

Standard Purchase Order Terms and Conditions

1. **Applicability.** This purchase order is an offer by the buyer named on the face of this purchase order (the "**Buyer**") for the purchase of the goods (the "**Goods**") and/or services (including any resulting deliverables) (the "**Services**") specified on the face of this purchase order from the party to whom the purchase order is addressed (the "**Seller**") in accordance with, and subject to, these terms and conditions (the "**Terms**") and any applicable statement of work (the Terms, together with the purchase order and the statement of work, collectively the "**Order**"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to this Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of this Order. This Order expressly limits Seller's acceptance to the Terms. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order. These Terms apply to any repaired or replacement Goods provided by Seller hereunder. Unless the context otherwise requires, references in this Order to the word "including" or "include" are to be construed without limitation.

2. **Acceptance.** This Order is not binding on Buyer until Seller accepts this Order. Buyer may withdraw this Order at any time before it is accepted by Seller. Unless Seller notifies Buyer immediately of the rejection of this Order, upon Seller's receipt of this Order, Seller shall promptly comply with this Order, and shall evidence acceptance of this Order by promptly executing an acceptance copy of this Order and returning the acceptance copy to Buyer. Despite Seller's failure to execute or return an acceptance copy, Seller's acceptance of the terms of this Order will be deemed to have occurred when: (a) Seller provides any Goods or performs any Services (in whole or in part) that are the subject matter of this Order, (b) Buyer receives an invoice for any Goods or Services (in whole or in part) that are the subject matter of this Order, or (c) Seller accepts payment for any Goods or Services (in whole or in part) that are the subject matter of this Order.

3. **Buyer Policies and Procedures.** Seller will comply with Buyer's policies, procedures, requirements and guidelines described in this Order or otherwise provided to Seller by Buyer (collectively, "**Policies**"), including:

(a) Subject to Section 25 below, Buyer's trademark usage requirements set forth in this Order or otherwise provided to Seller by Buyer, including, as applicable, execution of a separate license agreement with additional terms and conditions;

(b) The Privacy and Data Security Appendix ("**PDSA**") attached hereto;

(c) Buyer's physical and information security Policies set out in this Order or otherwise provided to Seller by Buyer; and

(d) Buyer's travel policy as it relates to any travel included in this Order. All travel shall be coordinated through Buyer's travel program and Buyer will notify Seller of applicable travel and related reimbursement restrictions at that time.

4. **Impact of Policies on Seller.** Buyer may change the Policies. All changes will be effective 30 days after Buyer makes such changes available to Seller, unless otherwise agreed in writing. If Seller determines that new or changes to Policies will cause a material impact to the delivery schedule, fees or other costs for the Goods or Services, Seller will promptly notify Buyer. Upon Buyer's receipt of Seller's notice, the parties will discuss how to mitigate the impact to enable Seller to comply.

5. Clerical Errors. Clerical errors, whether in mathematical computations or otherwise, made by Buyer on this Order or any other forms delivered to Seller shall be subject to correction without any liability to Buyer.

6. Quality of Goods. All Goods in this Order shall be new, not previously used or returned, and in its original packaging.

7. No Minimum Purchase. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order.

8. Performance of Services.

(a) Seller Personnel and Subcontracting. Seller will recruit, select, and train its personnel according to this Order. At Buyer's request, Seller will promptly remove or replace any individual performing Services. Seller is responsible for all wages, fringe benefits, payroll taxes, insurance, work schedules, and work conditions regarding its employees, contractors or other resources performing Services under this Order. Seller's obligation for work conditions under this Section does not include responsibility for work conditions for any Buyer provided and Buyer controlled workplace. Seller will not subcontract any Services to any third party without Buyer's prior written consent. If Buyer approves the use of a subcontractor, or if Seller uses a subcontractor without the prior written permission of Buyer, Seller will: (i) remain obligated under this Order for performing the Services, (ii) remain liable for the acts or omissions of any subcontractor personnel; (iii) require each subcontractor to agree in writing to the terms of this Order for the work performed by the subcontractor; (iii) require each subcontractor to agree in writing that Buyer is an intended third-party beneficiary of its agreement with Seller; (iv) pay all amounts due to subcontractor. Buyer may pay the subcontractor and offset those amounts against amounts owed to Seller if Seller fails to pay a subcontractor any amounts due and owing; and (v) require each subcontractor to verify that its employee will comply with immigration rules and laws in the jurisdiction in which the employee will provide Services.

(b) Seller Equipment and Technology. Unless otherwise agreed in this Order, Seller will provide the equipment, software, and other items required to perform the Services at its own expense. Seller will ensure that its equipment, software, and systems are compatible with Buyer's equipment, software, and systems as necessary to perform the Services. For Services provided on a fixed price basis, if any services, functions or responsibilities not specifically described in this Order are required for the proper performance of the Services, such services, functions or responsibilities shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if expressly described in this Order.

(c) Workplace Safety and Health. Seller will comply with all applicable laws and regulations related to workplace safety and health, including, the Occupational Safety and Health Act of 1970 (OSHA) and parallel state laws approved under Section 18 of OSHA. Seller will include in all subcontracts a provision that the subcontractor will comply with all such laws and regulations. If Seller encounters unsafe conditions or workplace hazards in a Buyer owned or leased facility or a Buyer provided and controlled workplace, Seller will notify Buyer promptly in writing of the existence and location of such condition or hazard.

9. Delivery Date. Seller shall deliver the Goods in the quality described in Section 6 and in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). Timely delivery of the Goods and Services is of the essence (including all performance dates, timetables, project milestones and other requirements in this Order). If Seller fails to deliver the Goods

in full on the Delivery Date, or the Services in accordance with their applicable delivery requirements Buyer may terminate this Order immediately by providing written notice to Seller.

10. Delivery Location. All Goods shall be delivered to the location specified on the face of this Order (the "**Delivery Location**") during Buyer's normal business hours or as otherwise instructed by Buyer. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location, including any shipments of Goods requiring any government import clearance. Buyer may terminate this Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods.

11. Shipping Terms. The purchase order number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to this Order. Delivery of goods without a purchase order number referenced on the packing/delivery slips will be deemed invalid and delivery will not be accepted.

12. Taxes. Buyer shall not be responsible to Seller, its personnel or any governmental authority, for the payment or withholding of any federal, state or local income, unemployment or other employment-related taxes in connection with the provision of the Services rendered pursuant to this Order. Seller shall have full and complete responsibility to pay all federal, state and local taxes applicable to Seller's performance of Services hereunder, including without limitation federal and state income taxes, social security taxes, unemployment insurance and disability insurance taxes, and any other taxes and business license fees as may be required in connection with the performance of the Services rendered pursuant to this Order.

13. Packaging. All goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

14. Inspection and Rejection of Nonconforming Goods and Services. Buyer will inspect the Goods and Services within 15 business days after the Delivery Date; otherwise the Goods or Services will be deemed accepted. Buyer, at its sole option, may reject all or any portion of the Goods or Services if it determines the Goods or Services are defective, or do not meet the quality requirements in Sections 6 and 8. If Buyer rejects any portion of the Goods and Services, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Order in its entirety; (b) accept the Goods and/or Services at a reasonably reduced price; or (c) reject the Goods and/or Services and require replacement of the rejected Goods or repair or re-performance of the rejected Services. If Buyer requires replacement of the Goods, Seller shall, at its expense, within three (3) days for food and beverage and within sixty (60) days for manufactured components, replace the nonconforming Goods and pay for all related expenses, including transportation charges for the return of the defective goods and the delivery of replacement Goods. If Buyer requires re-performance of the Services, Seller shall, at its expense, within ten (10) business days, re-perform the nonconforming Services and pay for all related expenses. If Seller fails to timely deliver replacement Goods or Services, Buyer may replace them with goods or services from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 28. Buyer's failure to specify any defect or nonconformance in the acceptance or rejection of any or all of the Goods or Services shall not prevent Buyer from relying on such defect or nonconformance to establish a failure of the Goods or Services to conform to the applicable specifications and warranties or to otherwise justify rejection hereunder..

15. Price. The price of the Goods and Services is the price stated in this Order (the "**Price**"). Invoices must bear the exact same prices and terms as specified in this Order. Seller's acceptance of this Order or shipment of any part of it will constitute Seller's agreement to all of this Order's specifications as to terms, conditions, delivery, and price. If no price is included in this Order, the Price shall be the lowest price charged by Seller to any of its external customers as of the date of this Order. Unless otherwise specified in this Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

16. Quantity. If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

17. Most Favored Customer. Seller represents and warrants that the Price for the Goods and Services is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Goods and similar Services. If Seller charges any other buyer a lower price, Seller must apply that price to all Goods and Services under this Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate this Order without liability pursuant to Section 28.

18. Payment Terms/Invoices. Seller shall issue an invoice to Buyer: (a) monthly in arrears if the Services are provided on a time and materials basis, or (b) as a single invoice upon Buyer's acceptance of the Goods or Services if provided on a fixed price basis; and only in accordance with the Terms. Buyer shall pay all properly invoiced amounts due to Seller within forty-five (45) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Buyer may dispute any invoice amount (each, a "Disputed Amount") by providing oral or written notice. Partial payment is notice from Buyer of a Disputed Amount. Buyer will make commercially reasonable efforts to notify Seller in writing of any Disputed Amount within 60 days of receiving the applicable invoice. Neither failing to provide notice nor payment of an invoice is a waiver of any claim or right. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Order notwithstanding any such dispute unless Buyer has terminated this Order pursuant to Section 28. Buyer will have 60 days from the date a dispute is resolved to pay Seller. Buyer has no obligation to pay any invoice received 120 days or more after the date Seller was required to invoice Buyer under this Order; provided, however, that this does not apply to: (i) Disputed Amounts; (ii) rejected invoices subject to correction; (iii) invoices delayed due to the actions or inactions of Buyer; or (iv) delays agreed upon by the parties in writing.

19. Setoff. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

20. Change Orders and Amendments. Buyer may at any time, by written instructions and/or drawings issued to Seller (each a "Change Order"), order changes to the Goods or Services. Seller shall within seven (7) days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed Goods or Services subject to the cost proposal and the terms and conditions of this Order. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under this Order. No change to this Order is binding upon Buyer unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Buyer.

21. Representations and Warranties. Seller represents and warrants that: (i) it has full rights and authority to enter into and perform according to this Order, (ii) its performance will not violate any agreement or obligation between Seller and any third party; (iii) it will obtain and maintain all approvals, licenses, filings or registrations necessary to provide the Goods and Services; and (iv) it will comply with all applicable laws (including export laws and regulations).

Seller further represents and warrants that the Goods and Services will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer, including the quality requirements of Section 6; (c) be performed and provided professionally using adequate resources and personnel of required skill, experience and qualifications, and be of high grade, nature and quality, both in accordance with prevailing industry standards and applicable law; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property or other proprietary rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods or Services by Buyer. If Buyer gives Seller notice of breach of warranty under this paragraph, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods or Services and pay for all related expenses, including transportation charges for the return of the defective or nonconforming Goods to Seller and the delivery of repaired or replacement Goods to Buyer.

22. General Indemnification. Seller shall, at its expense, defend, indemnify and hold Buyer, its affiliates, and their respective successors, directors, officers, employees and agents (collectively, "**Indemnitees**") harmless from and against all third-party claims, actions, demands, proceedings, damages, costs and liabilities of any kind (collectively, "**Claims**") to the extent that such Claims arise out of or relate to the Goods and Services purchased from Seller or Seller's negligence, willful misconduct or breach of this Order. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

23. Intellectual Property Indemnification. In the event of a Claim of infringement or misappropriation of any third party's intellectual property or other proprietary rights, Seller shall, in addition to its indemnity obligations in Section 22 above, and at its sole expense: (i) promptly secure the right to continue using the affected Goods or Services; or (ii) if this cannot be accomplished with commercially reasonable efforts, then, replace or modify the Goods or Services to make them non-infringing, provided that the replacement or modification will not degrade the performance or quality of the Goods or Services; or (iii) if neither (i) nor (ii) can be accomplished by Seller with commercially reasonable efforts, then refund to Buyer the amount Buyer has paid for the Goods or Services.

24. Indemnification Procedures. The Indemnities will: (a) provide Seller with reasonably prompt notice of Claims; (b) permit Seller through mutually acceptable counsel to answer and defend Claims; and (c) provide Seller with reasonable information and assistance to help Seller defend Claims at its expense. Any Indemnitee may employ separate counsel and participate in the defense of any Claim at its own expense. Seller will not stipulate, admit, or acknowledge any fault or liability by any Indemnitee without such party's prior written consent. Seller will not settle any Claim or publicize any settlement without Buyer's prior written consent.

25. Use of Buyer's Name or Trademarks. Seller agrees not to use any name, likeness, representation, trademark, service mark or other intellectual property of Buyer (including that of its properties or employees) in any advertising, promotion or other written or oral disclosure without the prior written consent of Buyer. Seller agrees that this Order does not constitute an endorsement of Seller's products or services.

26. Insurance. Seller will maintain sufficient insurance coverage to meet obligations created by this Order and by applicable law. Supplier's insurance must include the following to the extent this Order creates risks generally covered by these insurance policies:

- (a) Commercial General Liability (occurrence form) including contractual and product liability with limits of at least \$2,000,000 US per occurrence;
- (b) Automobile liability with limits of at least \$2,000,000 US per occurrence;
- (c) Workers' compensation that satisfies all statutory limits;
- (d) Employer's liability with limits of at least \$500,000 US per occurrence;
- (e) Professional liability/errors and omissions with limits of at least \$2,000,000 US per claim. Such coverage will cover infringement of third party intellectual property rights (including, for example, copyright, and trademark) if such coverage is reasonably commercially available; and
- (f) Cyber liability (also known as data security) with limits of at least \$2,000,000 US per claim.

Each liability insurance policy obtained by Seller shall: (i) name Buyer as an additional insured; (ii) state that with respect to the operations and services of Seller, such policy is primary and any insurance carried by Buyer is excess and noncontributing with such primary insurance; and (iii) waive all rights of subrogation.

Upon request, Seller will provide Buyer with proof of insurance coverage required by this Section. If Buyer reasonably determines that Seller's coverage is less than that required to meet its obligations, Seller will promptly buy additional coverage and notify Buyer in writing. The insurance in this Section shall be separate from and shall not limit the indemnities in this Order.

27. Gaming Clause. Seller acknowledges that Buyer is engaged in a business that is or may be subject to, and exists because of, privileged licenses or other permits issued by gaming and/or liquor regulatory authorities having jurisdiction over Buyer and/or its affiliates in this or other jurisdictions ("**Regulatory Agency**"). Seller further acknowledges that this Order and/or the relationship of the parties may be subject to review by Regulatory Agencies regardless of where the acts contemplated herein take place. Seller represents and warrants that it is in compliance with all applicable laws, rules, and regulations, including but not limited laws governing gaming and liquor licensing and regulation. Buyer may terminate this Order immediately if: (i) Seller fails to obtain and maintain in good standing any required licenses or approvals from any Regulatory Agency; (ii) Buyer is directed by any Regulatory Agency to terminate this Order and/or to cease business or other associations with Seller; or (iii) Buyer determines in its sole discretion, acting in good faith, that (A) its association with Seller could violate any laws or regulations regarding prohibited relationships with gaming companies or (B) it would be in Buyer's best interest to terminate its relationship with Seller to protect any contemplated or pending licensing applications or any privileged gaming and/or liquor licenses. Notwithstanding anything to the contrary herein, in the event Buyer terminates this Order pursuant to this Section, Buyer shall have no further liability to Seller except for any outstanding obligations due prior to the effective date of such termination, unless Buyer is prohibited from performing such obligations by any Regulatory Agency.

28. Termination. Buyer may terminate this Order, with immediate effect, in whole or in part, at any time with or without cause upon written notice to Seller. If Buyer terminates this Order for any reason, Seller's sole and exclusive remedy is payment for the Goods and Services received and accepted by Buyer prior to the termination.

29. Limitation of Liability. In no event shall Buyer, or Buyer's members, subsidiaries, affiliates, successors or assigns or their respective directors, officers, employees or contractors (collectively, "**Buyer's Affiliates**") be liable to Seller under this Order or any theory or cause of action for any indirect, incidental, consequential, special, punitive or exemplary damages including economic loss or lost profits, even if Buyer or Buyer's Affiliates have been advised of the possibility of such damages or if such damages are foreseeable.

30. Waiver. A party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.

31. Confidential Information. All non-public, confidential or proprietary information of Buyer, including specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Order is confidential, solely for the use of performing this Order and may not be disclosed or copied unless authorized by Buyer in writing. For the avoidance of doubt, confidential information includes this Order, the existence of this Order, and any discussions related to this Order. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

32. Force Majeure. Neither party will be liable for failure to perform any obligation under this Order to the extent such failure is caused by a force majeure event (including acts of God, natural disasters, war, civil disturbance, action by governmental entity or order, strike and other causes beyond the party's reasonable control). The party affected by the force majeure event will provide notice to the other party within a commercially reasonable time and will use its best efforts to resume performance. Obligations not performed due to a force majeure event will be performed as soon as reasonably possible when the force majeure event concludes and any payment obligations shall be suspended until performance resumes. Notwithstanding the foregoing, if a Force Majeure Event prevents Seller from carrying out its obligations under this Order for a continuous period of more than twenty (20) days, Buyer may terminate this Order immediately by giving written notice to Seller.

33. Assignment. Seller will not sell, assign, transfer, pledge or encumber this Order or any right, or delegate any duty or obligation under this Order, by assignment or operation of law, without Buyer's prior written consent. Buyer will not unreasonably withhold such consent. Seller will be deemed to have assigned this Order if Seller engages in a change of control transaction. Buyer may assign this Order to any of its affiliates. This Order will inure to the benefit of and bind all permitted successors, assigns, receivers and trustees of each party.

34. Relationship of the Parties. The parties are independent contractors. This Order does not create an exclusive relationship between the parties. Seller's personnel and its subcontractor's personnel are not Buyer employees. Services will be performed using Seller's and its subcontractor's own manner and means of performance of the work. Buyer does not retain the right to direct the manner and means of the performance of the work, other than the removal or replacement of personnel. Seller will provide Buyer with satisfactory proof of independent contractor status upon request.

35. No Third-Party Beneficiaries. Except for Seller's indemnity obligations herein, this Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

36. Governing Law. This Order and all matters arising out of or relating to this Order shall be governed by and construed in accordance with the laws of the State of Nevada, without regard to conflict of law principles.

37. Choice of Forum. Each party irrevocably agrees that the courts of Clark County, Nevada shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Order or its subject matter or formation (including non-contractual disputes or claims).

38. Cumulative Remedies. The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

39. Notices. All notices, consents, requests, demands and other communications required or permitted hereunder will be in writing; will be sent by messenger, certified or registered U.S. mail, a reliable delivery service for next business day delivery or e-mail, charges prepaid as applicable, to the appropriate address(es) or number(s) set forth in this Order; and will be deemed to have been given on the date of receipt by the addressee (or, if the date of receipt is not a business day, on the first business day after the date of receipt), as evidenced by (A) a receipt executed by the addressee (or a responsible person in his or her office), the records of the person delivering such communication or a notice to the effect that such addressee refused to claim or accept such communication, if sent by messenger, U.S. mail or express delivery service, or (B) a receipt, or other evidence of transmittal, generated by the sender's e-mail software showing that such communication was sent to the appropriate e-mail address on a specified date, if sent by e-mail. All such communications will be sent to the addresses shown on this Order hereof, or to such other addresses or email addresses as either party may inform the other party by giving five (5) business days' prior notice.

40. Severability. If any court of competent jurisdiction determines that any provision of this Order is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect.

41. Survival. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including Sections 19-27, 29, 31-33, and this Section.

SMGHA Nevada
PRIVACY AND DATA SECURITY APPENDIX

This Privacy and Data Security Appendix (“PDSA”) sets forth Vendor’s duties and obligations with respect to all Company Information Assets collected, used, transmitted or maintained for Company, or its affiliates. In the event of any inconsistencies between the PDSA and the contract to which this PDSA is appended (the “**Agreement**”), this PDSA will supersede and prevail. This PDSA describes Company’s privacy and security requirements and sets forth Vendor’s obligations to comply with such requirements.

1) **Definitions**

- a) **“Company”** means the SMGHA Nevada affiliated entity that is party to the contract to which this PDSA is appended.
- b) **“Company Information Assets”** means information or data created, collected, generated, licensed, leased, or purchased by or on behalf of Company or information or data otherwise under the control or responsibility of Company wherever located, including, but not limited to, Personal Information as defined in this Appendix, Confidential Information as defined in the Agreement, and Company intellectual property and financial records, that are disclosed or otherwise made available to Vendor by Company pursuant to or as part of the Agreement as well as any data that Vendor creates, collects, generates, licenses, leases, or purchases on behalf of the Company.
- c) **“Data storage device”** means any device that stores information or data from any electronic or optical medium, including, but not limited to, computers, cellular telephones, magnetic tape, electronic computer drives and optical computer drives, and the medium itself.
- d) **“Encryption”** means the protection of data in electronic or optical form, in storage or in transit, using an encryption technology which renders such data indecipherable in the absence of associated cryptographic keys necessary to enable decryption of such data and an appropriate management and safeguards of cryptographic keys to protect the integrity of the encryption.
- e) **“Law”** means any federal, state, local, tribal, municipal, foreign, international, multinational or other constitution, law, statute, treaty, rule, regulation, ordinance or code.
- f) **“Personal Information”** means any and all information or data (regardless of format) that (i) identifies or can be used to identify, contact or locate an individual, or (ii) that relates to an individual, whose identity can be either directly or indirectly inferred, including any information that is linked or linkable to that individual regardless of the citizenship, age, or other status of the individual, or (iii) is protected under applicable Laws.
- g) **“Privacy and Security Requirements”** means, collectively, all of the following to the extent relating to privacy, data protection, or security of information (including Personal Information): all (i) applicable requirements of Law, including applicable requirements governing the protection, collection, storage, transfer, disclosure or other use or disposition of Personal Information and security breach notification, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and its implementing rules and regulations (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), the Gramm–Leach–Bliley Act (“GLBA”), the European Union Data Protection Directive 95/46/EC, the California Consumer Privacy Act, and its implementing rules and regulations (“CCPA”), the California Privacy Rights Act, and its implementing rules and regulations (“CPRA”), the Virginia Consumer Data Protection Act, and its implementing rules and regulations (“CDPA”), the Colorado Privacy Act, and its implementing rules and regulations (“CPA”), the Nevada Notice Regarding Privacy of Information Collected on Internet from Consumers Act, and its implementing rules and regulations (“PIPICA”), the Controlling the Assault of Non-Solicited Pornography And Marketing Act and its implementing rules and regulations (“CAN-SPAM Act”), the Telephone Consumer Protection Act and its implementing rules and regulations (“TCPA”), the Children’s Online Privacy Protection Act and its implementing rules and regulations (“COPPA”) and the European Union General Data Protection Regulation (“GDPR”); and (ii) industry standards applicable to Vendor, including, but not limited to, the Payment Card Industry Data Security Standard (“PCI DSS”).
- h) **“Security Incident”** means the suspected or actual unauthorized access, acquisition, destruction, use, modification or disclosure or release of Company Information Assets.

- i) “**Services**” means, for purposes of this PDSA, all services that Company requests Vendor to perform under the Agreement that involve processing of, or actual or potential access to, Company Information Assets.
 - j) “**Service Provider**” has the meaning given to that term as set forth in the California Consumer Privacy Act, as amended by the California Privacy Rights Act, and in its associated regulations.
 - k) “**Third Party**” means a party that is not Company, Vendor, or a Service Provider.
 - l) “**Vendor**” means the non-SMGHA Nevada affiliated entity which is party to the contract to which this PDSA is appended, including the entity’s affiliates.
- 2) Data Privacy, Access, Use, and Retention
- a) Company Information Assets will be used solely for the purpose of performing the Services. Vendor will not sell Company Information Assets under any circumstance. "Sell," "Selling," "Sale," or "Sold," has the definition given to the term in the CCPA, as amended by the CPRA and its associated regulations.
 - b) Vendor will not appropriate Company Information Assets for its own use or to disclose such information to third parties unless specifically authorized by the Company in writing.
 - c) Vendor will comply with Company’s privacy policies as provided by Company to Vendor.
 - d) Vendor will comply with all reasonable requests from Company to assist Company in complying with its privacy obligations and inquiries, including by way of example, providing to Company information regarding any Company Information Assets in Vendor’s control and providing to Company information regarding the processing, storage, use, and destruction of any information Vendor received from Company.
 - e) Vendor will limit access to Company Information Assets only to those Vendor personnel who need access to the Company Information Assets to perform the Services. Vendor shall require and instruct its personnel not to discuss, divulge, or disclose any such Company Information Assets to any person or entity except those persons within Vendor and the organizations directly concerned with the performance of the Services.
 - f) At least ten (10) business days prior to providing any Company Information Assets to a subcontractor, Vendor shall notify Company in writing of the identity of the subcontractor and the categories of information it intends to provide. Vendor shall not provide any Company Information Assets to a subcontractor objected to by Company.
 - g) Vendor represents and warrants that its collection, access, use, storage, disposal, and disclosure of Company Information Assets does and will at all times comply with all Privacy and Security Requirements, as well as the terms and conditions of this Agreement. Vendor represents and warrants: all legally required consents and authorizations under applicable Law have been obtained by Vendor; all legally required notices, undertakings, and compliance measures required under applicable Law has been made or implemented by Vendor; any applicable self-regulatory requirements have been satisfied, including but not limited to, the guidelines published by the Digital Advertising Alliance; any relevant opt-out signal related to interest-based advertising, or the Sale of information, has been honored by Vendor; and; any requirement that Vendor refrain from any act or acts under applicable Law, or self-regulatory regime, shall be honored by Vendor.
 - h) Nothing in this PDSA or the Agreement shall operate as a waiver of Company or its affiliates’ rights to be exempt from any Law as a result of its status as a sovereign or as a result of its operation on Tribal trust lands, as applicable.
- 3) Information Security
- a) Vendor shall have implemented and will maintain a written information security program (the “**Security Program**”) applicable to all facilities, networks, infrastructure, devices, cloud resources, and other systems used by Vendor to provide the Services, including any applicable subcontractor facilities, networks, infrastructure, devices, cloud resources, and other systems, and shall include within any agreement with a subcontractor a provision that the subcontractor implement and maintain reasonable security measures to protect those records from unauthorized access, acquisition, destruction, use, modification or disclosure. For purposes of this Agreement, “Security Program” shall include, but shall not be limited to, any and all Vendor

policies, procedures, standards, and strategy, whether in hard copy, electronic, recorded form, or otherwise. Such Security Program must contain reasonable and appropriate administrative, technical, and physical safeguards to monitor Vendor's systems and protect Company Information Assets against anticipated threats or hazards regarding: security, confidentiality, availability, or integrity; loss and accidental, unlawful and unauthorized destruction, alteration, use, disclosure, acquisition, or access.

- b) Vendor will regularly assess risk, including risks to the privacy, security, integrity, and availability of Company Information Assets and test and monitor the effectiveness of its security safeguards, controls, countermeasures, systems and procedures. Vendor will timely address any identified risks or effectiveness issues in its security safeguards, controls, countermeasures, systems and procedures.
- c) At a minimum, Vendor's Security Program shall include:
 - i. Appropriate threat monitoring and detection pertaining to systems, databases, and/or infrastructure that store, transmit, or otherwise process Company Information Assets, including appropriate logging and anti-virus/anti-malware software;
 - ii. Security Incident response program;
 - iii. Use of secure user identification and authentication protocols, including, but not limited to, unique user credentials, use of appropriate access controls, and strict measures to protect identification and authentication processes;
 - iv. Patch-management program, whereby Vendor installs, within a commercially reasonable time following release, all security patches and operating system and application security updates for any devices or interfaces through which or with which the Services are provided;
 - v. Use of Encryption protocols for Personal Information in transit and at rest, including Personal information contained on any transportable Data Storage Device;
 - vi. Implementation of secure coding practices pursuant to industry standards, such as those published by the Open Web Application Security Project;
 - vii. Secure remote access protocols and use of multi-factor authentication for access to computer systems;
 - viii. Appropriate network segmentation;
 - ix. Appropriate disposal and destruction procedures after information is no longer needed for a legitimate business purpose;
 - x. Password management, including requirements addressing rotation and complexity, storage and management, restrictions on password sharing, and account lockout controls;
 - xi. Designation of one or more employees to coordinate the Security Program;
 - xii. Training of appropriate personnel on all aspect of the items listed above;
 - xiii. Selection of vendors who adhere to at least the same level of standards as the Security Program.
- d) Promptly upon the expiration, earlier termination of the Agreement, or the instruction of Company, Vendor shall return, destroy, or render unreadable or undecipherable all Company Information Assets in its possession, custody or control, unless otherwise specified by Company.
- e) In the event of a Security Incident, Vendor shall (i) promptly investigate the Security Incident; (ii) identify the impact of the Security Incident; (iii) take commercially reasonable actions to investigate and mitigate the effects of any such Security Incident; (iv) notify Company (including the Company contact(s) identified in the Agreement, if applicable) of the Security Incident within 72 hours, subject to applicable confidentiality obligations, the direction of law enforcement, and other limitations to the extent allowed and/or required by applicable Law; (v) cooperate with Company in Vendor's investigation of any such Security Incident and provide information reasonably requested by Company, including forensic reports, audit logs, and/or root cause analysis, (vi) timely provide any legally-required notifications to Company; (vii) at Company's sole discretion, provide notification to any individuals affected by the Security Incident, provided that, before doing so, Vendor will provide Company the opportunity to approve any such notification to affected individuals. Unless expressly required by applicable Law, Vendor is prohibited from communicating with any individual or third party (other than law enforcement or parties engaged to assist with the investigation under a confidentiality obligation) regarding any Security Incident without prior written consent of Company.
- f) No more frequently than once per twelve (12) - month period, upon written request by Company, Vendor shall respond to security questionnaires provided by Company with regard to the Security Program, to the extent that disclosure of any such information will not compromise Vendor's confidentiality obligations and/or legal obligations or privileges.

- g) Company reserves the right to request evidence of Vendor's third party audits (e.g., Service Organization Control (SOC) 2), at Company's discretion.
- h) Vendor shall indemnify, defend and hold harmless the Company for, and as to, any damage, loss, liability, fines, assessments, costs and expenses of any kind (including reasonable attorneys' fees) incurred by or imposed upon Company arising out of or relating to any third party claim, action, audit, lawsuit, proceeding, or regulatory enforcement action that arises from or relates to Vendor's breach of any of the provisions or representations or warranties contained or referenced in this PDSA. Any limitations of liability set forth in the Agreement, including but not limited to limitations of liability with respect to consequential damages or total aggregate damages, shall not apply to the foregoing indemnity obligation. To the extent this provision conflicts with the Agreement because it offers greater indemnification, defense, or hold harmless rights in favor of the Company than the Agreement for any particular item, than this provision shall control.