

**PENNSYLVANIA LIQUOR CONTROL BOARD (PLCB)  
STANDARD CONTRACT TERMS AND CONDITIONS  
FOR NON-MERCHANDISE PURCHASE ORDERS**

**1. TERM OF CONTRACT**

The term of the Contract shall start on the Commencement Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to any other Contract provisions. The Commencement Date shall be the later of the date in the Notice to Proceed or the Effective Date (as defined below). The Effective Date shall be the last signatory date after the Contract is fully executed by Contractor, the PLCB, and any other approvals required by Commonwealth contracting procedures. **No contractual work shall begin until Contractor is issued a Notice to Proceed by the PLCB directing performance to begin on a date certain which is on or after the Effective Date.** Contractor shall not perform any service or work or incur any expenses prior to the Commencement date and the PLCB shall not be liable to pay Contractor for any service or work performed or expenses incurred before the Commencement date. No PLCB employee has the authority to verbally direct the commencement of any work under this Contract.

**2. EXTENSION OF CONTRACT TERM**

To prevent problems associated with contract expiration, termination, or transition, including to avoid a lapse in service, the PLCB reserves the right, upon notice to Contractor, to extend the term of the Contract for up to six months upon the same terms and conditions.

**3. DEFINITIONS**

Capitalized terms used in these standard terms and conditions that are not otherwise defined in these provisions have the meanings specified in the Contract to which it is attached.

As used in this Contract, these words shall have the following meanings:

- a. **Amendment:** amendments are issued for any change to the terms and conditions, or any change exceeding the scope of the Contract, including material changes to the requirements or costs of the Contract and require the same signatures as the original Contract document: i.e., the officers who may bind the Contractor, and the Commonwealth officials who may bind the PLCB. Whether a document constitutes an Amendment, or another type of change/notice document is in the discretion of the PLCB.
- b. **Change Order:** change orders are notices of a change which one or both Parties have the option to change under the Contract. They can also be used as a notification of a correction. Change Orders are signed by Party-designated officers/officials of the Parties, including PLCB legal counsel. Whether a document constitutes a Change Order or another type of change/notice document is in the discretion of the PLCB.

- c. **Commonwealth:** The Commonwealth of Pennsylvania.
- d. **Contracting Officer:** The person authorized to administer this Contract for the PLCB and to make written determinations with respect to the Contract.
- e. **Days:** Unless specifically indicated otherwise, days mean calendar days.
- f. **Developed Works or Developed Materials:** All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples, or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.
- g. **Documentation:** All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, proposals, correspondence, electronic communication or other machine-readable storage media.
- h. **Oracle Supplier Portal (Portal):** PLCB's online self-service platform used to facilitate business with the PLCB.
- i. **Services:** All Contractor activity necessary to satisfy the Contract.

#### 4. INDEPENDENT PRIME CONTRACTOR

In performing its obligations under the Contract, Contractor will act as an independent contractor and not as an employee or agent of the PLCB or the Commonwealth. Contractor shall not have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the PLCB or the Commonwealth. This Contract does not create an association, agency, joint venture, or partnership between the Parties or impose any liability attributable to such a relationship upon either Party. Each party shall be solely responsible for compensating its personnel and for payment of all related FICA, workers' compensation, unemployment and withholding taxes. Neither party shall provide the other party's personnel with any benefits, including but not limited to compensation for insurance premiums, paid sick leave, or retirement benefits.

Contractor shall be responsible for all services in this Contract regardless of if Contractor provides them directly. Furthermore, Contractor is the sole point of contact regarding all contractual matters, including all payments and charges resulting from the Contract and all issues related to subcontractor performance.

#### 5. DELIVERY

- a. **Supplies Delivery:** All item(s) shall be delivered F.O.B. Destination. Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the PLCB. Loss, injury, or destruction shall not release Contractor from any contractual obligations. Except as otherwise provided in this

contract, all item(s) must be delivered within the time period specified. Because the PLCB is a sole source for many of its products to Pennsylvania consumers, time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver items as specified. Unless otherwise stated in this Contract, delivery must be made within 30 days after the Effective Date. Failure to do so may be considered by the PLCB as a material breach of this Contract.

- b. **Delivery of Services:** Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

## **6. ESTIMATED QUANTITIES**

It shall be understood and agreed that any quantities listed in the Contract are estimates only and may be increased or decreased in accordance with the actual requirements of the PLCB and that the PLCB by accepting any bid, in whole or in part, contracts to purchase only the materials and services in the quantities represented in the actual procurement specifications and actual needs of the PLCB. This is a non-exclusive contract and the PLCB reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever the PLCB deems it to be in its best interest.

## **7. WARRANTY**

Contractor warrants, and the PLCB has relied on Contractor's oral and written affirmations that all items furnished, and all services performed by Contractor, its agents, and subcontractors shall be free and clear of any defects in skilled labor or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one year following delivery by Contractor and acceptance by the PLCB. Contractor shall repair, replace or otherwise correct any problem with the delivered item. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the PLCB and the PLCB shall be provided an extended warranty for that part for a period of one year.

