

LANDMARKS FOR LIVING, INC.

Lease Addendum - Build, Buy or Transfer Clause

Tenant's Name: Transfer Technology, Carol A. Reynolds

Address: Old City Hall, Apartment # 303
423 Walnut Street,
Harrisburg, PA 17101

It is understood and agreed that the Tenant may terminate this Lease at any time during the initial lease term providing that the first six (6) months of occupancy have been completed and:

I. TRANSFER

Tenant's place of business or employment is moved to a distance of more than one hundred (100) miles from the lease premises. Tenant must provide sixty (60) days' advance written notice by certified mail, return receipt requested of Tenant's Intent to end Lease. The notice must include the employer's notarized statement, on Company letterhead, stating when and to where the Tenant will be transferred.

As a condition to ending the Lease before the end of the term, Tenant must pay a fee equal to one months rent. This amount must be paid at the time that Tenant gives notice to Landlord. This amount is in addition to all rent due through the end of the month that Tenant ends the Lease and moves out. Tenant may not use the Security Deposit for this fee or for rent due under the Lease. In addition, Tenant must pay all rent and other charges due at the time that Tenant sends the notice. Tenant cannot end the Lease before the end of the term if Tenant is in breach of Lease.

OR

II. BUILD/BUY

Tenant builds and/or buys a home. Tenant must provide sixty (60) days' advance written notice by certified mail, return receipt requested of Tenant's intent to end the Lease. The notice must include a copy of the Agreement of Sale or other similar documentation proving that Tenant has built or purchased a home titled in Tenant's name.

As a condition to ending the Lease before the end of the term, Tenant must pay a fee equal to one month's rent. This amount must be paid at the time that Tenant gives notice to Landlord. This amount is in addition to all rent due through the end of the month that Tenant ends the Lease and moves out. Tenant may not use the Security Deposit for this fee or for rent due under the Lease. In addition, Tenant must pay all rent and other charges due at the time that Tenant sends the notice. Tenant cannot end the Lease before the end of the term if Tenant is in breach of Lease.

LANDLORD:

Old City Hall, L. P.

Date: _____

By: pm brownaker
Landmarks for Living, Inc., Agent

Date: 5/19/04

TENANT(S):

x Carol Reynolds
Transfer Technology

Date: 4-28-04

+ Carol Reynolds
Carol A. Reynolds

Date: 4-28-04

* Sixty (60) days' notice is effective from the first day of the month. Notices received after the first day of the month will be effective the following calendar month.

RESIDENTIAL LEASE AGREEMENT

THE DATE OF THIS LEASE IS April 26, 2004, BETWEEN.

Landlord: Old City Hall, L. P.
Agent for Landlord: Landmarks for Living, Inc

AND

Tenant: Transfer Technology
Carol A. Reynolds

\$250.00 Off First Full Months Rent

Landlord agrees to rent to Tenant the "Leased Unit" on the following terms and conditions:

1. ADDRESS OF THE LEASED UNIT.

Old City Hall, Apartment # 305
423 Walnut Street,
Harrisburg, PA 17101

2. TERM.

Length of Lease:	12 months	Lease Begins On:	June 01, 2004
Unless Renewed, this Lease Ends On:			May 31, 2005

3. RENT.

Total Rent For Lease Term:	\$	10,020.00
Rent For Each Month:	\$	835.00
Rent for Part of the Month from May 08, 2004 to May 31, 2004	\$	668.00

Tenant must pay rent to Landlord or Agent for Landlord by the first (1st) day of every month at 423 Walnut Street, Harrisburg, PA 17101.

If Tenant's check is returned by the bank, Tenant will pay a charge of \$ 50.00 as additional rent. If any of the rent is not paid by the fifth (5th) day of the month, Tenant must pay a late fee of \$ 50.00.

4. SECURITY DEPOSIT.

Tenant has paid to Landlord a security deposit of \$ 250.00, as security that Tenant will perform his/her obligations under this Lease. Landlord may use the security deposit to pay for losses or damages caused by Tenant's breach of this Lease. Landlord may also use the security deposit to pay for any damage to the Leased Unit.

Tenant must pay losses or damages which are not covered by the security deposit as additional rent. Tenant may not use the security deposit to pay the rent for the Leased Unit. Landlord may keep the security deposit if Tenant fails to make rental payments or if Tenant leaves before the end of the Lease Term.

Landlord will deposit the security deposit at Citizens Bank. Tenant must vacate the Leased Unit and give Tenant's new address to Landlord in writing before Tenant is eligible for return of the security deposit.

5. **UTILITIES.**

Landlord will pay for the following utilities:

Cold Water & Sewer
Trash

Tenant will pay for all other utilities. Tenant agrees to place all other utilities in the name of Tenant and agrees to pay all bills when due.

Landlord is not responsible for any inconvenience or loss caused by interruption of any utilities services.

6. **USE AND OCCUPANCY.**

(a) Tenant will personally use and continuously occupy the Leased Unit as a residence for Tenant(s) and persons. Only the following persons may reside in the Leased Unit: Transfer Technology Carol A. Reynolds It is a breach of this Lease to have any person(s) living in the Leased Unit who is (are) not listed in this Paragraph.

(b) Tenant will not remove or attempt to remove Tenant's personal property without first paying to Landlord all rent due for the balance of this Lease.

(c) Tenant will notify Landlord in advance if Tenant intends to be away from the Leased Unit for more than 10 days.

(d) Tenant will comply with all statutes, laws, ordinances and regulations. Tenant will not keep anything which is dangerous in the Leased Unit. Tenant will not conduct any dangerous activity in the building. Tenant will not do anything which might increase the danger to the Leased Unit or to other occupants in the building.

(e) Tenant will not act in any way which unreasonably disturbs the peace and quiet of other residents or of Landlord or Agent.

7. **POSSESSION.**

Landlord will make a good faith effort to make the Leased Unit available to Tenant on the day this Lease is scheduled to begin. If any delay does occur, no rent is due until the Leased Unit is available to Tenant.

Tenant can end this Lease by written notice to Landlord by certified mail, return receipt requested, if the Leased Unit is not available within 10 days after the Lease beginning date. Tenant's only remedy is to end the Lease. Landlord is not responsible for any inconvenience, loss or damage if there is any delay in making the Leased Unit available to Tenant.

8. **SUB-LETTING.**

Tenant may not sublease, transfer or assign this Lease. No person is allowed to occupy the Leased Unit unless specifically named in Paragraph 6(a).

9. **ALTERATIONS.**

Tenant may not remodel or make any structural changes to the interior or exterior of the Leased Unit. Tenant may not attach or remove any carpeting or fixtures without first obtaining Landlord's written permission. When this Lease ends, Tenant must return the Leased Unit to its original condition.

10. **CONDITION OF LEASED UNIT; REPAIR OF DAMAGE.**

Tenant has examined the Leased Unit, and is satisfied with its present physical condition.

Tenant agrees to maintain the Leased Unit during the term of this Lease in the same condition as it was on the beginning date of the Lease.

Tenant agrees to return the Leased Unit to Landlord at the end of this Lease in the same condition as it was on the beginning date of this Lease.

Tenant will promptly notify Landlord in writing if the Leased Unit is damaged or repairs are required. Landlord agrees to perform necessary repairs with reasonable promptness after receiving written notice from Tenant.

