
THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY – SCIENCE APPLICATION INTERNATIONAL
CORPORATION AGREEMENT

This Agreement (hereinafter referred to as "Agreement" or "Contract") is entered into this 11th day of April 2007 (the effective date) by and between The Illinois State Toll Highway Authority (hereinafter referred to as "Tollway" or "Buyer"), an instrumentality and administrative agency of the State of Illinois, and Science Application International Corporation (hereinafter referred to as "SAIC" or "Vendor"), a Delaware Corporation, for Violation Enforcement System equipment (hereinafter referred to as "Equipment") to complete the Tollway's Phase 3 upgrades to the Tollway's Violation Enforcement System (hereinafter "VES") (SAIC has previously completed Phase 1 and Phase 2 Tollway mainline VES upgrades; Phase 3 upgrades will be primarily to Tollway ramp locations).

WHEREAS, the Tollway's current Violation Enforcement System uses the SAIC technology and proprietary system known as "TollVision"; and

WHEREAS, due to compatibility concerns and as the sole economically feasible source for certain upgrades to the Tollway's VES, SAIC has proposed to provide the Equipment for the Phase 3 upgrades to the Tollway's VES for an amount not to exceed Two Million Four Hundred Fifty Eight Thousand Nine Hundred Eighty One Dollars Even (\$2,458,981);and

WHEREAS, SAIC is providing technological upgrades to existing SAIC equipment which includes: cameras and related supporting apparatus allowing for higher quality capture of violation images, advanced LED based lighting and supporting apparatus to ensure proper illumination of images, digital storage media (new servers to store transactions and images) and upgraded applications software to read, save and interpret image information as detailed in Exhibit D.

NOW THEREFORE, for and in consideration of the above recitals and the terms and conditions contained in the parties' Agreement (as defined below), the parties agree as follows:

Attached hereto are the following documents that together with this Agreement Dated April 11, 2007 comprise the parties' Agreement with respect to the Equipment to be provided by SAIC for the Phase 3 upgrades:

1. Agreement Dated April 11th 2007;
2. The Department of Central Management Services "Standard Terms and Conditions" (attached Section 4 "Terms and Conditions") and Illinois Tollway Supplemental Terms and Conditions, Exhibit A;
2. SAIC Standard Terms and Conditions, Exhibit B;
3. SAIC Standard Software License Agreement, Exhibit C;
4. SAIC Proposals: 2156-71-207-222; 2156-71-207-223; 2156-71-207-224, Exhibit D;
3. Pricing Sheet dated 3-15-07 entitled "SAIC Costs for Proposed Violation Enforcement System," Exhibit E;
4. Project Schedule, Exhibit F."

1. The aforementioned documents shall have the order of precedence listed. Together they comprise the entire agreement between the parties. In the event of a conflict, the first named document shall take precedence over the subsequent named document - except in those instances where the parties have specifically stated in writing that a provision in a subsequent named document takes precedence over a provision of the same kind in the first named document. SAIC understands that this Agreement may be subject to the approval of The Department of Central Management Services (hereinafter "CMS") and that any services performed by SAIC prior to approval and execution of the Agreement by CMS are at its sole risk.
2. The parties acknowledge that "The Department of Central Management Services Standard Terms and Conditions" and "SAIC Standard Terms and Conditions" may contain duplicative and/or conflicting provisions. The parties agree that in that event "The Department of Central Management Services Standard Terms and Conditions" shall control.
3. The parties acknowledge that the above referenced SAIC proposals contain pricing information. The parties agree that the prices contained/listed in the Pricing Sheet entitled "SAIC Costs for Proposed Violation Enforcement System" dated 3-15-07, Exhibit E, are the parties' final agreed contract value for the Equipment and Services and shall control.
4. The effective date of this Agreement is April 11, 2007. SAIC understands that this Agreement is subject to the approval of The Department of Central Management Services (hereinafter "CMS") and that any services performed by SAIC prior to approval and execution of the Agreement by CMS are at its sole risk.
5. Notwithstanding anything contained in the aforementioned documents, the following (6.-14.) shall apply and control to the Equipment to be provided by SAIC. The following is intended to clarify the parties' understanding with respect to the Equipment to be provided by SAIC pursuant to this Agreement.
6. New Agreement and Term: This is not a "Change Order" to SAIC's prior agreement with the Tollway. That agreement expired. This is a new agreement for the Phase 3 Upgrades. The term of this Agreement is April 11, 2007 through December 31, 2007.
7. **Changes to SAIC Standard Terms and Conditions:**
 - 7.1 The second sentence of Section 3 is amended as follows: "Agency/Buyer shall notify Vendor in writing within twenty (20) days of receipt of the Products and/or services of any claim for shortage or failure of the Products and/or services to meet the requirements set forth in the Contract.
 - 7.2 The first paragraph of section 10 is amended as follows: Buyer shall bear the risk of loss or damage to the goods from any casualty subsequent to delivery to buyer's premises and buyer's acceptance of the goods. SAIC will prepay freight charges and invoice to ISTHA at actual cost.

7.3 Section 24 A. is amended as follows: "The Products are provided with a one (1) year return to factory warranty against defects in materials and workmanship from the date the Products are accepted by the Buyer."

7.4 Section 26 "Applicable Law and Disputes" and Section 28 "Order of Precedence" are deleted in their entirety.

8. **Payment:** The Equipment will be paid for Net 45 days after receipt of invoice in accordance with the following payment milestone schedule.

Payment Milestone	Amount
Upon Contract Execution	30% of the Total Contract Value
Upon Shipment of Equipment –	*70% Of the Total Value of the Equipment Shipped

Note:

*Value of the equipment shipped per the pricing in Exhibit E minus 30% (prorated portion of the advance payment)

Payments shall be made to the Vendor in US Dollars and shall be remitted electronically to the following EFT address:

Science Applications International Corporation
Citibank, N. A.
399 Park Avenue
New York, New York 10043
Account No. 30547584
ABA No. 021000089
SWIFT:CITIUS33
Contact: Shawnese N. Jones
(302) 324-6377

Any payment by check shall be remitted to the following lockbox address:

Science Applications International Corporation
P.O. Box 223058
Pittsburgh, PA 15251-2058

9. Audits:

9.1 The Tollway reserves the right to audit SAIC's records pertaining to this contract once in every twelve-month period. SAIC shall maintain, for a minimum of three years after the completion of the contract, adequate books, records and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records and supporting documents related to the contract shall be available upon reasonable notice during normal business hours for review and audit by the

Tollway, the Illinois Auditor General, the Tollway's Inspector General and the Illinois Department of Central Management Services (CMS) at SAIC's offices; and SAIC agrees to cooperate fully with any audit conducted by the Auditor General, Tollway Inspector General, CMS or the Tollway and to provide full access to all relevant materials. Failure to maintain the books, records and supporting documents required by this section shall establish a presumption in favor of the State for the recovery of any funds paid by the Tollway under the contract for which adequate books; records and supporting documentation are not available to support their purported disbursement.

9.2 The Tollway, Tollway Inspector General, CMS and Auditor General reserve the right to audit SAIC's records generated in connection with services provided pursuant to this Agreement upon twenty-four (24) hours notice at a mutually agreed time, and SAIC will cooperate fully and provide time, space and access to the records as may be required.

9.3 All records generated by Tollway (or by SAIC on behalf of the Tollway in performance of the Services) during the term of this contract shall remain the property of the Tollway and shall be maintained by SAIC throughout the contract period. However, upon expiration, termination or cancellation of the contract the records must be returned to the Tollway.

