

CONTRACT NO. **TRUST005**

FEDERAL ID NO. _____

CONTRACT

PENNSYLVANIA TOURISM SIGNING TRUST

AND

This Contract (“**Contract**”), made this _____ day of _____, 2012, by and between the Pennsylvania Tourism Signing Trust (the “**Trust**”),

A N D

_____, and acting through its proper officials (the “**Contractor**”).

Trust and Contractor are hereinafter collectively referred to as “**Parties**” or individually a “**Party**”

1. GENERAL

The Contractor will conduct work (the “**Project**”) in accordance with the terms and conditions of the following documents, all of which are attached hereto as Exhibits A, B and C and are incorporated herein by this reference:

- A. Project Requirements referred to as The Invitation to Bid titled, “Pennsylvania Tourism Signing Trust Auditor”, Statement of Work dated _____, 2012 (the “**Project Requirements**”),
- B. Addendum #1, Questions and Answers, dated _____, 2012,
- C. The Contractor’s Cost Submittal titled, Appendix B – Cost Worksheet (the “**Cost Submittal**”), and

2. TERM

The term (the “**Term**”) of this Contract shall be for a period of one (1) year during which the Contractor agrees to perform the services as contemplated herein, unless earlier terminated as provided in **Section 14**; provided, however, that the Trust, at its sole discretion, may, upon advance written notice to Contractor, renew by letter the Term for up to forty-eight (48) additional months upon the same terms and conditions and if necessary extend for three (3) additional months upon the same terms and conditions. The purpose of the Trust’s right to extend the Term for an additional three months is to prevent a lapse in Contract coverage while the Trust is in the process of entering into a new contract. The Term shall commence on the date the Trust provides notice to Contractor to proceed (the “**Notice to Proceed**”).

3. INCORPORATION BY REFERENCE

The following designated Contract provisions, acts, and policies, and any amendments thereto, are hereby incorporated by reference as though set forth in full herein:

- (a) Contractor Responsibility Provisions, dated April 27, 2011;
- (b) Contractor Integrity Provisions, dated December, 2 2011;
- (c) Americans with Disabilities Act Provisions, dated October 14, 2011
- (d) Commonwealth Travel Policy, dated January 1, 2012; and
- (e) Commonwealth Nondiscrimination/Sexual Harassment Clause, dated August 19, 2010.

In these documents references to the Commonwealth are replaced with PTST, except when a Commonwealth provision, act or policy is cited.

4. DELIVERABLES

The Contractor will provide the Trust with all products and services stated in the Statement of Work and Cost Submittal.

5. SUBCONTRACTS

Any subcontract must first be approved by the Trust, in writing. Subcontracts shall include the following provisions from this Contract in their terms and conditions: **Section 3, Incorporation by Reference; Section 7, Review Rights; Section 9, Travel, if applicable; Section 10, Overhead, if applicable; Section 20, Beneficial Interests; Section 21, Accounting Records.**

Any subcontract must also contain a provision that the subcontract may be terminated by the Contractor if this Contract is terminated by the Trust for any reason. Additionally, every subcontract must include a statement that the Contractor is required to make payment to the subcontractor within 10 (ten) calendar days from receipt of payment from the Trust for the subcontractor's work.

In selecting a subcontractor, Contractor should keep in mind that providing opportunities for disadvantaged business enterprises, minority-owned, women-owned and small business concerns to compete for work is an important endeavor. The Contractor is encouraged to involve businesses of these types in the work required under this Contract.

6. OWNERSHIP RIGHTS

All proprietary materials and methodologies brought by the Contractor to the Project and all documents, sketches, drawings, designs, works, papers, files, reports, computer programs, data, computer documentation and other tangible materials authored and prepared by Contractor as the work product covered in the scope of work shall be treated in accordance with the following principles:

(1) Pre-existing Materials Brought by Contractor to the Project: The Trust shall have no ownership rights to Contractor's proprietary materials, data, software, methodologies or other intellectual property that Contractor brings to the Project or has previously developed with or obtained from third parties (collectively, the "**Contractor Property**");

(2) Copyright Ownership – Ownership of Materials Developed as Part of the Scope of Work for the Project: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, data, computer documentation and other tangible materials authored and prepared by Contractor as the work product covered in the scope of work for the Project, including works and work product developed by subcontractors, are the sole and exclusive property of the Trust and shall be considered works made for hire (collectively the "**Works**"). In the event that such Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, Contractor agrees to assign and, upon their authorship or creation, expressly and automatically assign all copyright interests, proprietary rights, trade

secrets, and other right, title and interest in and to such Works to the Trust. The Trust shall have the rights accorded a holder of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Works in copies, the right to distribute copies by sale 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 Works, and the right to display the Works. Upon completion or termination of this Contract, all working papers, files and other documentation shall immediately be delivered by Contractor to the Trust. Contractor warrants that the Works are original and do not infringe the rights of any other work.

(a) Contractor License – Notwithstanding the foregoing, Contractor and any subcontractors shall retain a royalty free non-exclusive license to reproduce such Works for internal use in furtherance of their services on behalf the Trust, for the length of this of this Contract, or, in the case of a subcontractor, for the length of such subcontractor’s contract with Contractor, and to have such Works published for any academic purpose including, but not limited to, publication as part of any thesis or dissertation or journal article, subject to the provisions of Section I-19 News Releases of the Request for Proposal.

(3) Patent Ownership: Contractor and its subcontractors shall retain ownership to patentable items, including, but not limited to, patents, processes, inventions or discoveries (collectively the “**Patentable Items**”) made by the Contractor during the performance of this Contract. Notwithstanding the foregoing, the Trust is granted a non-exclusive, non-transferable, royalty free license to use or practice the Patentable Items. The Trust may disclose to third parties any such Patentable Items made by Contractor or any of its subcontractors under the scope of work for the Project that have been previously publicly disclosed. The Trust understands that any third party disclosure will not confer any license under such Patentable Items.

7. REVIEW RIGHTS

The Trust and the Pennsylvania Department of Transportation Representative, who shall be designated by the Trust from time to time, have the right to review and inspect all Project activities upon reasonable notice of at least three (3) business days, during normal business hours.

8. PAYMENT

The Trust will pay the Contractor during the time period set forth in **Section 2** of this Contract, for deliverables completed in accordance with the terms and conditions of this Contract and the Project Requirements, the amount designated in the Cost Submittal. Collectively, the sum of the deliverable amounts shall constitute the “**Contract Price.**”

9. TRAVEL

All travel expenses incurred by the Contractor shall be covered within the deliverable amounts on the Cost Submittal. All travel expenses must comply with item 3.d. Travel Policies.

10. TRUST CONTRACTING OFFICER

The person designated to act for the Trust in administering and monitoring this Contract is Ted Leonard or her/his designee or replacement (the “**Contracting Officer**”).

11. DEFAULT

- a.** The Trust may, subject to the provisions of **Section 13**, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in **Section 14**, Termination Provisions) the whole or any part of this Contract for any of the following reasons:
- 1) Failure to begin work within the time specified in the Contract or as otherwise specified;
 - 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract terms;
 - 3) Unsatisfactory performance of the work;
 - 4) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - 5) Discontinuance of work without approval;
 - 6) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - 7) Insolvency or bankruptcy;
 - 8) Assignment made for the benefit of creditors;
 - 9) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - 10) Failure to protect, to repair, or to cure any damage or injury to property; or
 - 11) Breach of any provision of this Contract.
- b.** In the event that the Trust terminates this Contract in whole or in part as provided in Subparagraph a. above, the Trust 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 Trust for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.

- c. If the Contract is terminated as provided in Subparagraph a. above, the Trust, in addition to any other rights provided in this **Section 12**, may require the Contractor to transfer title and deliver immediately to the Trust in the manner and to the extent directed by the Pennsylvania Department of Transportation, such partially completed work, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Payment for completed work accepted by the Trust shall be at the Contract Price; provided. Except as provided below, payment for partially completed work, including, where applicable, reports and working papers, delivered to and accepted by the Trust, shall be in an amount agreed upon by the Contractor and Contracting Officer. The Trust may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Trust against loss.
- d. The rights and remedies of the Trust provided in this **Section 12** shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Trust's failure to exercise any rights or remedies provided in this **Section 12** shall not be construed to be a waiver by the Trust of its rights and remedies in regard to the event of default or any succeeding event of default.

12. FORCE MAJEURE

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

The Contractor shall notify the Trust orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect 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 Trust may reasonably request. After receipt of such notification, the Trust may elect either to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

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

13. TERMINATION PROVISIONS

The Trust has the right to terminate this Contract, completely or in part, for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- a. **TERMINATION FOR CONVENIENCE:** The Trust shall have the right to terminate the Contract for its convenience if the Trust determines that such termination is in the Trust's best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** The Trust's obligation to make payments during any Trust 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 Trust shall have the right to terminate the Contract. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.
- c. **TERMINATION FOR CAUSE:** The Trust shall have the right to terminate the Contract due to Contractor's default under **Section 12**, Default, upon written notice to the Contractor. The Trust shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this contract or by law. If it is later determined that the Trust erred in terminating the Contract for cause, then, at the Trust's discretion, the Contract shall be deemed to have been terminated for convenience under **Section 14.a**.

14. CONTRACT CONTROVERSIES

- a. Filing of Written Claim. 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 shall be deemed to have irrevocably waived and forever released its right to assert a claim in any forum.
- b. Role of Contracting Officer. The Contracting Officer, or his or her designee, 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 the mutual consent of the Contracting Officer and the Contractor. The Contracting Officer, or his or her designee, 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 and shall not be subject to appeal.

15. COMPLIANCE WITH LAWS

The Contractor shall comply with all Federal, State and local laws applicable to its work, and shall procure at its expense all licenses and permits necessary for the fulfillment of its obligations.

16. NO CONSEQUENTIAL DAMAGES

Under no circumstances and under no legal theory, whether in tort, contract or otherwise, shall either Party be liable to the other Party for an indirect, special, incidental or consequential damages of any character arising out of this Contract, including without limitation, damages for loss of goodwill, lost profits, or work stoppage even if the other Party has been informed of the possibility of such damages.

17. INSURANCE REQUIREMENTS

The Contractor shall procure and maintain at its expense the following types of insurance issued by companies acceptable to the Trust and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:

- a. Worker's compensation insurance for all of the Contractor's employees and those of any subContractor, engaged in work at the site of the Project in accordance with the Worker's Compensation Act of 1915 and any supplements or amendments thereof.
- b. Public liability and property damage insurance to protect the Trust, the Contractor, and any and all subContractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage, which may arise out of the services performed under this Contract, whether such performance be by the Contractor, by any subContractor, or anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than two hundred fifty thousand (\$250,000.00) dollars each person and one million (\$1,000,000.00) dollars each occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Trust as an additional insured. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Trust, as an additional insured, against the insurance coverage in regard to work performed for the Trust.

Contractor shall provide the Trust with a certificate of insurance evidencing the required insurance coverage at least once annually and such certificate shall list the Trust as an

additional insured. The required insurance coverage cannot be terminated or permitted to expire without at least thirty (30) days prior written notice to the Trust.

18. MODIFICATIONS

Any change to this Contract cost and/or time as detailed in this Contract, the Statement of Work and Cost Submittal, if applicable, other than the renewal(s) and/or extension permitted in **Section 2**, shall be in writing, approved by endorsement of Contractor and Trustees. Upon such full execution, the letter shall become a supplement to this Contract.

19. BENEFICIAL INTERESTS

No member or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

20. ACCOUNTING RECORDS

The Contractor shall maintain accounting records and other verifiable evidence pertaining to the costs it incurs on the Project (“**Records**”). The Contractor shall also require its subcontractors to maintain their own Records. These Records will be made available for inspection by the Trust, or any authorized representative, at all reasonable times at the office of the Contractor and any subcontractor during the Contract period and for three years following the date of the final payment to the Contractor and copies thereof shall be furnished as requested.

21. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING

1. Notwithstanding any other provision in this Contract to the contrary, if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Trust and provided further that the Trust can demonstrate that the virus or malicious, mischievous or destructive programming was introduced by the Contractor or any of its employees, agents, subcontractors or consultants, the Contractor shall be liable for any damage to any data and/or software owned or licensed by the Trust. In addition, the Contractor shall be liable for the damages incurred by the Trust including, but not limited to, the expenditure of Trust funds to eliminate or remove a computer virus or malicious mischievous or destructive programming that result from the Contractor’s failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor, its servants, agents, subcontractors, or employees through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.). In the event of destruction or modification of software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Trust’s software, and be liable to the Trust for any resulting damages.

2. The Trust may, at any time, audit, by a means deemed appropriate by the Trust, any computing devices being used by representatives of the Contractor to provide services to the Trust for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and whether the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to the Trust network until the proper installation(s) have been made.

The Contractor may use the anti-virus software used by the Trust to protect Contractor's computing devices used in the course of providing services to the Trust. It is understood that the Contractor may not install the software on any computing device not being used to provide services to the Trust, and that all copies of the software will be removed from all devices upon termination of this Contract.

22. NOTICES

Any notices required or permitted by this Contract or given in connection herewith, shall be in writing and made by certified mail, overnight mail service, first-class mail, fax or personal delivery, postage paid to the following representatives of the Parties:

If to the Trust:

Ted Leonard, Chairman
Pennsylvania Tourism Signing Trust
600 North Third Street
PO Box 2865
Harrisburg, PA 17105

If to the Contractor:

These notices include, but are not limited to, notice of termination, provision of the certificate of insurance, issues requiring resolution of a dispute, modifications to this Contract and any general issues concerning the interpretation of this Contract.

Other points of contact which are necessary to complete the work conducted under the terms of this Contract and not concerning the items listed in the above paragraph, shall be identified by the Parties immediately after the notice to proceed given by the Trust.

23. ORDER OF PRECEDENCE

If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence for resolution shall be, in descending order with the highest preference first: (1) the Contract; (2) the Statement of Work; (3) the Cost Submittal; and (4) the Questions and Answers.

24. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to conflict of law principles thereof.

25. SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of the Parties, their respective heirs, and permitted assigns; provided, however, that the Contractor shall not be permitted, under any circumstances, to assign or transfer any right or remedy hereunder without the prior written consent of the Trust, which may be withheld or denied in the Trust's sole discretion.

26. COUNTERPARTS

This Contract may be executed and delivered in separate counterparts (including by means of facsimile or email transmission), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

27. ADDITIONAL WORK

As part of this Contract the need for some additional work not yet anticipated or defined within the Statement of Work, but within the Contract scope, may be identified by PTST or the Contractor. In the event that such additional work is identified, PTST and the Contractor shall agree on the level of effort, any associated costs and a schedule for completion.

The agreement for inclusion of the additional work, associated costs and completion schedule, or any such change that results in an increase or decrease in the total value of the Contract, shall be formalized in writing by an exchange of letter signed only by both parties.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Contract the date first above written.

CONTRACTOR:

TITLE: _____ BY _____

DATE: _____

If a Corporation, only the Chairman, President, Vice President, Senior Vice President, Executive Vice President, Assistant Vice President, Chief Executive Officer, or Chief Operating Officer must sign; if one of these officers are not available, please attach a resolution. If a sole proprietorship, only the owner must sign; if a partnership, only one partner needs to sign; if a limited partnership, only the general partner may sign. If a Limited Liability Company (“LLC”), only one member needs to sign, unless it is a manager-based LLC, then a manager must sign. If a Municipality, Authority, or other entity, please attach a resolution.

DO NOT WRITE BELOW THIS LINE--FOR TRUST USE ONLY

TRUSTEES:

TITLE: _____ BY _____

DATE: _____