Tenant agrees to pay as additional rent the cost of the repair of damage caused by Tenant or other permitted occupants or visitors of Tenant. Only Landlord's employees, agents or contractors may make repairs to the Leased Unit.

Landlord is not responsible for any inconvenience or loss caused by necessary repairs to the Leased Unit.

11. CONDEMNATION.

Condemnation is the power of the government to take private property for public use. If the Leased Unit or any part of it is condemned, or voluntarily transferred by condemnation proceedings, this Lease will automatically end as to the condemned portion. If the Lease ends due to condemnation of a part of the Leased Unit, Landlord will reduce the rent accordingly. If the Leased Unit becomes uninhabitable due to the condemnation, the Lease will end when Tenant pays all rent due until the condemnation date. Tenant will not have any right to any award paid to Landlord by the condemning authority.

12. DAMAGE TO LEASED UNIT.

Landlord will not reduce the rent if there is a fire or other damage. Landlord will decide whether the Leased Unit cannot be lived in due to damage. If the Leased Unit becomes uninhabitable for any reason, this Lease will end when Tenant pays all rent due to the date that the Leased Unit is vacated.

Landlord is not responsible for any loss, damage or inconvenience to Tenant caused by fire or other cause.

13. TENANT'S PERSONAL PROPERTY AND INSURANCE.

Landlord is not responsible for any damage to Tenant's personal property. For that reason, Tenant must obtain insurance to protect his or her personal property. Tenant is in breach of this Lease if Tenant fails to obtain personal property insurance.

Any personal property left in the Leased Unit after Tenant has vacated or has been evicted is considered abandoned. Landlord may dispose of this property in any manner without notice to Tenant. Tenant must pay Landlord's cost of disposal of Tenant's property.

Tenant shall have comprehensive general liability insurance with an insurance company licensed to do business in Pennsylvania. The insurance must have minimum limits of liability for bodily injury and property damage of a combined single limit of \$300,000. This insurance is to protect Landlord and Tenant against any claim by Tenant's employees, servants, agents, visitors, licensees or family members.

If any insurance coverage maintained by Landlord is found to apply to any loss or damage covered by Tenant's insurance, the following will happen:

(a) Landlord's insurance and any obligation of Landlord to pay is considered excess coverage.

(b) Tenant's insurance must be fully used up before any claim can be made against Landlord or against Landlord's insurance coverage.

Regardless of anything stated in this Lease, Tenant releases Landlord from any injury loss or damage to personal property or persons from any cause. This Release is effective even if Landlord or Landlord's employees or agents cause the injury, loss or damage.

Tenant waives any right of subrogation by Tenant or by any insurance company which covers Tenant. Subrogation is the right to be repaid for any payments made by Tenant or Tenant's insurance for injury, loss or damage to personal property or persons.

Landlord may require Tenant to produce proof of insurance that is required in this Lease. It is a violation of the Lease to fail to have the insurance or fail to produce proof when requested.

14. ACCESS.

Landlord and anyone allowed by Landlord may enter the Leased Unit after first notifying Tenant. If there is an emergency, Landlord may enter the Leased Unit without giving Tenant advance notice. Tenant must obtain written approval from Landlord to add or change any lock. Tenant must provide to Landlord keys for any additional or changed locks.

15. END OF LEASE OR RENEWAL.

(a) Either party may end this Lease at the end of the original Term by written notice. Landlord or Tenant must receive this notice at least 60 days before the end of the Term.

(b) This Lease will automatically renew for 1 year if neither party ends the Lease at the end of the original Term or of any renewal term. Automatic renewal will not change the terms of this Lease except that the rent for each renewal term is increased by 5%.

(c) Landlord may increase the rent or change any other term of the Lease for any renewal period by sending written notice to Tenant. Landlord must send this notice at least 60 days before the end of the Term or of any renewal term.

Tenant may reject the renewal terms by sending written notice to Landlord by certified mail, return receipt requested, within 30 days of the date of Landlord's renewal notice. Tenant must then vacate at the end of the current Term. The Lease will renew on the terms set forth in Landlord's renewal notice if Tenant does not send notice ending the Lease.

(d) If Landlord agrees in writing to end this Lease before the end of the Term, Tenant is responsible for all costs and losses caused by the early ending of the Lease. As a condition to ending the Lease before the end of the term, Tenant must pay a liquidated damages buy out charge equal to three month's rent. This amount must be paid at the time that Tenant gives notice to Landlord. This amount is in addition to all rent due through the end of the month that Tenant ends the Lease and moves out. Tenant may not use the Security Deposit for this fee or for rent due under the Lease. In addition, Tenant must pay all rent and other charges due at the time that Tenant sends the notice. Tenant cannot end the Lease before the end of the term if Tenant is in Breach of Lease.

(e) If this Lease is ended and Tenant does not vacate on the ending date, Tenant must pay double the last monthly rental charge. This rental charge is due for each month that Tenant remains in possession of the Leased Unit.

16. RIGHT TO END LEASE DUE TO DEATH OR DISABILITY.

Tenant or the Estate shall have the right to end this Lease if Tenant dies or becomes disabled during the term of this Lease. Landlord may rent the Leased Unit without credit to Tenant or the Estate after Tenant or the Estate vacates. Tenant or the Estate must do the following to end the Lease:

- (a) send written notice of Tenant's death or disability to Landlord by certified mail;
- (b) provide adequate written medical proof that Tenant must leave the premises because he or she is no longer able to care for himself or herself due to a disability;
- (c) send to Landlord a copy of the death certificate if Tenant is dead;
- (d) pay the rent for a period of 2 calendar months from the last day of the month when notice is received by Landlord;
- (e) vacate the premises and give possession to Landlord within 30 days from the date of the notice; and,
- (f) give any security deposit to the Landlord in payment for the right to end this Lease before the end of the term.

17. LANDLORD'S REMEDIES.

Tenant is in breach of this Lease if Tenant fails to make rental payments when due or fails to comply with any other provision of this Lease. If Tenant breaches this Lease:

- (a) Tenant must immediately pay all rents for the balance of the term of this Lease and Landlord may sue to collect this rent
- (b) Landlord may end this Lease.
- (c) Landlord may evict Tenant.
- (d) Landlord may sue Tenant to collect any monies due including but not limited to legal fees and costs to enforce lease terms. Tenant agrees to pay all legal fees and costs.
- (e) To the extent allowed by law, Landlord may discontinue any utility services to the Leased Unit.
- (f) Landlord may exercise any one or more of the other remedies available to it under law or in equity.
- (g) Tenant agrees to waive the 15 or 30 day notice period which is contained in Section 501 of the Landlord and Tenant Act of 1951, as amended, 68 P.S. 250.501. **LANDLORD MAY FILE SUIT AGAINST TENANT TO ENFORCE THE TERMS OF THE LEASE WITHOUT NOTICE TO TENANT.**
- (h) Tenant must pay Landlord's costs of enforcing this Lease including legal fees, whether or not suit is begun, as additional rent.

18. VACATING LEASED UNIT.

Tenant must notify Landlord and must return all keys at the time that Tenant vacates the Leased Unit.