10. Governing Law; Exclusive Jurisdiction: This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the laws of the United States and the State of Illinois (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in DuPage County, Illinois. **EACH OF ILLINOIS TOLLWAY AND SAIC CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS LOCATED IN DUPAGE COUNTY, STATE OF ILLINOIS.**

11. Notice:

Notices shall be in writing, and shall be deemed given if hand delivered or delivered by certified or registered mail, courier (Federal Express or similar reliable courier) or facsimile, and addressed to the following parties at the following addresses:

SAIC:

Science Application International Corporation

Security & Transportation Business Unit

16805 College Boulevard, Lenexa, KS 66219

Attention: Kim Roccaro, Contract Representative

Phone (913) 227-8400

Fax (913) 859-0584

Tollway:
General Counsel
Illinois State Toll Highway Authority
2700 Ogden Avenue
Downers Grove, Illinois 60515-1404
Phone (630) 241-6800 x1500
Fax (630) 271-7559

12. Suppliers: For the purposes of this Agreement SAIC's subcontractors and suppliers who support its normal manufacturing processes will be referred to as "suppliers". These suppliers will be exempt from Exhibit A, Clause 4.2.7 requirement. In addition, SAIC is not required to obtain approval from the Tollway or provide the Tollway detail reports regarding its suppliers.

13. Insurance

Within 10 days after the Contract execution date, SAIC will provide the Tollway with a certificate of insurance wherein The Illinois State Toll Highway Authority shall be named "Additional Insured" for the commercial general liability and automobile liability coverage. This coverage shall be primary for the Additional Insured and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other coverage be primary, contributing or excess. SAIC will maintain Workers Compensation coverage as required by the State of Illinois. SAIC shall maintain minimum limits of liability as set forth in Exhibit A.

14. Authorized Signatories:

Tollway: This Agreement must be authorized by resolution of the Board of Directors of The Illinois State Toll Highway Authority and approved as to form and constitutionality by the Attorney General of the State of Illinois and approved by the Department of Central Management Services of the State of Illinois.

SAIC: This Agreement must be executed by a duly authorized signatory of SAIC, evidenced by a corporate resolution certified by the corporate secretary of SAIC.

IN WITNESS WHEREOF the parties have set their hands and seals by their duly authorized signatories this 18th day of April 2007.

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY:

By: _____

Its: _____

Michael Cohen
Chief Fiscal Officer

M. J. R.
General Counsel

Science Applications International Corporation:

By: _____

Its: Thomas M. Taylor, Contracts Manager
Security & Transportation Technology Business Unit

ATTESTED:

Douglas E. Scott
Secretary



APPROVED AS TO FORM AND CONSTITUTIONALITY

L. Madigan
Attorney General - State of Illinois

Exhibit A: TERMS AND CONDITIONS and ILLINOIS TOLLWAY SUPPLEMENTAL TERMS AND CONDITIONS

This section contains the State's standard terms and conditions for all contracts. These terms and conditions will govern this contractual relationship and the Vendor is bound by them and is responsible for reading and understanding them. The State reserves the right to amend these terms and conditions when and where needed and to supplement them with any appropriate addendum, as noted herein.

1 BILLING AND PAYMENT

1.1 **BILLING:** The Agency/Buyer's billing practices are set out as follows and Vendor is presumed to have read and understands the following procedures:

1.1.1 Vendor shall submit invoices to the address, on the schedule and with the detail required by the ordering Agency/Buyer. Invoices for equipment and/or supplies purchased and/or services performed and expenses incurred prior to July 1st must be presented to the Agency/Buyer no later than July 31; otherwise Vendor may have to seek payment of such invoices through the Illinois Court of Claims (**30 ILCS 105/25**).

1.1.2 Vendor shall not bill for any taxes unless a statement is attached to the bill identifying the tax and showing why it is legally chargeable to the State. The State does not warrant the interest component of any payment, including installment payments, are exempt from income tax liability.

1.1.3 By submitting an invoice Vendor certifies that the equipment, supplies and/or services provided meet all requirements of the Contract, and the amount billed and expenses incurred are as allowed in the Contract.

1.2 **PAYMENT:**

1.2.1 Late payment charges, if any, shall not exceed the formula established in the State "Prompt Payment" Act (**30 ILCS 540/1**) and rules (**74 Ill. Adm. Code 900**). 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.

1.2.2 The Agency/Buyer shall not be liable to pay for any equipment and/or supplies provided and/or services rendered, including related expenses subject of this Contract incurred prior to the beginning of the term of this Contract. Any Contract or order

labeled "subject to financing" or words to similar effect is subject to the Agency/Buyer obtaining suitable financing.

1.2.3 The approved invoice amount will be paid less any retainage, if applicable, and previous partial payments.

1.2.4 Any contract or order requiring payment of financing interest is subject to the interest rate limitation set by law of the greater of 9% or 125% of the G.O. Bond Index (**30 ILCS 305/1**).

1.3 **DELAY OF PAYMENT DUE TO VENDOR FAILURE:** If the Agency/Buyer in good faith determines that the Vendor has failed to perform or deliver any service or product as required by this Contract, the Vendor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the Agency/Buyer may withhold that portion of the Vendor's compensation, which represents payment for service or product that was not performed or delivered.

1.4 **SET-OFF AGAINST SUMS OWED TO THE VENDOR:** The State may set off any sum owed to the Vendor on account of any debt owed to the State, specifically under this Contract, unless otherwise required by law, in accordance with the State Comptroller Act (**15 ILCS 405**). The Vendor agrees that this provision constitutes proper and timely notice under the law of setoff.

1.5 **AVAILABILITY OF APPROPRIATIONS (30 ILCS 500/20-60):** Agency/Buyer shall use its best efforts to secure sufficient appropriations to fund this CONTRACT. However, the Agency/Buyer's obligations hereunder shall cease immediately, without penalty or further payment being required, if: (a) the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation; (b) adequate funds are not appropriated or granted the Agency/Buyer by the Illinois General Assembly or the federal funding source, to allow the Agency/Buyer to operate as required and to fulfill its obligations under the Contract; or (c) funds appropriated are de-appropriated or not allocated, or if funds needed by the Agency/Buyer, at the Agency/Buyer's sole discretion, are insufficient for any reason. Agency/Buyer shall give Vendor notice of insufficient funding as soon as practicable. Vendor's obligation to perform shall cease upon receipt of the notice.

2 VENDOR PERFORMANCE AND RESPONSIBILITIES

2.1 **CONSULTATION:** Vendor shall keep the Agency/Buyer fully informed as to the progress of matters covered by this Contract. Where time permits and Vendor is not otherwise prohibited from so doing, Vendor shall offer the Agency/Buyer the opportunity to review relevant documents prior to filing with any public body or adversarial party.

2.2 **PERFORMANCE REVIEWS:**

- 2.2.1 The State or Agency/Buyer may conduct a performance review of the Vendor's performance under the Contract. The Vendor shall cooperate with the State or Agency/Buyer in this review, which may require that the Vendor provide records of its performance and billing. Vendor shall provide any required information within 30 days of the Agency/Buyer's request. This performance review may be used by any State agency in determining whether to enter into other contractual relationships with the Vendor.
- 2.2.2 Vendor shall have and maintain, during the term of this contract, internal procedures and processes to monitor performance to ensure full compliance with the contract. Vendor shall disclose such procedures and processes to the State upon request.
- 2.2.3 At the direction of the State, Vendor and State shall work together to develop a performance scorecard to record relevant facts related to performance as well as establishing conditions, milestones, requirements or timetables that apply to the contract.
- 2.3 **AUDIT/RETENTION OF RECORDS (30 ILCS 500/20-65):** Vendor shall maintain books and records relating to performance of the Contract or subcontract and necessary to support amounts charged to the State under the Contract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Vendor for a period of 3 years from the later of the date of final payment under the Contract or completion of the Contract. The 3-year period shall be extended for the duration of any audit in progress during the term. Books and records required to be maintained under this section shall be available for review or audit by representatives of the Auditor General, the Agency/Buyer, the Inspector General and other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor shall cooperate fully with any such audit. 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. If only state funds are involved, three years is sufficient.
- 2.4 **SCHEDULE OF WORK:** Any work performed on State premises shall be done during the hours designated by the State and shall in any event be performed so as to minimize inconvenience to the State and its personnel and minimize interference with the State's operations.
- 2.5 **RESPONSIBILITY FOR AGENTS AND EMPLOYEES:** Vendor shall be responsible for the negligent acts and omissions of its agents, employees and subcontractors in their performance of Vendor's duties under this Contract. Vendor represents that it shall utilize the services of individuals skilled in the profession for

which they will be used in performing services hereunder. In the event that the Agency/Buyer determines that any individual performing services for Vendor hereunder is not providing such skilled services, it shall promptly so notify Vendor and Vendor shall act reasonably to replace that individual or otherwise rectify the services provided.