## **8. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY**

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. Contractor shall defend any suit or proceeding brought against the PLCB on account of any alleged patent, copyright, or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the PLCB shall provide prompt notification in writing of any suit or proceeding; full right, authorization, and opportunity to conduct the defense; and full information and all reasonable cooperation for the defense of same.

If 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 infringement action. If information and assistance are furnished by the PLCB at Contractor's written request, it shall be at Contractor's expense, but the responsibility for expenses shall be limited to Contractor's written authorization.

Contractor shall indemnify and hold the PLCB harmless from all damages, costs, and expenses, including attorney's fees, that Contractor or the PLCB may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by Contractor in any suit or proceeding are held to constitute infringement and the use is enjoined, Contractor shall, at its own expense and at its option, either procure the right to continue use of the infringement products, replace them with noninfringement equal performance products, or modify them so that they are no longer infringing.

If Contractor is unable to do any of the preceding in a timely manner, Contractor agrees to remove all equipment or software obtained contemporaneously with the infringing product, or, at the option of the PLCB, only those items of equipment or software which are held to be infringing, and to pay the PLCB: 1) any amounts paid by the PLCB towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the PLCB for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any remaining pre-paid maintenance fee. The obligations of Contractor under this paragraph continue without time limit and survive the termination or expiration of this Contract. No costs or expenses shall be incurred by the PLCB for payment by Contractor without its written consent.

## **9. OWNERSHIP RIGHTS**

The PLCB shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the PLCB as part of the performance of the Contract.

## **10. ACCEPTANCE**

No item(s) received by the PLCB shall be deemed accepted until the PLCB has had a reasonable opportunity to inspect the item(s). Any item(s) discovered to be defective or that fails to conform to contractual specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliant specifications were not reasonably ascertainable upon the initial inspection. It shall be the duty of Contractor to remove rejected item(s) from the premises within 15 days after notification at Contractor's expense.

Rejected item(s) left longer than 15 days will be regarded as abandoned, and the PLCB shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the PLCB's costs and expenses regarding the storage and sale of the item(s). Upon notice of rejection, Contractor shall immediately replace all rejected item(s) with others conforming to contractual specifications or that are

not defective. If Contractor fails, neglects, or refuses to remedy the rejected items, the PLCB shall then have the right to procure a corresponding quantity of the rejected item(s), and deduct the difference between the price stated in the Contract and the cost to the PLCB from any monies due or that may become due to Contractor.

**11. PRODUCT CONFORMANCE**

The PLCB reserves the right to require all Contractors to:

- a. Provide certified data from laboratory testing performed by Contractor, or performed by an independent laboratory, as specified by the PLCB.
- b. Supply published manufacturer product documentation.
- c. Permit a PLCB representative to witness testing at Contractor's location or at an independent laboratory.
- d. Complete a survey/questionnaire relating to the bid requirements and specifications.
- e. Provide customer references.
- f. Provide a product demonstration at a location of the PLCB's choosing.

**12. REJECTED MATERIAL NOT CONSIDERED ABANDONED**

The PLCB shall have the right to not regard as abandoned any rejected material, and to demand that Contractor remove any rejected material from any premises under the control of the PLCB within thirty (30) days of notification. Contractor shall be responsible for removal of the rejected material and any clean-up caused by the material, including all fees and costs. If Contractor fails or refuses to remove the rejected material and conduct a cleaning as demanded by the PLCB, the PLCB may seek payment from, or setoff any payments due, to Contractor the costs of removal and clean-up under this or any other Contract with the PLCB. This is in addition to all other rights to recover costs and damages incurred by the PLCB.

**13. COMPLIANCE WITH LAW**

Contractor shall comply with all federal, state and local laws, regulations and Commonwealth and PLCB policies applicable to its Services and Deliverables, including, but not limited to, all statutes, regulations and rules that are in effect as of the Effective Date of the Contract and shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligation. This specifically includes all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the Breach of Personal Information Notification Act, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2330.

If any existing law, regulation or policy is changed or if any new law, regulation or policy is enacted that affects the Services provided under this Contract, Contractor compliance shall continue to be required. Where necessary, the Parties shall modify this Contract, via **Section 39, Changes**, to the extent reasonably necessary to:

- a. Ensure that such Services will be in full compliance with such laws, regulations and policies; and
- b. Modify the rates applicable to such Deliverables or Services.

#### 14. ENVIRONMENTAL PROVISIONS

In the performance of the Contract and if applicable to the goods or services provided, Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to, the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. § 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. § 6018.101 et seq.; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. § 693.1.

#### 15. POST-CONSUMER RECYCLED CONTENT

- a. Except as specifically waived in writing by the Commonwealth of Pennsylvania's Department of General Services, any products which are provided to the PLCB as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified by the United States' Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- b. **Recycled Content Enforcement:** Contractor may be required, after delivery of the Contract item(s), to provide the PLCB with documentary evidence that the item(s) were produced with the required minimum percentage of post-consumer and recovered material content.