19. **NO WAIVER BY LANDLORD.**

If Landlord does not exercise any of its rights under this Lease, Landlord may still exercise these rights at a later date. Acceptance of past due rent is not a waiver of Landlord's rights to enforce other terms under this Lease.

20. **SUBORDINATION.**

This Lease and Tenant's rights under this Lease are subordinate (inferior) to all existing and any future financing, loans or leases on the building or land. Among other things, this means that the new owner or mortgagee may end this lease if there is a foreclosure sale of the property. Tenant agrees to waive rights by permitting the buyer at a foreclosure sale to end this Lease.

Tenant agrees to all financing and to sale of the Leased Unit or property subject to this Lease. Tenant authorizes Landlord to sign any papers on behalf of Tenant which are necessary to confirm the terms of this Paragraph. These are additional waivers of Tenant's rights.

21. **RELEASE OF LANDLORD.**

Landlord is not responsible for any injury, property damage or loss sustained by Tenant or Tenant's guests.

Tenant agrees to release Landlord from responsibility for any damage, loss or injury caused by any other person occupying the Property, or by Landlord or Landlord's agents or employees. Tenant agrees that this release includes losses or damages which result from any of Tenant's acts or failure to act. All claims against Landlord for any damage, loss or injury are expressly waived by Tenant.

22. **NOTICE TO TENANT.**

THIS LEASE CONTAINS WAIVERS OF CONSUMER RIGHTS. TENANT WAIVES CERTAIN RIGHTS BY SIGNING THIS LEASE.

23. **NO JURY TRIAL.**

Landlord and Tenant waive and give up any right to any jury trial for any claim or matter concerning this Lease or the Leased Unit.

24. **INCORRECT INFORMATION IN APPLICATION.**

If Tenant provided incorrect information in the Application, it is a breach of this Lease. Landlord may end this Lease and/or sue Tenant for possession and/or any losses or money damages if the Application contained incorrect information.

25. **ADDITIONAL TERMS AND CONDITIONS.**

The Rules and Regulations which are attached are part of this Lease. Violation of any of the "Rules and Regulations" is a breach of this Lease.

26. **SEPARABILITY.**

If one or more of the paragraphs of this Lease are determined to be invalid, the remainder of this Lease will remain in effect.

27. **AGENT.**

The Agent acts for the Landlord and not for itself. Tenant understands that the Agent is not responsible for any claims by Tenant.

28. **RIDERS.**

The following Riders are attached to and made a part of this Lease:

Rules and Regulations
Electric Service Addendum
Build Buy & Transfer

29. **LEASE CHANGES.**

The terms and conditions of this Lease may only be changed if in writing and signed by both Landlord and Tenant. No oral changes or agreements are permitted.

LANDLORD:

Old City Hall, L. P.

Date: _____

By: *Am Brumaker*
Landmarks for Living, Inc., Agent

Date: 5/19/04

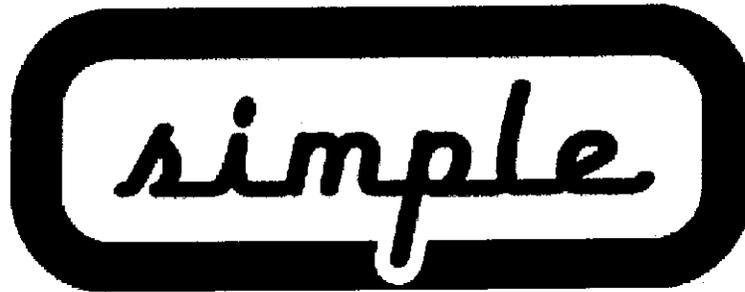
TENANT(S):

x *Carol Reynolds*
Transfer Technology

Date: 4-28-04

x *Carol Reynolds*
Carol A. Reynolds

Date: _____



Simple Brands, LP.
DOMESTIC WORKFORCE UTILIZATION
CERTIFICATION SUBMITTAL RESPONSE TO RFP
20080318 WINE KIOSKS II-12
May 6, 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.

APPENDIX K
DOMESTIC WORKFORCE UTILIZATION CERTIFICATION

Each proposal will be scored for its commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those proposers who will perform the contracted direct labor exclusively within the geographical boundaries of the United States. Those who propose to perform a portion of the direct labor outside of the United States will receive a correspondingly smaller score for this criterion.

In order to be eligible for any consideration for this criterion, proposers must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed. Failure to complete and sign this certification will result in no consideration being given to the proposer for this criterion.

I, James Lesser, the Managing Member of Simple Brands, LP a Pennsylvania limited partnership, ("Contractor") located at 190 Presidential Boulevard, Bala Cynwyd, PA 19004, having a Social Security or Federal Identification Number of [REDACTED], do hereby certify and represent to the Commonwealth of Pennsylvania ("Commonwealth") (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States.

OR

YES percent (100 %) [Contractor must specify the percentage] of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States. Please identify the direct labor performed under the contract that will be performed outside the United States: _____

[Use additional sheets if necessary]

The Pennsylvania Liquor Control Board shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

[Signature]
Signature/Date

MICHAEL T. FROST
Printed Name/Title

Simple Brands, LP

[Signature] 5/1/08
Signature/Date

James Lesser, Managing Member
Printed Name/Title



IN THE PUBLIC INTEREST

PENNSYLVANIA LIQUOR CONTROL BOARD

Harrisburg, Pennsylvania 17124-0001

January 29, 2009

Mr. James Lesser
Simple Brands, L.P.
190 Presidential Blvd.
Bala Cynwyd, PA 19004

RE: Contract 20080318

Dear Mr. Lesser:

It is my pleasure to inform you that Contract 20080318, for Wine Kiosks, has been approved. A fully executed copy of the Contract is enclosed.

Simple Brands, L.P. is authorized to proceed with the requirements of the Contract effective January 29, 2009.

James Short will serve as the PLCB Contact Person for this Contract. You may contact Mr. Short at (717) 787-8653 or jashort@state.pa.us.

Please let me know if you have any questions or concerns.

Very truly yours,

Debra L. Brinser
Chief, Procurement Division
(717) 787-9851

Enclosure



CONTRACT NO. 20080318

WINE KIOSKS

BETWEEN:

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LIQUOR CONTROL BOARD
NORTHWEST OFFICE BUILDING
HARRISBURG, PA 17124-0001**

AND

**SIMPLE BRANDS, L.P.
190 Presidential Boulevard
Bala Cynwyd, PA 19004**

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OFFICE OF CHIEF COUNSEL

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- Exhibit A: Initial PLCB Responsibilities**
- Exhibit B: Approved Subcontractors**
- Exhibit C: PLCB Assumptions**
- Exhibit D: Completion and Approval Form**
- Exhibit E: Telephone and Hardware Break/Fix**

CONTRACT
GENERAL CONDITIONS

1. PARTIES

The parties to this agreement (hereinafter referred to as "Contract") are the Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board, (hereinafter referred to as "PLCB") and Simple Brands, L.P. (hereinafter referred to as "Contractor").

The parties hereby agree as follows:

2. DEFINITIONS - For purposes of this Contract, the following terms and definitions apply:

- A. Acceptance Period -- The length of time that the PLCB has to review a deliverable.
- B. Actual Operating Expenses -- The actual costs incurred by the PLCB in connection with the installation and operation of the wine kiosks (subject at all times to the provisions of Paragraph 17.B).
- C. Board - The Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board (PLCB).
- D. Business Day - A weekday, excluding Commonwealth of Pennsylvania holidays.
- E. Commonwealth - The Commonwealth of Pennsylvania, including the Pennsylvania Liquor Control Board (PLCB).