2.6 ASSIGNMENT AND DELEGATION:

- 2.6.1 This Contract may not be assigned, transferred or conveyed in whole or in part by the Vendor without the prior written consent of the State. For the purpose of construing this clause, a transfer of a controlling interest in the Vendor shall be considered an assignment.
- 2.6.2 After notice, the Agency/Buyer may transfer the Contract or payment responsibility to another State Agency, or assign the Contract to a third-party for financing purposes.

2.7 USE OF THIRD PARTIES:

- 2.7.1 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.
- 2.7.2 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.
- 2.7.3 Vendor shall identify in an addendum to this Contract, the names and addresses of all subcontractors utilized by Vendor in the performance of this Contract, together with the anticipated amount of money that each subcontractor is expected to receive pursuant to this Contract. The State may request updated information at any time. For purposes of this section, subcontractors are those specifically hired to perform all or part of the work of this contract or to provide the supplies requested by the State.

2.7.4 If Vendor is unable to secure or maintain key personnel named in the Contract to render the services, Vendor shall not be relieved of its obligations to complete performance. Agency/Buyer shall have the option to accept a substitute or to terminate the Contract.

2.8 **LICENSE:** Vendor, directly or through its employees, shall have and maintain any required license. With written consent of the Agency/Buyer, Vendor may meet the license requirement through a subcontractor.

2.9 **SOLICITATION AND EMPLOYMENT:** Vendor shall not employ any person employed by the Agency/Buyer during the term of this Contract to perform any work required by the terms of this Contract. As a condition of this Contract, the Vendor shall give notice immediately to the Agency/Buyer's director if Vendor solicits or intends to solicit for employment any of the Agency/Buyer's employees during the term of this Contract. Agency/Buyer has no authority to contractually refuse to hire Vendor's employees who apply to the State for employment.

2.10 **FORCE MAJEURE:** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, labor or material shortages, labor disputes, fire, flood, explosion, legislation, and governmental regulation.

2.11 **TAX COMPLIANCE:** Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.

2.12 **COMPLIANCE WITH THE LAW:** The Vendor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Vendor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

2.13 **ANTITRUST ASSIGNMENT:** Vendor agrees to assign, sell and transfer to the State of Illinois all right, title and interest in and to any claims and causes of action arising under antitrust laws of Illinois or the United States that Vendor may possess as a direct result of Vendor's performance under this Contract.

3 **CONFIDENTIALITY AND WORK PRODUCT**

3.1 **CONFIDENTIALITY:** Vendor's employees, agents and subcontractors may have access to confidential data maintained by the Agency/Buyer to the extent necessary to carry out its responsibilities under the Contract. As such, the following applies unless agreed to otherwise in writing:

- 3.1.1 In addition to 3.1.2, Vendor shall treat information received from Agency/Buyer that is marked as "Confidential", "Proprietary" or in a similar manner pursuant to this Contract as confidential;
- 3.1.2 Upon request, the Vendor shall provide to the Agency/Buyer a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- 3.1.3 If Confidential or Proprietary information or similar information is to be provided, Vendor must designate one individual who shall remain the responsible authority in charge of all Confidential or Proprietary information collected, used, or disseminated by the Vendor in connection with the performance of the Contract.
- 3.1.4 Vendor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract;
- 3.1.5 The Proprietary or Confidential information shall remain the property of the Agency/Buyer at all times.

3.2 CONFIDENTIAL INFORMATION MAY NOT BE DISSEMINATED: 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 Agency/Buyer, either during the period of the Contract or thereafter. The Vendor 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 request of the Agency/Buyer.

3.3 SUBPOENA: In the event that a subpoena or other legal process is served upon the Vendor for records containing confidential information, the Vendor shall promptly notify the Agency/Buyer and cooperate with the Agency/Buyer in any lawful effort to protect the confidential information.

3.4 REPORTING UNAUTHORIZED DISCLOSURES: The Vendor shall immediately report to the Agency/Buyer any unauthorized disclosure of confidential information upon its occurrence.

3.5 SURVIVES TERMINATION: Vendor's obligations regarding Confidential Information under this Contract shall survive termination of this Contract.

4 INDEMNIFICATION AND LIABILITY

4.1 BY THE VENDOR: The Vendor agrees to indemnify and hold harmless the State of Illinois and the Agency/Buyer, its officers, employees and agents (appointed and elected) and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including

reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Illinois or the Agency/Buyer, related to or arising from:

- 4.1.1 Any negligent, intentional or wrongful act or omission of the Vendor or any agent or subcontractor utilized or employed by the Vendor arising out of or related to the Phase 3 services being performed by Vendor under this Agreement;
- 4.1.2 Any failure by the Vendor to fulfill the Compliance with the Law provision of this Contract;
- 4.1.3 Any failure by the Vendor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Illinois;
- 4.1.4 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
- 4.1.5 Any failure by the Vendor to adhere to the confidentiality provisions of this Contract.

4.2 PATENT & COPYRIGHT INDEMNIFICATION

- 4.2.1 In the event of an infringement under 4.1.4, Vendor at its own expense will lead the defense and all negotiations for its settlement or compromise. In the event any Vendor product becomes, or in Vendor's opinion is likely to become, the subject of a claim of infringement of a patent or copyright, Vendor may at its option (1) secure the Agency/Buyer's right to continue using the Vendor product; (2) replace or modify it to make it non-infringing; (3) upon return of all infringing Vendor products, refund to Agency/Buyer the price actually paid by Agency/Buyer for the infringing product, or (4) substitute for the infringing product another suitable, non-infringing product. Vendor shall have no liability for any claim of copyright or patent infringement based on (1) use of other than a current unaltered release of the product available from Vendor if such infringement would have been avoided by the use of such current unaltered release or (2) use or combination of the Vendor product with programs or data not supplied by Vendor. Vendor extends no indemnity whatever against infringement claims against non-U.S. patents, copyrights or other intellectual property.

THE FOREGOING STATES THE ENTIRE LIABILITY OF
VENDOR TO AGENCY/BUYER WITH RESPECT TO

INFRINGEMENT OF ANY COPYRIGHTS OR PATENTS OF
VENDOR PRODUCTS OR ANY PARTS THEREOF.

- 4.3** **LIABILITY:** Vendor agrees to assume, all risk of loss and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, relating to bodily injuries to persons (including death) and for loss of, damage to, or destruction of real and/or tangible personal property (including property of the State) resulting from the negligence or misconduct of Vendor, its employees, agents, or subcontractors in the performance of the Contract. Vendor shall assume risk of loss until Equipment has been received at the Agency/Buyer's facility. Vendor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction, or damage to State property, and shall at the State's request and expense, furnish to the State reasonable assistance and cooperation, including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the State in obtaining recovery. Vendor's liability to Agency/Buyer shall be limited in accordance with Exhibit B, Clause 18. Neither party shall be liable for incidental, special or consequential damages.
- 4.4** **LEGISLATIVE CHANGES:** The Vendor herein expressly acknowledges that the Contract and its subject matter are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the terms or subject matter of this Contract, the Vendor shall not hold the Agency/Buyer liable in any manner for the resulting changes. The Agency/Buyer shall use best efforts to provide thirty (30) days' written notice to the Vendor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Agency/Buyer's right to terminate the Contract pursuant to the termination provisions.

