

CONTRACT FOR PROFESSIONAL AND ARTISTIC SERVICES

The Parties to this Contract are the State of Illinois acting through the undersigned Agency (collectively the State) and the Vendor. The Contract consists of this signature page, the following pages detailing the contents described below, and any attachments identified on these pages.

- 1. **TERM AND TERMINATION**
- 2. **DESCRIPTION OF SUPPLIES / SERVICES**
- 3. **PRICING**
- 4. **STANDARD TERMS AND CONDITIONS**
- 5. **CERTIFICATIONS AND CONFLICTS**
- 6. **SUPPLEMENTAL PROVISIONS**

In consideration of the mutual covenants and agreements contained in this Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms and conditions set forth herein and have caused this Contract to be executed by their duly authorized representatives on the dates shown below.

For The **VENDOR**:

Authorized Signature: *Joseph F. Horn*
Printed Name: Joseph F. Horn
Title: Consultant Date: June 11, 2010

Vendor Name: Joseph F. Horn
Address: [REDACTED]
City, State, Zip: [REDACTED]
Phone: [REDACTED] Fax: 814 865 7092
E-Mail: joehorn@psu.edu

STATE OF ILLINOIS
For The **DEPARTMENT OF TRANSPORTATION**:

<u><i>Susan R. Shea</i></u> Susan R. Shea, Director, Division of Aeronautics	<u>June 16, 2010</u> Date
<u><i>[Signature]</i></u> Ellen Schanley-Haskins, Chief Counsel (as to form)	<u>6-16-10</u> Date
<u><i>[Signature]</i></u> Gary Hennig, Secretary of Transportation	<u>6-17-10</u> Date
<u><i>[Signature]</i></u> Nadine Lacombe, General Counsel Department of Central Management Services	<u>6-24-10</u> Date

Reviewed and approved by:
Mesa [Signature]
6-22-10

1. TERM AND TERMINATION

1.1 TERM OF THIS CONTRACT: This Contract shall be effective upon Execution through June 30, 2011.

1.2 RENEWAL: This Contract may not be renewed.

1.3 TERMINATION FOR CAUSE: The State may terminate this Contract, in whole or in part, immediately upon notice to the Vendor if it is determined that the actions, or failure to act, of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause jeopardy to health, safety, or property. The Contract may be terminated if the State determines that the Vendor lacks the financial resources to perform under the Contract. In the event the Vendor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the contract effective as of the date on which the license or certification is no longer in effect. If Vendor fails to perform to the State's satisfaction any material requirement of this Contract or is in violation of a material provision of this Contract, the State shall provide written notice to the Vendor requesting that the breach or noncompliance be remedied within the period of time specified in the State's written notice. If the breach or noncompliance is not remedied by that date the State may either: (a) immediately terminate the Contract without additional written notice or, (b) enforce the terms and conditions of the Contract, and in either event seek any available legal or equitable remedies and damages.

1.4 TERMINATION FOR CONVENIENCE: Following thirty (30) days written notice, the State may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Vendor. Following any such termination for convenience, the Vendor shall be entitled to compensation upon submission of invoices and proof of claim for services provided under this Contract up to and including the date of termination.

2. DESCRIPTION OF SUPPLIES AND SERVICES

2.1 NEED FOR SERVICES:

The Agency requires the professional and specialized services of an expert to carry out the services described in Description of Services.

2.2 DESCRIPTION OF SERVICES:

Vendor will provide expert analysis and expert witness testimony at hearings related to the Children's Memorial Hospital in Chicago that may result in anticipated litigation.

Vendor shall consult with and keep the Agency fully informed as to the progress of all matters covered by this Contract. Where time permits, Vendor shall offer the Agency the opportunity to review court documents and briefs prior to filing. Vendor shall promptly furnish the Agency with copies of all correspondence and all court documents and briefs prepared in connection with the services rendered under this Contract.