- F. Contact Person - The PLCB official responsible for administering the Contract. This individual shall be the Contractor's primary contact for Contract questions and other issues. The Contact Person is James Short, or his/her authorized designee.
- G. Contract Year - One (1) full year beginning on the Effective Date of this Contract, and each subsequent full year thereafter during the term of this Contract. The final Contract year may be less than a full calendar year.
- H. Contracting Officer - The person or his/her designee authorized to sign the Contract on behalf of the PLCB. The Contracting Officer is Joe Conti.
- I. Contractor - Simple Brands, L.P. with offices located at 190 Presidential Boulevard, Bala Cynwyd, PA 19004.
- J. Contractor Project Manager - The Contractor's official or his/her designee responsible for the overall project management and coordination. This individual will be the primary point of contact with the PLCB. The initial Contractor Project Manager for this project is Michael Fiore. The Contractor may designate a new Contractor Project Manager upon written notice to the PLCB. The PLCB shall be given thirty (30) days notice to review the qualifications of, and to provide approval for, the new Contractor Project Manager, which approval will not be unreasonably withheld.
- K. Day - A calendar day.
- L. Distribution Center - A building designated for the receipt of merchandise, storage of merchandise and outbound transportation of merchandise. Also referred to herein as "warehouse" or "facility."

- M. Fiscal Year – The period from July 1 until the following June 30 each calendar year.
- N. Gross Profits - The dollar sales representing merchandise sold via the wine kiosks, less the weighted average of the cost of merchandise sold, minus sales tax and state liquor tax.
- O. Holiday - A day on which the PLCB Central Office, and/or PLCB wine and spirits stores are closed or not operating normally. (See Appendix I of the RFP, as incorporated herein by reference, for the store holiday schedule).
- P. Intentionally Deleted.
- Q. IBM 4690 Operating System – The operating system used on IBM's point-of-sale devices including registers and store controllers. It requires IBM proprietary hardware to function (a non-volatile, random access memory ("NVRAM") card).
- R. IBM GSA System – The point-of-sale (POS) application from IBM intended for the specialty and mass-merchandise retail environment, currently installed at the PLCB's stores, only on the IBM 4690 operating system, and heavily customized by the PLCB.
- S. IBM StorePay – A customizable software solution developed by IBM's National Retail Services Center, currently installed at the PLCB and used for processing credit, debit and gift card transactions, using an IBM proprietary interface for the IBM GSA POS system. It is not a standard product offering and the PLCB does not own or have the source code.
- T. In Writing - Other than verbal, i.e., via U.S. postal, electronic or facsimile transmission and/or delivery.

- U. Merchandise - Liquor (wine or spirits), accessories, and supplies.
- V. Minor – A person under the age of twenty-one (21) years.
- W. Oracle Retail Central Office - A part of the Oracle Retail Merchandizing System and Oracle Point-of-Service (POS) systems used to provide corporate-level management functions to Oracle POS as well as transport data between the stores and central accounting and retail management systems. Oracle Retail Central Office will be installed and configured as part of the proposed Point-of-Sale Upgrade project to replace the PLCB's ten (10) year old registers and software in its stores.
- X. Oracle POS – Oracle's software that runs inside cash registers in stores as well as servers running inside the stores functioning as store controllers or back office servers. The PLCB believes that Oracle POS will be installed and configured as part of the PLCB's proposed Point-of-Sale Upgrade project to replace the PLCB's outdated registers and software in its stores.
- Y. Oracle Retail Merchandising System (RMS) - A solution for managing merchandising activities, including inventory replenishment, purchasing, and vendor management, across multiple retail channels, and incorporating three (3) functional areas: business foundation management, merchandise management, and merchandise financial tracking. The PLCB is in the middle of a project to implement Oracle's Retail Merchandising System as well as Oracle's financial solution.
- Z. Payment Card – Visa, Mastercard, American Express and/or Discover credit and/or debit cards, or any other card issued by banking institutions subject to

state or federal regulation and accepted by the PLCB, and PLCB gift cards.

- AA. PCI DSS -PCI Data Security Standard (PCI DSS) - A set of comprehensive requirements for enhancing payment account data security, developed by the founding payment brands of the PCI Security Standards Council, to help facilitate the broad adoption of consistent data security measures on a global basis. PCI DSS is a multifaceted security standard that includes requirements for security management, policies, procedures, network architecture, software design and other critical protective measures, and is intended to help organizations proactively protect customer account data. The PLCB is compliant with PCI DSS.
- BB. PLCB - The Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board.
- CC. RFP - Request for Proposal No. 20080318 for Wine Kiosks.
- DD. Satellite Wine Store – A bottled wine kiosk, together with the space in which it is located.
- EE. Shortfall – The amount, if any, by which the PLCB's Actual Operating Expenses (subject to the calculations in Paragraph 17.B) exceeds the PLCB's Gross Profits.
- FF. Store(s) - Locations for the retail sale of merchandise operated by the PLCB, also referred to herein as PLCB and/or Pennsylvania Liquor Stores, wine and spirits stores, the retail liquor store system, satellite wine stores and retail locations.
- GG. Weekday - A day of the week, except Saturday or Sunday.
- HH. Weighted Average of the Cost of Merchandise - The cost of merchandise

factoring in the following components: cost of the merchandise, freight to distribution center, consolidated costs to distribution center (import or U.S.), distribution center costs to deliver to store, duty and tax, handling at distribution center including cross dock, merchandise inspection and charges to load vehicles other than distribution center contractor.

JJ. Wine Kiosks – Self service bottled wine kiosks provided by the Contractor pursuant to this Contract.

3. **TERM OF CONTRACT** - The term of the contract shall commence on the Effective Date (as defined below) and shall end at the close of business ten (10) years from the Effective Date. The Effective Date shall be fixed by the Contracting Officer, or his/her authorized designee after the contract has been fully executed by the Contractor and by the PLCB/Commonwealth, and all approvals required by Commonwealth contracting procedures have been obtained. The Contract shall not be legally binding until after the Effective Date is affixed and the fully-executed Contract has been sent to the Contractor. The Contracting Officer, or his/her designee, shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date, which is on or after the Effective Date. The PLCB shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No PLCB employee has the authority to verbally direct the commencement of any work under this Contract.

The PLCB reserves the right, upon at least ninety (90) days written notice to the Contractor prior to the expiration of the existing Contract term or the expiration of the option period that is in effect, to extend this Contract for five (5), one (1)-year option periods, subject to the terms and conditions set forth in the initial contract term. The Contractor may elect to decline to extend the Contract for any such additional option period by notifying the PLCB within thirty (30) days of receipt of the PLCB's notice of its decision to extend the Contract. As specific projects are requested by the PLCB and agreed to by both parties, the Contractor shall submit a detailed work plan, schedule of deliverables and cost for PLCB prior to the commencement of any work during the option year(s).

In addition, the PLCB, in its sole discretion, shall have the right, at the expiration of the Contract, to extend the term of the Contract, or any part of the Contract, for up to three (3) months, upon the same terms and conditions, in order to prevent a lapse in contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract, if deemed necessary by the PLCB.