5 **WARRANTIES**

- 5.1** **CONCEPTS, MATERIALS AND WORKS PRODUCED:** Vendor represents and warrants that all the concepts, materials and works produced, or provided to the Agency/Buyer pursuant to the terms of this Contract shall be wholly original with the Vendor or that the Vendor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Vendor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Vendor and any other materials, works and methodologies used in connection with providing the services contemplated by this Contract
- 5.2** **TO BE PROVIDED IN A PROFESSIONAL MANNER:** Vendor warrants that all services will be performed in a good and professional manner and that all of the services to be performed hereunder will be rendered using sound,

professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

- 5.3 **CONFORMITY WITH CONTRACTUAL REQUIREMENTS:** The Vendor represents and warrants that the goods or services will appear and operate in conformance with the terms and conditions of this Contract.
- 5.4 **AUTHORITY TO ENTER INTO CONTRACT:** The Vendor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Agency/Buyer.
- 5.5 **OBLIGATIONS OWED TO THIRD PARTIES:** The Vendor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Contract are or will be fully satisfied by the Vendor so that the Agency/Buyer will not have any obligations with respect thereto.
- 5.6 **TITLE TO PROPERTY AND EQUIPMENT:** The Vendor represents and warrants that title to any property assigned, conveyed or licensed to the Agency/Buyer is good and that transfer of title or license to the Agency/Buyer is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Vendor further warrants that it has title to, or the right to allow the State to use, the equipment, supplies and/or services being provided and that the State may use same without suit, trouble or hindrance from Vendor or third parties.
- 5.7 **EQUIPMENT AND SUPPLIES QUALITY:** Unless otherwise agreed, Vendor warrants that all equipment and/or supplies shall be new, unused, of most current manufacture of Vendor and not discontinued, shall be free of defects in materials and workmanship, shall be provided in accordance with Vendor's standard warranty as defined in Exhibit B, Clause 24, and shall perform in accordance with manufacturer's published specifications.
- 5.8 **INDUSTRY STANDARDS:** The Vendor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the standards in the relevant industry in the performance of this Contract.
- 5.9 **TECHNOLOGY UPDATES:** The Vendor represents warrants that it shall deliver the technology and functionality as described in its proposals 2156-71-2007-222, 2156-71-207-223, and 2156-71-207-224, and as further described in Exhibit C, Software License Agreement.
- 5.10 **SOLICITATION:** The Vendor warrants that no person or selling Agency/Buyer has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

6 INSURANCE

- 6.1 **INSURANCE:** Vendor shall maintain public liability, casualty and auto insurance in sufficient amount to protect the State from liability for acts of Vendor and risks and indemnities for third party bodily injury and property damage assumed by Vendor. If Vendor does not have minimum coverage (for bodily injury of \$250,000 per person/\$500,000 per occurrence, and for property damage, \$100,000 per occurrence) Vendor must inform the Agency/Buyer and seek written permission for lesser coverage. Vendor shall carry Worker's Compensation Insurance in amount required by law. Upon request, Vendor shall provide and maintain any bond required by law or the Agency/Buyer. Vendor shall provide copies of certificates of insurance evidencing the coverage described in this paragraph.

7 **VENDOR STATUS AND QUALIFICATIONS**

- 7.1 **BACKGROUND CHECK:** The State may conduct criminal and driver history background checks of Vendor's officers, employees or agents who would directly supervise or physically perform any of the Contract requirements at State facilities. Any officer, employee or agent deemed unsuitable by the State must be replaced immediately.
- 7.2 **LEGAL ABILITY TO CONTRACT:** 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:
- 7.2.1 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.
 - 7.2.2 Vendor is not in default on an educational loan (**5 ILCS 385/3**).
 - 7.2.3 Vendor has informed the director of the Agency/Buyer 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 in 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**).
 - 7.2.4 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 made an admission on the record of having so bribed or attempted to bribe (**30 ILCS 500/50-5**).

- 7.2.5 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)**.
- 7.2.6 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 5 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 contracting State Agency/Buyer shall declare the contract void if this certification is false **(30 ILCS 500/50-10.5)**.
- 7.2.7 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 contracting State Agency/Buyer 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)**.
- 7.2.8 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 acknowledge that failure to comply can result in the contract being declared void.
- 7.2.9 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 (5) 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 contracting State Agency/Buyer may declare the contract void. **(30 ILCS 500/50-14)**
- 7.2.10 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)**.
- 7.2.11 Vendor is not in violation of the "Revolving Door" section of the Illinois Procurement Code **(30 ILCS 500/50-30)**.

- 7.2.12 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**).
- 7.2.13 Vendor will, pursuant to the Drug Free Workplace Act, provide a drug free workplace, and if an individual shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the Contract. This certification applies to contracts of \$5000 or more with individuals; and to entities with twenty-five (25) or more employees (**30 ILCS 580**).
- 7.2.14 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**).
- 7.2.15 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 5/33E-3, 5/33E-4**).
- 7.2.16 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**).
- 7.2.17 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**).
- 7.2.18 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, convict labor, or indentured labor under penal sanction (**PA 93-0307**).
- 7.2.19 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 of any child under the age of 12 (**PA 94-0264**).
- 7.2.20 Vendor certifies that it is not in violation of Section 50-14.5 of the Illinois Procurement Code 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 of Illinois or any State agency until the violation is mitigated”.

7.2.21 Vendor and, to the best of its knowledge, its subcontractors have not caused, directed or permitted any Procurement Lobbying Activities on its behalf to be undertaken by a Family Member of the then-serving Governor of the State of Illinois. **(Executive Order 1 (2007))**.

7.2.22 Vendor and, to the best of its knowledge, its subcontractors, have not caused, directed or permitted any Procurement Lobbying Activities on its behalf to be undertaken by a former employee of the State of Illinois who had Procurement Authority at any time during the one-year immediately preceding the Procurement Lobbying Activities. **(Executive Order 1 (2007))**.

7.3 CONFLICTS OF INTEREST: Vendor has disclosed, and agrees it is under a continuing obligation to disclose to the Agency/Buyer, 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 conflict under Section 50-13 exists no contract may be issued without an exemption from the Governor pursuant to Section 50-20 of the Illinois Procurement Code. An exemption is necessary if:

7.3.1 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 60% of the salary of the Governor (**currently \$90,414.60**). (The conflict of interest threshold of 60% 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.);

7.3.2 the contract is with a firm, partnership, association or corporation in which a person referenced in item 7.3.1 above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor (**currently \$150,691.00**).

7.3.3 the contract is with a firm, partnership, association or corporation in which a person referenced in item 7.3.1 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 \$301,382.00**) from the firm, partnership, association or corporation.

7.4 **INDEPENDENT CONTRACTOR:** The Vendor shall be an independent contractor. Equipment and/or supplies provided and/or services performed pursuant to this Contract are not rendered as an employee of the Agency/Buyer or of the State of Illinois. Amounts paid pursuant to this Contract do not constitute compensation paid to an employee.

7.5 **NOT A JOINT VENTURE:** Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

7.6 **NON-DISCRIMINATION:** In compliance with the State and Federal Constitutions, the Illinois Human Rights Act, the U. S. Civil Rights Act, and Section 504 of the Federal Rehabilitation Act, the Agency/Buyer does not unlawfully discriminate in employment, contracts, or any other activity.

8 **TERMINATION OF CONTRACT**

8.1 **TERMINATION FOR CAUSE WITH 10 DAY ADVANCE NOTICE:** The Agency/Buyer may terminate this Contract for any of the following reasons with ten (10) days prior written notice to the Vendor.

8.1.1 The Agency/Buyer determines that the actions, or failure to act, of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause jeopardy to health or safety;

8.1.2 The Vendor fails to comply with confidentiality laws or provisions;

8.1.3 The Vendor furnished any written representation or certification in connection with this Contract which is materially false or deceptive.

