONSE TO II-10-C

Payment Card Industry (“PC”) Security Standards Compliance Certificate

As illustrated in Exhibit “B” – Question #5’s response by the PLCB:

“As per Section IV-3.e.v of the RFP, the kiosks will process credit card transactions through the IBM StorePay software installed at the PLCB, which is currently used for processing credit, debit and gift card transactions. The kiosks will be linked to the PLCB's network via the Cisco router installed in each kiosk (See Section IV-3.e.ii of the RFP), and connected to the Commonwealth's network via the Commonwealth's network provider, Level-3 and the Commonwealth's existing telecommunications contract. The selected contractor's solution will link to the existing StorePay software and utilize the Commonwealth's private network, so that the PLCB will continue to be compliant with PNC Bank, N.A., PNC Merchant Services and Payment Card Industry Security Specifications (PCI SS). Based upon the foregoing, the PLCB believes that there is no need for the selected contractor to obtain this information. However, the selected contractor may request this information from the Pennsylvania Department of Treasury.

Relative to equipment specifications, the PLCB’s contract with PNC Bank, N.A., PNC Merchant Services requires the PLCB to use Verifone pinpads and signature capture.”



April 25, 2008

E.X. O'BRIEN
ASSOCIATES, LLC

John J. Manfreda
Admisitrator
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street, NW
Washington, DC 20220

Re: Request for Opinion

Dear Mr. Manfreda:

On behalf of a client who contemplates a certain business transaction, I am requesting the guidance of the TTB regarding its legality under all applicable federal laws.

My client (the "Company") has developed a state of the art electronic module that can be used to dispense wine by the bottle in certain retail establishments. Rest assured the Company has developed sophisticated systems to address the serious security and control issues in such a device. The Company seeks your guidance on its proposed method of compensation and other issues.

First of all, the Company is not now and has never been an industry member or involved in any way – directly or indirectly – in the beverage alcohol business. The Company will simply build the units and, subject to the directions of its proposed "customer", deliver them. The proposed customer will not pay rent for the modules. The proposed customer is a large control state who is the exclusive wholesaler and retailer of wine and spirits for off-premise sale.

The Company will not be involved in any marketing, advertising or decisions regarding products to be placed in the modules. All such decisions will be made by the state agency.

Rather than charging rent of the state agency for use of the units, the Company proposes to have the state agency pay it fees for each bottle that is sold through the units. This would depend on the state's ability to negotiate preferential pricing with the

411 Walnut Street
Pittsburgh, PA 15101
724.234.2020
724.234.2241 fax
fran@liquorlaw.com

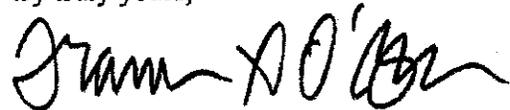
The Company would also like the opportunity to sell advertising to suppliers who have products in the unit if it would be legal to do so.

Another area of question concerns the labeling of wine sold to consumers. Prior to payment and delivery the consumer could not examine the bottle and read the label (including the Government Warning), but the module could be programmed to depict the complete label on the touch screen. Thus all the information would be easily read by the consumer.

Please contact me if additional information is necessary to address these issues.

Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Francis X. O'Brien", written in a cursive style.

Francis X. O'Brien

❖ RESPONSE TO II-10-D

Simple Brands LP was formed in October 2006 for the sole purpose of developing alcohol dispensing kiosks utilizing “best in class” technologies for use within “control” states. The principal partners are managing partner Mr. James D. Lesser, Mr. Ira M. Lubert, Mr. Jay A Vederman, and Mr. Thomas J. Kelly.

Mr. Lesser was President and CEO of JDL Management, a developer of networked coin operated amusement and entertainment attractions. In 2002 JDL developed 4 of the 10 highest grossing “arcade games” in North America. Unlike traditional developers/manufacturers that sell the games they design and manufacture JDL places their attractions in locations on a revenue sharing basis. All JDL games are networked in to a central “NOC” (network operating center) which allows for the remote monitoring of all key financial metrics as well as maintenance diagnostics for all units deployed worldwide. JDL has placed licensed interactive attractions in the top performing entertainment centers worldwide including publicly traded Six Flags amusement parks, Dave and Busters, and Disney as well as privately held TGI Fridays, Jillian’s, and Gameworks among others.