4. SERVICES TO BE PROVIDED –

A. Commencing on the Effective Date of this Contract, as defined in Paragraph 3, Term of Contract, the Contractor shall perform all tasks and requested services as set forth within this Contract.

B. On the Effective Date, as defined in Paragraph 3, Term of Contract, the

Contractor shall begin to take the steps necessary to provide fully-functional wine kiosks, in accordance with the timelines as agreed to by the parties, for the PLCB to place in locations throughout the Commonwealth designated by the PLCB. Transactions from the wine kiosks will be monitored via a PLCB-staffed customer service support center. The Contractor shall provide maintenance services related to the wine kiosks as more fully described in Paragraph 17, Wine Kiosk Operations. The PLCB shall be responsible for stocking and restocking the wine kiosks with merchandise. The PLCB shall be responsible for contracting with third parties in securing the locations for all of the wine kiosks. Agreements for the locations shall be completed by a date set forth in the project plan or as otherwise mutually agreed by the parties to this Contract. All locations shall meet the networking and connectivity requirements agreed to by the parties.

- C. The Contractor shall accomplish the following tasks and provide the following deliverables:

Task 1 – Within one hundred eighty (180) days of issuance date of the Notice to Proceed, the Contractor will identify an appropriate wine kiosk or similar solution meeting the requirements of the RFP and will provide the PLCB with its concept, including its business plan, project plan, implementation timelines, and options for installing said devices using commercially reasonable practices/benchmarks. It is understood that "commercial reasonableness" must include consideration of the PLCB as a State-run, commercial enterprise that must both sell and control the sales of

alcohol beverages. The Contractor will also provide technical requirements for its installation of the hardware and software it will supply for the Customer Service Support Center. Finally, the Contractor will work with the PLCB in its business process design for inventory management, stocking and ordering.

Deliverable: The Contractor will provide the PLCB with a detailed report describing the proposed solution's technical requirements and required level of effort to set-up the stand-alone wine kiosk system. The Contractor will provide reasonably accurate depictions, drawings or other visual renderings of the proposed wine kiosks, which set forth highly accurate dimensions (height, width, depth, potential weight) and electrical/computer line demands. In addition, the Contractor will provide a PowerPoint presentation or another form of visual presentation outlining system implementation options associated with the stand-alone wine kiosk system. The Contractor will also provide technical requirements for its installation of the hardware and software that it will supply for the Customer Service Support Center. The Contractor will work with the PLCB in its business process design for inventory management, stocking and ordering.

Task 2 – Within two hundred and forty (240) days of issuance date of the Notice to Proceed, the Contractor will provide requirements (as described below) needed to facilitate the full testing process of the prototype.

Deliverable: The Contractor will present renderings and schematic drawings of the prototype wine kiosk. The Bill of Materials ("BOM") will be developed for the prototype and pre-production units. Requirements needed to facilitate the full testing process will be developed to test the prototype, including, but not limited to:

1. Physical attributes as defined in the schematic drawings
2. Compliance of data transmissions to the POSTRAN FTP access location on the Kiosk Central Server as indicated in Exhibit C (Assumption #4) to allow for data exchange with the PLCB system software interface. Contractor shall assist the PLCB in its determination of PLCB's design and data specifications to comply with the specified data exchange process documented in the Exhibit C.
3. Compliance with IBM's StorePay solution's interface for processing payment cards. The Contractor shall work with IBM to determine IBM's StorePay solution's interface for processing payment cards. PLCB shall have the right of final review and acceptance. The PLCB will provide contacts and introductions; however the Contractor shall be obligated to make arrangements with and pay IBM's National Retail Service Center for any services rendered.
4. Network Communication within the Wine Kiosks behind the Cisco 1841 router and support communication points needed to facilitate remote monitoring and support
5. Inventory process and controls

6. A presentation of the practical work flow and functionality (including the steps taken to ensure the safety of consumers and PLCB employees) of the Contractor's proprietary Point-of-Sale ("POS") process at the wine kiosk level only
7. Customer interface
8. A breakdown of the modular assembly process that will be deployed for the staging and location assembly
9. Updated project plan

Task 3 - The Contractor will be required to provide, in accordance with the timelines set forth in the project plan, an integration plan compliant with the design specifications requirements referred to in Sections 2 and 3 above which allow data to be exchanged among PLCB systems including IBM StorePay and wine kiosks (as defined in Exhibit C).

Deliverable: The Contractor will provide a fully documented design plan as specified above as it relates to the wine kiosks, Customer Service Center and data compliance to the PLCB systems defined above.

Task 4 – The Contractor will provide, in accordance with the timelines set forth in the project plan, a fully-functional prototype model which will be tested in conjunction with the PLCB. All test results will lead to modification of the pre-production or BETA unit based on the approved concept. Subject to the PLCB's review and approval, Contractor will define the testing requirements following the Contractor's completion of due diligence.

Deliverable: The Contractor and the PLCB will test the pre-production or BETA unit for the period of time as agreed by the parties in the project plan. The Contractor will present the test findings to the PLCB. The Contractor will revise the BOM and project plan to reflect any project change orders resulting from the testing or modifications during testing. The revised project plan will contain estimates on unit delivery, and success criteria for pre-production or BETA units, as well as a project plan. Parameters of testing shall include but not be limited to the customer interface, compliance with State and Federal laws and PCI DSS, compliance with design specifications in Task 2, Item 3, compliance with the technical requirements set forth in the RFP regarding verification that customers are of legal drinking age and are not visibly intoxicated and the steps taken to ensure the safety of consumers and PLCB employees.

Task 5 - The Contractor will be required to provide, in accordance with the timelines set forth in the project plan, a comprehensive rollout schedule.

Deliverable: The Contractor will provide a detailed, written comprehensive rollout schedule and corresponding project plan which will include, but not be limited to:

1. A determination of the number of wine kiosk controller computers involved in the final deployment and the time required installing each;

2. A list of the PLCB resources needed to complete the process within the schedule;
3. Identification of PLCB personnel needed for Contractor's deployment processes, and associated training requirements; and
4. A fully-detailed rollout plan, which incorporates a description of the PLCB's installation methodology.

Task 5.1 - Prior to commencing Task 6, but in any event no later than eighteen (18) months from the issuance date of the Notice to Proceed (or by such other period as may be agreed in writing as part of the rollout plan), the Contractor will deliver, set up and install the information technology hardware and software for the Customer Service Center. The Contractor will also conduct training for the Customer Service Center's staff and provide manuals, job training aids and other training material so that the PLCB can train future staff. The Contractor is not responsible for the selection of the facility, networking to that facility, desks, chairs or other office furniture, all of which the PLCB will provide.

Deliverable:

1. Installation of the hardware and software for the Customer Service Center.
2. Training of the initial Customer Service Center personnel.

3. Training materials necessary and sufficient to train future Customer Service Center personnel.

Task 6 - Within eighteen (18) months from the issuance date of the Notice to Proceed or by such other period as agreed as part of the rollout plan or the updated project plan, the Contractor will set up and install one hundred (100) wine kiosks, video links, and other hardware/software components and, in general, provide implementation support. The Contractor will maintain the wine kiosks for the remaining term of the Contract in accordance with the requirements set forth in Paragraph 17.