8.2 **TERMINATION FOR CAUSE WITH NOTICE:** The occurrence of or any one or more of the following events, unless excusable under the Contract, shall constitute cause for the Agency/Buyer to declare the Vendor in default of its obligations under this Contract:

8.2.1 The Vendor fails to perform any material requirement of this Contract or is in violation of a material provision of this Contract,

- including, but without limitation, the express warranties made by the Vendor;
- 8.2.2 The Agency/Buyer determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;
- 8.2.3 The Vendor fails to make substantial and timely progress toward performance of the Contract;
- 8.2.4 The Vendor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Vendor terminates or suspends its business; or the Agency/Buyer reasonably believes that the Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 8.2.5 The Vendor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;
- 8.2.6 If there is a default event caused by the Vendor, the Agency/Buyer shall provide written notice to the Vendor requesting that the breach or noncompliance be remedied within 30 days from from Vendor's receipt of the Agency/Buyer's written notice. If the breach or noncompliance is not remedied by the date of the written notice, the Agency/Buyer may either: (a) immediately terminate the Contract without additional written notice; or, (b) enforce the terms and conditions of the Contract and seek any legal or equitable remedies.
- 8.3 **TERMINATION FOR CONVENIENCE UPON NOTICE:** Following fifteen (15) days written notice, the Agency/Buyer may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Vendor, except as provided herein. Following termination upon notice, the Vendor shall be entitled to compensation, upon submission of invoices and execution of a mutually acceptable settlement proposal, for work performed under this Contract to the Agency/Buyer up to and including the date of termination.
- 8.4 **TERMINATION DUE TO LACK OF FUNDS OR CHANGE IN LAW:** The Agency/Buyer shall have the right to terminate this Contract without penalty by giving written notice to the Vendor as a result of any of the following:
- 8.4.1 Adequate funds are not appropriated or granted to allow the Agency/Buyer to operate as required and to fulfill its obligations under this Contract;

8.4.2 Funds are de-appropriated or not allocated or if funds needed by the Agency/Buyer, at the Agency/Buyer's sole discretion, are insufficient for any reason;

8.43 Agency/Buyer is unable to fulfill its contract obligations due to a legislative act and/or operation of law.

8.5 VENDOR'S REMEDIES IN EVENT OF TERMINATION BY AGENCY/BUYER:

In the event of termination of this Contract for any reason by the Agency/Buyer, the Agency/Buyer shall pay only those amounts, if any, due and owing to the Vendor for the work performed up to and including the date of termination of the Contract and for which the Agency/Buyer is obligated to pay pursuant to this Contract, including the following:

- 8.5.1 a) For completed delivery of Equipment or rendering of services, per Exhibit E;
- b) For Vendor's reasonable substantiated cost incurred for other work in process not completed.
- c) Termination Settlement costs including the substantiated costs of terminating any suppliers and any other agreed upon costs set forth in the settlement proposal;
- d) and a reasonable profit.

Payment will be made Net 45 days from Vendor's submission of Invoices, proper delivery of the Vendor's termination settlement proposal, and the parties' mutual agreement per clause 8.6.4. This provision in no way limits the remedies available to the Agency/Buyer under this Contract in the event of termination. However, the Agency/Buyer shall not be liable for any of the following costs

8.5.2 The payment of unemployment compensation to the Vendor's employees;

8.5.3 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

8.5.4 Any taxes that may be owed by the Vendor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

8.6 VENDOR'S TERMINATION DUTIES: The Vendor, upon receipt of notice of termination or upon request of the Agency/Buyer, shall:

8.6.1 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; to be followed by a termination settlement proposal within ninety (90) days;

- 8.6.2 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;
- 8.6.3 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; and
- 8.6.4 Negotiate in good faith with the Agency/Buyer a mutually acceptable settlement (pursuant to the settlement proposal) and arrange for the final payment to Vendor. Failure to agree on this shall be a matter for resolution under the Disputes article of the Contract.

9 GENERAL PROVISIONS

- 9.1 **TERM AND RENEWALS:** The length of the Contract, including any renewals, may not exceed that allowed by law pursuant to **30 ILCS 500/20-60** or other applicable statutes. When the term begins on execution, that means the date of final execution by the State. If the commencement of performance is delayed because the Contract is not executed by the State on the start date, the State may change the start date, end date and milestones to reflect the delayed execution. No renewal may be effective automatically. No renewal may be effective solely at the Vendor's option.
- 9.2 **NON-EXCLUSIVE RIGHTS:** This Contract is not exclusive. The Agency/Buyer reserves the right to select other contractors to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.
- 9.3 **ENTIRE CONTRACT:** This Contract, including any attachments or amendments, constitutes the entire agreement between the Parties concerning the subject matter of the Contract. Modifications and waivers must be in writing and signed by authorized representatives of the Parties. Any provision of this Contract officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions of this Contract shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive termination of this Contract, including without limitation provisions relating to confidentiality, warranty, ownership and liability. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

- 9.4 **CONTRACTING AUTHORITY:** Certain contracts must be signed or approved by the Director of the Department of Central Management Services (CMS) before they are binding on the State. In those instances CMS shall not be responsible for costs or funding even though payments may be made through CMS facilities.
- 9.5 **AMENDMENTS:** This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.
- 9.6 **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.
- 9.7 **HEADINGS OR CAPTIONS:** The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.
- 9.8 **SUPERSEDES FORMER CONTRACT AGREEMENTS:** This Contract supersedes all prior Contracts or Agreements between the Agency/Buyer and the Vendor for the services provided in connection with this Contract.
- 9.9 **WAIVER:** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency/Buyer and the Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.
- 9.10 **NOTICE:** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth in Section 1 of the Contract, "Agency/Buyer and Vendor Contact Page." Notices by fax must show the date/time of successful receipt. Each such notice shall be deemed to have been provided: (a) at the time it is actually received, From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.
- 9.11 **CUMULATIVE RIGHTS:** The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- 9.12 **SEVERABILITY:** If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall

not affect the validity or enforceability of any other part or provision of this Contract.

- 9.13 **TIME IS OF THE ESSENCE:** Time is of the essence with respect to the performance of the terms of this Contract.
- 9.14 **AUTHORIZATION:** Each party to this Contract represents and warrants to the other parties 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 this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 9.15 **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.
- 9.16 **OBLIGATIONS BEYOND CONTRACT TERM:** This Contract shall remain in full force and effect until all obligations of the Parties have been satisfied, or until terminated or canceled pursuant to this Contract. All obligations of the Agency/Buyer and the Vendor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.
- 9.17 **COUNTERPARTS:** The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
- 9.18 **FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS:** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.
- 9.19 **ADDITIONAL PROVISIONS:** The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

ILLINOIS TOLLWAY SUPPLEMENTAL TERMS AND CONDITIONS

The following supplemental terms and conditions, if checked, are attached and are applicable to this contract:

- ☐ Public Works Requirements (820 ILCS 130/4) *
- ☐ Prevailing Wage (janitorial cleaning, window cleaning, building and grounds, site technician, natural resources, food services, and security services, if valued at more than \$200 per month or \$2000 per year. (30 ILCS 500/25-60) *
- ☐ Prevailing Wage (all printing contracts) (30 ILCS 500/25-60). *
- ☐ Prohibition of Contingent Fees (certain federally funded contracts)
- ☒ Other (describe)

PAYMENT OF TOLLS The Vendor shall be required to pay the full amount of tolls, if any, incurred by it during the duration of the contract. Said tolls will not be refunded by the Illinois Tollway. Furthermore, in the event that a final determination is made by the Tollway that the Contractor has failed to pay any required tolls and associated fines, the Tollway is authorized to take steps necessary to withhold the amounts of the unpaid tolls and fines from any payment due the contractor by the Tollway and/or other State of Illinois office, department, commission, board or agency.