#### 16. COMPENSATION

- a. **Compensation for Supplies:** Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Contract. All item(s) shall be delivered within the time period(s) specified in the Contract. Contractor shall be compensated only for item(s) that are delivered and accepted by the PLCB.
- b. **Compensation for Services:** Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. Contractor shall be compensated only for work performed to the satisfaction of the PLCB. Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.
- c. Notwithstanding any other provision of this Contract, the Contractor and the PLCB may negotiate new deliverables if those deliverables become necessary within the scope of the Contract. Negotiated deliverables may be added by Change Order.

**17. BILLING REQUIREMENTS**

Contractor shall include in all its invoices the following minimum information:

- a. Vendor name and "Remit to" address, including Oracle Vendor number;
- b. Oracle Purchase Order number;
- c. Ship To Address, including name of PLCB location;
- d. Description of the supplies/services delivered in accordance with Oracle Purchase Order (include purchase order line number);
- e. Quantity provided;
- f. Unit price;
- g. Price extension;
- h. Total price; and
- i. Delivery date of supplies or services.

If an invoice does not contain the minimum information set forth in this paragraph, the PLCB may return the invoice as improper. If the PLCB returns an invoice as improper, payment processing will be suspended until the PLCB receives a correct invoice. Contractor may not receive payment until the PLCB has received a correct invoice. Payment to Contractor is not considered due until the PLCB has received a correct invoice.

Each invoice to the PLCB shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for services to Contractor that are not in accordance with the prices on the Purchase Order, the Contract, updated price lists, or any discounts negotiated by the PLCB.

**18. PAYMENT**

- a. The PLCB shall put forth reasonable efforts to ensure that payment of undisputed amounts that are correctly billed, less applicable credits, occurs within 45 days of a receipt of a proper invoice. A "proper" invoice is not received until the PLCB accepts the service as satisfactorily performed and the invoice is correctly submitted.

Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract or is incorrectly submitted. If any payment is not made within 15 days after the required payment date, the PLCB may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and related regulations if Contractor is a Qualified Small Business Corporation (QSBC).

Payment should not be construed by Contractor as satisfactory acceptance of the service performed by Contractor. The PLCB reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if post payment testing, or inspection discloses a defect or a failure to meet specifications.

Contractor agrees that the PLCB may set off the amount of any state tax liability or other obligation of Contractor or its subsidiaries to the PLCB against any payments due Contractor under any contract with the PLCB.

- b. The PLCB shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is like a credit card in that there will be a small fee that Contractor is required to pay, and Contractor will receive payment directly from the card issuer rather than the PLCB. All fees related to this type of payment are the responsibility of Contractor. The PLCB prohibits increases in prices to offset credit card fees paid by Contractor or any other charges incurred by Contractor, unless specifically stated in the terms of the Contract or Purchase Order.
- c. The PLCB will make contract payments through Automated Clearing House (ACH) and Treasury check processes.
  - 1) Within 10 days of award of the Contract or Purchase Order, Contractor must submit or must have already submitted its ACH information, or remit to address within its user profile in the PLCB's procurement system, Oracle.
  - 2) Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the PLCB's ACH and/or Treasury check remittance advice to enable Contractor to properly apply the PLCB's payment to the invoice submitted.
  - 3) Contractor shall ensure that the ACH information contained in Oracle is accurate and complete. Contractor's failure to maintain accurate and complete information may result in payment delays.

## 19. TAXES

The PLCB 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. Except for 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 PLCB is also exempt from the Commonwealth of Pennsylvania sales tax, local sales taxes, public transportation assistance taxes and fees, and vehicle rental tax. The Pennsylvania 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 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.

## 20. ASSIGNMENT OF ANTITRUST CLAIMS

Contractor and the PLCB recognize that in actual economic practice, overcharges by 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, Contractor assigns to the PLCB all right, title, and interest in and to any claims 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.

## 21. HOLD HARMLESS PROVISION AND INDEMNIFICATION

- a. **Contractor Obligations:** Contractor shall hold the PLCB and the Commonwealth harmless from and indemnify the PLCB and the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by Contractor or its employees and agents that are related to this contract, as determined by the PLCB and/or the Commonwealth in its sole discretion.
- b. **Commonwealth Attorneys Act:** The PLCB shall provide Contractor with prompt notice of any claim or suit of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under any terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to Contractor, the PLCB and the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of suits.
- c. **Settlement:** Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The OAG may, in its sole discretion, allow Contractor to control the defense and any related settlement negotiations.

## 22. AUDIT PROVISIONS

The PLCB shall have the right, at reasonable times and at a site designated by the PLCB, to audit the books, documents, and records of Contractor to the extent they relate to costs or pricing data for the Contract. Contractor agrees to maintain and preserve records which support the prices charged and costs incurred for the Contract. Contractor shall also preserve books, documents, and records that support costs or pricing data for a period of 3 years from date of final payment. Contractor shall give full and free access of all records to the PLCB and its authorized representatives. The provisions of this section shall be applicable to and include all subcontractors of Contractor.