Deliverable: The Contractor will install wine kiosks that comply with the specifications that are agreed to by the parties following completion of the Contractor's due diligence. Installation will include placing the wine kiosks in the locations designated by the PLCB and, with the PLCB's networking and subject to the PLCB completing its other required tasks as described in this Contract and the project plan, making them operational. Following completion of installation of the wine kiosks, the Contractor will provide a report detailing the resolution of problems related to the distribution or installation of the wine kiosks and the rate of deployment.

Task 7 – Upon written notification by the PLCB that the PLCB has commenced its POS upgrade project, the Contractor will be required to::

- o develop a schedule with the PLCB's POS upgrade project manager for the due diligence that the Contractor will have to conduct in connection with

the Oracle Central Office POS system.

- o jointly develop and mutually agree upon the new data specifications requirements needed to develop an integration plan. The integration plan will address the exchange of data from the wine kiosk central server as indicated in Exhibit C (Assumption #4) to allow for data exchange with the wine kiosks system to the Oracle Central Office systems and payment card switching system used by the Oracle POS. The payment card switching system will be owned, operated and maintained by the PLCB.

Deliverable: The Contractor will provide a full documented design plan for the software interfaces. The Contractor will update its data interface module at all wine kiosks to support the Oracle Retail Management System's new requirements on a schedule to be mutually agreed upon by the parties, but whose completion date will be no later than the successful completion of the PLCB's POS upgrade project.

D. The parties agree that following the Contract Effective Date, the Contractor will conduct due diligence in preparation for completing the tasks and deliverables required by this Contract. The parties also agree that, following due diligence efforts, they may decide to alter the order in which the tasks shall be performed by the Contractor. The parties shall discuss such changes in good faith. Any such changes shall be mutually agreed upon in writing by the parties.

E. The PLCB shall perform the responsibilities, and shall provide the equipment, software, materials and resources as set forth in this Contract (including, but not limited to those listed in Exhibit A) and as mutually agreed upon in writing,

including as may be agreed in the applicable project or business plan. The Contractor's nonperformance of its obligations under this Contract shall be excused if and to the extent such nonperformance results from or is related to (1) the PLCB's failure to perform its responsibilities in a timely manner in accordance with the terms of this Contract, the applicable project or business plan, or the PLCB's failure to provide the equipment, software, materials or resources set forth in this Contract, the applicable project or business plan, or (2) defects with or caused by any equipment, software, materials or resources provided by the PLCB.

- F. A list of assumptions shall be included in the applicable project or business plan. The parties also have agreed that completion of the Contractor's tasks are based on a number of assumptions that have been made by Contractor, which are listed in Exhibit C (and such other assumptions as the parties may agree in writing). If it is determined by Contractor in performing hereunder that such assumptions were not accurate, the parties will meet to discuss changes that may be necessary to agreed upon timelines, project plans and tasks to be performed by Contractor.
- G. The Contractor's completion of each task may require input from the PLCB. The PLCB shall provide the resources necessary to timely and accurately provide such input. The PLCB shall respond to each request of the Contractor in writing within ten (10) business days. The PLCB's failure to respond in a timely manner

may lead to delays to the timelines established by the parties and may prevent the Contractor from completing its tasks and deliverables as required by this Contract.

- H. The PLCB will assume the responsibility as the retailer for stocking and restocking the wine kiosks during the duration of the parties' business relationship. The PLCB will use reasonable efforts to ensure that the wine kiosks are stocked with appropriate merchandise. Although the Contractor will retain ownership of the wine kiosks and all related proprietary technologies, it will have no discretion or control over the location of those modules, the selection of wines stocked in any module, the pricing set by the PLCB for those wines, or the criteria selected by the PLCB to govern sales of those wines to consumers.
- I. If the PLCB breaches its obligations to perform the responsibilities and/or to provide the equipment, software, materials and resources as described in the project or business plan mutually agreed upon by the parties, the Contractor shall file a claim pursuant to Paragraph 22, Contract Controversies.

5. **REPORTS AND PROJECT CONTROL** - The Contractor shall submit audits, reports, receipts and/or forms as the PLCB shall reasonably require.

A. **Project Plan**

Following completion of due diligence, the Contractor must prepare, maintain and

provide to the PLCB a detailed project plan that will detail the phased approach that will be used to complete the task and deliverables described in Paragraph 4 of this Contract. The project plan must clearly establish the work elements of each task, the resources assigned to each element, PLCB resources and responsibilities required to assist in the completion of each task, the time allotted to each element, task assumptions and dependencies and deliverable items to be produced.

B. Progress Reports

The Contractor shall prepare and submit to the PLCB written weekly progress reports during Tasks 1, 2, 3, 4, 5, 5.1, 6 and 7 addressing project status, significant accomplishments during the reporting period, problems, and recommendations for resolution. Reports must be in electronic format to the PLCB Contact Person by Tuesday of each week for the previous week and will show progress through the entire week.

C. Project Meetings

During the course of work, the Contractor's Project Manager and other representatives of Contractor and the PLCB will hold regularly scheduled conference calls at mutually agreeable times. In addition, the Contractor shall attend project meetings with the PLCB approximately one (1) time per month. The meetings will take place in Harrisburg, Pennsylvania or by videoconference. The PLCB Contact Person will schedule all meetings. The purpose of these

meetings may include, but will not be limited to, project status and presenting recommendations and strategies.

6. **PROJECT CHANGE CONTROL PROCEDURES** - The PLCB reserves the right to, at any time during the term of the Contract, request changes to the tasks or deliverables described above through change orders. Any such change order shall be in writing and signed by the Contact Person. Changes relating to the work to be accomplished by the Contractor under the Contract may be requested at any time by either party to the Contract. The change order shall be effective as of the date such change order is executed by all necessary parties, unless the change order specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract. There shall be no charge to the PLCB for any change order requested prior (i) to its written acceptance of Contractor's project plan or (ii) to the successful BETA-testing of the units, provided that in such changes are necessary and reasonable changes required to allow the wine kiosks to operate in a manner that has been agreed to by the parties. The Contractor must provide written notice to the PLCB when such change order would result in increased costs or delay of deliverables. In such a case, the PLCB and the Contractor shall negotiate and agree on appropriate fees for services or materials required under the change order and/or the agreed upon delay of deliverables within ten (10) days of the PLCB's receipt of Contractor's written notice regarding the increased costs and/or delay. The parties agree that the Contractor may refuse to make any changes to the design of the wine kiosks once the initial design has been approved by the PLCB.

The Contractor agrees to provide the service in accordance with the change order, following agreement by the parties as to any of Contractor's fees or costs to the PLCB, if applicable, related to this Contract, delays of deliverables, and acceptance of the change by the Contractor. Any dispute by the Contractor in regard to the performance required under any change order shall be handled through Paragraph 22, Contract Controversies. In no event shall the Contractor begin to perform any services in connection with any change order until the date such Change Order is executed by all necessary parties, unless the applicable Change Order identifies a later effective date.

For purposes of this Contract, "change order" is defined as a written order signed by the Contact Person directing the Contractor to make changes authorized under this Paragraph 6.

This procedure will be used by the PLCB and the Contractor to control changes relating to the work to be accomplished by the Contractor. It will also be used if modifications to deliverables are requested.