*Information regarding prevailing wage, benefit and working condition requirements may be obtained from the Illinois Department of Labor (217-782-6206) and information may be viewed at their website (www.state.il.us/agency/idol). You must check with IDOL before submitting your offer to determine the prevailing wages, benefits and working conditions applicable to this solicitation.

Exhibit B: SAIC STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE SALE OF PRODUCTS AND SERVICES (collectively called "Products") OFFERED BY SCIENCE APPLICATIONS INTERNATIONAL CORPORATION'S SECURITY AND TRANSPORTATION TECHNOLOGY BUSINESS UNIT (HEREINAFTER CALLED "SAIC") FOR THE CONSIDERATION SPECIFIED IN THE ACCOMPANYING QUOTATION OR CONTRACT. THESE TERMS AND CONDITIONS ARE HEREBY INCORPORATED BY REFERENCE INTO ANY QUOTATION OR CONTRACT (ALL COLLECTIVELY REFERRED TO AS THE "CONTRACT") AND SHALL GOVERN, NOTWITHSTANDING ANY CONTRADICTORY, MODIFYING OR ADDITIONAL TERMS OR CONDITIONS THAT MAY BE CONTAINED IN A BUYER'S REQUEST FOR QUOTATION, PURCHASE ORDER, OR OTHER DOCUMENTATION. BUYER'S ACCEPTANCE OR OPERATIONAL USE OF ANY PRODUCTS DELIVERED BY SAIC SHALL CONSTITUTE THE BUYER'S FULL ACCEPTANCE OF THESE TERMS AND CONDITIONS. SHOULD BUYER NOT ACCEPT THESE TERMS AND CONDITIONS, SAIC REQUIRES THAT THE PRODUCTS BE PROMPTLY RETURNED TO SAIC FOR CREDIT AS MAY BE APPLICABLE.

1. Prices

SAIC's offer is subject to adjustment in price and delivery schedule in the event that different quantities or other specifications are required than are set forth in the offer. Prices are subject to change due to the imposition by any lawful taxing authority of any additional tax, levy, assessment or other burden on, or related to the goods or services proposed. Unless otherwise specified, this offer is valid for ninety (90) days from the date of submission.

2. Payment Terms and Remit To Addresses

Except as otherwise set forth in the offer, payment shall be made in U.S. dollars 100% in advance prior to shipment or shall established and shall be drawn under an irrevocable documentary letter of credit established by Buyer in favor of SAIC issued by a bank acceptable to SAIC, and shall be advised through and payable at the counters of a bank nominated by SAIC. SAIC shall review and approve a draft of the letter of credit prior to issuance. SAIC reserves the right to require confirmation of the letter of credit by SAIC's nominated bank at Buyer's cost and expense. Buyer shall instruct the issuing bank to allow SAIC's nominated bank to debit the account of the issuing bank maintained with them for the full value of all drawings made under the letter of credit. The letter of credit shall be established not later than ten (10) days from the date of Contract execution. The letter of credit shall remain valid for the term of the Contract. Buyer will amend the letter of credit to be materially consistent with amendments to the Contract, or otherwise as agreed to in writing by SAIC.

All costs related to the issuance of the letter of credit and its amendment shall be for the account of the Buyer. All costs related to presentation of documents and collection under the letter of credit shall be for the account of SAIC.

Subject to SAIC credit approval, SAIC may extend payment terms of net 30 days which would be reflected on its invoice. SAIC shall submit invoices upon shipment of goods, completion of milestones, or performance of services as provided in the payment schedule of SAIC's offer. Partial deliveries shall be allowed. Any Contract in excess of \$500,000 shall require a 40% payment upon award. Late payments will be subject to an interest charge of 1.5% of the unpaid balance per month, which shall thereafter be added to all amounts unpaid and outstanding. If Buyer fails to make any payment to SAIC as required, SAIC shall have the right exercisable at SAIC's sole discretion, in addition to its other rights and remedies, to cease further performance. SAIC shall have a lien upon and may retain or repossess any and all deliverables if Buyer does not make full payment to SAIC.

Except as otherwise set forth in the offer, payments shall be made in US Dollars and shall be remitted electronically to the following EFT address:

Science Applications International Corporation
Citibank, N.A.
399 Park Avenue
New York, New York 10043
Account No. 30547584
ABA No. 021000089
SWIFT: CITIUS33
Contact: Shawnese N. Jones
(302) 324-6377

Any payment by check shall be remitted to the following lockbox address:

Science Applications International Corporation
P.O. Box 223058
Pittsburgh, PA 15251-2058

3. Acceptance By Buyer

Except as otherwise set forth in the offer, the Products and services delivered under the Contract shall be deemed accepted at the time they are delivered, in accordance with Article 10, or when services are rendered. Buyer shall notify SAIC in writing within ten (10) days of receipt of the Products and/or services of any claim for shortage or failure of the Products and/or services to meet the requirements set forth in the Contract.

4. Software Ownership (Applies only if software is furnished under the Contract.)

SAIC is furnishing the software to Buyer under a personal, non-exclusive, non-transferable license for the purpose of operating the goods delivered under the Contract for their intended use under the terms and conditions of the SAIC Standard Software License Agreement incorporated by reference into the Contract and attached hereto. Title and full ownership of the software shall remain with SAIC.

5. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under the Contract to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, power outages, wars, contagious illness or disease provoking government-imposed quarantines, prohibitions on travel or restrictions on commerce, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, failures of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform the Contract or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

6. Buyer Furnished Items (BFI)

Buyer shall provide the BFI as outlined in SAIC's offer. It shall be in a form and condition acceptable for its intended use as determined by SAIC. Buyer warrants that Buyer has the rights to provide any such BFI under the Contract. Should the BFI be inaccurate, inadequate or not in a condition for its intended use or not be provided in accordance with the Contract schedule, SAIC reserves the right to an adjustment in price and delivery schedule.

7. Permits, Licenses and Fees

Both parties shall comply with all laws and regulations governing the possession, use, handling, transfer, or disposal of hazardous and/or radioactive materials required in the performance of the Contract. SAIC shall assist Buyer in obtaining the licenses and permits necessary to facilitate the performance of any services, installation and operation of the goods and software furnished under the Contract. Except as provided for in the Contract, additional assistance requested by Buyer shall be provided by SAIC on a time and materials basis. Any license or permit fee imposed for the performance of work shall be borne by the Buyer.

8. Site Access

Site access shall be unhindered and available to SAIC in order to perform the required work without interruption in accordance with the Contract schedule. SAIC's inability to gain access to the site due to Buyer's actions or omissions or any circumstances beyond the direct control of SAIC including, but not limited to, delays, inconvenience, or damage sustained due to interference by utility appurtenances or the operation of moving the same shall be considered extra work and SAIC reserves the right to an adjustment in price and delivery schedule.

9. Differing Site Conditions

SAIC shall notify the Buyer of any conditions at the installation site(s) differing from those indicated in the Contract, including any unknown or subsurface physical conditions at the site(s) differing from those specified by Buyer. If such conditions so differ and cause an increase in SAIC's cost of, or the time required for performance of any part of the work under the Contract, SAIC reserves the right to an adjustment in price and delivery schedule.

10. Delivery

Except as otherwise set forth in the offer, all goods shall be shipped FCA (origin) per Incoterms 2000. If requested, shipping and handling charges will be prepaid by SAIC and invoiced to the Buyer at actual cost. Buyer shall bear the risk of loss or damage to the goods from any casualty subsequent to delivery to the delivery point. Physical title to the Products shall pass to Buyer upon delivery to the freight carrier.

If the Buyer is unable to accept delivery, at no fault of SAIC, at the delivery time specified in the contract, the Buyer will authorize SAIC in writing to ship the Products in place at SAIC's facility, or other mutually agreed upon location, and will acknowledge acceptance of the Products including title, risk of loss, and commencement of warranty.

