POKAGON BAND OF POTAWATOMI INDIANS
CANNABIS REGULATORY COMMISSION

REQUEST FOR PROPOSAL

Licensing and Investigation
Audit, Compliance, and Enforcement
and
Related Services

Pokagon Band of Potawatomi Indians
Purchasing Department
26907 Potawatomi Trail
Dowagiac, MI 49047
(269) 462-4268
michael.engen@pokagonband-nsn.gov

INSTRUCTIONS

1. Background.

The Pokagon Band of Potawatomi Indians **("Pokagon Band")** is a federally recognized Indian tribe. The Pokagon Band is organized under a constitution **("Constitution")**. Under the Constitution, the Tribal Council is the governing body of the Pokagon Band and is vested with the sovereign powers of the Pokagon Band, including to enact laws.

On December 9, 2021, the Tribal Council enacted the Cannabis Regulatory Act **("Act")**. Under Section 2.04 of the Act, the Tribal Council delegated "to the Commission sole authority and responsibility to regulate all Cannabis Related Business Activities within the Reservation, as expressly provided by this Act."

Under Section 3.02 of the Act, the Commission has the duty and power to develop, propose, and promulgate Cannabis Regulations **("Regulations")** relating to Cannabis Related Business Activities within the Reservation. On January 9, 2023, the Commission approved the final Regulations in accordance with the Act.

The Act and Regulations are available through the Pokagon Band website at https://www.pokagonband-nsn.gov/government/codes-and-ordinances/.

Under Section 4.02 of the Act, the Commission is organized under an Executive Director, who will oversee, manage, and supervise the day-to-day operations of the Commission, including the Commission's two divisions: (1) Licensing and Investigation Division; and (2) Audit, Compliance and Enforcement Division **("Divisions")**. The responsibilities of the Divisions are stated in Section 4.01 of the Act.

Under Chapter 5 of the Act, the Executive Director has the power and duty to carry out on behalf of the Commission the administrative and executive requirements of the Commission under the Act. The power and duties of the Executive Director are stated in Section 5.03 of the Act. The Executive Director reports to and is supervised by the Commission.

Under Section 8.02(a) of the Act, the Commission issues the following two types of Licenses: (1) Cannabis Facility License in accordance with Chapters 8 and 9 of the Act and Chapter 3 of the Regulations; and (2) Cannabis Supplier License in accordance with Chapters 8 and 10 of the Act and Chapter 4 of the Regulations.

Under Section 1.07(m) of the Act, "Cannabis Facility" is a physical facility located on the Reservation that engages in any Cannabis Related Business Activities within the Reservation but

excluding any physical facility at which no Cannabis or Cannabis Product is located. A Cannabis Facility must be "Band Owned", as defined in Section 1.07(g) of the Act.

The Commission has issued one Cannabis Facility License to Ember Enterprises, LLC located at 19279 Kinst Road, New Buffalo, MI 49117, which authorizes the licensee to operate a retail cannabis facility (information on the cannabis facility "Rolling Embers" is located at https://rolling-embers.com). The Commission may issue additional Cannabis Facility Licenses in the future.

Under Section 1.07 of the Act, "Cannabis Supplier" is a person that engages in any Cannabis Related Business Activities within the Reservation with a business relationship with a Cannabis Facility, such as supplying, transporting, or testing Cannabis. The Commission has issued four Cannabis Supplier Licenses and anticipates issuing more in the future.

The Pokagon Band Office of General Counsel provides legal services to the Commission, including drafting the Regulations, and related documents, such as applications, licenses, and other forms.

The Commission has not hired any staff, including the Executive Director. The Commission is performing the responsibilities of the Executive Director and the Divisions. The Commission seeks to engage an independent contractor to perform the responsibilities of the Executive Director and the Divisions, along with related services, under the Act and Regulations.

The Commission anticipates that an Agreement with the selected proposer would have an initial term of three (3) years, subject to the rights of termination stated in the Agreement.

2. Description.

Pursuant to this Request for Proposal **("RFP")**, the Commission seeks sealed proposals from entities to supply the services and deliverables **("Services")** to the Commission in accordance with the attached:

- **Exhibit A - Statement of Services**.

The Services will relate primarily to current licensees under the Act, currently being one Cannabis Facility, and four Cannabis Suppliers. However, as stated above, the number of Cannabis Facility License may increase, and the number of Cannabis Supplier Licensees is expected to increase.

The Commission estimates that on average the Contractor will be required to perform approximately fifty (50) hours of Services each month, but without limitation: (1) this is an

estimate only; (2) the initial hours may exceed this estimate because of time required to become familiar with the Act, Regulations, and Commission; (3) the development of standard operating procedures relating to the Services will require additional time; and (4) additional licensees will require additional time.

The contact person for this RFP is Michael Engen **("Contact Person")**. The Contact Person's email is michael.engen@pokagonband-nsn.gov and the telephone number is (269) 462-4268.

3. Contents.

Proposals must not exceed 20 single-sided pages, including the cover page, but excluding the resumes and subcontractor information required below, and should be prepared on 8 ½ x 11-inch paper using at least 12-point font with 1-inch margins. Proposals must be in accordance with this RFP, including without limitation, addressing all requirements of Exhibit A – Statement of Services. Proposals must certify that the signatory is legally authorized to commit the proposer to all terms and conditions of the proposal.

Each proposer must complete, sign, and submit with the proposal the following forms, copies of which are affixed to this RFP:

- **Exhibit B – Supplier Form**
- **Exhibit C – W-9 Form**

The resume for each of proposer's personnel who would perform any Services must be attached to the Proposal. Additionally, to the extent known, the proposal must describe any Services that would be performed by a subcontractor and state the name and address for each subcontractor. No individual shall perform any Services if the individual:

- Is under the age of 21
- Is a member of the Pokagon Band Tribal Council
- Is a judge or employee of the Pokagon Band Tribal Court
- Is a convicted felon
- Is a registered sex offender in any jurisdiction
- Is an employee or independent contractor of a Cannabis Facility or Cannabis Supplier, or otherwise has any direct or indirect financial interest in any Cannabis Facility or Cannabis Supplier
- Is employed or otherwise serves in a position with responsibilities that create a conflict of interest or the appearance of a conflict of interest with the Services, as determined by the Commission, including without limitation, having served on the Commission within two (2)

years

- Does not possess the necessary education, experience, and training to enable to individual to perform the Services as required, as determined by the Commission

Proposers are discouraged from including any information in a proposal that may be considered confidential or proprietary under applicable law. If a proposal must include such information, then a proposer must specifically designate the specific portions of the proposal that are confidential or proprietary. The Pokagon Band will treat such information as confidential, but neither the Pokagon Band nor any of its officials, employees or representatives shall be responsible for any disclosure of such information.

4. Fee.

Proposals must state all amounts to be charged in connection with completing the Services and must state all expenses for which the proposer will seek reimbursement (See Section 2 above for the time estimate). The proposal should state both: (1) all applicable hourly rates if the Services were billed on an hourly basis; and (2) a monthly fixed fee if the Services were billed on a fixed fee basis. The proposal should identify any exclusions from the monthly fixed rate, including based on uncertainty of the anticipated time commitment. The proposal should also state the method or timing to periodically adjust the monthly fixed fee.

Any discounts shall be incorporated as a reduction in the proposal price and not shown separately. The price as shown on the proposal shall be the price used in determining awards. Proposers are solely responsible for all costs and expenses which are incurred in connection with preparing and submitting a proposal.

5. Identity.

Proposals must state the legal name, address and telephone of the proposer and the type of entity (corporation, limited liability company, partnership, etc.). Proposals must be signed above the typed or printed name and title of the signer, who must be authorized to bind the proposer to the proposal.

6. Licenses.

Proposers must possess all necessary licenses and certifications and comply with all applicable legal requirements to perform the Services at the time of submission of a proposal. The failure to meet such requirements shall constitute grounds to reject a proposal.

7. Deadline.

Proposals must be received by the Contact Person by not later than on **June 12, 2023, by 5 p.m. ("Deadline")**. The Contact Person will date and time stamp each proposal. Each proposer is solely responsible for ensuring that a proposal is received by the Deadline. Telephone confirmation of receipt of the proposal may be made by calling the Contact Person.

8. Submission.

Proposals must be delivered to the Contact Person by email, first class U.S. mail or private courier service. The proposal must be signed, clearly marked as "Cannabis Regulatory Commission", and addressed to:

Pokagon Band of Potawatomi Indians
Purchasing Department
Attn: Michael Engen
26907 Potawatomi Trail
Dowagiac, MI 49047
michael.engen@pokagonband-nsn.gov

9. Recording.

All proposals which are timely received shall be recorded. A public opening of proposals will not occur.

10. Clarification.

Proposers must examine this RFP and all related documents and judge all matters relating to the adequacy and accuracy of the same. Any inquiries, suggestions, or requests concerning interpretation, clarification or additional information regarding this RFP or any related documents **("Request")** must be made by calling the Contact Person not less than one (1) week prior to the Deadline.

In response to a Request, the Pokagon Band may issue a written addendum to this RFP, which shall be the only official method for providing interpretation, clarification, or additional information. Proposers are solely responsible for contacting the Contact Person to determine whether any addenda have been issued.

Neither the Pokagon Band nor any of its officials, employees or representatives shall be

responsible for any verbal response provided in connection with a Request. The Pokagon Band reserves the right to request additional information from a proposer and to request a verbal presentation from a proposer.

11. Irrevocable.

Any proposal may be withdrawn before the Deadline. Any proposal not timely withdrawn shall constitute an irrevocable offer for a period of 120 days to perform the Services in accordance with Exhibit A – Statement of Services, which may be accepted by the Pokagon Band through issuance of a notice of award to the selected proposer.

Proposal modifications will be accepted only if received prior to the Deadline, in writing, properly signed by the authorized representative of the proposer. Proposal modifications shall be submitted in the same manner as a proposal but shall be clearly marked as "Modification to Proposal for Cannabis Regulatory Commission".

Any mathematical errors contained within a proposal shall be corrected by the Pokagon Band, including without limitation, misplaced decimal points or discrepancies between unit prices and extended prices, etc.

12. Evaluation.

The Commission will select the proposal that it determines to be most advantageous to the Commission, subject to applicable law. The Commission will determine whether a proposal meets the requirements of this RFP and, depending on the nature of the requirement, may eliminate a proposal for failure to comply with one or more of the requirements of this RFP.

13. Reserved.

The Commission reserves the right to: (a) select another proposer, if the Commission and the selected proposer are unable to finalize the Agreement on terms acceptable to the Commission; (b) waive any formalities, variances, deficiencies, or irregularities in any proposal or the manner of its submittal and award a contract; (c) reject all proposals; (d) abandon the project; and (e) re-solicit other proposals for the project on such terms as the Commission deems appropriate. This RFP does not create any obligation which is legally enforceable against the Pokagon Band, including the Commission, or any Pokagon Band official, employee or representative.

14. Contract.

The Commission anticipates entering into a contract in connection with this RFP, which unless the

parties agree otherwise, shall be in a form and substance substantially similar to:

- **Exhibit D – Form Services Agreement ("Agreement")**

This RFP is not a contract offer, and any proposal submitted in response to this RFP shall not constitute a contract with the Commission. A contract between the Commission and a proposer shall not be established until the Agreement has been duly authorized and approved by the Commission, Tribal Council, and the selected proposer.

15. Forms.

The selected proposer must complete all forms reasonably required by the Pokagon Band, including the following:

- **Exhibit E – Acknowledgement of National Sex Offender Registry Check Form**

16. Collusion.

Each proposer represents that the proposer has not, directly or indirectly, divulged to, discussed or compared the proposal with any other proposer and has not colluded in any manner whatsoever with any other proposer in connection with this proposal.

17. Compliance.

Proposers must comply with, and proposals are subject to, all applicable laws, rules, regulations, and standards in connection with the Services. By submitting a proposal, each proposer acknowledges and agrees to all terms and conditions of this RFP.

EXHIBIT A

POKAGON BAND OF POTAWATOMI INDIANS
CANNABIS REGULATORY COMMISSION
REQUEST FOR PROPOSALS
STATEMENT OF SERVICES

The Services includes the following:

- Perform the responsibilities of the Licensing and Investigation Division under Section 4.01(a)(1) of the Act
  - Receive all applications for Cannabis Facility Licenses and Cannabis Supplier Licenses **("Applications")**
  - Review all Applications for accuracy and completeness
  - Conduct all background investigations for Applications relating to Cannabis Suppliers, including on "Control Persons" in accordance with the Act and Regulations (citizenship, criminal history, civil history, consumer complaints, criminal associations, Michigan Licensed Caregiver in good standing)
  - Prepare background investigation reports for presentation to the Commission
  - Conduct all other licensing and compliance investigations that are required or permitted under the Act

- Perform the responsibilities of the Audit, Compliance, and Enforcement Division under Section 4.01(a)(2) of the Act
  - Monitor Cannabis Facilities and Cannabis Suppliers for compliance with the Act, Regulations, and any Compact, including all audit and financial oversight requirements regarding Cannabis Facility revenues, as specified by the Commission
  - Audit Cannabis Facilities and Cannabis Suppliers for compliance with the Act, Regulations, and any Compact, including for compliance with standards regarding financial oversight and accounting of revenues from any Cannabis Facility, and perform periodic compliance audits relating to:
    - Compliance with Cannabis Tracking System requirements under Chapter 2 of the Regulations
    - Compliance with Plan requirements under Section 3.05 of the Regulations
    - Compliance with Cannabis Employee requirements under Chapter 5 of the Regulations
    - Compliance with Cannabis Operations requirements under Chapter 6 of the Regulations
    - Compliance with Safety requirements under Chapter 7 of the Regulations
    - Compliance with Designated Consumption Area requirements under Chapter 8 of

the Regulations

- Ensure that an independent audit of the operations of each Cannabis Facility is conducted annually by a qualified entity engaged by the Cannabis Facility and that the resulting audit report is submitted to the Commission not later than thirty (30) days from completion of the audit.
- Perform periodic inspections and investigations and as requested by the Commission, including relating to the above identified compliance audit areas and, investigate disputes between customers and Cannabis Facilities in accordance with any standards set forth in the Act and Regulations
- Pursue enforcement activities for the failure of any Cannabis Facility or Cannabis Supplier to comply with the Act, Regulations, or any Compact

- Perform the duties of the Executive Director, as may be assigned by the Commission, which may include the tasks specified under Section 5.03(f), (g), (h), and (i) of the Act
  - Investigate compliance matters within the scope of authority of the Commission and prepare investigation reports regarding such matters for presentation to the Commission
  - Assist the Commission as needed with the preparation of records and evidence and coordinating with the Commission's legal counsel in the presentation of the Commission's position in cases involving challenges to Commission decisions
  - Cooperate with the Commission's legal counsel in addressing regulatory matters and enforcing provisions of the Act
  - Assist the Commission in developing and maintaining a suitable records management and retention system
  - Ensure that all Confidential and sensitive records and information are maintained and protected from unauthorized release by the selected proposer
  - Provide administrative support as requested by the Commission, including assisting in the development of forms

- Perform the administrative tasks necessary to implement Chapter 5 Cannabis Employees of the Regulations, including
  - Maintain the Cannabis Employee Certification Forms
  - Update the Excluded Cannabis Employee List not less than monthly, including adding persons to the list in accordance with Section 5.03 of the Regulations
  - Provide the updated Excluded Cannabis Employee List to each Cannabis Facility immediately
  - Receive and review reports from Cannabis Facilities of new or pending criminal charges involving Cannabis Employees and present findings to the Commission
  - Manage Cannabis Employee Identification Cards in accordance with Section 11.01 of the Act and Chapter 5 of the Regulations.

- Cooperate with the Commission in connection with any Appeals under Section 14.02 of the Act, including:
    - Assist in gathering evidence, preparing reports, and providing witness testimony

- Develop for Commission review and approval Standard Operating Procedures relating to all Services to be performed under this Agreement

- Assist the Commission in developing and amending the Regulations upon request by the Commission
    - Track industry best practices in regulatory oversight of Cannabis enterprises
    - Update the Commission regarding changes to Michigan cannabis laws
    - Track changes in the Federal Controlled Substances Act pertaining to cannabis and federal enforcement action on tribal lands involving legal cannabis operations and brief the Commission

- Attend and participate in Commission meetings upon request by the Commission

- Attend and participate in Tribal Council meetings upon request by the Commission

- Maintain complete and accurate records for all services performed under this Agreement

- Prepare reports on all services performed under this Agreement as specified by the Commission

- Perform such other services relating to the Act, Regulations, and any Compact as specified by the Commission

	Department: **Department of Finance**	Document ID: **03-3208.01**
	Prepared By: **Anita R. Grivins, Director Of Finance**	Date Prepared: **5/17/13**
	Policy Title: **VENDOR SELECTION**	Date Approved: **12/13/2013** Effective Date: **12/13/2013**
	Approved By: **Finance Board**	Revision: **1.0**

FM03-3208.01.00 NEW VENDOR NOTIFICATION

Date:_____

Anticipated Usage:

□ One Time Only_____

□ Intermittent_____

□ Ongoing_____

Prepared by (source):_____

Contact Information:

Vendor Name:_____

Address:_____

Phone :( )_____ Fax:( )_____

Contact Person:_____

Products/Services to be provided:_____

_____

_____

_____

_____

_____

Payment Terms:_____

Estimated Annual Dollar Volume Expected with this Vendor:_____

Has the Vendor completed an IRS W-9 Request for Taxpayer Identification Number Certificate and is it on file with the Band? □ Yes □ No

Assigned Vendor ID: _____

Related Party Transactions:

Is the Vendor a relative or close friend of any employee of the Band?

□ No □ Yes

If yes, please describe relationship: _____

_____

_____

_____

_____

List of Parties Excluded from Federal Procurement and Non-procurement Programs:

Has this vendor been verified as a qualified party as published by the U.S. General Services Administration (include a print screen for verification purposes) □ Yes □ No

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ Go to *www.irs.gov/FormW9* for instructions and the latest information.

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

Print or type. See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

☐☐☐ – ☐☐ – ☐☐☐☐

or

Employer identification number

☐☐ – ☐☐☐☐☐☐☐

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

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

Sign Here Signature of U.S. person ▶ Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting,* later, for further information.

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

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

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

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

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.

2. The treaty article addressing the income.

3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

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

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

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

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,

2. You do not certify your TIN when required (see the instructions for Part II for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

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

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

Certain payees and payments are exempt from backup withholding. See *Exempt payee code,* later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships,* earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code,* later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

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

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

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

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

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section 584(a)

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over $600 required to be reported and direct sales over $5,000[1]	Generally, exempt payees 1 through 5[2]
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

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

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

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

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

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

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

Note: See *What Name and Number To Give the Requester,* later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at *www.SSA.gov*. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at *www.irs.gov/Businesses* and clicking on Employer Identification Number (EIN) under Starting a Business. Go to *www.irs.gov/Forms* to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to *www.irs.gov/OrderForms* to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

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

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

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

Part II. Certification

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

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code,* earlier.

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

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

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

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

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

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

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account[1]
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor[2]
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee[1]
b. So-called trust account that is not a legal or valid trust under state law	The actual owner[1]
6. Sole proprietorship or disregarded entity owned by an individual	The owner[3]
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	**Give name and EIN of:**
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity[4]
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

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

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

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

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

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

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

Secure Your Tax Records From Identity Theft

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

To reduce your risk:

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

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

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

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

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

If you receive an unsolicited email claiming to be from the IRS, forward this message to *phishing@irs.gov*. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at *spam@uce.gov* or report them at *www.ftc.gov/complaint*. You can contact the FTC at *www.ftc.gov/idtheft* or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see *www.IdentityTheft.gov* and Pub. 5027.

Visit *www.irs.gov/IdentityTheft* to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

ACKNOWLEDGEMENT OF NATIONAL SEX OFFENDER REGISTRY CHECK

The Pokagon Band of Potawatomi Indians ("Band") has in effect an Employment, Contractor and Volunteer Screening Policy and Procedure ("Policy"). Subsection 4(C) of the Policy requires the following:

(1) A Non-Covered Volunteer who will perform any service for the Band shall disclose to the Screening Officer, in a manner required by the Screening Officer, his or her name, home address, date of birth and whether he or she is registered as a sex offender in any jurisdiction.

(2) A Non-Covered Contractor shall disclose to the Screening Officer, in a manner required by the Screening Officer, the name, home address and date of birth of any person who is performing or will perform any service for the Band and whether any such person is registered as a sex offender in any jurisdiction.

A check of the National Sex Offender Registry is a condition of service for every Non-Covered Volunteer and Non-Covered Contractor. Accordingly, each Non-Covered Volunteer who will perform any service for the Band must complete this Form, and each person who is performing or will perform any service for the Band on behalf of the Non-Covered Contractor must complete this Form.

Name

_____ _____ _____

Last First Middle Initial

Other Names Used **Dates of Use**

_____ from _____ to _____

_____ from _____ to _____

Home Address

_____ _____ _____ _____

Street City State Zip Code

Date of Birth

_____

Registered Sex Offender

☐ I am NOT registered as a sex offender is any jurisdiction

☐ I am registered as a sex offender in the following jurisdiction(s): _____

The below signatory hereby certifies that all information contained on this Form is true, accurate and complete in all respects.

_____ _____

Signature Date

Exhibit D – Form Services Agreement

This Services Agreement **("Agreement")** is made effective the last date of signature below **("Effective Date")** by and between _____, a _____ **("Contractor")** and the Cannabis Regulatory Commission **("Commission")**, an independent governmental subdivision of the Pokagon Band of Potawatomi Indians, a federally recognized Indian tribe **("Pokagon Band")**, and relates to the Contractor providing certain services and deliverables to the Commission. Collectively, the Contractor and Commission may be referred as the **"Parties"**, and each is a **"Party"**.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. Agreement

(a) Scope. This Agreement includes the following documents, which are incorporated into this Agreement: (i) the General Terms and Conditions; and (ii) all exhibits, schedules, appendices and any other attachments expressly identified in this Agreement.

(b) Conflicts. If there is any conflict or inconsistency between this Agreement and any exhibits, schedules, appendices, or any other attachments, this Agreement shall control in all respects.

2. Services

(a) Scope. The Contractor shall provide the Commission with the services set forth in **Exhibit A – Statement of Services ("Services")**.

(b) Schedule. The Contractor shall complete all Services in an expeditious manner consistent with the needs of the Commission, and in accordance with one or more schedules to be agreed upon by the Contractor and the Commission Chairman or another Commission member designated by the Commission through written notice the Contractor **("Commission Representative")**.

(c) Monitoring. The Commission Representative shall serve as the Commission's point-of-contact under this Agreement. Upon request, the Contractor shall meet with the Commission Representative in a mutually agreed upon manner, to review the progress under this Agreement and address issues related to this Agreement.

(d) Qualifications. The Contractor shall ensure that no individual shall perform any Services if the individual:

(i) Is under the age of 21;
(ii) Is a member of the Pokagon Band Tribal Council;
(iii) Is a judge or employee of the Pokagon Band Tribal Court;
(iv) Is a convicted felon;
(v) Is a registered sex offender in any jurisdiction;
(vi) Is an employee or independent contractor of a Cannabis Facility or Cannabis Supplier, or otherwise has any direct or indirect financial interest in any Cannabis Facility or Cannabis Supplier;
(vii) Is employed or otherwise serves in a position with responsibilities that create a conflict of interest

or the appearance of a conflict of interest with the Services, as determined by the Commission, including without limitation, having served on the Commission within two (2) years; or

(viii) Does not possess the necessary education, experience, and training to enable to individual to perform the Services as required, as determined by the Commission.

3. Fees

(a) Fees. Subject to the provisions of this Agreement, the Commission shall pay the Contractor a fee in accordance with **Exhibit B – Fee Schedule** for the satisfactory performance of the Services.

(b) Expenses. The Commission shall reimburse the Contractor for the following actual and necessary expenses incurred by the Contractor in the performance of the Services, excluding any administrative markup or other charges: (i) photocopying, printing, long distance telephone and fax machine use, mailing and shipping costs; and (ii) travel expenses, limited to air travel at coach rate, automobile rental, automobile mileage at the current IRS rate (for personal use vehicle), ground transportation, accommodations (hotel and motel) and meal costs. The Contractor shall obtain the Commission's prior written approval to incur travel expenses, and the Commission shall only reimburse the Contractor for travel expenses if such prior written approval was obtained.

(c) Invoices and Payments. The Contractor shall submit to the Commission monthly invoices for the Services completed during the billing period. Services compensated on an hourly basis or other increments of time shall be billed with an itemized accounting of the specific tasks performed indicating the time spent on each such task to the tenth of an hour. Services compensated by a flat fee shall be charged according to the percentage of the Services performed during the billing period and shall include a detailed description of the Services completed and the basis for determining the percentage of the Services completed. Receipts for all reimbursable expenses shall accompany each invoice. The Commission shall pay all undisputed invoice amounts within thirty (30) calendar days of the Commission's receipt of each invoice.

(d) No Liability. The Commission shall not be liable for any other fee, expense, or cost: (i) for services performed by the Contractor within the scope of the Services, except as may be expressly stated in **Exhibit B – Fee Schedule**; (ii) for additional services performed by the Contractor outside the scope of the Services unless such services are authorized by an amendment to this Agreement; or (iii) related to the services of any third-parties except by separate agreement between the Commission and the third-parties.

4. Term

(a) Term. This Agreement shall begin on the Effective Date and continue for three (3) years **("Term")**, unless terminated in accordance with this Agreement.

(b) Termination.

(i) If either Party breaches this Agreement and fails to cure such breach within fifteen (15) days after receipt of prior written notice of default from the non-breaching Party, which details the breach, then the non-breaching Party may terminate this Agreement with written notice to the breaching Party.

(ii) If the Contractor is, or is deemed under any law, to be insolvent or unable to pay its debts as they become due, or any corporate action, legal proceedings or other procedure or step is taken against the Contractor or any of the Contractor's assets, in relation to or with a view to winding-up, dissolution, administration, reorganization (in each case, whether out of court or otherwise), then the Commission may terminate this Agreement with prior written notice to the Contractor.

(iii) The Commission, in its sole discretion, may terminate this Agreement without cause with at least thirty (30) days prior written notice to the Contractor.

(c) Payment. If this Agreement is terminated, the Contractor shall be entitled to unpaid fees and reimbursable expenses authorized under this Agreement only for the portion of the Services actually completed, and reimbursable expenses incurred, by the Contractor prior to the effective date of termination, provided that if the Commission terminates this Agreement for breach, then the Commission may offset any such unpaid fees and reimbursable expenses by any costs or expenses incurred, or damages sustained, by the Commission in connection with such breach.

(d) Cooperation. Upon any termination of this Agreement, the Contractor shall secure and deliver to the Commission all Work Product, whether in draft form or completed. In connection with any notice of termination, the Commission may suspend the Contractor's performance of the Services for the duration of the notice period by providing the Contractor with prior written notice of such suspension.

5. Relationship

(a) Independent Contractor. In the performance of this Agreement, the Contractor shall be an independent contractor and not an employee of the Commission. The Commission shall not have or exercise any control or direction over the performance of the Services by the Contractor other than the reasonable efforts of the Commission to ensure that the Contractor's conduct fulfills and complies with the terms of this Agreement. No relationship of employer and employee, or partners, or joint venturers, or agent and principal is created by this Agreement.

(b) Benefits and Rights. The benefits and rights to which the Contractor is entitled are limited to those expressly set forth in this Agreement. Neither the Contractor nor any employee, agent, or representative of the Contractor may make any claim against the Commission for any rights or benefits the Commission may confer on any other person or entity, whether by contract or by law, including without limitation, unemployment insurance benefits and workers' compensation benefits.

(c) Taxes. The Contractor shall be solely responsible for all employment taxes and all other withholding obligations to any taxing or governmental authority and shall obtain workers' compensation insurance as may be required under applicable law. The Contractor shall provide the Commission with an IRS W-9 form upon entering into this Agreement. When required by law, the Commission shall: (i) withhold and remit to the U.S. Department of Treasury U.S. income tax from amounts owed under this Agreement; and (ii) provide an IRS 1099 form to the Contractor and the IRS.

(d) Subcontractors. The Contractor shall not subcontract the Services or any other obligation under this Agreement without: (i) providing the Commission with a copy of the proposed subcontract; and (ii) obtaining the prior written consent of the Commission, which shall not be unreasonably withheld. Regardless of any subcontract, the Contractor shall remain liable for performance of the Services and all other obligations under this Agreement. The Contractor shall be liable for all acts and omissions and willful misconduct of each subcontractor.

(e) No Assignment. The Contractor shall not assign this Agreement, including without limitation, any right or benefit under this Agreement, without the prior written consent of the Commission, and any purported assignment shall be void without such consent. This Agreement shall be binding upon and inure to the benefit of each Party's permitted successors and assigns.

(f) No Agency. The Contractor is not an agent of the Commission, and the Contractor shall not make any representation of any nature whatsoever that it has any authority to enter into any contract or obligation on behalf of the Commission or to settle any claim or interest of the Commission.

6. Representations

The Contractor represents, warrants, and covenants that:

(a) The Contractor has the requisite power and authority to perform all obligations under this Agreement;

(b) All necessary proceedings and approvals have occurred to authorize the execution, delivery and performance of this Agreement;

(c) The Contractor meets, and will continue to meet, all applicable licensing and certification requirements under all applicable laws regarding the Services;

(d) The Contractor is financially solvent and has sufficient working capital to complete the Services and otherwise perform all obligations under this Agreement;

(e) The Contractor is experienced and skilled in the performance of the Services and able to furnish all labor, supplies, and equipment necessary to complete the Services and otherwise perform all obligations under this Agreement;

(f) All work product and deliverables of any nature whatsoever, which are developed, produced or provided by, or on behalf of, the Contractor in connection with this Agreement **("Work Product")** shall not infringe on any copyright, patent, trade secret, trademark or any other intellectual property, proprietary and moral right of any nature whatsoever **("Intellectual Property Rights")**;

(g) The Contractor has not entered into and will not enter into any agreement which is inconsistent with or contrary to this Agreement;

(h) The Contractor will complete the Services in a professional manner consistent with industry standards and this Agreement by individuals who possess the necessary education, experience, and training; and

(i) Unless disclosed to the Commission in writing prior to the Effective Date, the Commission is not required to withhold U.S. income tax under applicable law from amounts paid to the Contractor under this Agreement, including without limitation, because the Contractor is a nonresident alien individual, foreign partnership or any other foreign entity for which U.S. income tax withholding is required under law.

7. Notices

All notices which are required or permitted under this Agreement shall be in writing delivered by personal service, commercial courier or by first class United States mail, postage pre-paid to the representatives identified below at the addresses indicated. All notices shall be deemed effective upon delivery.

Cannabis Regulatory Commission C/O Commission Chairman P.O. Box 180 58620 Sink Road Dowagiac, Michigan 49047	**[Insert]**

By the signatures of their duly authorized representatives below, the Parties acknowledge that they have read, understand, and freely accept this Agreement.

Cannabis Regulatory Commission

David Vialpando, Commission Chairman	Signature
Date	Title
	Date

GENERAL TERMS AND CONDITIONS

1. Disputes

(a) Governing Law. This Agreement shall be construed in accordance with the laws of the Pokagon Band and, to the extent not inconsistent with Pokagon Band law, the laws of the State of Michigan.

(b) Mutual Intent. The Parties acknowledge their mutual desire to establish a process for resolving all claims, actions and disputes that arise under this Agreement **("Dispute")**. Therefore, the Parties agree to use the informal and formal Dispute resolution set forth below. During the pendency of the Dispute, the Parties shall continue to perform their respective obligations under this Agreement, unless this Agreement has been terminated in accordance with this Agreement.

(c) Informal Negotiations. At the written request of a Party, each Party will appoint a representative to meet and negotiate in good faith to resolve the Dispute. The location, format, and frequency of these discussions shall be left to the discretion of the representatives. The Parties may agree to utilize other non-binding alternative dispute resolution procedures, such as mediation, to assist in the negotiations. All discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential and shall be inadmissible in any dispute resolution forum without the agreement of the Parties. If the Parties are unable to resolve the Dispute through negotiations within thirty (30) calendar days of the initial written request, or if the Parties agree in writing to forego this informal dispute resolution process, either Party may utilize the dispute resolution process identified below.

(d) Litigation. Any Dispute that has not been fully resolved pursuant to the process described above shall be subject to the exclusive jurisdiction of the Pokagon Band's Tribal Court and Appeals Court ("Tribal Court"). The Parties hereby consent to the exclusive jurisdiction of the Tribal Court for the purposes set forth herein and waive any objection to said venue, provided that the Commission's consent shall be subject to the provisions of the Limited Waiver set forth below.

(e) Limited Waiver. The Pokagon Band grants the Contractor a limited waiver of the Pokagon Band's sovereign immunity and the right to assert that immunity **("Limited Waiver")**, provided that the Limited Waiver shall only apply to Disputes brought by the Contractor (and no other person or entity) against the Commission (and no other person or entity) under this Agreement. Any award of damages against the Commission shall be payable solely from the Pokagon Band's governmental assets, which shall mean any present or future personal property or interest in property of any kind or nature, including money and revenues, and whether tangible or intangible, owned or held directly or indirectly by or on behalf of the Pokagon Band, but excluding: (A) any net gaming revenues properly allocated and accounted for in accordance with generally accepted accounting principles as a transfer by the Pokagon Band to the (1) Economic Development Account under §3.C of the Pokagon Band Revenue Allocation Plan **("RAP")**, or (2) the Per Capita Payment Account under §3.D of the RAP; (B) any federal or state grant funds awarded to the Pokagon Band; (C) any assets of the Pokagon Gaming Authority; (D) any assets of Mno-Bmadsen or any entity owned in whole or part by or through Mno-Bmadsen; (E) any assets of the Pokagon Development Authority or any entity owned in whole or part by or through the Pokagon Development Authority; (F) any assets of any federally chartered corporation pursuant to Section 17 of the Indian Reorganization Act of 1934 that are wholly owned by the Pokagon Band; (G) any assets, including without limitation, property, held in trust for the Pokagon Band by the United States of America; (H) any

assets of any limited liability company that is owned in whole or in part by or through the Pokagon Band; (I) any assets of any minors' trust; (J) any assets of any deferred per capita payment account; and (K) any assets for any retirement plan offered by or through the Pokagon Band, including without limitation, any defined benefit plan. The Limited Waiver shall remain in effect through the Term and for thirty (30) calendar days thereafter, provided that if any claims are commenced within such time, the Limited Waiver shall remain in effect for the duration of such procedure, including any appeals.

2. Compliance

(a) Laws. In the performance of this Agreement, the Contractor shall strictly comply with all applicable laws, including Pokagon Band laws, rules, and regulations.

(b) National Sex Offender Registry Check. Under the Pokagon Band's Employee, Contractor and Volunteer Screening Policy ("Screening Policy"), prior to performing any Services, the Contractor must disclose to the Pokagon Band's Department of Human Resources the name, home address and date of birth of any person who is performing or will perform any Services for the Commission on Pokagon Band land and whether any such person is registered as a sex offender in any jurisdiction. Every disclosure must be made by completing an Acknowledgement of National Sex Offender Registry Check Form ("Form"), which must be provided to the Band's Department of Human Resources at least five (5) calendar days before commencement of the Services. Under the Screening Policy, the Commission must not hire and must terminate the services of the Contractor, if any person who is performing or will perform any service for the Commission on Pokagon Band land is registered as a sex offender within any jurisdiction, unless the Contractor certifies in writing that such person will not perform any Services for the Commission on Pokagon Band land. The Pokagon Band will maintain each Form as confidential, except to the extent disclosure is required under applicable law.

(c) Conflict-of-Interest. During the Term, the Contractor shall not enter into any activity, employment or business arrangement that conflicts or appears to conflict with its obligations or the Commission's interests under this Agreement. If the Contractor contemplates any activity, employment, or business arrangement that may be a conflict-of-interest, it shall promptly advise the Commission of such circumstance and shall disclose to the Commission such plans prior to entering into this Agreement or prior to proceeding with such other activity, employment, or business arrangement.

(d) Ethics. The Contractor acknowledges having read and understanding Subsection 8.09 (Personal Financial Interest in Government Contracts), Subsection 8.11 (Gifts That May Influence Official Actions) and Section 10 (Gift Disclosure Requirements) of the Pokagon Band's Code of Ethics ("Code of Ethics"). Section 10 of the Code of Ethics requires that certain independent contractors file disclosure statements with the Pokagon Band's Ethics Board regarding gifts, as that term is defined in the Code of Ethics, given to members of the Tribal Council with a Fair Market Value in excess of $50.00. Without limitation, the Parties agree that the failure of the Contractor to comply with Section 10 of the Code of Ethics shall constitute a breach of this Agreement.

(e) Right to Audit. The Commission shall, upon reasonable notice to the Contractor, be entitled during normal business hours to audit, inspect, examine, and reproduce **("Audit")** the Contractor's materials and records, regardless of form, relating to this Agreement **("Records")**. The Contractor shall preserve all such Records for a period of not less than twelve (12) months from the date of final payment under this Agreement or for such longer period as required by applicable law, provided that if the Commission asserts any claim against the Contractor during such period, the Contractor shall continue to preserve the

Records until final resolution of the claim. If an Audit discloses a billing error or discrepancy of any nature in favor of the Contractor in excess of three percent (3%) of the total billings under this Agreement, then in addition to payment or credit for the overpricing or overcharges, the Contractor shall reimburse the Commission for the cost of the Audit, including without limitation, all direct expenses incurred to perform the Audit. Any payments and adjustments that are required as a result of the Audit shall be made within sixty (60) calendar days from the date the Commission provides the Contractor with the results and findings of the Audit

3. Confidentiality and Work Product

(a) Confidentiality.

(i) "Confidential Information" means all information, regardless of form, which is not generally known outside of the Commission or Pokagon Band or is known only through improper means or unauthorized disclosures and is either: (A) marked as "confidential"; or (B) should reasonably be recognized as being confidential, including without limitation, based on the subject matter or circumstances of the disclosure. Confidential Information is defined broadly and includes, without limitation: (A) information relating to the Commission's officials, employees, operations, finances, plans, actions, networks, systems, computers, and software; (B) information required to be treated as confidential under applicable law; (C) information relating to applicants, licensees, control persons, and cannabis employees (as defined under the Cannabis Regulatory Act) and any third-party information that the Commission is obligated to keep confidential by agreement; and (D) information of which the unauthorized disclosure or use could be detrimental to the interests of the Commission or Pokagon Band. Confidential Information does not include any information that: (A) is or becomes publicly available without either a breach of this Agreement or a breach of an obligation of confidentiality by anyone else; (B) can be shown by documentation to have been known by the Contractor when it was sent or disclosed to, or accessed by, the Contractor; (C) is furnished by a third-party, as a matter of right and without restriction on disclosure; or (D) can be shown by documentation to have independently developed by the Contractor without reference to any Confidential Information.

(ii) Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure is required by: (A) a valid subpoena or order of a court of competent jurisdiction; or (B) applicable law, provided that in all cases, the Contractor must: (1) to the extent not prohibited by applicable law, promptly notify the Commission in writing of such order or requirement; (2) give the Commission a reasonable opportunity to contest the required disclosure and seek protective order or other appropriate relief; and (3) disclose no more Confidential Information than what is required. Disclosure in accordance with the above shall not waive confidentiality for any other purpose.

(iii) The Contractor shall: (A) maintain all Confidential Information as confidential; (B) take all commercially reasonable steps to prevent the unauthorized access, disclosure or use of the Confidential Information, including without limitation, implementing, maintaining and complying with reasonable physical, technical, administrative and organizational

measures for the security and protection of Confidential Information; (C) not disclose, directly or indirectly, any Confidential Information, except to its officers, directors, employees, agents and contractors who have a need to know such information in order for the Contractor perform its obligations under this Agreement, provided that the Contractor shall ensure that prior to any such access, disclosure or use, each of its officers, directors, employees, agents and contractors has agreed in writing to be bound by the restrictions on access, disclosure and use of Confidential Information set forth in this Agreement; (D) not use the Confidential Information other than as necessary to perform its obligations under this Agreement; and (E) except as otherwise expressly authorized above, not disclose, directly or indirectly, any Confidential Information to any other third party without the Commission's prior written consent. The Contractor shall be responsible for any breach of confidentiality by its officers, directors, employees, agents, and contractors and shall immediately notify the Commission Representative of any unauthorized access, disclosure, or use of any Confidential Information.

(iv) Upon any expiration or termination of this Agreement, and promptly upon request of the Commission, the Contractor shall return all Confidential Information to the Commission along with any copies, notes, or compilations.

(v) Nothing in this Agreement shall be construed as granting the Contractor any right, title, or interest in or to any Confidential Information or any other data or information disclosed or provided to the Contractor in connection with this Agreement, rather as between the Commission and the Contractor, the Commission shall retain all such rights, title, or interests.

(b) Work Product.

(i) All Work Product shall be considered work made for hire, in accordance with the Copyright Act of 1976, as amended, 17 U.S.C. § 101, et seq., which was specifically ordered and commissioned by the Commission. If the Work Product, or any part of the Work Product, is determined not to be work made for hire, then the Contractor hereby irrevocably assigns and transfers to the Commission all worldwide rights, title, and interests, of any nature whatsoever, in and to the Work Product. If the Work Product, or any part of the Work Product, cannot be assigned under applicable law, then Contactor agrees to waive enforcement of such rights against the Commission and its officers, directors, employees, and agents and hereby grants the Commission an exclusive, full paid-up, and royalty-free license in perpetuity and worldwide, to fully exercise such rights, including rights to sublicense through multiple tiers of sublicense. The Commission may assign any of the above rights.

(ii) The Contractor shall not pursue any claim, action, or suit contesting, make any filings or registrations inconsistent with or otherwise take any action to challenge any Intellectual Property Rights of any nature whatsoever of the Commission in or to the Work Product.

(c) Injunctive Relief. Notwithstanding any other provision of this Agreement, the Contractor agrees that any actual or threatened breach by the Contractor of any obligation under Section 3 of these Terms and Conditions will cause immediate and irreparable damage to the Commission, which cannot be fully and

adequately compensated in money damages, and which will warrant preliminary and other injunctive relief, an order for specific performance and other equitable relief. No bond or other security shall be required in connection with the Commission obtaining any such order or relief, and the Contractor consents to the issuance of any such order or relief.

4. Liability

(a) Indemnification.

(i) The Commission shall indemnify and hold the Contractor and its officers, directors, employees, agents, and contractors harmless from and against all expenses, losses, liabilities and damages (including without limitation, attorneys' fees, litigation costs, damage awards, and settlement amounts), arising in connection with any claim, action or suit brought by: (A) any third-party involving any bodily injury, sickness, disease or death, or damage to, or destruction of, any tangible property, but only to the extent caused by any negligent act or omission or willful misconduct of the Commission or Pokagon Band or their respective officials, employees, and agents; or (B) any applicant, licensee, control person, or cannabis employee (as defined under the Cannabis Regulatory Act), but only to extent arising from the performance of the Services in good faith and in accordance with the requirements of this Agreement.

(ii) The Contractor shall indemnify and hold the Commission and Pokagon Band and their respective officials, employees, volunteers, agents, representatives, and contractors harmless from and against all expenses, losses, liabilities and damages (including without limitation, attorneys' fees, litigation costs, damage awards, and settlement amounts), arising in connection with any claim, action, suit or proceeding brought by any third-party arising from or involving: (A) any breach of this Agreement, including without limitation, performance of the Services not in good faith or contrary to this Agreement; (B) any bodily injury, sickness, disease or death, or damage to, or destruction of, any tangible property, but only to the extent caused by any negligent act or omission or willful misconduct of the Contractor or the Contractor's officers, directors, employees, agents, representatives, or contractors; (C) the Contractor's failure to pay all required employment taxes or any other withholding obligation to any taxing or governmental authority, or to provide any benefit or to obtain workers' compensation insurance as may be required under applicable law; or (D) any allegation that the Work Product infringes upon any Intellectual Property Rights of any third-party.

(iii) Each Party's obligation of indemnification (the Party with such obligation being the "Indemnitor" and the other Party being the "Indemnitee") under this Agreement shall be contingent upon: (A) the Indemnitee promptly notifying the Indemnitor in writing upon becoming aware of any claim which gives rise to a claim for indemnification; (B) the Indemnitor being allowed to control the defense and settlement of such claim; and (C) the Indemnitee cooperating with all reasonable requests of the Indemnitor (at the Indemnitor's expense) in defending or settling the claim. The Indemnitee shall have the right, at its option, to participate in the defense of any claim through counsel of its choosing. The Indemnitor shall not settle any such claim without the prior written consent of the Indemnitee, which shall not be unreasonably denied or delayed.

(b) Limitation on Liability. To the fullest extent permitted by applicable law, the Commission's total aggregate liability to the Contractor shall not exceed the sum of the total fees and reimbursable expenses owed under this Agreement for all claims, expenses, losses, and damages, including without limitation, attorneys' fees, and litigation costs, arising out of this Agreement regardless of the legal theory under which such liability is imposed. In no event shall either Party be liable for any special, incidental, consequential, or punitive damages of any nature, regardless of whether the Commission has been advised of the possibility of such damages and notwithstanding the failure of the essential purpose of any remedy. The above limitations shall not apply to any obligation of indemnification under this Agreement.

(c) Release. To the fullest extent permitted under applicable law, the Contractor waives all rights to recovery from the Commission and Pokagon Band and their respective officials and employees, for any bodily injury, sickness, disease or death, or damage to, or destruction of, any tangible property sustained by the Contractor or any of the Contractor's officers, directors, employees, agents, representatives, or contractors in connection with this Agreement. For purposes of clarity, the above release includes, without limitation, both official and individual capacity suits against the Commission and Pokagon Band officials and employees.

(d) Risk of Loss. If the Contractor is required to deliver any Work Product, then the Contractor shall bear the risk of loss to the Work Product until delivery of the same to the Commission.

(e) Remedies. The remedies provided for in this Agreement are cumulative rather than exclusive and are in addition to all other remedies provided by law or equity.

(f) Excusable Delay. The Parties shall not be excused from the performance of any obligation under this Agreement except when such performance is prevented by causes which are beyond the reasonable control and unforeseeable and without the fault of the Party affected, such as acts of God, inclement weather, war, terrorism, civil unrest, labor shortages, pandemics, epidemics, and acts of a government in its sovereign capacity. The affected Party shall promptly notify the other Party of any such cause for non-performance. Upon such notification, the affected Party's performance shall be excused on a day-to-day basis only for the duration of the cause of non-performance and only to the extent that performance is prevented, provided that such Party uses all reasonable efforts to eliminate the cause of non-performance. Where the performance of one Party is excused, the performance of the other Party shall likewise be excused, and both Parties shall promptly resume performance upon the cessation of the cause of non-performance.

5. General

(a) Time. Time is of the essence under this Agreement.

(b) Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof. This Agreement supersedes all prior written or oral agreements relating to the subject matter hereof and is not contingent upon or conditioned on the performance of any other agreement which may have been entered into by the Parties.

(c) Amendments. Any amendment to this Agreement will not be enforceable unless set forth in writing which is signed by a duly authorized representative of each Party.

(d) Severability. If any provision of this Agreement is determined to be invalid or unenforceable it shall be considered deleted from this Agreement, and the invalidity of such provision shall not affect the validity or enforceability of any other provision, which shall be given effect in the absence of the invalid provision. The Parties will, in good faith, attempt to replace any invalid or

unenforceable provision with one that is valid and enforceable and comes as close as possible to expressing the intent of the original provision.

(e) Headings. The headings of this Agreement are for reference purposes only, and only the text of each provision shall be construed to be the terms and conditions of this Agreement.

(f) Waiver. The failure of either Party to insist upon strict performance of any provision of this Agreement, or to exercise any right or option conferred by any such provision, in any one or more instances, shall not be construed to be a waiver or relinquishment of any such provision, right or option, rather the same shall remain in full force and effect.

(g) Construction. Both Parties having had the opportunity to review this Agreement with the counsel of their choice, agree that the rule of construction that a contract be strictly construed against the drafter shall not apply.

(h) No Third-Party Beneficiary. No third-party shall be a third-party beneficiary of any provision under this Agreement.

(i) Counterparts and Delivery. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement. Any facsimile, e-mail PDF or photocopy of an executed counterpart of, or signature page to, this Agreement shall be given the same effect as the original. This Agreement may be delivered via facsimile or e-mail transmission of an executed counterpart of, or signature page to, this Agreement.

(j) Surviving Obligations. Subsections 3(d), 4(c), 4(d), 5(c) and 6(f) of this Agreement, and Subsections 2(d), 2(f), 4(a), 4(b), 4(c), 4(d), and 4(e) and Sections 1, 3 and 5 of these General Terms and Conditions, and any other provisions the nature and context of which indicate the Parties' intent to survive, shall survive and continue in full force and effect following expiration or any termination of this Agreement.