- A. The PLCB Contact Person or Contractor personnel requesting the change will write a Project Change Request (PCR) which describes the change, and includes the necessary rationale and/or effect the change will have on the project. PCRs shall be numbered sequentially, starting with number one.

- B. The PLCB Contact Person or Contractor Project Manager, as appropriate, will review the proposed change.
 - C. After determination by the Contractor of the effects on price and schedule, the PLCB Contact Person and Contractor Project Manager will weigh the merits of the proposed change and approve it or reject it. The Contractor will not have any obligation to implement any changes until the applicable PCR is approved by both parties.
 - D. Each PCR approved in the PCR process must be signed by both parties and will be incorporated into the Contract and will not require any additional written Contract amendment(s), provided that the PCR process may be used in this manner only to accomplish the expeditious approval of necessary modifications or other project deliverables, previously unforeseen. However, it may not be used to modify other Contract language or any other terms or conditions of the Contract.
7. **SPECIAL SERVICES** - Upon request of the PLCB, the Contractor shall perform special services, not otherwise provided for in this Contract, at rates mutually agreed upon in writing.
8. **ACCEPTANCE** -

- A. The project plan submitted by the Contractor and approved by the PLCB shall identify the date a particular deliverable is scheduled to be delivered and the length of time that the PLCB has to review a deliverable (the "Acceptance Period"). The PLCB will not unreasonably delay commencement of acceptance.

- B. The Contractor shall certify, in writing, to the PLCB when a particular deliverable, interim or final, is completed and ready for acceptance (hereinafter Acceptance). When the Contractor submits a deliverable, the Contractor shall provide the PLCB with an Approval and Acceptance Form (in the form attached as Exhibit D). On or before the end of the Acceptance Period for a deliverable, the PLCB shall either: (1) provide the Contractor with the PLCB's written acceptance of the particular deliverable or (2) identify to the Contractor, in writing, the failure of the deliverable to comply with the specifications, listing all such failures with reasonable detail.

- C. If the deliverables are in compliance with the specifications, then the PLCB shall provide the Contractor with PLCB's written acceptance of the deliverables. If the deliverables are not in compliance with the specifications, then the PLCB shall provide the Contractor with the PLCB's written rejection of the deliverables.

- D. Upon the Contractor's receipt of the PLCB's written notice of rejection, which must identify the reasons for the failure of the deliverables to comply with the specifications, the Contractor shall have sixty (60) business days, or such other

time as the PLCB and the Contractor may agree is reasonable, within which to correct all such failures and/or defects, and resubmit the corrected deliverables, certifying to the PLCB, in writing, that the failures/defects have been corrected, and that the deliverables have been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted deliverables and certification, the PLCB shall have thirty (30) days, or such other time as the PLCB and the Contractor may agree is reasonable, to test the corrected deliverables to confirm that the failures/defects identified by the PLCB have been corrected and brought into compliance with the specifications and that the corrections have not directly caused other defects to the applicable deliverables. If such identified corrected deliverables are in compliance with the specifications and no other failures/defects are identified as having resulted from such corrections made by the Contractor, then the PLCB shall provide the Contractor with the PLCB's acceptance of the deliverables.

- E. Intentionally deleted.
- F. If the corrected identified deficiencies/defects still contain or cause additional failures/defects in the deliverables, the parties shall repeat the procedure set forth above in this Paragraph 8.
- G. If after repeated attempts (in no event less than three (3)) to correct the failures and/or defects, a portion of the deliverables continue to contain such failures and/or defects, the PLCB may, upon forty-five (45) days written notice, terminate the Contract if the Contractor fails to correct such failure and/or defects within such forty-five (45) day period. In no event shall any such period serve to extend

the date by which the Contractor is to provide visuals of the proposed wine kiosks pursuant to Task 2 of this Contract.

9. **LIMITATION OF LIABILITY** -- Except with respect to Contractor's breach of Paragraph 12 or 29, the Contractor's total liability to the PLCB for any and all contractual claims relating to or arising under this Contract shall be as set forth in Paragraph 17.B.

10. **OFFICE SPACE** – Except as may otherwise be stated in the applicable project or business plan, and as mutually agreed upon by the parties in writing, the PLCB will have no obligation to provide any office space to the Contractor. The PLCB will, however, work with the Contractor to the best of its ability to ensure that sufficient space is made available to the Contractor to accomplish the project while on site.

11. **EQUIPMENT AND MATERIALS** - Except as may otherwise be stated in the applicable project or business plan, and as mutually agreed upon by the parties in writing, the Contractor shall furnish all software, materials, and other necessary equipment for its employees to perform its Contractual requirements. All software, materials and other equipment provided by the Contractor shall remain the property of the Contractor.

12. **INSURANCE AND SURETY** –
 - A. **Insurance** - Except as provided for in Paragraph 12.A.3 below, the Contractor shall purchase and maintain at its expense for the term of the Contract the

following types of insurance, issued by companies and evidenced by policies, both of which are acceptable to the PLCB.

1. Workers' Compensation Insurance – The Contractor shall obtain workers' compensation insurance sufficient to cover all of the employees of the Contractor or any subcontractor working to fulfill this Contract.

2. Comprehensive General Liability and Property and Damage Insurance - The Contractor shall obtain Comprehensive General Liability and Property Damage Insurance in an amount not less than one million dollars (\$1,000,000.00) for injury to or death of one (1) person in a single occurrence, and three million dollars (\$3,000,000.00) for injury to or death of more than one (1) person in a single occurrence, and five hundred thousand dollars (\$500,000.00) for a single occurrence of property damage.

Before the PLCB will issue the Notice to Proceed, the Contractor shall submit to the PLCB current certificates of insurance naming the PLCB as an additional insured within ten (10) days after written notice to furnish such certificates. Upon the PLCB's written request, the Contractor shall provide the PLCB with a copy of any policy, which names the PLCB as an additional insured on the general liability and any excess coverage policy applicable to the services provided by the Contractor under this Contract. These certificates shall contain a provision

that coverage afforded under the policies shall not be cancelled or changed until at least thirty (30) days prior written notice has been given the PLCB. Copies of such notification shall be sent to the Contracting Officer.

The Contractor also agrees to authorize any provider of insurance coverage required under this Contract, to notify the Contracting Officer of any notices or premiums due by sending a copy of such notice to the Contracting Officer. The PLCB reserves the right, in the event of any default by the Contractor on any premiums due hereunder, to cure said default and to deduct such premiums from any monies due the Contractor.

If the Contractor does not maintain insurance as required by this Paragraph 12, the Contractor will be considered in default of this Contract pursuant to Paragraph 20, Default.

3. Flood Insurance – If applicable, the Contractor shall maintain flood insurance insuring the interest of the PLCB in all PLCB materials in the custody of the Contractor. The amount of the insurance maximum will be based upon the allowable insurance available for that specific site. This clause is applicable to any and all facilities/equipment of the Contractor used to perform the requirements of this Contract which are situated in a flood plain designated by the United States (U.S.) government.