11. Proprietary Information

The design, production and operation of the Products, in any form, are proprietary information and trade secrets of SAIC. Buyer agrees that it will keep in confidence and prevent the disclosure to any unauthorized person or persons, any and all proprietary or confidential information related to the Product that is disclosed to Buyer pursuant to this Agreement. Buyer shall not modify, reverse engineer, improve or otherwise change any Product or parts thereof, or any of SAIC's proprietary rights related thereto, and shall not use, incorporate or in any way use any of SAIC's proprietary rights or confidential information (whether disclosed separately or embodied in any of the Products) in Buyer's own products or business activities. Buyer acknowledges that, in the event of Buyer's breach of any of the foregoing provisions, SAIC will not have an adequate remedy in money or damages and that SAIC shall therefore be entitled to seek preliminary or permanent injunctive relief, against such breach from any court of competent jurisdiction. SAIC's right to obtain such injunctive relief shall not be construed as any limit of its right to seek further legal and equitable remedies.

12. Intellectual Property Rights

SAIC shall solely own and have exclusive worldwide right, title and interest in and to all United States and foreign patents, trademarks, service marks, copyrights, mask works, trade secrets, software and all other intellectual and industrial property rights in any way related to the Products and all modifications, improvements and derivative works related thereto ("Product Intellectual Property Rights" or "Product

IPR"). Title to all such Product IPR shall at all times remain with SAIC, and Buyer's use thereof shall be restricted under the non-exclusive licenses granted by SAIC in Section 12(a) and 12(b) below.

12(a). *(License to Buyer for End Use)* Subject to Buyer's performance of all obligations hereunder, SAIC hereby grants to Buyer a personal, non-exclusive, royalty-free, non-transferable and indivisible license to use Product IPR only as they are contained in the Products and for no other purpose. Buyer shall not remove SAIC trademark notices, copyright notices, patent markings or mask work notices on or in the Products or on any other materials supplied by SAIC.

Buyer acknowledges that all rights to and goodwill associated with any trademarks related to the Products (the "Marks") belong to SAIC. Buyer agrees that it will not challenge or attack SAIC's rights in any Marks, and will not take or fail to take any action which, by taking or failure to take such action, has a result of impairing such rights of SAIC, will not use the Marks on goods or services other than to identify the Products, and will not do anything else inconsistent with the rights of SAIC.

12(b). *(License to Buyer to sublicense for end use or distribution)*

Subject to the terms and conditions of this Agreement, including without limitation the obligation of Buyer to flow down to sublicensees the clauses specified in Schedule X herein (attached hereto and incorporated by reference), SAIC grants to Buyer a nonexclusive, nontransferable license to designate sublicensees to use the Products under the terms of Section 12(a) and, when reselling the Products, to market, promote, and sublicense the Product IPR in accordance with the conditions specified in Schedule X.

12(b)(1) Buyer may sublicense the Product IPR to sublicensees, in accordance with the restrictions contained in this Agreement, only so long as any agreement between Buyer and its sublicensees: (i) contains such terms and conditions as necessary to reflect those restrictions; and (ii) is drafted so as to specifically include SAIC as an intended third-party beneficiary. In addition to the foregoing, and as an explicit condition of the license in the Product IPR granted from SAIC to Buyer herein, Buyer shall include in each of its agreements with its sublicensees the terms and conditions set forth in Schedule X. The parties agree Buyer shall have to no right to sell the product or license or otherwise provide the Product IPR to any third party without including terms and conditions set forth in Schedule X. Buyer shall deliver to SAIC a copy of each such sublicense agreement and each subsequent modification thereto, if any, promptly after execution.

13. Publicity

Buyer shall not use SAIC's name or any trademarks relating to the Products in any publicity or advertising campaign without the prior written permission of SAIC. Upon execution of this Agreement, either Party may issue a press release regarding the subject matter of this Agreement upon receipt of written approval of that press release from the other party.

14. Assignment

The Contract is not assignable without the prior written consent of SAIC. Any attempt by the Buyer to assign any of the rights, duties or obligations of the Contract without such consent shall be null and void.

15. Notices

All notices required or permitted under the Contract shall be in writing and shall be deemed to have been given upon personal delivery, upon receipt of delivery service or courier transmittal, or upon facsimile to the party with confirmation of transmission received.

16. Indemnification

Buyer shall assume full responsibility for use of the Products after purchase and shall indemnify, defend and hold SAIC harmless from all claims, damages, expenses, liabilities and losses, including without limitation attorney's fees and costs incurred that in any way arise out of or relate to (a) the manner in which Buyer and/or any of its customers or end users use or operate the Products; (b) any personal injuries, property damages or other losses resulting or occurring from the use by Buyer, its customers or end users; (c) defects or other problems with other component parts, equipment or materials produced or supplied by anyone other than SAIC and that maybe used with the Products; and/or (d) Buyer's transactions with its sublicensees, end users or other parties involving the Products.

17. Patent And Copyright Indemnification

SAIC at its own expense will defend and indemnify Buyer and Buyer's customer against any action brought against Buyer or Buyer's customer to the extent that it is based on a claim that any SAIC Product used within the scope of the contract hereunder willfully infringes a U.S. patent or copyright at the time of entering into the contract, provided Buyer notifies SAIC promptly in writing of the action (and all prior claims relating to such action) and SAIC shall lead the defense and all negotiations for its settlement or compromise. In the event any SAIC product becomes, or in SAIC's opinion is likely to become, the subject of a claim of infringement of a patent or copyright, SAIC may at its option (1) secure the Buyer's right to continue using the SAIC product; (2) replace or modify it to make it non-infringing; (3) upon return of all infringing SAIC products, refund to Buyer the price actually paid by Buyer for the infringing product, or (4) substitute for the infringing product another suitable, non-infringing product. SAIC shall have no liability for any claim of copyright or patent infringement based on (1) use of other than a current unaltered release of the product available from SAIC if such infringement would have been avoided by the use of such current unaltered release or (2) use or combination of the SAIC product with programs or data not supplied by SAIC. SAIC extends no indemnity whatever against infringement claims against non-U.S. patents, copyrights or other intellectual property.

THE FOREGOING STATES THE ENTIRE LIABILITY OF SAIC TO BUYER AND BUYER'S CUSTOMER WITH RESPECT TO INFRINGEMENT OF ANY COPYRIGHTS OR PATENTS OF SAIC PRODUCTS OR ANY PARTS THEREOF.

18. Limitation of Liability

SAIC's total liability to Buyer and all liabilities arising out of or related to the Contract, from any cause or causes, and regardless of the legal theory, including breach of contract, warranty, negligence, strict liability, or statutory liability, shall not, in the aggregate, exceed the amounts paid to SAIC under the Contract, or under the specific delivery order at issue, whichever is less.

In no event shall either party be liable to the other for any special, indirect, incidental, consequential, or economic damages (including, but not limited to lost profits and lost business opportunity), regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages.

Any claim by Buyer relating to the Contract, other than in warranty, must be made in writing and presented to SAIC within one year after the earlier of: (1) the date on which Buyer accepts the deliverable at issue; or (2) the date on which SAIC completes performance of the services specified in the Contract. Any claim under warranty must be made within the time specified in the applicable warranty clause.

19. Taxes (*Applicable to goods and services delivered or performed in the U.S.A.*)

The prices set forth herein do not include sales, or use taxes or gross receipts taxes or other applicable state or local government taxes which may be applicable to the goods and/or services delivered hereunder. Unless SAIC receives a sales tax certificate which exempts the goods and/or services from such taxes, SAIC shall invoice and Buyer shall reimburse SAIC for the tax in addition to the stated prices set forth herein.