James D. Lesser, President -James Lesser is a veteran entrepreneur with fifteen years of experience in the Gaming/Software/Vending Industry. In 1993 Mr. Lesser launched JDL Management an interactive sports based marketing and event coordination company. JDL Management was formed specifically to develop and manage the “EA SPORTS Madden Challenge”, a 25 city video game tournament that has grown to become the largest electronic sporting event in the world. Since its inception over 1 million competitors from around the world have participated at venues across the country. In 1995 (after selling out in 50 consecutive cities) Mr. Lesser sold JDL Management to Electronic Arts, the publisher of the MADDEN series. In 1996 Mr. Lesser founded JDL Ventures, a developer and operator of unique sports related coin operated game attractions. Unlike traditional game developers that manufacture and sell the games they develop and build, JDL placed games on location utilizing a revenue sharing model. JDL successfully placed attractions in North America’s top entertainment properties including Six Flags Theme Parks, Dave and Busters, TGI FRIDAYS, Jillian’s, Game Works, Universal and Disney Properties. All games developed by JDL integrate in to a wide area network in order to accommodate nationwide tournaments and real time reporting of accounting functions, video surveillance, and attraction diagnostics. In 2002-2003 JDL developed 4 of the 10 highest grossing games in the U.S. market. Mr. Lesser is a past member of AMOA and IAAPA and has been recognized in vending and game publications including Vending Times, Replay, Play Meter, and Amusements Today as well as The Philadelphia Inquirer, Philadelphia Daily News, Philadelphia Magazine, Philadelphia business Journal, Entrepreneur Magazine, and Inc. Magazine.

Ira M. Lubert, Partner – M. Lubert is a co-founder of Lubert-Adler, as well as LLR Partners, Quaker Bio Ventures, LEM Mezzanine, Versa Capital, Rubenstein Partners, LBC Credit Partners, and Patriot Capital Partners, which together constitute Independence Capital Partners.

Mr. Lubert has 30 years of experience in the real estate investment sector. Prior to forming Lubert-Adler, Mr. Lubert was the principal and founder of TL Ventures, within the family of Safeguard Scientifics, Inc. (NYSE: SFE), an early-stage venture fund. Mr. Lubert was also founder of Radnor Venture Partners, L.P., the first venture fund managed by Safeguard Scientifics.

Mr. Lubert holds a B.S. in human development from Pennsylvania State University and currently serves on the board of directors for Eureka-GGN, Thomas Jefferson University Hospital, The Franklin Institute, PREIT (NYSE: PEI), and the Wistar Institute.

Mr. Lubert also serves on community boards, including three years on the board of trustees of Pennsylvania State University. He is past chairman of the United Way Campaign of Philadelphia and an active recruiter for the Alexis de Tocqueville Society of the United Way.

Michael T. Fiore, Chief Technology Consultant – The Company has retained Mike Fiore on an independent contractor basis to oversee the prototyping, beta-testing and first-round deployment (estimated for June/July 2009) of ADAM units in Pennsylvania. He will be responsible for managing and coordinating the efforts of the various professional service providers and component technology developers retained by the Company. He will also be responsible for managing day-to-day communications with the PLCB's technical staff throughout the ADAM network design and development process.

Mike currently serves as President and Founder of M. T. Fiore & Associates, LLC, a management consulting firm that focuses on the use of information technology to increase business operating efficiencies and productivity. From 1999 until 2006, Mike held various positions, including Chairman, President and Chief Executive Officer, at Help-Now Consulting (formerly Help-Now.com), a company which he founded. Help-Now is a provider of network technology consulting, design, implementation and management services. Clients of Help-Now have included Air Products and Chemicals, Arthur Andersen, BellSouth, GlaxoSmithKline, Lucent Technologies, Nortel, Pfizer, Raytheon, Sunoco and Xerox, among many others. In 2005 and 2006, Mike also held various positions at Mall Ball, LLC, an operator of basketball-themed entertainment kiosks in malls throughout the U.S. In his first position at Mall Ball, Mike was responsible for the design, development, testing and implementation of the company's enterprise management system. Mike later served as President of Mall Ball,

) and was responsible for managing the daily operations of the company, including new kiosk deployments and maintaining the company's proprietary kiosk network management platform. Prior to this, Mike held various sales and marketing positions at leading technology and information marketing companies such as Docucon Imaging Services, Parametric Technology Corp., and United States Surgical Corp

Scott Weintraub, Chief Financial Officer -Mr. Weintraub has 20 plus years of business, accounting, and management experience. Prior to joining Simple Brands, from 1996 to 2000, Mr. Weintraub served as Director of Finance for Public Communications Associates, a New Jersey-based telecommunications company. Before that, he was Comptroller for a Washington, DC-based publicly traded real estate development and management company, Bresler & Reiner, Inc., for eight years. From 1985 until 1988, Mr. Weintraub served as Accounting Manager for Sterling Software, Inc., having begun his career with Informatics General Corporation; a company that was acquired by Sterling Software, Inc. in 1985. Mr. Weintraub earned his B.S. degree in business administration from the University of Maryland.

) *Thomas B. Myers, Operations Manager* -Tom has worked in the technology sector for over 13 years providing electronic repair, LAN/WAN infrastructure management, hardware repair, software installation and field training for such companies as MEI (a Mars/M&M division) and Decision One (the largest independent IT service provider in North America). Tom also worked as Operations Director for Mall Ball LLC, providing tech support and inventory management for amusement attractions across the United States, as well as day to day support for company operations. Tom provided tech support and Customer Service Management for JDL LLC, which was responsible for approximately 2225 amusement games across the country.

Tom currently serves as a Sr. field engineer for Dell Computer, providing next-day support for consumer and business customers in the Mid Atlantic States. At Dell Tom oversees a department of over 40 Dell service technicians.

❖ RESPONSE TO II-10-E

Proposer agrees, that it currently has no contracts with the PLCB and/or any other parties that may present a conflict of interest.

❖ RESPONSE TO II-10-F

Proposer agrees not to divulge or release any information provided to it by the PLCB prior to the official release date of the contract.

❖ RESPONSE TO II-10-G

Name: Dan Smith

Position: Former CEO of Jillian's Entertainment Corporation

Number: [REDACTED]

About Jillian's Entertainment Corporation: With individual locations varying in size between 40,000 and 75,000 square feet, each location features: The Video Café, with over 16 giant screen TVs for optimal sports viewing and a new menu with an eclectic blend of insatiable appetizers, delectable entrees, and luscious desserts; The 9-Ball Lounge, with tournament quality billiard tables; The Amazing Games Room filled to the rafters with the latest electronic and simulation games; Hi Life Lanes, an over the top multi-media bowling alley; as well as other dining and entertainment venues such as dancing

Name: Reggie Moultrie

Position: Former Sr. VP of Amusements of Dave & Buster's, Inc.

Number: [REDACTED]

About Dave & Buster's, Inc.: Fun and games collide with food and drink at Dave & Buster's. The company owns and operates about 50 entertainment complexes in 20 states and Canada that offer casual dining, full bar service, and a cavernous game room. The adult fun spots feature the latest in video games and motion simulators, as well as games of skill in which players can win prizes. For dining, Dave & Buster's offers a menu that features traditional American fare such as burgers, seafood, and steak. Partners David Corriveau and James "Buster" Corley opened the first Dave & Buster's in 1982. Private equity firm Wellspring Capital Management owns more than 80% of the company; hedge fund manager HBK Investments owns the rest.

Name: Mark Kane

Position: VP of Six Flags, Inc.

Number: [REDACTED]

For millions of people, Six Flags is the standard-bearer for theme park thrills. Formerly Premier Parks, the company is the #2 amusement park operator in the world (behind Walt Disney), drawing nearly 25 million visitors to its 20 parks in North America. Most of its parks operate under the Six Flags banner

(including Six Flags Great America, Six Flags Fiesta Texas, and Six Flags Magic Mountain) offering thrill rides, water slides, and other family entertainment. Revenues come from gate receipts, food, and merchandise. Six Flags' licensing of characters from Warner Bros. such as Looney Tunes, Batman, and Superman give its attractions a built in popularity.

❖ RESPONSE TO II-10-H

Proposer agrees to submit a performance bond or other performance guarantee acceptable to the PLCB in the amount of three million dollars (\$3,000,000.00) within ten (10) calendar days after written notice from the PLCB to furnish such surety is issued. (See Exhibit "C" for Evidence of Surety)

❖ RESPONSE TO II-10-I

(See Exhibit "A" for Surety of Insurability)

❖ RESPONSE TO II-10-J

This proposal will remain valid for a period of 120 calendar days following its submission in response to the RFP.

❖ RESPONSE TO II-10-K

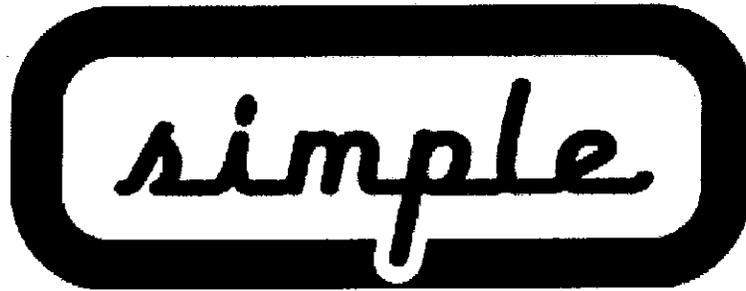
The Simple Brands hereby certifies that neither us nor our proposed subcontractors, nor any of their suppliers, are currently under suspension or debarment by the Commonwealth, any government entity, instrumentality or authority." (II-10-K)

❖ RESPONSE TO II-10-L

(See Exhibit "B" for W-9 Forms)

❖ RESPONSE TO II-10-M

Proposer agrees, to the extent required by Management Directive 215.9 (April 16, 1999), that the Commonwealth may set off the amount of any state tax liability or other debt owed to the Commonwealth (and not being contested on appeal), of the proposer or its subsidiaries, against any payments due to the proposer under this or any other contract with the Commonwealth. (II-10-M)



Simple Brands, LP.
SUBMITTAL RESPONSE TO RFP 20080318 WINE
KIOSKS
May 3, 2008

EXHIBIT "A"



COHEN-SELTZER, INC.

Guidance with Integrity

May 7, 2008

Ms. Debra Brinser
Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
Procurement Division
Room 413, Northwest Office Building
910 Capital Street
Harrisburg, PA 17124-0001

Re: Simple Brands, LLC

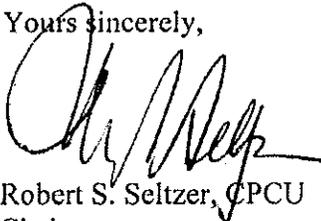
Dear Ms. Brinser:

This letter is to inform you that we have reviewed the insurance requirements contained in the Request for Proposal RFP 20080310 (RFP) for Contract #20080318 WINE KIOSKS.

By this letter we assure you that the insurance coverage required under paragraph 12(a) will be issued naming the Pennsylvania Liquor Control Board (PLCB) as an additional insured on policies where applicable. This coverage will be provided in accordance with the requirements shown in the RFP form.

Should you have questions, or require additional information, please do not hesitate to contact me directly.

Yours sincerely,



Robert S. Seltzer, CPCU
Chairman

RSS:mpd

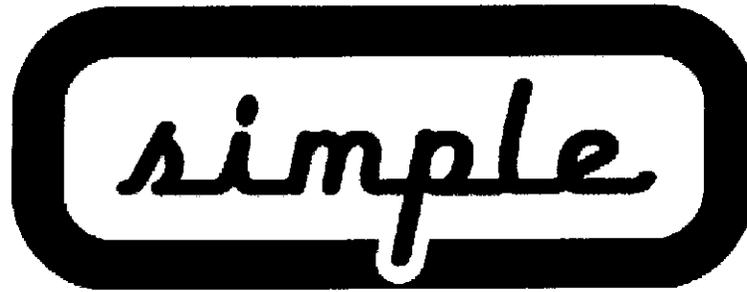
Cira Centre • 2929 Arch Street, Suite 1650 • Philadelphia, PA 19104-2868 • Phone 215.988.1200 • Fax 215.988.1209 • www.cosel.com

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Simple Brands, LP.
SUBMITTAL RESPONSE TO RFP 20080318 WINE
KIOSKS
May 3, 2008

EXHIBIT " B "

Request for Taxpayer Identification Number and Certification

Give form to the
 requester. Do not
 send to the IRS.

Print or type
 See Specific Instructions on page 2.

Name Bresslergroup, Inc.	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other	
Address (number, street, and apt. or suite no.) 2400 Market Street, Suite 1-2	Requester's name and address (optional)
City, state, and ZIP code Philadelphia PA 19103.3031	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see **How to get a TIN** on page 3.

Social security number										
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; border: 1px solid black;"> </td> </tr> </table>										
or										
Employer identification number										

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here

Signature of U.S. person

Judith Squire

Digitally signed by Judith Squire
 DN: cn=Judith Squire, c=US,
 o=Bresslergroup, Inc.,
 email=jquires@bresslergroup.com
 Date: 2007.10.10 10:33:00 -0400

Date **05/02/08**

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Foreign person. If you are a foreign person, use the appropriate Form W-8 (see **Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities**).

Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
 2. The United States or any of its agencies or instrumentalities,
 3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
 4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
 5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
 7. A foreign central bank of issue,
 8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
 9. A futures commission merchant registered with the Commodity Futures Trading Commission,
 10. A real estate investment trust,
 11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
 12. A common trust fund operated by a bank under section 584(a),
 13. A financial institution,
 14. A middleman known in the investment community as a nominee or custodian, or
 15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹See Form 1099-MISC, Miscellaneous Income, and its instructions.

²However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.