## 23. DEFAULT

- a. The PLCB may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare Contractor in default by written notice to Contractor, and terminate in whole or in part as provided in the Termination Provisions of this Contract, this Contract or any Purchase Order for any of the following reasons:
- 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
  - 2) Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the Contract or Purchase Order terms;
  - 3) Unsatisfactory performance of contracted work or the unsatisfactory and unacceptable behavior of Contractor's employees, agents, or its subcontractors contrary to federal, state, or local laws or Commonwealth policies;
  - 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
  - 5) Improper delivery;
  - 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
  - 7) Delivery of a defective item;
  - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
  - 9) Discontinuance of work without approval;
  - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
  - 11) Insolvency or bankruptcy;
  - 12) Assignment made for the benefit of creditors;
  - 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
  - 14) Failure to protect, to repair, or to make good any damage or injury to property;
  - 15) Breach of any provision of the Contract;

- 16) Failure to comply with representations made in Contractor's bid/proposal;  
or
  - 17) Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that the PLCB terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the PLCB may procure, upon any terms and in any manner as it determines, items similar or identical to those so terminated, and Contractor shall be liable to the PLCB for any reasonable excess costs for any similar or identical items included within the terminated part of the Contract or Purchase Order.
- c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the PLCB, in addition to any other rights provided in this paragraph, may require Contractor to transfer title and deliver immediately to the PLCB in the manner and to the extent directed by the Contracting Officer, any partially completed items, including, where applicable, reports, working papers and other documentation, as Contractor has specifically produced or specifically acquired for the performance of any part of the Contract or Purchase Order 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 items including, where applicable, reports and working papers, delivered to and accepted by the PLCB shall be in an amount agreed upon by Contractor and the Contracting Officer. The PLCB may withhold from amounts otherwise due Contractor for any completed or partially completed works, any 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 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract, including but not limited to the potential of debarment from future PLCB and Commonwealth contract opportunities.
- e. The PLCB's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the PLCB of its rights and remedies regarding the event of default or any succeeding event of default.
- f. Following exhaustion of Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

#### **24. FORCE MAJEURE**

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control include 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 as proclaimed by the Commonwealth, general strikes throughout the trade, freight embargoes, or any other events or circumstances not within the reasonable control of Contractor whether similar or dissimilar to any of the foregoing.

Contractor shall notify the PLCB orally within 5 days and in writing within 10 days of the date on which Contractor becomes aware, or should have reasonably become aware, that a cause would prevent or delay its performance. Notification shall (i) describe fully the cause(s) and its effect 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. Contractor shall have the burden of proving that the cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce supporting documentation as the PLCB may reasonably request. After receipt of notification, the PLCB may elect to cancel the Contract, cancel the Purchase Order, or extend the time for performance as reasonably necessary to compensate for Contractor's delay. Contractor shall furnish the PLCB with periodic reports at the rate of no less than one per week regarding the progress of the Force Majeure Event. Contractor shall use reasonable diligence to minimize damages and to resume performance.

In the event of a declared emergency by competent governmental authorities, the PLCB by notice to Contractor, may suspend all or a portion of the Contract or Purchase Order, or request that the Contractor perform alternative or modified Services to mitigate the effects of the applicable Force Majeure event. In the event that such alternative Services are requested by the PLCB, the Parties will use best efforts to establish agreeable terms for the provision of such Services, which shall be documented in a written Change Order that is approved by both Parties.

## 25. TERMINATION PROVISIONS

The PLCB has the right to terminate this Contract or any Purchase Order for any of the following reasons. Termination shall be effective upon written notice to Contractor.

- a. **TERMINATION FOR CONVENIENCE:** The PLCB shall have the right to terminate the Contract or a Purchase Order for its convenience if the PLCB determines termination to be in its best interest. Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall Contractor be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** The PLCB's obligation to make payments during any Commonwealth 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 or a Purchase Order. Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

- c. **TERMINATION FOR CAUSE:** The PLCB shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to Contractor or for any actions deemed a material default within this Contract. The PLCB shall also have the right, upon written notice to Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract as a material breach or as permitted by law. If it is later determined that the PLCB erred in terminating the Contract or a Purchase Order for cause, then, at the PLCB's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under Subparagraph a. A termination pursuant to this paragraph shall not be the PLCB's sole and exclusive remedy for any breach of this Contract.

## 26. **CONTRACT CONTROVERSIES**

- a. In the event of a controversy or claim arising from the Contract, Contractor must, within six 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 Contractor asserts a controversy exists. If Contractor fails to file a claim or files an untimely claim, Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within 60 days from when the claim is filed, either party may request mediation through the Governor's Office of General Counsel Dispute Resolution Program.
- b. If Contractor or the Contracting Officer requests mediation and the other party agrees, the Contracting Officer shall promptly arrange for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, 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 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and Contractor. The Contracting Officer shall send his/her written determination to Contractor. If the Contracting Officer fails to issue a final determination within the 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 15 days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, 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 Contractor pursuant to the terms of the Contract.