- B. **Personal Injury/Property Damage** - Without in any way limiting the scope of Paragraph 12.A above, the Contractor shall be liable for all personal injuries or tangible property damage to invitees while on the Contractor's or the PLCB's property caused by the negligence of the Contractor. The Contractor shall also be liable for any personal injuries or tangible property damages sustained by the PLCB, its agents, servants, employees or invitees resulting from the negligent activities of the Contractor, its agents, servants, employees or invitees. The Contractor shall also be liable for any and all harm to PLCB merchandise resulting from (1) defective wine kiosks, provided that the Contractor shall not be responsible for such harm that is the result of (i) changes to deliverables made by the PLCB or its agents not otherwise agreed to by the parties under Paragraph 4, (ii) negligence, misuse or abuse by the PLCB or its agents, (iii) reasonable wear and tear or (iv) defects with any equipment, software, resources or materials provided by the PLCB or (2) the Contractor's breach of this Contract with respect to its obligations to maintain the wine kiosks.
- C. **Occupational Safety and Health Requirements** - All matters dealing with the health, welfare and working conditions of the Contractor's employees are the responsibility of the Contractor. The Contractor agrees to comply with all local, state and federal regulations governing health, welfare and occupational safety standards.

13. **CONDUCT OF SERVICE** -

A. Work Performance - Unless otherwise provided herein, the Contractor shall furnish all necessary qualified personnel and equipment to perform the requirements set forth in the Contract. Unless otherwise mutually agreed by the parties, all services required in the Contract shall be performed within the time periods specified in the Contract. If applicable, the Contractor shall be compensated in accordance with the terms and conditions of this Contract. The Contractor's work hereunder shall be carried out under the supervision of the Contact Person. The PLCB acknowledges that the Contact Person or his/her authorized designee is authorized to act on behalf of and make decisions for the PLCB.

1. PLCB Policies/Procedures - The Contractor shall use and follow all policies, practices, systems and procedures as provided by the PLCB to the Contractor. Existing policies, practices, systems and procedures will be provided to the Contractor prior to the Contractor's execution of this Contract. Amended or supplemental policies, practices, systems and procedures during the term of the Contract will be provided as appropriate.
2. The Contractor is required to replace any staff member(s) as soon as reasonably possible following notification by the PLCB if, in the reasonable opinion of the PLCB, the identified staff member (i) is not technically proficient to handle tasks assigned or such staff member(s), (ii) in performing services from PLCB locations, has repeatedly failed to follow

the policies and procedures of the PLCB as provided to the Contractor in accordance with Paragraph 13.A.(1) or (iii) has personally caused a material breach of this Contract. Notwithstanding the foregoing, the PLCB may not request the removal of the Contractor's Project Manager.

- B. Clerical/Administrative Costs - The Contractor is responsible for and agrees to pay for all clerical and administrative costs which it incurs incidental to the terms and conditions of this Contract.
- C. Offset Provision - The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other debt or obligation of the Contractor or its subsidiaries that is owed to the Commonwealth and is not being contested on appeal against any payments due the Contractor under this or any other contract with the Commonwealth.
- D. Nondiscrimination/Sexual Harassment Clause - The Contractor agrees to the conditions of Appendix A of the RFP, as incorporated herein by reference.
- E. Contractor Integrity Provisions - The Contractor agrees to the conditions of Appendix D of the RFP, as incorporated herein by reference.
- F. Liquor Code - The Contractor agrees to the conditions of Appendix B of the RFP, as incorporated herein by reference.

- G. Adverse Interest Act - The Contractor agrees to the conditions of Appendix C of the RFP, as incorporated herein by reference.

- H. Americans with Disabilities Act - The Contractor agrees to the conditions of Appendix H of the RFP, as incorporated herein by reference.

- I. Contractor Responsibility Provisions - The Contractor agrees to the conditions of Appendix G of the RFP, as incorporated herein by reference.

- J. Covenant Against Contingent Fees - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the PLCB shall have the right to terminate this Contract, in writing, without liability, or, in its discretion, to deduct from the Contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

- K. Licenses Required - The final award of this Contract is contingent upon the satisfactory issuance to the Contractor of any appropriate federal, state or local license, or permit legally necessary to operate.

- L. Other Contractors - The Contractor, its servants, agents and employees shall fully cooperate with and not restrict facility access to other PLCB/Commonwealth contractors and/or employees inasmuch as the performance of work of such other contractors and/or Commonwealth employees is related to the operation of the PLCB's business. The Contractor, its servants, agents and employees, shall not commit or permit any act which will interfere with the performance of work by any other PLCB/Commonwealth contractor and/or employees. This Paragraph 13.L shall be included in the contracts of all contractors with whom this Contractor will be required to cooperate in the performance of this Contract. The PLCB shall equitably enforce this Paragraph 13.L on all contractors to prevent the imposition of unreasonable burden upon any contractor. The Contractor shall be responsible for any costs incurred by the PLCB/Commonwealth or the PLCB/Commonwealth contractors for violations of this Paragraph 13.L.

- M. Environmental Provisions - In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations (local, state and federal).

- N. Compliance with Laws - The Contractor shall comply with all federal and state laws and regulations and local ordinances applicable to the Contractor's performance of the services under this Contract, including, but not limited to, the Federal Alcohol Administration Act.

- O. Rights and Remedies - Failure by either party to exercise any of its rights and remedies under this Contract shall not constitute a waiver of those rights or remedies.
- P. Recycled Content Provisions - The Contractor shall comply with the Post-Consumer Recycled Content Provisions as set forth in Appendix E of the RFP, as incorporated herein by reference.
- Q. Warranty - The Contractor warrants that all services performed and/or delivered by the Contractor, its agents and subcontractors shall be performed in a professional and workmanlike manner. The Contractor further warrants that the portions of the wine kiosks created by the Contractor, its agents and subcontractors shall be free and clear of any material defects in workmanship or materials. The 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 the 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 not otherwise agreed to by the parties under Paragraph 4,

(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.

- 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. This is upon condition that the PLCB shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the PLCB may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the PLCB at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the PLCB harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the PLCB may pay

or incur by reason of any infringement or violation of the rights occurring to any holder of any copyright, trademark, patent or trade secret interests and rights in any services or deliverables provided by the Contractor. If any of the services or 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 infringing deliverable, or, at the option of the PLCB, only those portions of the deliverable which are held to be infringing. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

- S. Ownership Rights - 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 the Contractor perpetually. The Contractor hereby grants the PLCB, 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 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 modify or 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, unless the parties have made other arrangements mutually agreed upon in writing, subject to Paragraph 17.K.

The PLCB acknowledges that the Contractor will attempt to market the wine kiosks (or similar devices) to other potential customers, including other state run liquor control boards. In doing so, the Contractor may reveal to such potential customers the results of the PLCB's use of the wine kiosks and such other information as may be relevant to such potential customers in their consideration of the wine kiosks, subject to prior written consent by the PLCB, which consent shall not be unreasonably withheld. Except as otherwise provided in this Paragraph 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 Paragraph 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. Background Checks - The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth IT facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access and on an annual basis thereafter.

Before the PLCB will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the PLCB consents to the access, in

writing, prior to the access. The PLCB may withhold its consent at its complete discretion. Failure of the Contractor to comply with the terms of this paragraph on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the PLCB may result in default of the Contractor under this Contract.

The Commonwealth specifically reserves the right of the PLCB to conduct its own background checks over and above that described herein.

X. 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: