

REQUEST FOR PROPOSALS FOR

PAYMENT CARD INDUSTRY COMPLIANCE AND READINESS SERVICES

ISSUING OFFICE

**PENNSYLVANIA LIQUOR CONTROL BOARD
BUREAU OF PURCHASING AND CONTRACT ADMINISTRATION
ROOM 312, NORTHWEST OFFICE BUILDING
HARRISBURG, PENNSYLVANIA 17124**

RFP NUMBER:

20230905

DATE OF ISSUANCE

JULY 8, 2024

**REQUEST FOR PROPOSALS FOR
PAYMENT CARD INDUSTRY COMPLIANCE AND READINESS SERVICES**

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CALENDAR OF EVENTS

The Commonwealth will make every effort to adhere to the following schedule:

| Activity | Responsibility | Date |
|--|-----------------------|---|
| Questions pertaining to this RFP can be submitted as they arise via email to Issuing Officer, Tanya Readinger, at treadinger@pa.gov from the date of issuance up to, and including, this date and time. | Potential Offerors | All questions must be submitted by 5:00PM ET on 07/22/2024 |
| Answers to questions from Potential Offerors will be posted to the Department of General Services eMarketplace website at http://www.emarketplace.state.pa.us/Search.aspx on this date and time. | Issuing Office | All answers will be provided by 5:00PM ET on 07/29/2024 |
| Please monitor website for all communications regarding the RFP. | Potential Offerors | Regularly until proposal due date. |
| Proposal must be electronically submitted via upload into a designated OneDrive folder for which access will be granted by contacting the Issuing Officer. | Offerors | Proposals must be received at PLCB by 1:00PM ET on 08/12/2024 |

PART I

GENERAL INFORMATION

- I-1. Purpose.** This request for proposals (“RFP”) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the Pennsylvania Liquor Control Board’s (“PLCB”) consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need **for Payment Card Industry (PCI) Compliance and Readiness Services** (“Project”). This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.
- I-2. Issuing Office.** The PLCB (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be Tanya Readinger, Purchasing and Contracting Administration Division, Room 312 Northwest Office Building, Harrisburg, PA 17124, treadinger@pa.gov, who is the Issuing Officer for this RFP. Please refer all inquiries to the Issuing Officer.
- I-3. Overview of Project.** The PLCB is the Commonwealth’s wholesaler and primary retailer of wine and spirits and the agency responsible for regulatory control of beverage alcohol in Pennsylvania. As a Payment Card Industry Data Security Standards (PCI DSS) “Level 1” merchant with approximately 585 stores throughout the state and e-commerce sites for citizen and licensee customers, the PLCB seeks an offeror who can assist the agency with continually meeting the annual regulatory security requirements established by the PCI Security Standards Council (PCI SSC).
- I-4. Objectives.**
- A. General.** The Offeror shall provide the staffing resources, tools, methodologies, guidance, and deliverables needed to ensure PLCB is continually meeting all annually scheduled PCI DSS regulatory requirements that come with being a Level 1 merchant. The PLCB seeks a provider with demonstrated experience in supporting merchants achieving PCI DSS compliance and increasing their security posture through the identification and implementation of applicable controls.
- B. Specific.**
1. Selected Offeror must be, or partner with, a PCI-approved Qualified Security Assessor (QSA) and annually conduct an assessment against the latest PCI DSS version, or version of PLCB’s choosing if more than one is valid during any given audit period.
 2. Selected Offeror must provide a secure collaboration solution to facilitate the sharing, review, and management of relevant audit evidence and overall audit progress status.

3. Selected Offeror must annually conduct an internal penetration test, and, optionally at PLCB's discretion, an external penetration test against PLCB's in-scope environment(s).
 4. Selected Offeror must annually conduct a risk assessment using the NIST Cybersecurity Framework (CSF), or mutually agreed upon, risk management framework.
 5. Selected Offeror must execute monthly scans against PLCB's in-scope external endpoints or websites.
 6. Selected Offeror must annually perform a readiness review of PLCB's in-scope PCI environment, applicable PCI DSS requirements, and implemented controls.
- I-5. Type of Contract.** It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a firm, fixed-price contract containing the Contract Terms and Conditions as shown in **Part V**. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible, and capable of performing the Project.
- I-6. Rejection of Proposals.** The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received in response to this RFP.
- I-7. Incurring Costs.** The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.
- I-8. Questions & Answers.** If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line "RFP20230905 Questions"**) to the Issuing Officer named in **Part I-2** of the RFP. If the Offeror has questions, they may be submitted as they arise by email, but **no later than** the date indicated on the Calendar of Events. The Issuing Officer shall post the answers to the questions to eMarketplace at <http://www.emarketplace.state.pa.us/Search.aspx> by the deadline stated on the Calendar of Events.
- All questions and responses as posted to eMarketplace are an addendum to, and part of, this RFP in accordance with RFP **Part I-10**. Each Offeror shall be responsible to monitor eMarketplace for new or revised RFP information. The Issuing Office shall not be bound by any verbal information, nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described in **Part I-26**.
- I-9. Addenda to the RFP.** If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to eMarketplace at <http://www.emarketplace.state.pa.us/Search.aspx>. It is the Offeror's responsibility to periodically check eMarketplace for any new information or addenda to

the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to eMarketplace as addenda to the RFP.

I-10. Response Date. To be considered for selection, electronic proposal submissions as described in **Part I-11** must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Issuing Office **will not** accept paper or emailed submissions. The Issuing Office will reject any late proposals.

I-11. Proposal Requirements.

A. Proposal Submission: To be considered, Offerors must contact the Issuing Officer identified in **Part I-2** to be granted access to a OneDrive folder that will be created for the submission of proposals to this RFP. Access can only be granted to a single designated email address. After being granted access to the OneDrive folder, the Offeror must upload a single electronic copy of **the Technical Submittal; the Cost Submittal** using the format provided in **Part I-11B**. The electronic files must be in Microsoft Office or Microsoft-Office-compatible format and any spreadsheets must be in Microsoft Excel. The Offerors may not lock or protect any cells or tabs.

The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the Offeror to its provisions must sign the **Proposal Cover Sheet (Appendix A)** and **Corporate Signatory Delegation Authorization Form (Appendix B)**, if needed. *See also Part II-1B.*

For this RFP, the submitted proposal must remain valid until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by written notice received at the Issuing Office's email address prior to the exact hour and date specified for proposal receipt.

B. Proposal Format: Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all proposal requirements. **DO NOT IMBED LINKS TO DOCUMENTS OR WEBSITES WITHIN A TECHNICAL SUBMITTAL**; rather, all information to be considered by the Evaluation Committee must be set forth in narrative fashion, including as appendices to the Technical Submittal as may be necessary.

Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Proposal. All cost data relating to this proposal should be kept separate from and not included in the Technical Submittal.

Offerors should not reiterate technical information in the cost submittal. Each electronic proposal shall consist of the following separate electronic files:

1. Technical Submittal, in response to **Part III**, including the following complete, signed Appendices:
 - a. **Appendix A, Proposal Cover Sheet**
 - b. **Appendix B, Corporate Signatory Delegation Authorization Form** (if applicable).
 - c. **Appendix C, Worker Protection and Investment Notice**
 - d. **Appendix D, Iran Free Procurement Certification Form**
 - e. **Appendix E, Trade Secret, Confidential, Proprietary Information Notice Form** (if applicable)
2. Cost Submittal, in response to RFP **Part IV**;

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

The Issuing Office may make investigations as deemed necessary to determine the ability of the Offeror to perform the Project, and the Offeror shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Issuing Office that such Offeror is properly qualified to carry out the obligations of the RFP and to complete the Project as specified.

- I-12. Economy of Preparation.** Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.
- I-13. Alternate Proposals.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.
- I-14. Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.
- I-15. Presentations.** To aid in the evaluation of the proposal by the Evaluation Committee, the PLCB reserves the right to request that an Offeror provide a presentation detailing all or a portion of its proposal. In the event a presentation is requested, the Issuing Officer will

contact the applicable Offeror(s) with details concerning the timing and content requirements for the requested presentations.

I-16. Prime Contractor Responsibilities. The selected Offeror will be solely responsible for all services offered in its proposal whether it produces them itself or by subcontract. Further, the Issuing Office will consider the selected Offeror to be the sole point of contact regarding all contractual matters.

I-17. Proposal Contents.

A. Confidential Information. The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in **Part 1-17(C)** below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

If a written statement and redacted version of the proposal is not submitted at the time of the proposal submission, the proposal will be subject to release as submitted with only the financial capability redacted.

B. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained in proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.

C. Public Disclosure. After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered for exemption under 65 P.S. § 67.708(b)(11) from public records requests. Refer to **Appendix E** of the RFP for a **Trade Secret Confidential Proprietary Information Notice Form** that may be utilized as the signed written statement, if applicable. If financial capability information is submitted in response to **Part III** of this RFP, such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-18. Best and Final Offers (BAFO).

- A. While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers.” To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:
1. Schedule oral presentations and/or interviews of potential candidates;
 2. Request revised proposals;
 3. Enter into pre-selection negotiations.
- B. The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:
1. Those Offerors which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
 2. Those Offerors which the Issuing Office has determined in accordance with **Part II-5** from the submitted and gathered financial and other information, do not possess the financial capability, experience, or qualifications to assure good faith performance of the contract.
 3. Those Offerors whose score for their technical submittal of the proposal is less than 75% of the total amount of technical points allotted to the technical criterion.
- The Issuing Office may further limit participation in the best and final offers process to those remaining responsible Offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.
- C. The Evaluation Criteria found in **Part II-4**, shall also be used to evaluate the Best and Final offers.

I-19. News Releases. Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this RFP without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office. Post-award public communications regarding the Contract and Project may only be issued by the awarded Offeror with the approval of, and in coordination with, the PLCB Communications Office.

I-20. Restriction of Contact. From the issue date of this RFP until the Issuing Office selects a proposal for contract negotiations, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror’s proposal. If the Issuing Office later discovers that the

Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.

- I-21. Performance Assumptions.** Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I-21**. Offeror must have the capability to work remotely, with the potential for in-office work as required by PLCB. The selected Offeror will have direct access to key decision makers and other personnel throughout the PLCB during this engagement.

The PLCB will ensure the appropriate agency technology, project management, and/or stakeholder resources are available to provide required information, perform required tasks, and attend meetings in accordance with the mutually agreed schedule to enable the provision of services under this Agreement.

- I-22. Term of Contract.** The term of the contract will commence on the Effective Date and will end after three years. The Issuing Office may renew the Contract, in any annual increment(s) up to an additional two years after the initial three-year period, upon written notice to the selected Offeror and in the Issuing Office's sole discretion. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

- I-23. Offeror's Representations and Authorizations.** By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A.** Offeror and any proposed subcontractor are currently in compliance with and will maintain compliance with the *State Adverse Interest Act* (71 P.S. 776.1-776.8), and specifically affirms that neither has made, under separate contract with the Issuing Office, any recommendations to the PLCB concerning the need for the services described in its proposal or the specifications for the services described in this RFP.
- B.** Offeror has not disclosed and will not disclose any details about its proposal or about its participation as an Offeror or potential Offeror in this RFP to any other firm or individual who is also an Offeror or potential Offeror, nor to any employee or agent of the Commonwealth. This obligation ceases only upon release by the Issuing Office of a Notice of Award of a fully approved and executed contract.
- C.** Offeror is not on the current list of persons engaged in investment activities in Iran, which list is created by the Pennsylvania Department of General Services pursuant to Section 3503 of the Procurement Code, and that the Offeror is eligible to contract with

the Commonwealth under Sections 3501-3506 of the Procurement Code. Alternatively, such Offeror may demonstrate that it has received an exception from the certification requirement for this solicitation pursuant to Section 3503(e) of the Procurement Code.

- D.** All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904 (unsworn falsification to authorities).
- E.** The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- F.** The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, nor to any employees or agents of the Commonwealth, and the Offeror shall not disclose any of these items except to the Issuing Office prior to the release by the Issuing Office of a Notice of Award of a fully approved and executed contract.
- G.** The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- H.** The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- I.** To the best knowledge of the person(s) signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- J.** To the best of the knowledge of the person(s) signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- K.** The Offeror is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Offeror cannot so certify, then it

shall submit along with its proposal a written explanation of why it cannot make such certification.

- L.** Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- M.** By submitting its proposal, including a completed **Appendix C Worker Protection and Investment Certification**, the Offeror certifies that it is currently compliant with applicable Commonwealth of Pennsylvania labor and workforce safety laws. See also **Part III-6 Worker Protection and Investment Certification**.
- N.** Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.
- O.** The Offeror is not currently engaged and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.
- P.** Offeror is not on the current list of persons engaged in investment activities in Russia or Belarus, which lists are created by the Pennsylvania Department of Treasury pursuant to PA Act 57 of 2023, and that the Offeror is eligible to contract with the Commonwealth under Act 57.

I-24. Notification of Selection.

- A. Selection for Contract Negotiations.** The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all the evaluation factors, the proposal that is the most advantageous to the Issuing Office.
- B. Notice of Award of Contract.** Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract fully executed by all required signatories.

I-25. Debriefing Conferences. Within 15 calendar days of notification for contract negotiations as described in **Part I-24(A)** above, Offerors whose proposals were not selected may request a debriefing. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. The Issuing Office will not conduct debriefings more than 30 calendar days after notice of selection for contract negotiations has been sent. An Offeror's exercise of the opportunity

to be debriefed does not constitute nor toll the time for filing a protest (See **Part I-26** of this RFP).

I-26. RFP Protest Procedure. The RFP Protest Procedure is on the DGS website at <http://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2058%20Bid%20Protests.pdf>. A protest by a party that has not or has not yet submitted a proposal must be filed no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within **seven** days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than **seven** days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office, which writing may be transmitted by email to the Issuing Office. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

I-27. Use of Electronic Versions of this RFP. This RFP is being made available by electronic means. If an Offeror electronically accepts the RFP, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. If there is a conflict between a version of the RFP in the Offeror's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

I-28. Information Technology Policies.

This RFP is subject to the Information Technology Policies (ITPs) issued by the Office of Administration, Office for Information Technology (OA-OIT). ITPs may be found at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>.

All proposals must be submitted on the basis that all ITPs are applicable to this procurement. It is the responsibility of the Offeror to read and be familiar with the ITPs. Notwithstanding the foregoing, if the Offeror believes that any ITP is not applicable to this procurement, it must list all such ITPs in its technical response and explain why it believes the ITP is not applicable. The Issuing Office may, in its sole discretion, accept or reject any request that an ITP is not applicable to the procurement. The Offeror's failure to list an ITP will result in its waiving its right to do so later, unless the Issuing Office, in its sole discretion, determines that it would be in the best interest of the Commonwealth to waive the pertinent ITP.

PART II

CRITERIA FOR SELECTION

II-1. Mandatory Responsiveness Requirements. To be eligible for selection, a proposal must:

- A. Be timely received from an Offeror (see **Part I-10**); and
- B. Be properly signed by the Offeror, in accordance with Commonwealth law. Include a properly signed **Appendix A, Proposal Cover Sheet** and **Appendix B, Corporate Signatory Delegation Authorization** or similar supporting documentation as needed.

The following information is offered to assist Offerors in ensuring proposals are properly signed and substantiated, but is not, and may not be construed as, legal advice:

- 1. If the Offeror is a corporation, **Appendix A, Proposal Cover Sheet** must be signed by corporation's president or a vice president and a secretary, assistant secretary, treasurer, or assistant treasurer. If the two above-listed signatures are not provided, then the proposal should include a copy of a document which provides evidence from which the Issuing Office may reasonably infer signature authority (including but not limited to corporate bylaws, or a certified corporate resolution).
 - 2. When the Offeror is a limited liability company, the **Appendix A, Proposal Cover Sheet** must be signed by a duly identified member or manager of the LLC. If the LLC is member- managed, a member must sign. If the LLC is manager-managed, a member cannot bind the LLC; a manager must sign.
 - 3. When the Offeror is a general partnership, the **Appendix A, Proposal Cover Sheet** may be signed by any partner. When the Offeror is a limited partnership, the **Appendix A, Proposal Cover Sheet** must be signed by a duly identified general partner. Any other signatories must be substantiated with a valid power of attorney signed by a partner or general partner.
 - 4. An entity operating under a fictitious name can be bound only according to the instructions applicable to the type of organization. Indicate the name of the person or entity owning and registering the fictitious name (e.g.; Doe Corporation, d/b/a The Corner Store) so that the authority of the signatories is clear.
- C. Selected Offeror must be, or partner with, a PCI-approved Quality Security Assessor (QSA). Qualified Security Assessor (QSA) companies are independent security organizations that have been qualified by the PCI Security Standards Council to validate an entity's adherence to PCI DSS. QSA Employees are individuals who are employed by a QSA Company and have satisfied and continue to satisfy all QSA Requirements.
- https://listings.pcisecuritystandards.org/assessors_and_solutions/qualified_security_assessors

- D.** Selected Offeror must be, or partner with, a PCI Approved Scanning Vendor (ASV). An ASV is an organization with a set of security services and tools (“ASV scan solution”) to conduct external vulnerability scanning services to validate adherence with the external scanning requirements of PCI DSS Requirement 11.2.2. The scanning vendor’s ASV scan solution is tested and approved by PCI SSC before an ASV is added to PCI SSC’s List of Approved Scanning Vendors. https://listings.pcisecuritystandards.org/assessors_and_solutions/approved_scanning_vendors

II-2. Nonconforming Proposals. The Mandatory Responsiveness Requirements set forth in **Part II-1** above are the only RFP requirements that the PLCB will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror’s proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror’s proposal.

II-3. Evaluation. The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all the evaluation factors.

II-4. Evaluation Criteria. The following criteria will be used in evaluating each proposal:

A. Technical: The Issuing Office has established the weight for the Technical criterion for this RFP as 70% of the total points. Evaluation will be based upon the following: The final Technical scores are determined by giving the maximum number of technical points available to the proposal(s) with the highest raw technical score. Points are then awarded to other proposals on a proportional pro-rated basis.

1. Soundness of Approach. Emphasis is on the proposed methods for providing the services described in this RFP. An evaluation of the soundness of approach will consider information such as how the proposed solution meets the requirements of this RFP.

2. Qualifications. This category refers to the ability of the Offeror to meet all requirements of the RFP, including quality, relevancy, and recency of other projects completed by the Offeror and Offeror’s ability to timely and effectively provide all services requested. The Offeror’s financial ability to undertake a project of this size will also be evaluated in this category. The expected skill set of professional personnel will be evaluated based on experience and education, with emphasis given to experience in services similar to that described in this RFP.

B. Cost: The Issuing Office has established the weight for the Cost criterion for this RFP as 30% of the total points. The cost criterion is rated by giving the proposal with the

lowest total cost the maximum number of Cost points available. Points are then awarded to other proposals on a proportional pro-rated basis.

- C. Worker Protection and Investment Certification.** Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every Pennsylvania worker has a safe and healthy work environment, and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are compliant with all applicable Pennsylvania state labor and workforce safety laws. Such certification shall be made through the **Worker Protection and Investment Notice (Appendix C)** and submitted with the Offeror's proposal.

- II-5. Offeror Responsibility.** To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

For an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

- A.** The total score for the technical submittal of the Offeror's proposal must be greater than or equal to 75% of the **available technical points**; and
- B.** The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. The Issuing Office will review the Offeror's previous three financial statements, any additional information received from the Offeror, and any other publicly available financial information concerning the Offeror and assess each Offeror's financial capacity based on calculating and analyzing various financial ratios, and comparison with industry standards and trends.

Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

II-6. Final Ranking and Award.

- A.** After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, the final cost scores, and (when applicable) the domestic workforce utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.
- B.** The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C.** The Issuing Office must select for contract negotiations the offeror with the highest overall score.

- D.** The Issuing Office has the discretion to reject all proposals or cancel this RFP at any time prior to the time a contract is fully executed if it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

PART III

TECHNICAL SUBMITTAL

III-1. Statement of the Project.

Based on the Overview of the Project and General and Specific Objectives identified in **Parts I-3 and I-4** of this RFP, state in succinct terms your understanding of the services required by this RFP and your company's ability to support this project.

III-2. Qualifications.

A. Company Overview.

Provide an overview of your company including years of experience providing guidance IT security, penetration testing, risk management and compliance management services, number, and types (public/private) of clients served, including any awards, recognition and/or certifications. Please also identify what, if anything, differentiates your company from like Offerors.

B. Prior Experience.

Include experience in performing assessments against the latest PCI DSS version, performing risk assessments using the NIST CSF and/or similar frameworks, penetration tests against e-commerce websites, internal organizational, Wi-Fi, and cloud tenant networks. Experience shown should be work done by individuals who will be assigned to this project, as well as that of your company. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

Provide three detailed examples of recent (within the last 1-3 years) advisory services performed that are similar in nature and scope to the services stated in this RFP. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Contractor should provide a detailed narrative for each project that includes the following:

1. Project Name
2. Scope and Size of Project
3. Project Start and End Dates
4. Client Name
5. Client Address
6. Client Contact Name, Phone Number and Email address (for reference purposes)

C. Personnel. Include the number of executive and professional personnel, who will be engaged in the work. Show where these personnel will be physically located

during the time they are engaged in the Project. For key personnel include the employee's name and, through a resume or similar document, the Project personnel's education, certifications, and experience in the following. Indicate the responsibilities each individual will have in this Project and how long each has been with your company.

The selected Offeror must provide and identify in their proposal response:

- 1. At least one (1) PCI-approved Qualified Security Accessor (QSA) to:**
 - a. Perform the annual on-site audit against the latest PCI DSS version, or version of PLCB's choosing if more than one is valid during any given audit period.**
 - b. Draft and sign a Report on Compliance (ROC) and an Attestation of Compliance (AOC) reports upon PLCB's successful, compliant, audit completion.**
- 2. Trained and certified penetration tester(s) who will:**
 - a. Perform an annual internal and external penetration test against PLCB's in-scope environment(s) as identified by the QSA during the annual on-site audit's scoping session.**
 - b. Provide a remediation plan for any identified vulnerabilities/findings.**
- 3. Trained and certified risk management professional(s) who will:**
 - a. Perform an annual risk assessment using the NIST CSF, or mutually agreed upon, risk management framework.**
 - b. Provide a remediation plan for any identified control gaps.**
 - c. Provide a risk register for PLCB continuous tracking.**
- 4. A PCI Approved Scanning Vendor (ASV) who will:**
 - a. Perform monthly scans against PCLB's external in-scope environment as identified by the QSA during the annual on-site audit's scoping session.**
 - b. Provide an attested scanning findings report upon scan completion and PLCB sign-off/request.**
- 5. At least one (1) trained/certified Project Manager to coordinate and managed the planning, preparation, status, and timely completion of all activities throughout the audit year calendar cycle.**

The PCI-approved Qualified Security Accessor (QSA) must be certified by the PCI SSC.

Penetration tester certifications can include, but are not limited to, the following:

- CompTIA PenTest+
- EC-Council Certified Ethical Hacker (CEH)
- Certified Penetration Tester (CPT)
- Certified Expert Penetration Tester (CEPT)
- Certified Cloud Penetration Tester (CCPT)
- Certified Mobile and Web Application Penetration Tester (CMWAPT)
- Certified Red Team Operations Professional (CRTOP)
- EC-Council Licensed Penetration Tester (LPT) Master
- Global Information Assurance Certification (GIAC) Penetration Tester (GPEN)
- Offensive Security Certified Professional (OSCP)

Risk Assessor certifications can include, but are not limited to, the following:

- Certified Risk Management Professional (CRMP)
- Certified Information Systems Security Professional (CISSP)
- Certified Information Systems Auditor (CISA)
- Certified Governance, Risk and Compliance (CGRC)
- Certified in Risk and Information Systems Control (CRISC)

D. Substitutions: The PLCB must approve or disapprove all staffing substitutions and changes. Once approved professionals are assigned to the Project, the selected Offeror may not re-assign this asset to another project without prior written consent from the PLCB. The PLCB has the right to require replacement of any personnel in the event of unacceptable performance of the work.

Any planned staffing substitutions must be submitted to the PLCB ten business days (two calendar weeks) prior to the vacation or substitution. The PLCB must not incur any delays due to knowledge transfer to new Offeror personnel resulting from staffing substitutions or replacement. It is the selected Offeror's responsibility to train replacement staff.

E. Subcontractors: Provide a subcontracting plan for all subcontractors who will contribute to the performance of the Services described in this RFP. The selected Offeror is prohibited from subcontracting or outsourcing any part of the Services without the express written approval from the PLCB. Unless otherwise notified by the PLCB during contract negotiations, upon award of the contract resulting from this RFP, subcontractors included in the proposal submission are deemed approved. For each entity/role included in your subcontracting plan provide:

1. Name of subcontractor with a company overview. This should include ownership structure and number of employees.
2. The specific work supplies or services the subcontractor will perform; location for work performed; how the work, supplies or services relate to the project; and the specific timeframe during the term when the work, supplies or services will be provided or performed.
3. Prior experience working with the subcontractor and/or subcontractor's qualifications for performing the intended function, including resumes (if appropriate and available).
4. The fixed percentage commitment that subcontractor will receive based on the final negotiated cost for the initial term of the prime contract.
5. Number of employees by job category to work on the project.

III-3. Financial Capability. Describe your company's financial stability and economic capability to perform the contract requirements. Provide your company's financial statements (audited, if available) for the past three fiscal years, including the company's Balance Sheet and Income Statement or Profit/Loss Statements. Also include a print out of your Dun & Bradstreet comprehensive report, if available. Do not send a link or request that the PLCB access the Dun & Bradstreet reporting system. If your company is a publicly traded company, please provide a link to your financial records on your company website in lieu of providing hardcopies. The Commonwealth reserves the right to request additional information it deems necessary to evaluate an Offeror's financial capability.

Your failure or refusal to provide adequately informative financial information despite the protections of the Pennsylvania Right to Know Law may adversely impact the evaluation committee's technical score and/or Issuing Officer's determination of your financial responsibility. Specific documents as identified herein are recommended; alternative materials may be offered to substantiate financial capability. Where the specifically identified documents exist, however, their submission is expected as part your proposal.

III-4. Work Plan. Describe in narrative form your technical plan for accomplishing the work using the task descriptions as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

Tasks:

A. PCI Data Security Standard (DSS) latest version assessment: The Selected Offeror will perform an assessment against the latest PCI Data Security Standard (DSS) version and create the PCI Report on Compliance (ROC) and Attestation of Compliance (AOC) for PLCB to submit to their respective card associations and/or credit card processors/acquirers.

1. **Frequency:** Annually. The expiration date of PLCB's ROC will determine the required start and completion dates of the annual assessment. The assessment shall start no later than 5 months before the PLCB's ROC expiration date which is currently May 12th.
2. **Approach and Methodology:** The Selected Offeror shall work in an iterative manner and follow an approach like that outlined below when performing PCI assessments.
 - a. **Strategy and Scoping:** The Selected Offeror shall have a standard evidence collection mechanism which includes a listing of needed evidence mapped to PLCB's applicable PCI DSS requirements. During this phase, a strategy, or kick-off, meeting shall take place during which the Selected Offeror will obtain a high-level understanding of the PLCB's environment, provide overall strategy for evidence collection to optimize timeline, considering common schedule-impacting areas, and clarify scoping items. This phase will focus on collecting evidence that are scoping related only for the following reasons:
 - i. Dramatically reduces churn later in cycle on evidence due to changes in scope decisions.
 - ii. Output of Scoping phase is sampling details which inform post-scoping evidence.
 - b. **50% Evidence Pass:** In this phase, the post-scoping the evidence collection process can begin. Because sampling is an output of the scoping phase, Selected Offeror shall coordinate with the testing teams to ensure correct scope is considered for any testing.
 - c. **100% Evidence Pass:** This phase is to complete the balance of evidence collection. The assessor can confirm the effective certification date at this time and estimate the ROC/AOC delivery plan and timeline.
 - d. **ROC and AOC Issuance:** Once all evidence has been approved, the Selected Offeror will finalize all documentation, and issues the PLCB a ROC and AOC.
3. **Deliverables:**
 - a. **Assessment Plan:** The assessment plan shall be developed following the kick-off meeting. The following must minimally be included.
 - i. Project roles and team contact information
 - ii. Project Scope
 - iii. Project Milestones
 - iv. Project Communications
 - v. Next Steps

- b. **Weekly Status Report:** These reports will provide status updates in key measurement areas such as schedule and cost. They will also outline important events that occurred the past week, plans for next week, and any project concerns.
- c. **PCI DSS Attestation of Compliance (AOC)** will be provided at the conclusion of the annual assessment.
- d. **PCI DSS Report on Compliance (ROC)** will be provided at the conclusion of the annual assessment.

B. Internal Penetration Testing: The Selected Offeror shall perform an internal penetration test against PLCB's networks and infrastructure to simulate a real attack situation.

1. Frequency: At least annually or at the PLCB's discretion if deemed not in scope of the annual PCI DSS assessment. PLCB reserves the right to requests more than once per year if necessary.

2. Approach and Methodology: The scenario will vary year-to-year, but the overall methodology shall include the following steps:

- a. Reconnaissance
- b. Mapping of the target system(s)/environment(s)
- c. Discovery
- d. Exploitation of vulnerabilities

3. Deliverables:

a. **Rules of Engagement:** An agreement defining the guidelines and constraints regarding the execution of the testing shall be drafted and approved by the Selected Offeror and PLCB before any testing can commence. The following must minimally be included:

- i. Tester and PLCB contact information.
- ii. Schedule of dates and times testing will be performed.
- iii. In-scope and out-of-scope IP/network ranges
- iv. List of testing tools
- v. Rules to be followed
- vi. Incident handling and response plan

b. **Report of Findings:** Summarizing the methods and results of testing. The following must minimally be included:

- i. **Scope:** A summary of what the overall testing phases accomplished.
- ii. **Approach:** A breakdown of the methods and tools used during testing.

- iii. Findings: A detailed report containing test results from the assessment.
- iv. Recommendations: Identified strengths and weaknesses based on assessment findings as well as recommendations to help improve areas of concern.

C. External Penetration Testing: The Selected Offeror will perform an external penetration test against PLCB's in-scope systems or websites to simulate a real attack situation.

1. Frequency: Annually or at the PLCB's discretion if deemed not in scope of the annual PCI DSS assessment.

2. Approach and Methodology: The methodology shall minimally include the following steps:

- a. Reconnaissance
- b. Mapping of the target system(s)/environment(s)
- c. Discovery
- d. Exploitation of vulnerabilities
- e. Reporting

3. Deliverables:

a. Rules of Engagement: An agreement defining the guidelines and constraints regarding the execution of the testing shall be drafted by the Selected Offeror and approved by the PLCB before any testing can commence. The following must minimally be included:

- i. Tester and PLCB contact information.
- ii. Schedule of dates and times testing will be performed.
- iii. In-scope and out-of-scope IP/network ranges
- iv. List of testing tools
- v. Rules to be followed
- vi. Incident handling and response plan

b. Report of Findings: Summarizing the methods and results of testing. The following must minimally be included:

- i. Scope: A summary of what the overall testing phases accomplished.
- ii. Approach: A breakdown of the methods and tools used during testing.
- iii. Findings: A detailed report containing test results from the assessment.
- iv. Recommendations: Identified strengths and weaknesses based on assessment findings as well as recommendations to help improve areas of concern.

D. Risk Assessment: The Selected Offeror shall conduct a risk assessment using the NIST CSF, or mutually agreed upon, risk management framework and deliver a findings report and remediation plan upon their completion.

1. Frequency: Annually or at the PLCB's discretion if deemed not in scope of the annual PCI DSS assessment. This assessment can overlap internal/external penetration activities but cannot overlap the annual PCI DSS and readiness assessments.

2. Approach and Methodology: The methodology shall minimally include the following steps:

- a. Evaluate existing information security controls.
- b. Interview key staff (i.e., users, administrators, and management) to identify undocumented practices and gain feedback.
- c. Identify missing or incomplete control areas.
- d. Reporting.

3. Deliverables:

a. Report of Findings: Summarizing the methods and results of the assessment. The following must minimally be included:

- i. Scope: A summary of what the overall assessment phases accomplished.
- ii. Approach: A breakdown of the methods and any tools used during testing.
- iii. Findings: A detailed report containing test results from the assessment.
- iv. Recommendations: Identified strengths and weaknesses based on assessment findings as well as recommendations to help improve control areas.

E. External Vulnerability Scanning: The Selected Offeror shall perform monthly scans against PLCB's in-scope external endpoints, or websites, as identified by the QSA during the annual scoping session of the on-site audit.

1. Frequency: Monthly.

2. Approach and Methodology: The approach and methodology must conform with the external scanning requirements of PCI DSS Requirement 11.2.2.

3. Deliverables:

- a. An attested scanning findings report to validate adherence with the external scanning requirements of PCI DSS Requirement 11.2.2. The following must minimally be included:

- i. Customer/ASV information, e.g., name, address, contact information
- ii. Scan Status
- iii. Customer/ASV attestation
- iv. In scope scanning components
- v. Vulnerability Findings (if any)

F. PCI Compliance Readiness Assessment: The Selected Offeror will perform a PCI DSS readiness assessment to help PLCB evaluate if it is prepared for the coming full assessment.

1. **Frequency:** Annually. This assessment shall occur at the halfway point between the completion of the annual PCI DSS assessment and beginning of the next cycle, or September given the PLCB's current May 12th ROC expiration date.
2. **Approach and Methodology:** The Selected Offeror shall assess PLCB's PCI in-scope assets and environments and latest DSS version to identify any compliance gaps and pinpoint areas needing improvement to proactively meet the requirements of the coming full assessment.
3. **Deliverables:**
 - a. A findings and recommendations report detailing gaps identified because of the assessment and corresponding recommendations to bridge the identified gaps prior to the coming full annual assessment.

III-5. Requirements.

A. Solution Requirements

The Selected Offeror shall provide a certified secure cloud-hosted collaboration solution to facilitate the sharing, review, and management of relevant audit records and overall audit progress status.

All Data provided, collected, processed, or created to fulfill the terms of this contract is considered confidential and sensitive in accordance with Sections 30 and 31 of the Contract.

Controls and protections shall be applied to the transmission, use, and storage of the data as part of the performance of the Contract, including but not limited to:

- Ensuring all access to the data is through unique accounts.
- Ensuring all access is logged and monitored.
- Applying role-based access to ensure the data is protected by a "need to know need to do basis."
- Any solution utilized uses and requires multi-factor authentication (MFA).
- All data is encrypted at rest and in transit.

B. Data Retention

PLCB provided records for audit purposes shall be held for 2 years after an audit is completed, and then purged from the Selected Offeror's systems unless specified otherwise by the PLCB by written request. Audit findings and conclusions delivered as part of the performance of this contract shall be retained for 3 years after delivery of the audit findings and conclusions, even if it should extend beyond the date of the contract's expiration or termination, unless specified otherwise by the PLCB by written request. Subcontractors shall not retain data after the expiration or completion of this contract in the same manner as the Selected Offeror.

All data retained will be held in accordance with the terms of Section 30 of the Contract.

Describe your controls for data retention and the means of destruction of data that goes past the retention period. Confirmation that the data has been destroyed shall be provided to the PLCB pursuant to the notice requirements defined by the terms of the Contract. Confirmation shall be sent at the end of the contract period and on a quarterly basis for data that goes past the retention period during the term of the Contract.

Upon contract expiration or at any other time at the written request of the PLCB, all PLCB data (and all copies of this information) shall be returned to the PLCB in a format agreed to by the PLCB, at no additional cost to the PLCB. Please describe the export methods available to accomplish this task.

C. Business Continuity/Disaster Recovery.

The selected Offeror(s) must be able to provide the services under the resulting Contract in a way that permits the PLCB's operations to continue in the context of any potential stoppage of service. As such, summarize any such plans and protocols your company has in place to address such circumstances. No additional fee may be applied for compliance with this requirement.

III-6. Reports and Project Control.

Selected Offeror shall provide all reports identified in **Part III-4 Work Plan**.

III-7. Objections and Additions to Standard Contract Terms and Conditions.

The Offeror will identify which, if any, of the terms and conditions (contained in **Part V**) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror's failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth.

The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for **Part V**. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror's, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections set out in its proposal, the Offeror must submit its proposal, including the cost proposal, based on the terms and conditions set out in **Part V**. The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in **Part V or to other provisions of the RFP as specifically identified above.**

PART IV

COST SUBMITTAL

- IV-1. Cost Submittal.** The information requested in this **Part IV** shall constitute the Cost Submittal. The Cost Submittal shall be submitted electronically in accordance with **Part I-11A**, and costs for this project will be paid at a firm, fixed price. If travel is necessary to perform the services, such terms will be negotiated at a later date. Offerors should **not** include any assumptions in their cost submittals. If the Offeror includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Offerors should direct in writing to the Issuing Office pursuant to **Part I-2** of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.
- IV-2. Incurring Costs.** The Issuing Office will only pay the Selected Offeror for work satisfactorily performed after execution of a written contract and the start of the Contract term, in accordance with Contract requirements, and only after the Issuing Office has issued a Notice to Proceed that has been acknowledged and accepted by the Selected Offeror in the PLCB's on-line self-service Oracle Supplier Portal (Portal). The Portal is used to facilitate business with the PLCB.
- IV-3. Invoicing.** All invoicing shall occur electronically in the PLCB supplier portal. Upon delivery of service, an invoice itemized by Purchase Order line item should be created and submitted through the Portal. The invoice should include only the itemized amounts due under the Purchase Order. The Purchase Order and Notice to Proceed must be acknowledged in the Portal by the Contractor before any invoices can be submitted. Invoices to the PLCB may only reflect charges as agreed to in the contract unless otherwise approved by the PLCB by a written Change Order or Contract Amendment.
- Any questions or problems related to invoicing, bill payment, debits/credits to invoices, or other monetary related topics identified by the Selected Offeror during the duration of the Contract term should be addressed directly to the PLCB Project Manager.
- IV-4. Supplier Registration.** The Selected Offeror will be required to register in the Portal as a "Non-Merchandise" supplier of goods and services. During the registration process, every Offeror will be required to complete a questionnaire to verify their supplier type (Merchandise or Non-merchandise). Every Offeror will also be required to enter the details of the "PLCB Purchasing team contact person". This information can be found in **Part I-2** of this RFP. Registration must be completed before a Purchase Order (PO) can be fully executed. Information on how to register and related training can be found by clicking the link below. **(Please note: A PLCB Supplier number will NOT be immediately generated upon submission of registration. The request will be processed within 3-5 business days from date received.)**

<https://www.lcb.pa.gov/JoinOurTeam/Pages/ERP-Resources-for-Goods-and-Services-Suppliers.aspx>

IV-5. Portal. After registration, the Selected Offeror will use the Portal to manage and update account information, upload and view invoices, view and acknowledge purchase orders and related documents, view and track payment information and status.

It is the Selected Offeror's responsibility to ensure that the supplier information contained in the Portal is accurate and complete. **Failure to update the Portal of any changes to supplier information may result in delayed payments.**

IV-6. State Tax Liability/Debt Obligation. The Commonwealth may set-off the amount of any state tax liability or other debt or obligation of the Selected Offeror or its subsidiaries that is owed to the Commonwealth and is not being contested on appeal against any payments due the Selected Offeror under the resulting Contract or any other contract between the Commonwealth and the Selected Offeror.

PART V

CONTRACT TERMS AND CONDITIONS

*The following contract terms and conditions shall, in accordance with **Part III-7** of this RFP, become part of the contract between the Pennsylvania Liquor Control Board (“PLCB” or “Customer”) and the awarded Offeror (“Contractor”) resulting from this RFP (hereinafter, “Contract”).*

1. SCOPE OF SERVICES

- A.** During the term of this Contract, Contractor agrees to provide the Services as set forth in the Contract (collectively, the “Services”). The Contract is comprised of the following documents which, in the event a conflict exists, shall have an order of precedence as follows:
 - i. the Contract Terms and Conditions;
 - ii. the Contractor’s final Cost Submittal;
 - iii. the RFP, as amended by any addenda; and
 - iv. the Contractor’s Technical Submittal to the RFP, as amended by any clarifications or Best and Final Offers.
- B.** From time to time, the PLCB may request that Contractor provide additional, alternative, or modified Services that will be defined more specifically at the time of request. To the extent additional terms are needed to perform such Services, the Parties will use best efforts to define those terms and document them in a Change Order or via an Amendment to this Contract, as necessary. Any such change document must be signed by both parties and approved by the PLCB Office of Chief Counsel. No PLCB employee has the authority to verbally add or amend contract terms.
- C.** The PLCB reserves the right to purchase services covered under the Contract through a separate procurement procedure, whenever the PLCB deems it to be in its best interest.

2. TERM OF CONTRACT

The initial term of this Contract will start on the Commencement Date (as defined below) and continue as indicated in the RFP, subject to any other contract provisions. The Commencement Date will be the later of the date in the Notice to Proceed or the Effective Date (as defined below). The Effective Date will be the date the Contract has been fully executed by the Contractor and by the PLCB and all additional approvals required by Commonwealth contracting procedures have been obtained. The Contractor shall not begin any contractual work until after Contractor is issued a Notice to Proceed directing the Contractor to start performance on the Commencement date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the Commencement date set forth in the Notice to Proceed and the PLCB shall not be liable to pay the 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.

3. 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 the Contractor, to extend the term of the Contract for any increment(s) of up to six months upon the same rates, terms, and conditions.

4. DEFINITIONS

As used in this Contract, these words shall have the following meanings unless otherwise defined in the RFP or Appendices. Any words used in this Contract that are not defined below shall have the definition provided in the RFP:

- A. Agency:** the Pennsylvania Liquor Control Board (“PLCB”).
- B. 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.
- C. 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.
- D. Commonwealth:** refers collectively to the government of the Commonwealth of Pennsylvania as a whole, inclusive of the PLCB.
- E. Contract:** the contract resulting from RFP #**20230905**.
- F. Contracting Officer:** the person authorized to administer this Contract for the PLCB and to make written determinations with respect to the Contract.
- G. Contractor:** the Offeror selected by the PLCB pursuant to RFP# **20230905**.
- H. Customer:** Pennsylvania Liquor Control Board, or PLCB
- I. Data:** any recorded information, regardless of the form, the media on which it is recorded, or the method of recording.
- J. Days:** unless specifically indicated otherwise, days mean calendar days.

- K.** Deliverable: a required Deliverable as set forth in RFP# **20230905** or in a later order under the Contract.
- L.** Developed Works. All of the fully or partially complete property, whether tangible or intangible prepared by the Contractor for ownership by the Commonwealth in fulfillment of the requirements of this Contract, including but not limited to: Deliverables, documents; sketches; drawings; designs; works; papers; files; reports; computer programs; documentation; data; records; software; samples; literary works and other works of authorship. Developed Works include all material necessary to exercise all attributes of ownership or of the license granted in, or in compliance with, **Section 32, Proprietary Rights**.
- M.** Documentation: all materials required to support and convey information about the Services required by this Contract. Documentation includes, but is not necessarily restricted to, written reports and analyses, diagrams, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.
- N.** Party or Parties: PLCB and Contractor.
- O.** PLCB: Pennsylvania Liquor Control Board.
- P.** PLCB Point of Contact: a designated PLCB employee that is responsible for all administrative matters related to this Contract, including but not limited to receipt of invoices.
- Q.** PLCB Project Manager: the designated PLCB employee that will be responsible for making management level decisions related to the Services.
- R.** Portal: PLCB's Online Supplier Portal used to facilitate business with the PLCB.
- S.** RFP: Request for Proposals # **20230905** for **PCI Compliance and Readiness Services**.
- T.** Services: all Contractor activity necessary to satisfy the Contract.

5. INDEPENDENT PRIME CONTRACTOR

In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth. The Contractor will be responsible for all Services under this Contract whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

6. REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties made in this Contract, its incorporated documents, and in the documentation for the Services or Deliverables, the Contractor represents and warrants as follows:

- A. That the Services and Deliverables will conform in all material respects to the functional specifications for the Services and Deliverables and/or the requirements of the Contract and the applicable procurement document.
- B. That the Services shall be performed in accordance with industry standards using the utmost care and skill.
- C. The Contractor and its agents shall comply with all federal, state and local laws, regulations and policies in fulfillment of this Contract and any purchasing document, 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 obligations.
- D. That Services shall be provided by personnel qualified to perform the tasks required.
- E. That the Contractor shall correct any non-conformity within the warranty period specified herein, or if no period is specified, within 90 days of notice.
- F. That the Contractor will not cause, or take any action that, directly or indirectly, may cause a disruption of PLCB's operations.
- G. That the Contractor has the necessary legal rights, including licenses to third-party products, tools, or materials, to perform the Services and deliver the Deliverables under this Contract.
- H. That work products and Developed Works are original and do not infringe any copyright, patent, trademark, or other intellectual property right of any third party and are in conformance with the intellectual property laws and regulations of the United States and the requirements of this Contract.
- I. That the Contractor has obtained all necessary corporate approvals to enter into this Contract and that no consent, approval, or withholding of objection is required from any external authority with respect to the entering into of this Contract.
- J. That the Contractor is under no obligation or restriction, nor will it assume any such obligation or restriction, that would in any way interfere or conflict with any obligations under this Contract.

7. COMPLIANCE WITH LAW

The 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 29, Change Orders and Amendments**, 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.

8. COMPENSATION

- A. The Contractor will be compensated at the rates set forth in the Contractor's final Cost Submittal. The Contractor shall be compensated only for work accepted by the PLCB.
- B. Contractor shall not be paid or reimbursed for:
 - i. Time spent preparing and/or transmitting invoices or any other billing or time keeping records.
 - ii. Time for work not performed or meetings not held/attended.
 - iii. Time or expenses for faxing, postage, mail, messenger services or other special delivery.
 - iv. Time spent on repetitious preparation/review/revision of documents unless at the explicit request of the PLCB.
- C. Travel. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract. If pre-approved by PLCB and added to the Contract via approved change processes, travel and related expenses shall be reimbursed in accordance with (in order of precedence) PLCB Policy, and [Management Directive 230.10 Amended, Commonwealth Travel Policy](#), and [Manual 230.1, Commonwealth Travel Procedures Manual](#).
- D. Notwithstanding any other provision of this Contract, the Contractor and the PLCB may negotiate new deliverable if those deliverables become necessary within the scope of the Contract. Negotiated deliverables may be added via Change Order.

9. BILLING REQUIREMENTS

All invoicing shall occur electronically in the Portal. Upon delivery of service, an invoice itemized by Purchase Order line item should be created and submitted through the Portal. The invoice should include only the itemized amounts due under the Purchase Order. The Purchase Order and Notice to Proceed must be acknowledged in the Supplier Portal by the Contractor before any invoices can be submitted.

In no instance shall any payment be made for Services to the Contractor that are not in accordance with the contracted prices.

If assistance is needed to create and submit an invoice via the Portal, please review the course on how suppliers enter an invoice in the Portal and/or quick reference guide located on the PLCB's public website at the following link:

<https://www.lcb.pa.gov/JoinOurTeam/Pages/ERP-Resources-for-Goods-and-Services-Suppliers.aspx>

10. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS

The Payment Terms will be set at "Net 30." The PLCB shall put forth reasonable efforts to ensure payment of undisputed amounts billed, less applicable credits, within 45 days of receipt of a proper invoice. A "proper" invoice is not received until the PLCB accepts the service as satisfactorily performed.

Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. 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 regulations promulgated pursuant thereto.

- A. Payment Method.** The PLCB will make contract payments through the Automated Clearing House. Within 10 days of award of the contract the Contractor must submit or must have already submitted their ACH information within their user profile in the Portal.
- B. Unique Identifier.** The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the PLCB's ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
- C. ACH Information in the Portal.** It is the responsibility of the Contractor to ensure that the ACH information contained in the Portal is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

11. TAXES AND OFFSET

The Contractor will be responsible for the payment of any applicable taxes, licenses, charges and assessments imposed by any governmental authority upon the Contractor in relation to the performance of the Services. This includes, but is not limited to, local property taxes, municipal fees, licensing fees, and all taxes related to the employment of personnel required to perform the Services.

The Commonwealth may set-off the amount of any state tax liability or other debt or obligation of the Contractor, or its subsidiaries, owed to the Commonwealth and is not being contested on appeal against any payments due the Contractor under this Contract or any other contract between the Commonwealth and the Contractor.

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. 23-6003016. 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 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.

12. 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.

13. HOLD HARMLESS

- A. Contractor Obligations** The Contractor shall hold the PLCB harmless from and indemnify the PLCB against any and 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 the Contractor or its employees, subcontractors and agents that are related to this Contract, as determined by the PLCB in its sole discretion.
- B. Commonwealth Attorneys Act.** The PLCB shall provide the Contractor with prompt notice of any such 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 such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- C. Settlement** Notwithstanding the above, neither party shall enter into any settlement of any claim or suit without the other party's written consent, which shall not be unreasonably withheld nor unduly delayed. The PLCB may, in the discretion and at the direction of the OAG, allow the Contractor to control the defense and any related settlement negotiations.

14. 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 the Contractor and/or its approved subcontractors to the extent that the books, documents and records relate to costs or pricing data for the Contract or the performance of the Services or Deliverables. The Contractor agrees to maintain records which will

support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three years from date of final payment. The Contractor shall give full and free access to all records to the PLCB and/or their authorized representatives. The provisions of this **Section 14** shall be applicable to and included in each subcontract hereunder.

15. 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 the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract for any of the following reasons:
- i. Failure to begin work within the time specified in the Contract or as otherwise specified to ensure business needs are met.
 - ii. Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract.
 - iii. Continued unsatisfactory performance of the work.
 - iv. Discontinuance of work without approval and/or failure to resume discontinued work after notice to do so.
 - v. If the Contractor is adjudicated bankrupt, is determined to be insolvent, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors or seeks protection against creditors under any applicable federal or state laws, or if there is a commencement of any bankruptcy, insolvency, receivership or other similar proceeding against Contractor that is not dismissed within sixty-days after such filing.
 - vi. Breach of any material provision of the Contract, including failure to comply with representations made in the Contractor's bid/proposal.
 - vii. Failure to comply with applicable industry standards, customs, and practice.
- B.** The PLCB will provide written notice to Contractor upon determining that the Contractor is in default pursuant to **Subsection 15(A)** above. The notice will include a description of the nature of the default and a reasonable cure period for Contractor to correct the default. Failure by Contractor to cure the default within the time period provided in any such notice may result in termination of this Contract pursuant to the Termination Provisions of **Section 17**.
- C.** In the event that the PLCB terminates this Contract in whole or in part as provided in **Subsection 15(A)** above, the PLCB may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Contractor shall be liable to the PLCB for any reasonable excess costs for such similar or identical services

included within the terminated part of the Contract. These costs are in the nature of cover damages as set forth in 13 Pa.C.S.A. §§ 2711(a), 2712.

- 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.
- 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 in regard to the event of default or any subsequent event of default.
- F.** Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision at **Section 18** of this Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

16. FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the PLCB orally within three days and in writing within seven days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the PLCB may reasonably request. After receipt of such notification, the PLCB may elect to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the PLCB by notice to the Contractor, may: suspend all or a portion of the Contract, 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.

17. TERMINATION PROVISIONS

The PLCB has the right to terminate this Contract for any of the following reasons. Termination shall be effective as of the date provided in written notice to the Contractor.

A. TERMINATION FOR CONVENIENCE:

- i. The Commonwealth may terminate the Contract or a Purchase Order issued against the Contract, in whole or in part, without cause by giving Contractor **30 days'** prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective.

In the event of termination hereunder, Contractor shall receive payment for all Services performed consistent with the terms of the Contract prior to the effective date of termination.

- ii. In no event shall the Contractor be paid for any loss of anticipated profit (by the Contractor or any subcontractor), loss of use of money, or administrative or overhead costs.
- iii. Failure to agree on any termination costs shall be a dispute handled in accordance with **Section 18, Contract Controversies**, of this Contract.

The Contractor shall cease Services as of the date set forth in the Notice of Termination, and shall be paid only for such Services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such services performed during the **30-day** notice period, if such services are requested by the Commonwealth, for the collection, assembling, and transmitting to the Commonwealth of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the Services required under this Contract.

The above shall not be deemed to limit the Commonwealth's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable law.

- 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, in whole or in part. The Contractor shall be reimbursed in the same manner as that described in **Subsection 17(A)** to the extent that approved / appropriated funds are available. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs.

- C. TERMINATION FOR CAUSE:** The PLCB shall have the right to terminate the Contract for Contractor default under the Default Clause upon written notice to the Contractor. The PLCB shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in the Contract or by law. If it is later determined that the PLCB erred in terminating the Contract for cause, then, at the PLCB's discretion, the Contract shall be deemed to have been terminated for convenience under **Subsection 17(A)**.

18. CONTRACT CONTROVERSIES

- A.** In the event of a controversy or claim arising from the Contract, the 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 the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within 60 days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.
- B.** If the Contractor or the Contracting Officer requests mediation and the other party agrees, the Contracting Officer shall promptly make arrangements 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 the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within 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, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the Contracting Officer and the PLCB shall compensate the Contractor for such continuous performance pursuant to the terms of the Contract.

19. 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.** The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the

Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

- C. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- D. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all the terms and conditions of this Contract.
- E. For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- F. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment Contract executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- G. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

20. OTHER CONTRACTORS

The PLCB may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and PLCB employees and coordinate its work with such additional work as may be required. The 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.

21. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

Representations. The 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. The Contractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books,

records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

A. Nondiscrimination/Sexual Harassment Obligations. The Contractor shall not:

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.
- v. 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.

B. Establishment of Contractor Policy. The 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, the 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.

- C. Notification of Violations.** The Contractor's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the contract. Accordingly, the Contractor shall notify the Commonwealth 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.
- D. Cancellation or Termination of Contract.** The Commonwealth 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 agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.
- E. Subcontracts.** The 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 the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by those provisions. If the Contractor becomes aware of a subcontractor's violation of this clause, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

22. CONTRACTOR INTEGRITY PROVISIONS

- A. Definitions.** For purposes of these Contractor Integrity Provisions, the following definitions apply:
- i. "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.
 - ii. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.
 - iii. "Contractor Related Parties" means any Affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
 - iv. "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.
 - v. "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.

- vi. “Non-bid Basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

B. Representations and Warranties

- i. **Contractor Representation and Warranties.** The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:
 - 1. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - 2. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
 - 3. had any business license or professional license suspended or revoked;
 - 4. 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
 - 5. 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.
- ii. **Contractor Explanation.** If the 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, the Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth’s best interest to execute the contract.
- iii. **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.
- iv. **Notice.** The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth 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, the Contractor shall:

- i. maintain the highest standards of honesty and integrity.

- ii. take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.
- iii. establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
- iv. 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.
- v. 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 Commonwealth in writing and the Commonwealth consents to Contractor's financial interest. The Contractor must disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.
- vi. comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.
- vii. 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.
- viii. immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the 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, the Contractor shall:

- i. reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- ii. 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.

- iii. 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 Commonwealth may terminate this and any other contract with the Contractor, claim 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 the Contractor from doing business with 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 Commonwealth may have under law, statute, regulation, or contract.

F. Subcontracts. The 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 the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Contractor becomes aware of a subcontractor's violation of these provisions, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

23. CONTRACTOR RESPONSIBILITY PROVISIONS

A. Definition. For the purpose of these provisions, the term "Contractor" means as 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 Commonwealth. 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

- i. The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.

- ii. The 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 such liabilities or obligations exist or is subject to a duly approved deferred payment plan if such liabilities exist.
- C. Notification.** The Contractor shall notify the Commonwealth 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. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.
- D. Default.** The Contractor's failure to notify the Commonwealth 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 Commonwealth.
- E. Reimbursement.** The Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this contract or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- F. Suspension and Debarment List.** The 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.

24. AMERICANS WITH DISABILITIES ACT

- A. No Exclusion.** Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract.
- B. Compliance.** For all goods and services provided pursuant to this contract, the 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.** The Contractor shall indemnify 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 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 in its sole discretion.

25. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee, except 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 Commonwealth 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 such commission, percentage, brokerage, or contingent fee.

26. APPLICABLE LAW AND FORUM

This Contract is to be governed by and must be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of law provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in person jurisdiction over the Contractor, and the Contractor consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation to the PLCB's rights or defenses.

27. INTEGRATION

This Contract, including all referenced documents, constitutes the entire Contract between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, Contract or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written Change Order or Amendment signed by both parties.

28. CONTROLLING TERMS AND CONDITIONS

The terms and conditions of this Contract shall be the exclusive terms of Contract between the Contractor and the PLCB. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, websites, or other documentation shall not become part of the parties' Contract and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the PLCB.

Further, and for purposes of clarity, the Contractor may not require the PLCB, or any user of the Services or Supplies acquired within the scope of this Contract to sign, click through, or in any

other way agree to any terms associated with use of or interaction with those Services, unless the PLCB has approved the terms in writing in advance under this Contract, and the terms are consistent with this Contract. Changes to terms may be accomplished only by processes set out in this Contract.

29. CHANGE ORDERS AND AMENDMENTS

- A.** Change Orders: As long as the scope of the Contract is not thereby altered, the PLCB reserves the right to make changes at any time during the term of the Contract: to make changes to the Services within the scope of the Contract; or to modify the time of performance.
- B.** Amendments: An Amendment will be required for changes outside the scope of this Contract, unless it is appropriate to use a Change Order or funding adjustment. The PLCB reserves the right to require an Amendment for any change to this Contract in its sole discretion.
- C.** All changes to this Contract shall be initiated by the PLCB upon notification to the Contractor in writing. The change shall be effective as of the date indicated on the Change Order or Amendment, as applicable. Such increases, decreases, changes, or modifications will not invalidate the Contract. The Contractor agrees to provide the Services in accordance with the Change Order or Amendment. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through **Section 18, the Contract Controversies Provision**.

30. CONFIDENTIALITY AND BREACH

Confidential Information shared by one party (“Disclosing Party”) to the other party (“Recipient”) during the course of the business relationship between the parties shall be treated in accordance with this Contract.

All Data provided, collected, processed, or created to fulfill the terms of this contract is Confidential Information unless otherwise indicated in writing. “Confidential Information” shall include, but not be limited to, information disclosed by or through Disclosing Party to Recipient, whether in writing, orally or by any other means, which is confidential and/or proprietary to Disclosing Party. Such information may include, without limitation: (a) information concerning Disclosing Party’s customers, grantees, or regulated entities; (b) all forms and types of financial, business, technical, or economic information including oral presentations pertaining to services; marketing strategies; computer software, software designs, and services; business plans and logic; computer hardware used by Disclosing Party; and other information, documents, and materials that pertain to operation policies, procedures, and any other aspects of the business of Disclosing Party; (c) financial and pricing information of Disclosing Party; (d) financial information of PLCB customers and regulated entities; and (d) proprietary software developed by, or licensed to, the Disclosing Party. In accordance with the Liquor Code at 47 P.S. § 2-207(m)(2), “Confidential Information” shall also include the names and addresses of individual consumers who participate in a customer relations

management program or purchase products from the PLCB, as well as any records or information that would disclose the personal purchase choices of individual consumers.

Recipient shall use Confidential Information only as directed by Disclosing Party and shall not accumulate Confidential Information in any way or make use of Confidential Information for any purpose other than to perform the requirements necessary to fulfill the business transaction(s) agreed to by the Parties. Recipient shall not disclose, transfer, use, copy, or allow any employee or any third party access to any such Confidential Information, except for those who are legally permitted to access the information and have a need to know such Confidential Information in order for Recipient to accomplish the requirements of the business transaction(s) agreed to by the Parties and who are individually bound by contractual obligations of confidentiality and limitation of use sufficient to give effect to this Contract. Without Disclosing Party's prior written consent, Recipient shall not disclose Confidential Information to any unauthorized party. Recipient shall treat Confidential Information with at least the same degree of care that it treats its own Confidential Information and shall exercise reasonable precautions to prevent disclosure of Confidential Information to unauthorized parties.

The obligations with respect to Confidential Information shall not apply to Confidential Information that: (a) at the time of disclosure was generally known by the public; (b) the Recipient obtained from a third party that it has reason to believe had the right to make such disclosure; (c) Disclosing Party specifically authorizes the Recipient to disclose; (d) either Party developed independently; or (e) becomes part of the public domain through no fault of the Parties. Nothing herein shall be construed to restrict Recipient from disclosing such Confidential Information as may be required by federal or state law, pursuant to a court order issued by a court of competent jurisdiction, or pursuant to a validly issued subpoena, or pursuant to a requirement of a valid and legal law enforcement investigation; provided, however, that if Recipient is required to make such disclosure, it immediately notifies Disclosing Party in advance in writing of such requirement for disclosure, so that Disclosing Party, at its own option and at its expense, may seek to restrain disclosure of such Confidential Information.

Recipient agrees that any unauthorized use or disclosure of Confidential Information may cause immediate and irreparable harm to Disclosing Party. Recipient acknowledges that Disclosing Party shall have the right to take all reasonable steps to protect its interests in keeping the Confidential Information confidential, including, but not limited to, injunctive relief and specific performance without proof of actual damages, and any other remedies as may be available at law or in equity, in the event Recipient does not fulfill its obligations under this Contract. Notwithstanding the foregoing, this provision shall not be read, interpreted, or construed as a waiver of the sovereign immunity of PLCB or of the Commonwealth of Pennsylvania.

Recipient shall not use the Confidential Information of Disclosing Party: (a) for its own benefit or that of any third party; (b) to Disclosing Party's detriment; or (c) in any manner other than to perform the requirements necessary to fulfill the business transaction(s) agreed to by the Parties.

Recipient shall ensure that it does not retain Confidential Information for longer than it needs such information to perform the requirements necessary to fulfill the business transaction(s) agreed to by the Parties. Recipient's disposal policy shall require that such information is reviewed and destroyed on a routine basis consistent with Recipient's disposal policy.

In the event Contractor knows or reasonably believes that there has been a breach of Commonwealth Data, Recipient shall take the following actions:

1. Immediately notify PLCB of such breach.
2. Identify to PLCB at no cost to PLCB what specific Confidential Information may have been breached.
3. Monitor any affected accounts for any unusual activity (if appropriate).
4. Take measures to contain and control the incident to prevent further unauthorized access.
5. Remedy the circumstances that permitted such breach to occur.
6. Cooperate with PLCB as necessary to facilitate PLCB's compliance with any applicable federal or state law regarding unauthorized access of the Confidential Information.

In addition to any other remedy in this Contract, Contractor shall fully reimburse PLCB for the actual costs of mailing notices to individuals whose data has or may have been breached, where such breach is the direct result, in whole or in part, of Contractor's breach of this Contract, Contractor's failure to conform to applicable law, or Contractor's negligence.

The terms and conditions of this Contract shall survive for a minimum of five years after the date of delivery of the last item of Confidential Information between the Parties. Notwithstanding the foregoing, the Recipient acknowledges that (i) its obligations under this Contract with respect to the Disclosing Party's Confidential Information shall remain in effect for as long as such information shall remain Confidential Information under applicable law and (ii) its obligations under this Contract with respect to the Disclosing Party's trade secrets shall remain in effect for as long as such information shall remain a trade secret under applicable law.

Upon either Party's written demand and/or upon termination of a business transaction between the Parties, Recipient shall destroy Disclosing Party's Confidential Information (including the removal of any copies of the Confidential Information in any form whatsoever on Recipient's computer and information storage systems). Recipient shall also provide to Disclosing Party a written certification of destruction signed by an officer of Recipient duly authorized to legally bind Recipient which certifies that no copies of the Confidential Information have been retained.

Disclosing Party shall not, except in a way consistent with the Proprietary Rights provisions of this Contract, indicate that any portion of a Deliverable is its own Confidential Information.

31. SENSITIVE INFORMATION

- A. The Contractor shall not publish or otherwise disclose, except to the Commonwealth or the Contractor's subcontractors, any information or data obtained hereunder from or about private individuals, organizations, or public agencies, in a way that allows the information or data furnished by or about any particular person or establishment to be identified.
- B. The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefiting from services under this Contract for any purpose not connected with the parties' Contract responsibilities.

- C. The Contractor will comply with all obligations applicable to it under all applicable data protection legislation in relation to all personal data that is processed by it in the course of performing its obligations under this Contract including by:
 - i. Maintaining valid and up to date registrations and certifications; and
 - ii. Complying with all data protection legislation applicable to cross border data flows of personal data and required security and privacy measures for personal data.

32. PROPRIETARY RIGHTS

- A. **Retained Rights.** Each Party owns, and will continue to own all right, title and interest in and to any inventions however embodied, know how, works in any media, software, information, trade secrets, materials, property or proprietary interest, that it owned prior to this Contract, or that it created or acquired independently of its obligations pursuant to this Contract, and in respect of any modifications or enhancements made thereto (collectively, “Retained Rights”). All Retained Rights not expressly transferred or licensed herein are reserved to the respective owner.
- B. **Work Products and Deliverables.** Subject to the terms of this Contract, and upon any work products’ or Deliverables’ full or partial creation, the work products and Deliverables are and shall be considered “works made for hire” under the Copyright Act of 1976, as amended, 17 United States Code. If and to the extent that work products and Deliverables may not fit the definition of “works made for hire,” Contractor hereby assigns and transfers to PLCB the full spectrum of intellectual property rights in work products and Deliverables (except any Retained Rights or Contractor Materials as defined herein) fully or partially created pursuant to this Contract. Contractor further agrees that its subcontractors assign, and upon their authorship or creation, expressly and automatically assign and transfer all copyright interest, proprietary rights, trade secrets, and other right, title, and interest in and to the work products and Developed Works to the PLCB.

Assignment of the full spectrum of intellectual property rights means that PLCB gains ownership, including all rights afforded an owner of a trade secret, patent, or copyright under the United States intellectual property laws. As to copyright, this includes but is not limited to the exclusive right to reproduce the work products and Deliverables in multiple copies, the right to distribute copies by sales or other transfers, the right to register all copyrights in its own name as author in the United States and in foreign countries, the right to prepare derivative works based upon the work products and Deliverables and the right to display the work products and Deliverables.

- C. **Contractor Materials.** To the extent material that is used in, enhanced, or developed in the course of providing work products and Deliverables or Services hereunder and such material is not identified as a work product or Deliverable, is of a general abstract character, or may be generically re-used, Contractor owns (or will own) such material, including without limitation: methodologies; delivery procedures; manuals; generic software tools, routines, frameworks, and components; generic content, research and background materials; templates; analytical models; project tools; and development tools, in addition

to all materials in which it owns the Retained Rights in accordance with **Section 32(A)** above (collectively, “Contractor Materials”).

To the extent any Contractor Materials are necessarily required for the proper functioning of the work products or Deliverables (such that the work products or Deliverables will not function, or will not properly function, without the Contractor Materials) or are embedded into the work products or Deliverables, Contractor grants to PLCB a perpetual, nonexclusive, non-transferable, royalty free, license to use such Contractor Materials solely in conjunction with its anticipated use of such work products or Deliverables.

PLCB acknowledges that the Contractor Materials are Confidential Information of Contractor, regardless of whether so designated. PLCB grants Contractor the right to deploy such Contractor Material in the portion of PLCB’s IT environment to which Contractor has been given access, and only with PLCB’s written pre-approval and in accordance with PLCB’s policies and procedures. Notwithstanding the foregoing, and for purposes of clarity, in no case shall the Contractor deploy Contractor Material, or use any Contractor Material in the development of work products or Deliverables, in the operation of work products or Deliverables, or in the provision of Services, without PLCB’s written pre-approval of such use, which may include any analysis or vetting of the Contractor Material deemed necessary by PLCB.

To the extent that any Contractor Materials are necessarily required for the proper functioning of the work products or Deliverables (such that the work products or Deliverables will not function, or will not properly function, without the Contractor Materials) or are embedded into the work products or Deliverables, and PLCB has not pre-approved a subsequent fee-based licensing arrangement, the necessary rights shall be and hereby are granted by the Contractor without an additional fee.

- D.** If and to the extent that Contractor is requested to provide any materials (including but not limited to software) to PLCB in respect of which the relevant intellectual property rights are owned by a third party, Contractor will notify PLCB of any license restrictions pertaining to such third-party materials (which shall then apply to all usage made of such third-party materials) in advance of the provision of the third-party materials and in advance of any use of the third-party materials in a work product or Deliverable.
- E.** Where PLCB provides to Contractor any third-party materials (including but not limited to software), to use for creation of work products or Deliverables or include as part of or an adjunct to work products or Deliverables, PLCB represents that it has all rights to permit the Contractor’s use of, sublicense, or transfer the third-party materials for its intended purpose. All PLCB materials or third-party materials provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract shall be considered Confidential Information under **Section 30, Confidentiality and Breach**.

During the term of this Contract, Contractor may use Commonwealth and third-party materials provided hereunder for the limited purpose of providing the Services covered under this Contract. Neither Contractor nor any of its subcontractors may decompile or

reverse engineer, or attempt to decompile or reverse engineer, any of the third-party or Commonwealth materials, and must use the material in accordance with the material documentation and license limitations, including confidentiality restrictions.

F. Residual Knowledge. Other than Confidential Information, Contractor may use for any purpose any other information which may be retained in the unaided memories of personnel performing the Services such as ideas, concepts, know-how, experience and techniques. An employee's memory is unaided if the employee has not intentionally memorized the information for the purpose of retaining and subsequently using or disclosing it.

G. The Contractor agrees that it will include terms sufficient to ensure compliance with this Section by Contractor and subcontractor in any subcontractor or other agreement with third parties who in any way participate in the creation or development of work products or Developed Works.

33. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING

The Contractor warrants that the work products and Deliverables delivered by, as well as any other Contractor or third-party product or tool used by, the Contractor do not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of PLCB's system, or intellectual property that is part of work product or Deliverables provided to PLCB (each a "Virus"). However, Contractor's intellectual property may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Contractor for temporary use are time sensitive.

The Contractor shall be liable for any damages incurred by PLCB including, but not limited to, the expenditure of PLCB funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that results from the Deliverable and/or work product.

In the event of destruction or modification of any intellectual property, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore PLCB's software, and be liable to PLCB for any resulting damages.

34. BACKGROUND CHECKS

The Contractor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to PLCB's IT facilities, including on-site, physical, and electronic access, and including but not limited to production and non-production systems. Background checks are to be conducted in accordance with PLCB's existing policies. Before PLCB will permit access to the PLCB's facilities by any Contractor, or its employee, subcontractor or agent, the Contractor must provide written confirmation to the office designated by PLCB that the background check has been conducted.

If, at any time, it is discovered that any Contractor, or its employee, subcontractor or agent has a criminal record that includes a felony or misdemeanor conviction involving terrorist threats, 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 PLCB facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to PLCB facilities or systems, unless PLCB consents, in writing, prior to the access being provided. PLCB may withhold its consent at its sole discretion. Failure of the Contractor to comply with the terms of this Sub-Section may result in the default of the Contractor under its Contract with PLCB. PLCB specifically reserves the right to conduct background checks over and above that described herein.

Ongoing Obligation. If at any time during the term of this Contract, any of the representations contained in this Section are no longer true, Contractor will immediately notify PLCB Project Manager, and PLCB shall have the immediate right to terminate this Contract, without further obligation.

35. PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET PROTECTION

- A. The Contractor shall, at its expense, defend, indemnify and hold PLCB harmless from any suit or proceeding which may be brought by a third party against PLCB, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, trademarks or trade dress, or for a misappropriation of a United States trade secret arising out of performance of this Contract (“Claim”), including all intellectual property provided by the Contractor. For the purposes of this Contract, “indemnify and hold harmless” shall mean the Contractor’s specific, exclusive, and limited obligation to (a) pay any judgments, fines and penalties finally awarded by a court of competent jurisdiction, governmental/administrative body or any settlements reached pursuant to a Claim and (b) reimburse PLCB for its reasonable administrative costs or expenses, including without limitation reasonable attorneys’ fees, it necessarily incurs in handling the Claim.

PLCB agrees to give the Contractor prompt notice of any such claim of which it learns. Pursuant to the [*Commonwealth Attorneys Act*](#), Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P. S. §§ [732-101—732-506](#), the Office of Attorney General (“OAG”) has the sole authority to represent PLCB in actions brought against PLCB. The OAG, however, in its sole discretion, and under the terms the OAG deems appropriate, may delegate its right of defense of a Claim. If the OAG delegates the defense to the Contractor, PLCB will cooperate with all reasonable requests of Contractor made in the defense of and/or settlement of a Claim. The Contractor shall not, without OAG and PLCB’s consent, enter into any settlement contract which (a) states or implies that PLCB has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires PLCB to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires PLCB to make a payment which the Contractor is not obligated by this Contract to pay on behalf of PLCB.

In all events, PLCB shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that PLCB provide support to the Contractor in defending any such Claim, the Contractor shall reimburse PLCB for all necessary expenses (including attorneys’ fees, if such are made necessary by the Contractor’s request) incurred by PLCB

for such support. If the OAG does not delegate to the Contractor the authority to control the defense and settlement of a Claim, the Contractor's obligation under this Section ceases. The Contractor, at its own expense, shall provide whatever cooperation the OAG requests in the defense of the suit.

- B.** The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all intellectual property provided under this Contract do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties.
- C.** If the defense of a Claim and the authority to control any potential settlements thereof is delegated to the Contractor, the Contractor shall pay all damages and costs finally awarded therein against PLCB or agreed to by the Contractor in any settlement. If information and assistance are furnished by 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.
- D.** If, in the Contractor's opinion, any intellectual property furnished hereunder is likely to or does become subject to a claim of infringement of a United States patent, copyright, trade dress or trademark, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense:

 - i. substitute functional equivalents for the alleged infringing intellectual property, or
 - ii. obtain the rights for PLCB to continue the use of such intellectual property.
- E.** If any of the intellectual property provided by the Contractor is in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Contractor shall, at its own expense and at its option, either:

 - i. procure the right to continue use of such infringing intellectual property;
 - ii. replace the intellectual property with non-infringing items; or
 - iii. modify the intellectual property so that it is no longer infringing.
- F.** If the use of any intellectual property is enjoined and the Contractor is unable to do any of the preceding set forth in Sub-Section (E) above, the Contractor, upon return of the intellectual property, agrees to refund to PLCB:

 - i. the license fee paid for the infringing intellectual property, less the amount for the period of usage of the intellectual property; and

- ii. the pro-rated portion of any maintenance or Service fees representing the time remaining in any period of services for which payment was made.
- G.** The obligations of the Contractor under this Section survive the termination of this Contract.
- H.** Notwithstanding the above, the Contractor shall have no obligation under this Section for:
- i. modification of any intellectual property provided by PLCB or a third party acting under the direction of PLCB;
 - ii. any material provided by PLCB to the Contractor and incorporated into, or used to prepare any intellectual property;
 - iii. use of any intellectual property after Contractor recommends discontinuation because of possible or actual infringement and has provided one of the remedies under **Subsection 35(E)** or **Subsection 35(F)** above;
 - iv. use of any intellectual property in other than the specified operating environment;
 - v. the combination, operation, or use of the intellectual property with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the intellectual property, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
 - vi. PLCB's use of any intellectual property beyond the scope contemplated by the Contract; or
 - vii. PLCB's failure to use corrections or enhancements made available to PLCB by the Contractor at no charge.
- I.** The obligation to indemnify PLCB, under the terms of this Section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

36. SOVEREIGN IMMUNITY

No provision of this Contract may be construed to waive or limit the sovereign immunity of the PLCB or the Commonwealth of Pennsylvania or its governmental sub-units.

37. NOTICE

Notice and filing in tribunals are governed by the rules of the tribunal. Outside of the context of notice and filing in a tribunal of competent jurisdiction, any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by telecopy, electronic or digital transmission (provided such 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 the Contractor: the Contractor's address as recorded in the PLCB's Supplier Registration system.

b. If to the PLCB:

PLCB Executive Director
512 Northwest Office Building
Harrisburg, Pennsylvania 17124

With a copy to:

PLCB Office of Chief Counsel
401 Northwest Office Building
Harrisburg, Pennsylvania 17124
ra-lblegal@pa.gov

38. 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 Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this contract, the Commonwealth shall notify the Contractor that it requires the Contractor’s assistance, and the Contractor shall provide to the Commonwealth:

- i. access to, and copies of, any document or information in the Contractor’s possession (Requested Information) arising out of this contract that the Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and
- ii. any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this contract.

C. Trade Secret or Confidential Proprietary Information. If the 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 the Contractor considers exempt from production under the RTKL, the Contractor shall notify the Commonwealth and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of the Contractor, that explains why the requested material is exempt from public disclosure under the RTKL. If the Commonwealth determines that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth’s determination.

D. Reimbursement.

- i. **Commonwealth Reimbursement.** If the Contractor fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Contractor shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- ii. **Contractor Reimbursement.** The Commonwealth will reimburse the Contractor for any costs that the 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 Commonwealth Release. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Contractor's legal challenge, regardless of the outcome.

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

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

39. ADVERSE INTEREST ACT AND LIQUOR CODE

The Contractor agrees to maintain compliance with the State Adverse Interest Act Sections 776.1 through 776.8 (71 P.S. Sections 776.1 – 776.8), and Liquor Code Sections 210 and 214 (47 P.S. §§ 2-210, 2-214).

40. INSURANCE REQUIREMENTS

A. General. The Contractor shall maintain at its expense and require its agents, contractors and subcontractors to procure and maintain, as appropriate and at a minimum, the following types and amounts of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:

- i. Workers' Compensation Insurance for all of the Contractor's employees engaged in performing Services in accordance with the [*Worker's Compensation Act*](#), Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 1—2708.

- ii. Commercial general liability insurance providing coverage from claims for damages for personal injury, death and property of others, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for or Supplies provided to the Commonwealth.
- iii. Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of \$2,000,000, per accident/occurrence/annual aggregate.
- iv. Professional Liability/Errors and Omissions Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
- v. Network/Cyber Liability Insurance (including coverage for Professional and Technology-Based Services Liability if not covered under Company's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
- vi. Completed Operations Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
- vii. Cybercrime insurance in an amount of not less than \$2,000,000 per claim.
- viii. Umbrella coverage in the sum of \$2 million shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Automobile Liability, Employers' Liability, and Professional Liability.

The minimum types and amounts of insurance required are not be construed as limitations on liability.

B. Certificate of Insurance. Prior to commencing Services under the Contract, and continuing thereafter, the Contractor shall provide the Commonwealth with a copy of each current certificate of insurance required by this Section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this Section until at least 15 days' prior written notice has been given to the Commonwealth. Such cancellation or change

shall not relieve the Contractor of its continuing obligation to maintain insurance coverage in accordance with this Section.

- C. Insurance coverage length.** The Contractor agrees to maintain such insurance for the life of the Contract, and to provide substantiation of such coverage by providing PLCB with each current certificate of insurance.

41. SIGNATURES

The parties agree that: (1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form; (2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; (3) if a law requires a record to be in writing, an electronic record satisfies the law; and (4) if law requires a signature, an electronic signature satisfies the law. Signatures may be offered in, and shall be effective as, counterparts.

42. PUBLICITY/ADVERTISEMENT

The Contractor must obtain written PLCB approval prior to mentioning the PLCB or a Commonwealth agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark, trade or brand name, or logo.

43. SURVIVAL

The termination or expiration of this Contract will not affect any provisions of this Contract which by their nature survive termination or expiration, including but not limited to the provisions that deal with the following subject matters: definitions, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, indemnification and privacy.

44. WAIVER

Failure to enforce any provision will not constitute a waiver.

45. SEVERABILITY

If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

47. NONEXCLUSIVE REMEDY

Except as expressly set forth in this Contract, the exercise by either party of any of its remedies under this Contract will be without prejudice to its other remedies under this Contract or otherwise.

48. NOTICE OF DELAYS

Whenever the Contractor encounters any difficulty that delays or threatens to delay the timely performance of this Contract (including actual or potential labor disputes), the Contractor shall promptly give notice thereof in writing to the Commonwealth stating all relevant information with

respect thereto. Such notice shall not in any way constitute a basis for an extension of any deadline or due date or be construed as a waiver by the Commonwealth of any rights or remedies to which it is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of the delivery schedule is granted, it will be done consistent with **Section 29, Change Orders and Amendments**.

49. CONDUCT OF SERVICES

Following the Effective Date of the Contract, Contractor shall proceed diligently with all Services and shall perform such Services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

In determining whether the Contractor has performed with due diligence under the Contract, it is agreed and understood that the Commonwealth may measure the amount and quality of the Contractor's effort against the representations made in the Contractor's Proposal. The Contractor's Services hereunder shall be monitored by the Commonwealth's designated representatives. If the Commonwealth reasonably determines that the Contractor has not performed with due diligence, the Commonwealth and the Contractor will attempt to reach agreement with respect to such matter. Failure of the Commonwealth or the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of **Section 18, Contract Controversies**.

50. CONTRACTOR HOSTED SECURITY, LOCATION, STATUS AND DISPOSITION OF DATA

- A.** All Data must be stored within the United States;
- B.** The Contractor shall be responsible for maintaining the privacy, security and integrity of Data in the Contractor's or its subcontractors' possession;
- C.** All Data shall be provided to the Commonwealth upon request, in a form acceptable to the Commonwealth and at no cost;
- D.** Any Data shall be destroyed by the Contractor at the Commonwealth's request;
- E.** Any Data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy and accessibility requirements of this Contract.

51. 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/lease, and for an employee's hours performing ancillary services necessary for the performance of the services or lease 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 annually thereafter, 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 employees

- i. 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. The 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 Commonwealth, provide to the Commonwealth 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 General Counsel for appropriate civil or criminal referral.

G. Subcontractors. The 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.

52. WORKER PROTECTION AND INVESTMENT

The 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.

**APPENDIX A
PROPOSAL COVER SHEET
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LIQUOR CONTROL BOARD
RFP #20230905**

| Offeror Information: | |
|---------------------------------|--|
| Offeror Name | |
| Offeror Mailing Address | |
| Offeror Website | |
| Offeror Contact Person | |
| Contact Person's Phone Number | |
| Contact Person's E-Mail Address | |
| Offeror Federal ID Number | |
| Offeror Oracle Supplier Number | |

| Submittals Uploaded: | |
|-----------------------------|---------------------|
| Δ | Technical Submittal |
| Δ | Cost Submittal |

| Signature(s) | |
|--|---------------|
| Signature(s) of an official(s) authorized to bind the Offeror to the provisions contained in the Offeror's proposal: | |
| Signature: | Signature: |
| Printed Name: | Printed Name: |
| Title: | Title: |

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

APPENDIX B

CORPORATE SIGNATORY DELEGATION AUTHORIZATION

PLCB RFP # 20230905

CORPORATE SIGNATORY DELEGATION AUTHORIZATION

I, _____, of _____, City of _____,
(Name) (Address)

County of _____, State of _____, certify that I am the
_____ of _____, a corporation organized
(Title/Capacity) (Name of Corporation)

under the laws of the State of _____, having its principal office at
_____, City of _____, County of _____,
(Address)

State of _____; and that the following is a true and complete copy of a resolution duly
adopted by the Board of Directors of _____ at a meeting held by
(Name of Corporation)

them on _____ day of _____, 20____, at which a quorum was present; and that this resolution has
not been altered, amended, repealed, rescinded or otherwise modified and that it is still in full force
and effect. RESOLVED THAT

_____ of _____, City of _____,
(Name) (Address)

County of _____, State of _____ is hereby authorized to execute
contracts on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the corporation this
_____ day of _____, 20_____.

(Signature of Certifying Official)

(SEAL)

(Typed or Printed Name)

(Title)



NOTICE

WORKER PROTECTION AND INVESTMENT

On October 21, 2021, Governor Tom Wolf signed Executive Order 2021-06, *Worker Protection and Investment*. The Executive Order affirms that the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end and in accordance with the Executive Order, prior to being awarded a contract or grant, contractors and grantees of the Commonwealth must certify that they are in compliance with all applicable Pennsylvania state labor and workforce safety laws including:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

Contractors and grantees must also certify compliance with Unemployment Compensation tax requirements and Workers' Compensation insurance requirements.

To ensure compliance with these statutes, Contractors and Grantees will be required to submit the Worker Protection and Investment Certification Form BOP-2201 in response to all procurement solicitations (invitations for bids, requests for proposals, requests for quotes, emergency procurements and sole source procurements) and grant applications and or requests for applications for grants. Contracts and grants will not be executed with prospective contractors or grantees until such certification form is received.

In addition, the Pennsylvania Department of Labor and Industry has created a public list of businesses that have been found to be non-compliant with Pennsylvania state labor and workforce safety law which will be published on its [public-facing website](#). Agencies are required to ensure that prospective contractors or grantees are not on the list prior to awarding any contract or grant. Contractors and grantees who appear on the list can be removed by remedying their statutory noncompliance. Contact information for addressing compliance status is available on the list website.

These requirements of the Executive Order are currently in effect. Questions should be directed to the contracting or granting agency.



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

- A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania's Unemployment Compensation Law, Workers' Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:
1. Construction Workplace Misclassification Act
 2. Employment of Minors Child Labor Act
 3. Minimum Wage Act
 4. Prevailing Wage Act
 5. Equal Pay Law
 6. Employer to Pay Employment Medical Examination Fee Act
 7. Seasonal Farm Labor Act
 8. Wage Payment and Collection Law
 9. Industrial Homework Law
 10. Construction Industry Employee Verification Act
 11. Act 102: Prohibition on Excessive Overtime in Healthcare
 12. Apprenticeship and Training Act
 13. Inspection of Employment Records Law
- B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee's compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

| | |
|---|-------------|
| | |
| <i>Signature</i> | <i>Date</i> |
| | |
| <i>Name (Printed)</i> | |
| | |
| <i>Title of Certifying Official (Printed)</i> | |
| | |
| <i>Contractor/Grantee Name (Printed)</i> | |

APPENDIX D

IRAN FREE PROCUREMENT CERTIFICATION

PLCB RFP #20230905

IRAN FREE PROCUREMENT CERTIFICATION FORM

(Pennsylvania's Procurement Code Sections 3501-3506, 62 Pa.C.S. §§ 3501-3506)

To be eligible for an award of a contract with a Commonwealth entity for goods or services worth at least \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services ("DGS") pursuant to Section 3503 of the Procurement Code **and** is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

To comply with this requirement, please insert your vendor or financial institution name and complete **one** of the options below. Please note: Pennsylvania law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Section 3503 of the Procurement Code.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS **and** is eligible to contract with the Commonwealth of Pennsylvania Sections 3501-3506 of the Procurement Code.

| | |
|--|----------------------|
| <i>Vendor Name/Financial Institution (Printed)</i> | |
| <i>By (Authorized Signature)</i> | |
| <i>Printed Name and Title of Person Signing</i> | <i>Date Executed</i> |

OPTION #2 – EXEMPTION

Pursuant to Procurement Code Section 3503(e), DGS may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to enter into a contract for goods and services.

If you have obtained a written exemption from the certification requirement, please fill out the information below, and attach the written documentation demonstrating the exemption approval.

| | |
|--|----------------------|
| <i>Vendor Name/Financial Institution (Printed)</i> | |
| <i>By (Authorized Signature)</i> | |
| <i>Printed Name and Title of Person Signing</i> | <i>Date Executed</i> |

APPENDIX E

**TRADE SECRET/CONFIDENTIAL
PROPRIETARY INFORMATION NOTICE**

PLCB RFP # 20230905

Trade Secret/Confidential Proprietary Information Notice

Instructions:

The Commonwealth may not assert on behalf of a third party an exception to the public release of materials that contain trade secrets or confidential proprietary information unless the materials are accompanied, at the time they are submitted, by this form or a document containing similar information.

It is the responsibility of the party submitting this form to ensure that all statements and assertions made below are legally defensible and accurate. The Commonwealth will not provide a submitting party any advice with regard to trade secret law.

Name of submitting party:

Contact information for submitting party:

Please provide a brief overview of the materials that you are submitting (e.g. bid proposal, grant application, technical schematics):

Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g.: *Response to RFP #12345678 for XYZ being offered by XXXXXXXX. Documents required to be submitted under law ABC*)

Please provide a list detailing which portions of the material being submitted you believe constitute a trade secret or confidential proprietary information, and please provide an explanation of why you think those materials constitute a trade secret or confidential proprietary information. Also, please mark the submitted material in such a way to allow a reviewer to easily distinguish between the parts referenced below. (You may attach additional pages if needed)

Note: The following information will not be considered a trade secret or confidential proprietary information:

- Any information submitted as part of a vendor's cost proposal
- Information submitted as part of a vendor's technical response that does not pertain to specific business practices or product specification
- Information submitted as part of a vendor's technical or disadvantaged business response that is otherwise publicly available or otherwise easily obtained
- Information detailing the name, quantity, and price paid for any product or service being purchased by the Commonwealth

| <u>Page Number</u> | <u>Description</u> | <u>Explanation</u> |
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Acknowledgment

The undersigned party hereby agrees that it has read and completed this form, and has marked the material being submitted in accordance with the instructions above. The undersigned party acknowledges that the Commonwealth is not liable for the use or disclosure of trade secret data or confidential proprietary information that has not been clearly marked as such, and which was not accompanied by a specific explanation included with this form.

The undersigned agrees to defend any action seeking release of the materials it believes to be trade secret or confidential, and indemnify and hold harmless the Commonwealth, its agents and employees, from any judgments awarded against the Commonwealth in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives so long as the Commonwealth has possession of the submitted material, and will apply to all costs unless and until the undersigned provides a written statement or similar notice to the Commonwealth stating that it no longer wishes to exempt the submitted material from public disclosure.

The undersigned acknowledges that the Commonwealth is required to keep all records for at least as long as specified in its published records retention schedule.

The undersigned acknowledges that the Commonwealth reserves the right to reject the undersigned's claim of trade secret/confidential proprietary information if the Commonwealth determines that the undersigned has not met the burden of establishing that the information constitutes a trade secret or is confidential. The undersigned also acknowledges that if only a certain part of the submitted material is found to constitute a trade secret or is confidential, the remainder of the submitted material will become public; only the protected information will be removed and remain nonpublic.

If being submitted electronically, the undersigned agrees that the mark below is a valid electronic signature.

Signature

Title

Date

PLCB RFP# 20230905
PCI Compliance and Readiness Services

APPENDIX F

COST SUBMITTAL TEMPLATE

Cost Submittal Instructions

- 1.) Complete all yellow fields in the "Deliverables" tab.
- 2.) Formulas are embedded in the worksheet. Offerors must verify that all calculations and costs are accurate.
- 3.) For deliverables 1 through 4 and 6, enter a price as a single, one-time flat fee.
- 4.) For deliverable 5, enter a cost per month. The deliverable 5 subtotal will calculate that cost for the year.
- 5.) The cost submittal should not be altered in any way, other than entering the costs.
- 6.) Please contact Issuing Officer Tanya Readinger at treadinger@pa.gov with any question or concerns, which questions or concerns must be submitted by the deadline for same as set forth in the Calendar of Events to this RFP. Any late-submitted questions or concerns may be dismissed by the Issuing Officer.

Deliverables for Part III-4 Work Plan

| | | Year 1 | Year 2 | Year 3 | Year 4 (Optional) | Year 5 (Optional) |
|--|------------------|---------------|---------------|---------------|------------------------------|------------------------------|
| | Frequency | | | | | |
| Deliverable 1 - PCI Data Security Standard (DSS) Latest Version Assessment - PCI Report on Compliance (ROC) & Attestation of Compliance (AOC) | Annually | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Deliverable 2 - Internal Penetration Testing | Annually | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Deliverable 3 - External Penetration Testing | Annually | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Deliverable 4 - Risk Assessment | Annually | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Deliverable 5 - External Vulnerability Scanning | Monthly | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Deliverable 5 Subtotal | | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Deliverable 6 - PCI Compliance Readiness Assessment | Annually | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Annual Subtotals | | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Contract Base Term Total | | \$0.00 | | | | |