## 27. **ASSIGNABILITY AND SUBCONTRACTING**

- a. Subject to the terms and conditions of this Paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.

- b. Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- c. Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- d. Notwithstanding the foregoing, Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that Contractor provides written notice of assignment to the Contracting Officer together with a written acknowledgement from the assignee that any payments are subject to all of the terms and conditions of this Contract.
- e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in 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 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, not be a debarred Contractor under the Commonwealth of Pennsylvania or the federal government, and receive an appropriate clearance through the Commonwealths Contractor Responsibility Program.
- g. A change of name by Contractor, following which Contractor's federal identification number remains unchanged, shall not be an assignment hereunder. Contractor shall give the Contracting Officer written notice of any change of name and any supporting documentation that is requested.

## **28. OTHER CONTRACTORS**

This contract does not create exclusivity rights to the Contractor. The PLCB may undertake or award other contracts for additional or related work, and Contractor shall fully cooperate with other contractors and PLCB employees, and coordinate its work with any additional work as may be required. Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by PLCB employees. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The PLCB shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

## **29. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

- a. **Representations.** Contractor represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for

the term of the contract. Contractor shall, upon request and within the time periods requested by the PLCB, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books, records, and accounts by the PLCB for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

- b. **Nondiscrimination/Sexual Harassment Obligations.** Contractor shall not:
- 1) in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any subcontract, by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act ("PHRA") and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
  - 2) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this contract.
  - 3) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this contract.
  - 4) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which this contract relates.
  - 5) in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- c. **Establishment of Contractor Policy.** Contractor shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of the contract, Contractor shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near

where the contracted services are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.

- d. **Notification of Violations.** Contractor's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the contract. Accordingly, Contractor shall notify the PLCB if, at any time during the term of this contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- e. **Cancellation or Termination of Contract.** The PLCB may cancel or terminate this contract and all money due or to become due under this contract may be forfeited for a violation of the terms and conditions of these Nondiscrimination/Sexual Harassment provisions. In addition, the PLCB may proceed with debarment or suspension and may place Contractor in the Contractor Responsibility File.
- f. **Subcontracts.** Contractor shall include these Nondiscrimination/Sexual Harassment provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of these provisions in Contractor's subcontracts does not create privity of contract between the PLCB and any subcontractor, and no third-party beneficiaries are created by those provisions. If Contractor becomes aware of a subcontractor's violation of this clause, Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

### 30. CONTRACTOR INTEGRITY

- a. **Definitions.** For purposes of these Contractor Integrity Provisions, the following definitions apply:
  - 1) "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
  - 2) "Contractor" means the individual or entity, that has entered into this contract with the PLCB.
  - 3) "Contractor Related Parties" means any Affiliates of Contractor and Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in Contractor.
  - 4) "Financial Interest" means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - 5) "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances,

deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, as may be amended, 4 Pa. Code §7.153(b), apply.

- 6) "Non-bid Basis" means a contract awarded or executed by the PLCB with Contractor without seeking bids or proposals from any other potential bidder or offeror.

**b. Representations and Warranties.**

- 1) **Contractor Representation and Warranties.** Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither Contractor nor Contractor Related Parties have:
- i. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - ii. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
  - iii. had any business license or professional license suspended or revoked;
  - iv. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
  - v. been, and are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.
- 2) **Contractor Explanation.** If Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a non-bid basis at the time of the execution of the contract, Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The PLCB may, based on its evaluation of the explanation provided, determine whether it is in the PLCB's best interest to execute the contract.
- 3) **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to this contract, Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.
- 4) **Notice.** Contractor shall immediately notify the PLCB, in writing, if at any time during the term of the contract it becomes aware of any event that would cause Contractor's certification or explanation to change. Contractor acknowledges that the PLCB may, in its sole discretion, terminate the

contract for cause if it learns that any of the certifications made in these provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the contract.

- c. **Contractor Responsibilities.** During the term of this contract, Contractor shall:
- 1) maintain the highest standards of honesty and integrity.
  - 2) take no action in violation of any applicable laws, regulations, or other requirements applicable to Contractor that govern PLCB or Commonwealth contracting and procurement.
  - 3) establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to Contractor's activity with the PLCB and PLCB employees and ensure that its employees comply with the policy.
  - 4) not accept, agree to give, offer, confer, agree to confer, or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order, statement of policy, management directive, or bulletin applicable to the provision of goods or services under this contract.
  - 5) not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the PLCB in writing and the PLCB consents to Contractor's financial interest. Contractor must disclose the financial interest to the PLCB at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the date Contractor signs the contract. The PLCB shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.
  - 6) comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.
  - 7) comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.
  - 8) immediately notify the Contracting Officer or the Office of the State Inspector General, in writing, when Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee, which, if acted upon, would violate the ethical standards.
- d. **Investigations.** If a State Inspector General investigation is initiated, Contractor shall:

- 1) reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of Contractor's compliance with the terms of this or any other agreement between Contractor and the PLCB that results in the suspension or debarment of Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in Contractor's suspension or debarment.
  - 2) cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions and make identified Contractor employees available for interviews at reasonable times and places.
  - 3) upon the inquiry or request of an Inspector General, provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. This information may include, but is not limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.
- e. **Termination.** For violation of any of these Contractor Integrity Provisions, the PLCB may terminate this and any other contract with Contractor, claim reasonable liquidated damages in an amount equal to the value of anything received in breach of these Contractor Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the PLCB and the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one does not preclude the use of all or any other. These rights and remedies are in addition to those the PLCB and the Commonwealth may have under law, statute, regulation, or contract.
- f. **Subcontracts.** Contractor shall include these Contractor Integrity Provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of this provision in Contractor's subcontracts does not create privity of contract between the PLCB and any subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If Contractor becomes aware of a subcontractor's violation of these provisions, Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

### 31. CONTRACTOR RESPONSIBILITY

- a. **Definition.** For these provisions, the term "Contractor" means any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the PLCB. The term also

includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

**b. Contractor Representations.**

- 1) Contractor represents for itself and its subcontractors required to be disclosed or approved by the PLCB, that as of the date of its execution of this contract, that neither Contractor, nor any subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if Contractor cannot make this representation, Contractor shall submit, along with its contract, a written explanation of why certification cannot be made.
- 2) Contractor represents that as of the date of its execution of this contract it has no tax liabilities or other Commonwealth obligations or has filed a timely administrative or judicial appeal if any liabilities or obligations exist or is subject to a duly approved deferred payment plan if any liabilities exist.

- c. **Notification.** Contractor shall notify the PLCB if, at any time during the term of this contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Contractor shall provide this notification within 15 days of the date of suspension or debarment.
- d. **Default.** Contractor's failure to notify the PLCB of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the contract with the PLCB.
- e. **Reimbursement.** Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of Contractor's compliance with the terms of this contract or any other agreement between Contractor and the Commonwealth that results in the suspension or debarment of Contractor. These costs include, but are not limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Contractor shall not be responsible for investigative costs for investigations that do not result in Contractor's suspension or debarment.
- f. **Suspension and Debarment List.** Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment list tab.

**32. AMERICANS WITH DISABILITIES ACT**

- a. **No Exclusion:** Pursuant to the Americans With Disabilities Act, 42 U.S. Code § 12101, et seq., Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability.

- b. **Compliance:** For all goods and services provided pursuant to this contract, Contractor shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act that apply to state and local governments.
- c. **Indemnification:** Contractor shall indemnify and hold harmless the PLCB and the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, ad liabilities, arising out of or in connection with the Contractor's failure or its employee's or agent's failure to comply with the provisions of paragraph a., as determined by the Commonwealth or the PLCB in their sole discretion.

**33. HAZARDOUS SUBSTANCES**

Contractor shall provide information to the PLCB about the identity and hazards of hazardous substances supplied or used by Contractor in the performance of the Contract, if any. 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.

- a. Labeling. Contractor shall ensure 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 Contractor is clearly labeled, tagged or marked with the information listed in the following subsections:
  - 1) Hazardous substances:
    - i. The chemical name or common name,
    - ii. A hazard warning, and
    - iii. The name, address, and telephone number of the manufacturer.
  - 2) 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 of 1.0% or more of the mixture,
    - iv. A hazard warning, and
    - v. The name, address, and telephone number of the manufacturer.
  - 3) 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.
- 4) 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 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.

- b. Safety Data Sheet. Contractor shall provide Safety Data Sheets (SDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The PLCB must be provided an appropriate SDS with the initial shipment and with the first shipment after an SDS is updated or product changed. For any other chemical, Contractor shall provide an appropriate SDS, if the manufacturer, importer, or supplier produces or possesses the SDS. Contractor shall also notify the PLCB when a substance or mixture is subject to

the provisions of the Act. Safety Data Sheets may be attached to the carton, container, or package mailed to the PLCB at the time of shipment.

**34. COVENANT AGAINST CONTINGENT FEES**

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

**35. APPLICABLE LAW AND FORUM**

Any matters of dispute between the parties to this Agreement, whether arising from the Agreement itself or from alleged extra contractual dealings, interactions, or facts prior to or subsequent to the formation of the Agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort or violation of the contract, shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, regardless of the legal theory upon which such matter is asserted, without regard to any conflict of laws provisions, and in accordance with the decisions of the Pennsylvania courts.

Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania and waives any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in personam jurisdiction over Contractor, and Contractor consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of the PLCB's or the Commonwealth's rights or defenses.

**36. INTEGRATION**

This Contract and all referenced documents are completely integrated and are the entire agreement between the parties. The parties intend that this agreement constitutes the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing. In entering this contract, the parties did not rely upon oral or written statements or representations not contained within the document itself.

No agent, representative, employee or officer of either the PLCB other than its Board, its Executive Director, the Executive Director's contract delegate as noted in writing, or 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, waive, 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, waive, 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 who possess written contracting authority.

**37. ORDER OF PRECEDENCE**

In the event there is a conflict among the documents comprising this Contract, the PLCB and Contractor agree on the following order of precedence: the Contract; the solicitation, inclusive of any addenda or attachments; and Contractor's response to the solicitation.

**38. CONTROLLING TERMS AND CONDITIONS**

The terms and conditions of this Contract shall be the exclusive terms of agreement between Contractor and the PLCB. All quotations requested and received from Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in Contractor's quotations, invoices, business forms, purchase orders, other documentation, or orally made shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by Contractor, and not binding on the PLCB or the Commonwealth. This provision also applies to communications made by email, texting, click through acceptance, or any other form of electronic or digital communication.

**39. CHANGES**

The PLCB reserves the right to make changes that are within the scope of the Contract at any time during the term of the Contract or any renewals or extensions: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify Contractor that the PLCB is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions.

Any change shall be made by the Contracting Officer by notifying Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. Contractor agrees to provide the service in accordance with the change order. Any dispute by Contractor regarding the performance required by any notification of change shall be handled through the Contract Controversies Provision.

**40. BACKGROUND CHECKS**

- a. 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 facilities, either through on-site access or through remote access. Background checks are to be conducted using the Request for Criminal Record Check form and procedure found at

<https://www.psp.pa.gov/pages/criminal-history-background-check.aspx>.

The background check must be conducted prior to initial access and on an annual basis for the duration of the Contract.

- b. Before the Commonwealth will permit access to Contractor, 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, 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 Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the PLCB may result in Contractor being deemed in default of its Contract.
- c. The PLCB specifically reserves the right to conduct background checks over and above that described in this section.
- d. Access to certain Capitol Complex buildings, including properties under the control of the PLCB, and other state office buildings is restricted by means of card readers and secured visitors' entrances. Commonwealth- and PLCB contracted personnel who have regular and routine business in Commonwealth or PLCB worksites may be issued a photo identification or access badge subject to the requirements of the PLCB and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 (Amended) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings. The requirements, policy and procedures include a processing fee payable by Contractor for contracted personnel photo identification or access badges.

#### **41. CONFIDENTIALITY**

- a. Contractor agrees to guard the confidentiality of the PLCB's and the Commonwealth's confidential information with the same diligence with which it guards its own proprietary information. If Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the PLCB, it may do so only if the third parties sign agreements containing the same provisions as contained in this Section. The PLCB agrees to protect the confidentiality of Contractor's confidential information.

For information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in a way as to give notice to the other party. The parties agree that confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the

receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.

- b. The obligations stated in this Section do not apply to information:
- 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
  - 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
  - 3) known or available to the public, except where knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
  - 4) disclosed to the recipient without a similar restriction by a third party who has the right to make a disclosure; or
  - 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process, including but not limited to the Pennsylvania Right-to-Know Law.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the PLCB in connection with services provided to the PLCB under this Contract.

- c. Contractor shall use the following process when submitting information to the PLCB it believes to be confidential and/or proprietary information or trade secrets:
- 1) Prepare an un-redacted version of the appropriate document, and
  - 2) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
  - 3) Prepare a signed written statement that states:
    - (i) the attached document contains confidential or proprietary information or trade secrets;
    - (ii) Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
    - (iii) Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

- 4) Submit the two documents along with the signed written statement to the PLCB.

#### 42. NOTICE

Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided the delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to following:

- a. If to Contractor: Contractor's address as recorded in the PLCB's Supplier Registration system.
- b. If to the PLCB: the address of the Issuing Office as set forth on the Contract.

#### 43. ASSIGNMENT

Other than assignment of payment noted in Section 18 above, the rights and duties under this contract may neither be assigned nor delegated. The parties further agree to surrender any power to assign their rights or delegate their duties upon formation of this contract. Any attempt by Contractor to assign any right or delegate any duty under this contract shall be null and void.

#### 44. RIGHT TO KNOW LAW

- a. **Applicability.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this contract.
- b. **Contractor Assistance.** If the PLCB needs Contractor's assistance in any matter arising out of the RTKL related to this contract, the PLCB shall notify Contractor that it requires Contractor's assistance, and Contractor shall provide to the PLCB:
  - 1) access to, and copies of, any document or information in Contractor's possession (Requested Information) arising out of this contract that the PLCB reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and
  - 2) any other assistance as the PLCB may reasonably request, to comply with the RTKL with respect to this contract.
- c. **Trade Secret or Confidential Proprietary Information.** If Contractor considers the Requested Information to include a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that Contractor considers exempt from production under the RTKL, Contractor shall notify the PLCB and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of Contractor, that explains why the requested material is exempt from public disclosure under the RTKL. If the PLCB determines that the Requested Information is clearly not exempt from disclosure, Contractor shall provide the Requested Information to the PLCB within five business days of receipt of written notice of the PLCB's determination.

d. **Reimbursement**

- 1) **PLCB Reimbursement.** If Contractor fails to provide the Requested Information and the PLCB is ordered to produce the Requested Information, Contractor shall reimburse the PLCB for any damages, penalties, or costs that the PLCB may incur as a result of Contractor's failure, including any statutory damages assessed against the PLCB.
- 2) **Contractor Reimbursement.** The PLCB will reimburse Contractor for any costs that Contractor incurs as a direct result of complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL.

e. **Challenges of PLCB Release.** Contractor may file a legal challenge to any PLCB decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Contractor shall reimburse the PLCB and the Commonwealth for any legal expenses incurred by the PLCB or the Commonwealth as a result of the challenge, including any damages, penalties or costs that the PLCB or the Commonwealth may incur as a result of Contractor's legal challenge, regardless of the outcome.

f. **Waiver.** As between the parties, Contractor waives all rights or remedies that may be available to it as a result of the PLCB's disclosure of Requested Information pursuant to the RTKL.

g. **Survival.** Contractor's obligations contained in this Section survive the termination or expiration of this contract.

45. **ENHANCED MINIMUM WAGE**

a. **Enhanced Minimum Wage.** Contractor shall pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this contract, and for an employee's hours performing ancillary services necessary for the performance of the services when the employee spends at least 20% of their time performing ancillary services in a given work week.

b. **Adjustment.** Beginning July 1, 2023, and on an annual basis, the minimum wage rate will be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.

c. **Exceptions.** These Enhanced Minimum Wage Provisions do not apply to

- i. employees exempt from minimum wage under the Minimum Wage Act of 1968;
- ii. covered by a collective bargaining agreement;

- iii. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
  - iv. required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** Contractor shall: (1) post this Enhanced Minimum Wage Provision for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.
- e. **Records.** Contractor must maintain and, upon request and within the time periods requested by the PLCB, provide to the PLCB all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment, or referral to the Office of Attorney General for appropriate civil or criminal referral.
- g. **Subcontractors.** Contractor shall include these Enhanced Minimum Wage Provisions in its subcontracts under this contract or lease to ensure that these provisions are binding on its subcontractors.

#### 46. **WORKER PROTECTION AND INVESTMENT**

Contractor shall comply with all applicable Pennsylvania state labor laws and worker safety laws including, but not limited to, the following:

- a. Construction Workplace Misclassification Act;
- b. Employment of Minors Child Labor Act;
- c. Minimum Wage Act;
- d. Prevailing Wage Act;
- e. Equal Pay Law;
- f. Employer to Pay Employment Medical Examination Fee Act;
- g. Seasonal Farm Labor Act;
- h. Wage Payment and Collection Law;
- i. Industrial Homework Law;
- j. Construction Industry Employee Verification Act;

- k. Act 102: Prohibition on Excessive Overtime in Healthcare;
- l. Apprenticeship and Training Act; and
- m. Inspection of Employment Records Law.

**47. SIGNATURES**

The Contract shall not be a legally binding contract until the fully-executed Purchase Order has been sent to Contractor. No PLCB employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Purchase Order prior to the Original PO Effective Date. Contractor waives any claim or cause of action for any service or work performed prior to the Original PO Effective Date.

The fully-executed Purchase Order will be sent to the Contractor electronically. ..

The PLCB and Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Purchase Order to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Purchase Order legally binding, notwithstanding contrary requirements in any law. The parties agree not to contest the validity or enforceability of a genuine Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Purchase Order or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgement shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any document if necessary.

**48. DATA BREACH AND LOSS**

To the extent Contractor receives, provides, stores, manages, maintains, and/or transmits personal information including, but limited to, personal health information, pursuant to this Contract, Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301-2329. Further, to the extent Contractor maintains, stores, or

manages computerized data on behalf of the PLCB that constitutes personal information, as defined in the *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301-2329, Contractor shall comply with the then current version of the following IT Policies (ITPs): *ITP-SEC019, Policy and Procedures for Protecting Commonwealth Electronic Data*; *ITP-SEC024, IT Security Incident Reporting Policy*; *ITP-SEC025, Proper Use and Disclosure of Personally Identifiable Information (PII)*; and *ITP-SEC031, Encryption Standards*.

**49. EMPLOYEE PERFORMANCE EXPECTATIONS/RIGHTS OF REMOVAL**

The PLCB, in its sole discretion, will notify the contractor to remove and prohibit further use of any its employees, including subcontracted employees, who do not meet the PLCB's standards of performance.

Grounds for removal include, but are not limited to, habitual tardiness; use of electronic devices (e.g., cell phones and tablets) for personal purposes; rude, bullying, or offensive behaviors; harassing or discriminating behavior towards PLCB employees, customers, or guests that otherwise violates federal, state, or local laws or PLCB policies; possession or use of alcohol or marijuana; possession or use of illegal substances; intoxication; lack of professionalism; sleeping on the job; conversing with acquaintances or personal visitors while performing contractual duties; excessively fraternizing with PLCB staff, customers, and guests; and any other behavior that may distract the contractor's employees from the performance of their contractual duties or which creates a threat to the health, safety, or welfare of PLCB employees, customers, or guests.