2.3 MILESTONES AND DELIVERABLES:

Vendor will investigate the effect of wind and airwakes on helicopter response and control margins during approach and landing at the proposed rooftop helipad. The work will involve the following tasks:

1. Integrate a rotorcraft flight dynamics computer simulation model with the validated computational fluid dynamics (CFD) flow solutions developed and provided by Continuum Dynamics, Inc. (CDI).
2. Set up input for helicopter computer simulation model to represent a typical helicopter that would operate from the proposed helipad.
3. Define a set of 2-3 critical wind conditions and calculate the aircraft control and power margins at various points on the approach path and over the helipad. Assess capability of helicopter to maintain control throughout the flight path.
4. Analyze the efficacy of the proposed wind measurement system (the Super AWOS) for predicting dangerous wind conditions.
5. Document and present results.
6. Provide expert testimony at hearings and legal proceedings.

2.4 VENDOR / STAFF SPECIFICATIONS: N/A

2.5 DELIVERY SPECIFICATIONS: N/A

2.6 WHERE SERVICES ARE TO BE PERFORMED:

Services will be performed primarily in the geographical area referenced in Section 3.4.

2.7 SCHEDULE OF WORK:

Any work performed on State premises shall be done during the hours designated by the State and performed in a manner that does not interfere with the State and its personnel.

2.8 WARRANTIES FOR SUPPLIES AND SERVICES:

2.8.1 Vendor warrants that the supplies furnished under this Contract (a) will conform to the State's manufacturing standards, specifications, drawing, samples or descriptions furnished by the State, including but not limited to all specifications attached as exhibits hereto, (b) will be merchantable, of good quality and workmanship, free from defects for a period of twelve months or longer if specified in writing, and fit and sufficient for the intended use (c) will comply with all federal and state laws, regulations and ordinances pertaining to the manufacturing, packing, labeling, sale and delivery of the supplies (d) will be of good title and be free and clear of all liens and encumbrances and (e) will not infringe any patent, copyright or other intellectual property rights of any third party. Vendor agrees to reimburse the State for any losses, costs, damages or expenses, including without limitations, reasonable attorney's fees and expenses, arising from failure of the supplies to meet such warranties. Vendor shall insure that all manufacturers' warranties are transferred to the State and shall provide a copy of the warranty. These warranties shall be in addition to all other warranties, express, implied or statutory, and shall survive the State's payment, acceptance, inspection or failure to inspect the supplies.

2.8.2 Vendor warrants that all services will be performed in a good and professional manner to industry standards by trained and competent personnel. Vendor shall monitor performances of each individual and shall reassign immediately any individual who is not performing to professional standards, who is not efficient or effective in performing the work of the contract, who is disruptive or not respectful of others in the workplace, or who in any way violates the Contract or State policies.

2.9 REPORTING, STATUS AND MONITORING SPECIFICATIONS:

2.9.1 Vendor shall immediately notify the State of any event that may have a material impact on Vendor's ability to perform the Contract.

2.9.2 Upon request and on forms provided by Agency, Vendor shall report the number of qualified veterans and certain ex-offenders hired during Vendor's last completed fiscal year. Vendor may be entitled to employment tax credit for hiring individuals in those groups (PA 94-1067).

3. PRICING

3.1 METHOD AND RATE OF COMPENSATION: Vendor shall be reimbursed for all reasonable, actual direct labor costs incurred in fulfilling the terms of this Contract in accordance with the rates established by the following method:

hourly \$150.00

3.2 MAXIMUM COMPENSATION FOR SUPPLIES AND SERVICES:

Firm Price _____

Estimated Price \$25,000

3.3 RENEWAL COMPENSATION: If this contract is renewed, the rates for labor shall be the same as for the initial term.

3.4 EXPENSES: Any approved travel expenses shall be reimbursed in accordance with the Travel Regulation Council and Governor's Travel Board rules (http://www.state.il.us/cms/2_services_oth/trvlguid.htm). Vendor shall be reimbursed for all reasonable, actual, ordinary and necessary direct non-labor costs incurred in fulfilling the terms of this Contract, including, but not limited to the following:

Reasonable, actual, ordinary and necessary expenses for travel, meals, and lodging incurred by the Vendor to fulfill Vendor's obligations under this Contract. Vendor shall retain all receipts therefore and shall, upon request of the Agency, provide any necessary documentation. Mileage reimbursement shall be made in accordance with the travel regulations applicable to the Agency for the use of personally owned or supplied motor vehicles other than rental vehicles. Expenses for lodging and meals shall be reimbursed only if the Vendor's services under this Contract must be performed outside State College, Pennsylvania and its immediate vicinity or metropolitan area. No mileage reimbursement for travel shall be provided where the Vendor is furnished use of a State-owned vehicle or airplane or where Vendor utilized public air, rail or highway transportation.

Reasonable, actual, ordinary and necessary expenses for (a) telecommunications, including telephone, telegraph, postage, parcel post and freight, and package express; (b) reproduction (including, but not limited to, photographs, prints and offset work); and (c) rental charges of equipment owned by the Vendor at established rates but exclusive of profit and less any portion charged elsewhere. Vendor shall retain all receipts therefore and shall upon request of the Agency provide any necessary documentation.

Reasonable, actual, ordinary, and necessary expenses for other special materials required for and used solely in the fulfillment of this Contract. Vendor shall retain all receipts therefore and shall, upon request of the Agency, provide any necessary documentation.

Travel, meals, lodging and other direct non-labor costs which Vendor expects to incur under this Contract outside the State of Illinois or outside the geographic area referred to in the above paragraphs, with the exception of telephone, mailing, and other similar communication expenses, shall require the prior approval of the Agency, which approval shall not be unreasonably withheld. Prior approval by the Agency of travel to be undertaken by Vendor outside of the State of Illinois or outside of the above-referenced geographic area as an incident of Vendor's performance of services under this Contract, shall constitute approval for Vendor to incur reasonable, actual ordinary, and necessary expenses for travel, meals, lodging, and other ordinary and necessary direct non-labor costs.

Vendor shall require Agency approval before incurring any extraordinary or unusual expenses.

3.5 DISCOUNT: Not applicable

3.6 TAX: Vendor shall not bill for any taxes unless accompanied by proof the State is subject to the tax. If necessary, Vendor may request the applicable Agency's Illinois tax exemption number and federal tax exemption information.

3.7 INVOICE SPECIFICATIONS: Vendor shall submit monthly invoices to the Illinois Department of Transportation for services performed during each month.

Each invoice shall be itemized listing the services performed by date, including the hours worked, and the individual performing stated services.

The amount shown on each invoice for labor costs shall be in accordance with the rates established in Section 3.1 above.

The invoices shall also itemize non-labor costs such as those incurred for travel, food, and lodging and, upon request, shall be supported by receipts.

The invoices shall be supported by a summary page of the total labor and total non-labor costs incurred during the specified month by Vendor in the performance of this Contract and claimed to constitute allowable costs.

The summary page shall be signed by the Vendor and shall set out Vendor's social security number or EIN number and billing address.

All such invoices shall also contain a statement which reads substantially as follows: "The following described and listed services were performed by me on the days and dates listed and the services listed are true and correct" or, alternatively, any other certification required by the Office of the Attorney General.

All invoices issued by the Vendor to the Department pursuant to this Contract shall be sent to the following address:

Susan Shea, Director of Aeronautics
Illinois Department of Transportation
#1 Langhorne Bond Drive
Springfield, IL 62707

3.8 PAYMENT TERMS AND CONDITIONS:

3.8.1 By submitting an invoice, Vendor certifies that the supplies or services provided meet all requirements of the Contract, and the amount billed and expenses incurred are as allowed in the Contract. Invoices for supplies purchased, services performed and expenses incurred through June 30 of any year must be submitted to the State no later than July 31 of that year; otherwise Vendor may have to seek payment through the Illinois Court of Claims (30 ILCS 105/25). All invoices are subject to statutory offset (30 ILCS 210).

3.8.2 Payments, including late payment charges, will be paid in accordance with the State "Prompt Payment Act" (30 ILCS 540) and rules (74 Ill. Adm. Code 900) when applicable. Payments delayed at the beginning of the State's fiscal year (July and August payments) because of the appropriation process shall not be considered a breach.

3.8.3 The State shall not be liable to pay for supplies provided or services rendered, including related expenses incurred prior to the execution of this Contract by the Parties and the beginning of the term of this Contract.

3.8.4 As a condition of receiving payment Vendor must pay its employees prevailing wages when required by law (e.g., public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resource services, security guard and food services). Vendor is responsible for contacting the Illinois Dept. of Labor (217-782-6206; <http://www.state.il.us/agency/ildol/index.htm>) to ensure understanding of prevailing wage requirements (30 ILCS 500/25-60(b)).

3.8.5 As a condition of receiving payment Vendor must pay its suppliers and subcontractors according to the terms of their respective contracts. Vendor shall provide lien waivers to the State upon request.

4. STANDARD TERMS AND CONDITIONS

- 4.1 AVAILABILITY OF APPROPRIATION (30 ILCS 500/20-60):** State shall use its best efforts to secure sufficient appropriations to fund this Contract. However, the State, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason.
- 4.2 AUDIT/RETENTION OF RECORDS (30 ILCS 500/20-65):** Vendor and its subcontractors shall maintain books and records relating to the performance of the Contract or subcontract and necessary to support amounts charged to the State under the Contract or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Vendor for a period of three years from the later of the date of final payment under the Contract or completion of the Contract, and by the subcontractor for a period of three years from the later of final payment under the term or during the three year period thereafter. Books and records required to be maintained under this section shall be available for review or audit by representatives of the State, the Auditor General, the Executive Inspector General and other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the Contract for which adequate books and records are not available to support the purported disbursement. The Vendor shall not impose a charge for audit or examination of the Vendor's books and records. If federal funds are used to pay contract costs, the Vendor must retain its records for five years. Vendor shall take reasonable steps to insure that any subcontractor is in compliance with the requirements of this section.
- 4.3 TIME IS OF THE ESSENCE:** Time is of the essence with respect to Vendor's performance of this Contract. Except as specifically waived in writing, failure by either Party to exercise or enforce a right shall not affect any subsequent ability to exercise or enforce a right.
- 4.4 FORCE MAJEURE:** Failure by either Party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control and not due to its negligence including acts of nature, acts of terrorism, riots, labor disputes, fire, flood, explosion, and governmental prohibition. The non-declaring party may cancel the Contract without penalty if performance does not resume within 30 days of the declaration.
- 4.5 CONFIDENTIAL INFORMATION:** Each Party, including its agents and subcontractors, to this Contract may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this Contract. The receiving Party shall presume all information received or to which it gains access pursuant to this Contract is confidential unless otherwise designated by the disclosing Party. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the period of the Contract or thereafter. The receiving Party must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the end of the Contract, or earlier at the request of the disclosing Party, or notify the disclosing Party in writing of its destruction. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; received in good faith from a third-party not subject to any confidentiality obligation to the disclosing Party; now is or later becomes publicly known through no breach of confidentiality obligation by the receiving Party; or is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.
- 4.6 USE AND OWNERSHIP:** All work performed or supplies created by Vendor under this Contract, whether written documents or data, goods or deliverables of any kind, shall be deemed work-for-hire under copyright law and all intellectual property and other laws, and the State of Illinois is granted sole and exclusive ownership to all such work, unless otherwise agreed to herein. Vendor hereby assigns to the State all right, title, and interest in and to such work including any related intellectual property rights, and/or waives any and all claims that Vendor may have to such work including any so-called "moral rights" in connection with the work. Confidential data or information contained in such work shall be subject to Section 4.5 herein.
- 4.7 INDEMNIFICATION AND LIABILITY:** The Vendor agrees to indemnify and hold harmless the State of Illinois, its agencies, officers, employees, agents and volunteers from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, arising out of (a) any breach or violation by Vendor of any of its representations, warranties, covenants or agreements set forth herein, (b) any actual or alleged death or injury to any person, damage to any property or any other damage or loss by whomsoever suffered, claimed to result in whole or in part from Vendor's negligent performance hereunder, (c) any act, activity or omission of Vendor or any of its employees, representatives, subcontractors or agents. Neither party shall be liable for incidental, special, consequential or punitive damages.

- 4.8 INSURANCE:** Vendor shall, at all times during the term and any renewals, maintain, at a minimum, the insurance coverage indicated in the attached certificates of insurance from USAA Casualty Insurance Company/Pennsylvania Auto Policy and Mutual Benefit Insurance Company Homeowner's Policy. Certificates may not be modified or canceled until at least 30 days notice has been provided to the State. Modifications to Scope of Services under this contract may necessitate modifications to these insurance requirements, accordingly. Insurance shall not limit Vendor's obligation to indemnify, defend, or settle any claims.
- 4.9 INDEPENDENT CONTRACTOR:** Vendor shall, in the performance of this Contract, be an independent contractor and not an agent or employee of, or joint venturer with the State. All payments by the State shall be made on that basis.
- 4.10 ASSIGNMENT AND SUBCONTRACTING:** This Contract may not be assigned, transferred or subcontracted in whole or in part by the Vendor without the prior written consent of the State. Vendor shall describe, as a supplemental provision to this Contract, the names and addresses of all authorized subcontractors utilized by Vendor in the performance of this Contract, together with a description of the work to be performed by the subcontractor and the anticipated amount of money that each subcontractor is expected to receive pursuant to this Contract. For purposes of this section, subcontractors are those specifically hired to perform all or part of the work or to provide the supplies covered by the Contract.
- 4.11 SOLICITATION AND EMPLOYMENT:** Vendor shall not employ any person employed by the State during the term of this Contract to perform any work under this Contract. Vendor shall give notice immediately to the Agency's director if Vendor solicits or intends to solicit State employees to perform any work under this Contract.
- 4.12 COMPLIANCE WITH THE LAW:** The Vendor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders, federal circulars and all license and permit requirements in the performance of this Contract. Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.
- 4.13 BACKGROUND CHECK:** Whenever the State deems it reasonably necessary for security reasons, the State may conduct, at its expense, criminal and driver history background checks of Vendor's officers, employees or agents. Vendor shall reassign immediately any such individual who does not pass the background checks.
- 4.14 APPLICABLE LAW:** This Contract shall be construed in accordance with and is subject to the laws and rules of the State of Illinois. The Department of Human Rights' Equal Opportunity requirements (44 Ill. Adm. Code 750) are incorporated by reference. Any claim against the State arising out of this Contract must be filed exclusively with the Illinois Court of Claims (705 ILCS 505/1). The State shall not enter into binding arbitration to resolve any Contract dispute. The State of Illinois does not waive sovereign immunity by entering into this Contract. The official text of cited statutes is incorporated by reference (An unofficial version can be viewed at <http://www.lga.gov/legislation/ilcs/ilcs.asp>. In compliance with the Illinois and federal Constitutions, the Illinois Human Rights Act, the U. S. Civil Rights Act, and Section 504 of the federal Rehabilitation Act and other applicable laws and rules the State does not unlawfully discriminate in employment, contracts, or any other activity.
- 4.15 ANTI-TRUST ASSIGNMENT:** If Vendor does not pursue any claim and cause of action it has arising under federal or state antitrust laws relating to the subject matter of the Contract, then upon request Vendor shall assign to the State all right, title and interest in and to the claim or cause of action.
- 4.16 AUTHORIZATION:** Each Party to this Contract represents and warrants to the other that: (a) it has the right, power and authority to enter into and perform its obligations under this Contract and (b) it has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and (c) this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 4.17 CONTRACTUAL AUTHORITY:** The Agency that signs for the State of Illinois shall be the only State entity responsible for performance and payment under the Contract. When the Department of Central Management Services (CMS) signs in addition to an Agency, CMS does so as approving officer and shall have no liability to Vendor. When CMS signs a Master Contract on behalf of State agencies, only the Agency that places an order with the Vendor shall have any liability to Vendor.
- 4.18 NOTICES:** Notices and other communications provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by courier (UPS, Federal Express or other similar and reliable carrier), by e-mail, or by fax showing the date and time of successful receipt. Notices shall be sent to the individuals who signed the Contract using the contact

information following the signatures. Each such notice shall be deemed to have been provided at the time it is actually received. By giving notice, either Party may change the contact information.

5. CERTIFICATIONS AND CONFLICTS

Vendor certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

- 5.1 Vendor, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.
- 5.2 Vendor is not in default on an educational loan (5 ILCS 385/3).
- 5.3 Vendor (if an individual, sole proprietor, or partner) has informed the director of the Agency in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items (30 ILCS 105/15a).
- 5.4 Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer, and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit performing substantially similar work that will be performed under this contract (30 ILCS 500/25-80).
- 5.5 Vendor has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has Vendor made an admission of guilt of such conduct that is a matter of record (30 ILCS 500/50-5).
- 5.6 If Vendor has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).
- 5.7 If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the Contract void if this certification is false (30 ILCS 500/50-10.5).
- 5.8 Vendor and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the State may declare the Contract void if this certification is false (30 ILCS 500/50-11) or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt (30 ILCS 500/50-60).
- 5.9 Vendor and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (30 ILCS 500/50-12) and acknowledges that failure to comply can result in the Contract being declared void.
- 5.10 Vendor certifies that it has not committed a willful or knowing violation of the Environmental Protection Act (relating to Civil Penalties under the Environmental Protection Act) within the last five years, and is therefore not barred from being awarded a contract. If the State later determines that this certification was falsely made by the Vendor, the Vendor acknowledges that the State may declare the Contract void (30 ILCS 500/50-14).
- 5.11 Vendor has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has Vendor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).
- 5.12 Vendor is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).
- 5.13 Vendor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers or employees of the State (30 ILCS 500/50-40, 50-45, 50-50).

- 5.14 In accordance with the Steel Products Procurement Act, steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring agency grants an exception (30 ILCS 565).
- 5.15 Vendor will, pursuant to the Drug Free Workplace Act, provide a drug free workplace and Vendor and its employees shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance during the performance of the Contract. This certification applies to contracts of \$5000 or more with individuals; and to entities with 25 or more employees (30 ILCS 580).
- 5.16 Neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000 (30 ILCS 582).
- 5.17 Vendor has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States (720 ILCS 5/33 E-3, E-4).
- 5.18 Vendor complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
- 5.19 Vendor does not pay dues to, or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club" (775 ILCS 25/2).
- 5.20 Vendor complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).
- 5.21 Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been produced in whole or in part by the labor or any child under the age of 12 (30 ILCS 584).
- 5.22 Vendor certifies that it is not in violation of Section 50-14.5 of the Illinois Procurement Code (30 ILCS 500/50-14.5) that states: "Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act (410 ILCS 45) are prohibited from doing business with the State until the violation is mitigated".
- 5.23 Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
- 5.24 In accordance with Public Act 095-0307, all information technology, including electronic information, software, systems and equipment, developed or provided under this contract must comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at www.dhs.state.il.us/IIaa.
- 5.25 Vendor has disclosed if required, on forms provided by the State, and agrees it is under a continuing obligation to disclose to the State, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit Vendor from having or continuing the Contract. This includes, but is not limited to conflicts under the "Infrastructure Task Force Fee Prohibition" section of the State Finance Act (30 ILCS 105/8.40), Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or those which may conflict in any manner with the Vendor's obligation under this Contract. Vendor shall not employ any person with a conflict to perform under this Contract. If any elected or appointed State officer or employee, or the spouse or minor child of same has any ownership or financial interest in the Vendor or the Contract, Vendor certifies it has disclosed that information to the State if required, on forms provided by the State, and any waiver of the conflict has been issued in accordance with applicable law and rule. A waiver is required if:
- a) the person intending to contract with the State, their spouse or child: (i) holds an elective office in Illinois; (ii) holds a seat in the Illinois General Assembly; (iii) is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for

such employment in excess of 80% of the salary of the Governor (currently \$106,447.20). (The conflict of interest threshold of 80% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders, legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.);

b) the contract is with a firm, partnership, association or corporation in which a person referenced in a) above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor (currently \$177,412.00).

c) the contract is with a firm, partnership, association or corporation in which a person referenced in b) above, together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor (currently \$364,824.00) from the firm, partnership, association or corporation.

5.26 Vendor, as defined in Public Act 95-971, certifies that it has read, understands, and is in compliance with the Act and will not make a contribution that will violate the Act. In general, Public Act 95-971 contains new registration and reporting requirements for certain Vendors, as well as limitations on political contributions by certain Vendors and their affiliates. These requirements shall be effective for the duration of the term of office of the incumbent Governor or for a period of 2 years after the end of the contract term, whichever is longer.

Vendor certifies, in accordance with Public Act 95-971, as applicable:

Vendor is not required to register as a business entity with the State Board of Elections.

or

Vendor has registered as a business entity with the State Board of Elections and acknowledges a continuing duty to update the registration as required by the Act. A copy of the stamped certificate of registration is attached.

Vendor acknowledges that the State may declare this Contract void without any additional compensation due to the Vendor if this foregoing certification is false or if the Vendor (or any of its Affiliated Persons or Entities) engages in conduct that violates Public Act 95-971.

with Agency/Buyer in good faith to resolve the problem. If the parties agree that the individual in question is not performing the services in a skilled manner, Vendor shall reassign that individual. Between Agency/Buyer's notifying the Vendor and the parties' resolution of the problem, Vendor shall ensure that service to the affected site is provided by other personnel.

6.2.3 PUBLICITY

Vendor shall not, in any advertisement or any other type of solicitation for business, state, indicate or otherwise imply that it is under contract to the Agency/Buyer nor shall the Agency/Buyer's name be used in any such advertisement or solicitation without prior written approval except as required by law.

6.2.4 CONSULTATION

Vendor shall keep the Agency/Buyer fully informed as to the progress of matters covered by this Contract.

6.2.5 ACCOUNTING

The Vendor shall be responsible for utilizing the appropriate provisions contained in Title 48, Code of Federal Regulations, subpart 31, as amended (Contract Cost Principles and Procedures) with respect to all costs associated with supplies and/or services the Vendor provides to the Agency/Buyer pursuant to the terms of this contract. The Vendor shall also maintain a proper accounting system in accordance with generally accepted accounting standards or Agency/Buyer directives. Information regarding the cost principles in Title 48, Code of Federal Regulations, subpart 31 (Contract Cost Principles and Procedures) may be viewed at the following website: http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far31.htm#PO_0

6.2.6 THIRD-PARTY BENEFICIARIES

There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the Agency/Buyer and the Vendor.

6.2.7 SUCCESSORS IN INTEREST

All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

6.2.8 VENDOR'S TERMINATION DUTIES

The Vendor, upon receipt of notice of termination or upon request of the Agency/Buyer, shall:

Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, any other matters the Agency/Buyer may require;

Immediately cease using and return to the Agency/Buyer any personal property or materials, whether tangible or intangible, provided by the Agency/Buyer to the Vendor;

Comply with the Agency/Buyer's Instructions for the timely transfer of any active files and work product produced by the Vendor under this Contract;

Cooperate in good faith with the Agency/Buyer, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and

Immediately return to the Agency/Buyer any payments made by the Agency/Buyer for services that were not rendered by the Vendor

6.2.9 OVERTIME

All work performed by Vendor at overtime rates shall be pre-approved by the Agency/Buyer.

6.2.10 PURCHASE OF EQUIPMENT AND MAINTENANCE ASSURANCE:

6.2.10.1 Vendor shall not purchase equipment with funds received under this Contract without having obtained the Agency/Buyer's prior approval. For purposes of this Article, "equipment" shall include any product, tangible and non-tangible, used solely in Vendor's performance under this Contract and having a useful life of two years or more and an acquisition cost of at least \$100. Vendor acknowledges that the Agency/Buyer is under no obligation to give consent and that the Agency/Buyer may, if it gives consent, subject that consent to such additional terms and conditions as the Agency/Buyer may require. Vendor acknowledges that any equipment purchased under this provision is and shall remain the property of the Agency/Buyer.

6.2.10.2 The Agency/Buyer reserves the right to maintain any equipment purchased under this Contract using Agency/Buyer personnel or third party maintainers. In such case, Vendor shall provide the Agency/Buyer or its maintenance provider with such services, documentation, materials and parts under reasonable terms and conditions and at reasonable costs. The Agency/Buyer reserves the right to return to Vendor's maintenance following written certification by Vendor that the equipment is eligible for Vendor's maintenance. Vendor's standard charges for the certification inspection, plus any applicable charges required to bring the equipment into eligibility for Vendor's maintenance shall apply. Exercise of these rights by the Agency/Buyer shall be without penalty or sanction by Vendor.

6.2.10.3 If Vendor discontinues service or maintenance of equipment or software provided under this Contract, Vendor shall provide to the Agency/Buyer at no cost adequate documentation and access to specialized or proprietary tools to allow the Agency/Buyer or a subcontractor to maintain the equipment or software. This provision shall not apply if Vendor arranges for continued service and maintenance through another Vendor and at a price acceptable to the Agency/Buyer.

6.2.11 USE OF THIRD PARTIES:

6.2.11.1 The Agency/Buyer acknowledges that the Vendor may contract with third parties for the performance of any of the Vendor's obligations under this Contract. However, all subcontracts shall be subject to prior approval by the Agency/Buyer, so the Vendor must obtain the Agency/Buyer's prior written consent before allowing any Third Party to perform any of the Vendor's obligations under this Contract.

6.2.11.2 A Vendor who obtains the Agency/Buyer's prior written consent and subsequently enters into a contract with a Third Party for performance of any of the Vendor's obligations under this Contract remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Vendor under this Contract shall also apply fully and completely to subcontractors. This includes requiring all subcontractors to submit certifications and disclosures to Agency/Buyer for review and approval upon request. The Agency/Buyer shall have the right to request the removal of a subcontractor from the Contract for good cause.

6.2.12 USE OF WORK PRODUCT:

Unless otherwise agreed in writing, the following applies regarding work product created or produced under this Contract:

6.2.12.1 Work product produced under this Contract, including, but not limited to, documents, reports, information, documentation of any sort and ideas, whether preliminary or final, shall become and remain the property of the State and/or Agency/Buyer, including any patent, copyright or other intellectual property rights;

6.2.12.2 With the exception of ideas, all such work products shall be considered works made for hire within the meaning of 17 U.S.C. § 101;

6.2.12.3 To the extent that any portion of such work product is not a work made for hire, Vendor completely and without reservation assigns to the Agency/Buyer all right, title and interest in and to such portion of the work product, as well as all related intellectual property rights, including patent and copyright;

6.2.12.4 Agency/Buyer shall exercise all rights of ownership in all such work product without restriction or limitation, without further compensation to Vendor.

6.2.12.5 Vendor shall not acquire or have any right to use, disclose or reproduce the work product or any equipment, documents, information, media, software, or know-how obtained from the State except to perform this Contract. Nothing herein shall be construed as precluding the use of any information independently acquired by Vendor without such limitation;

6.2.12.6 The ideas, methodologies, processes, inventions and tools (including computer hardware and software where applicable) that Vendor previously developed and brings to the Agency/Buyer in furtherance of performance of the Contract shall remain the property of the Vendor; and

6.2.12.7 Vendor grants to the Agency/Buyer a nonexclusive license to use and employ such software, ideas, concepts, methodologies, processes, inventions and tools solely within its enterprise.

TAXPAYER IDENTIFICATION NUMBER

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. person (including a U.S. resident alien).

- If you are an individual, enter your name and SSN as it appears on your Social Security Card.
- If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
- If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the d/b/a on the business name line and enter the owner's SSN or EIN.
- If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
- For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Taxpayer Identification Number:

Social Security Number

or

Employer Identification Number



Legal Status (check one):

Individual

Sole Proprietor

Partnership

Legal Services Corporation

Tax-exempt

Corporation providing or billing medical and/or health care services

Corporation NOT providing or billing medical and/or health care services

Governmental

Non-resident alien

Estate or trust

Pharmacy (Non-Corp.)

Pharmacy/Funeral Home/Cemetery (Corp.)

Limited Liability Company (select applicable tax classification)

D = disregarded entity

C = corporation

P = partnership

Signature:

Date:

6/14/2010