20. Taxes and Duties (*Applicable to goods and services delivered or performed outside the U.S.A.*)

- A. The Contract price, including the prices in any subcontracts, does not include any taxes, including VAT, GST, withholding taxes, duties, assessments, liens, or similar charges levied upon SAIC by an entity other than the U.S. government or a political subdivision thereof (hereinafter "Foreign Taxes"), which could be incurred by SAIC as a result of the Contract. If SAIC, its subcontractors, or their respective employees are required to pay any Foreign Taxes, or any penalties and/or interest assessed with respect to Foreign Taxes (hereinafter "Foreign Penalties") the Contract price shall be correspondingly increased to reimburse SAIC for the full amount of Foreign Taxes or Foreign Penalties. If SAIC, its subcontractors, or their respective employees are required to file a return or report with respect to any Foreign Taxes, the Contract price shall be correspondingly increased to reimburse SAIC for the full cost to prepare and file any such return or report ("Foreign Return Charges"). If no further payments are due to SAIC under the Contract, Buyer shall reimburse SAIC for all Foreign Taxes, Penalties and Return Charges within 30 days of receiving an invoice for such amounts from SAIC.
- B. If SAIC is required to collect VAT or similar sales or use taxes, SAIC will charge Buyer such amount as a separate item on its invoice or provide a separate invoice if no further invoices are issued under the contract. If SAIC is not registered to collect VAT or similar taxes, Buyer will pay such amounts directly to the taxing authority.
- C. If after the effective date of the Contract, there are any changes or developments which may result in an increase in any foreign taxes, and/or any new foreign taxes or assessments are levied, or if the methods of administering or the rates of any foreign taxes and assessments are changed, and such new taxes, assessments, or changes result in an increased potential tax liability of SAIC, its subcontractors or their respective employees financial responsibility hereunder, the Contract price shall be correspondingly increased.

21. Import/Export Regulations

- A. (*Applicable for sales to Buyers and/or shipments outside the United States of America*)
Buyer agrees that SAIC's performance under the Contract is subject to all of the required and continuing United States (U.S.) Government approvals, clearances, regulations, and export licenses. Should this Contract include commodities and/or technical data from SAIC Canada, the Canadian government export regulations shall also apply. In the event SAIC is unable to obtain or maintain any required approvals, clearances and/or export or import licenses, SAIC shall be excused from its obligation to provide those goods or services set forth in the Contract for which such approvals, clearances and/or export or import licenses are required.

Commodities will be exported in accordance with U.S. export regulations and, Canadian export regulations (if applicable), including but not limited to the International Traffic in Arms Regulations,

the Export Administration Regulations, the regulations promulgated by the U.S. Department of Treasury and all other applicable U.S. laws and regulations (collectively, the "export regulations"). Diversion contrary to U.S. law and/or Canadian Law (if applicable) is prohibited. The commodities may not be resold, transferred, transshipped or re-exported without prior authorization by the U.S. Government and/or Canadian Government (if applicable).

B. *(Applicable to U.S. Buyers who intend to export shipments outside the United States of America)* SAIC's hardware, software, and technical data, as defined by the U.S. Government are subject to the U.S. export regulations. Should this Contract include commodities and/or technical data from SAIC Canada, the Canadian government export regulations shall also apply. Direct or indirect exportation/transfer contrary to U.S. law and/or Canadian law (if applicable) is prohibited. Buyer assumes all responsibility for securing commodity classifications, export licenses, shipment, and record keeping in accordance with applicable export regulations of the United States of America and/or Canada (if applicable).

C. **Resales and Re-Export of Products**

Buyer acknowledges that: a) any commodities and/or technical data consisting of or contained in Products provided subject to these terms are of U.S. or Canadian origin and subject to the U.S. and/or Canadian export regulations; b) that all sales of Products hereunder are routed transactions within the meaning of the U.S. and/or Canadian export regulations; and c) that any export or re-export thereof must be in compliance with the U.S. and/or Canadian export regulations. Buyer agrees that it shall not export or re-export, directly or indirectly any commodities and/or technical data (or direct products thereof) ordered subject to these terms in any form to (i) destinations in Country Group E:2, as specified in Supplement No. 1 to Part 740 of the EAR as modified from time to time by the U.S. Bureau of Industry and Security, (ii) destinations that are otherwise controlled or embargoed under U.S. or Canadian export regulations or (iii) entities or individuals which are listed on prohibited lists such as the Table of Denial orders maintained pursuant to such laws or regulations.

22. Changes

SAIC may suggest or Buyer may request changes within the scope of the Contract and applicable specifications. Should any such suggested changes cause an increase or decrease in the purchase price, or in the delivery or installation schedule, or affect any other Contract provisions, SAIC shall submit a proposed adjustment to the purchase price, schedule and/or any other provision affected by the change. Upon reaching a mutual agreement in writing thereto, SAIC shall proceed with such change.

23. Termination or Cancellation

- A. **Termination:** Either party may only assert that the Contract is terminated for default pursuant to a material breach by the other party. In all such cases, the breaching party shall be afforded a reasonable period of time to remedy such material breach, but in any event not less than 30 days from the date that the breaching party receives a written cure notice from the asserting party specifying the nature of the breaching party's failure to comply with a material provision of the Contract.
- B. **Cancellation:** Cancellation of the Contract or any part thereof shall result in a restocking fee to be charged to Buyer equal to 30% of the full purchase price of the cancelled items. Cancellation will be honored only within thirty (30) calendar days from Contract placement. SAIC will submit an invoice for the restocking fees and Buyer shall remit payment for such restocking fees within net 30 days after receipt of invoice. Credits due Buyer for prior amounts paid against cancelled items

shall be applied to future payments due by Buyer or reimbursed by SAIC within net 30 days, if no future payments are due.

24. Warranties

- A. **The Products:** The Products are provided with a one (1) year return to factory warranty against defects in materials and workmanship from the date the Products are placed at the disposal of the Buyer at the named place of delivery. Repairs of defects will be performed by SAIC at no charge to the Buyer, subject to the limitations herein. To request warranty service, the Buyer must call SAIC's service coordinator for a return material authorization number. Buyer shall ship any defective parts in accordance with SAIC's return instructions together with any required documentation including details of the problems or failure, freight prepaid, to SAIC's repair facility. Upon receipt at SAIC's repair facility, SAIC shall be responsible for the costs and risk of loss of returning the repaired or replaced equipment to the Buyer. SAIC will retain and own all parts removed from the repaired equipment. .
- B. **Service and Repairs (if applicable):** SAIC warrants service and repairs (hereinafter "Services") against defects in materials and workmanship for a period of 90 days after the of date of service or repair. SAIC warrants that the Services provided under this Agreement shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing the same or substantially similar Services. In the event of any breach of the foregoing warranty, provided Customer has delivered to SAIC timely notice of such breach as hereinafter required, SAIC shall, at its own expense, in its discretion either (1) re-perform the non-conforming Services and correct the non-conforming Services to conform to this standard; or (2) refund to Customer that portion of the Price received by SAIC attributable to the non-conforming Services. No warranty claim shall be effective unless Customer has delivered to SAIC written notice specifying in detail the non-conformities within 90 days after performance of the non-conforming Services or tender of the non-conforming Deliverables.
- C. **SAIC Software Warranty:** Buyer agrees that it will be bound by the SAIC Standard Software License Agreement incorporated herein by reference. SAIC software warranties are set forth in the SAIC Standard Software License Agreement.
- D. **Third-Party Equipment, Software and Documentation ("third-party materials"):**
Warranties for third party materials are warranted by the original equipment manufacturer(s) and such warranties shall pass through to the Buyer as extended to SAIC. To request warranty service for third-party materials, the Buyer shall notify SAIC of the defect with the material and the fault which caused the defect in order to receive a return authorization. SAIC, in support of the manufacturer's warranty, shall coordinate any such warranty returns, their repair, and return of goods to the Buyer. The Buyer shall ship any defective parts, freight prepaid, to SAIC after receiving an SAIC return authorization. The repair or replacement of goods under warranty is subject to the manufacturer's warranty and the limitations of paragraph (E) below.
- E. The warranties listed above are valid only if the Buyer uses the items properly, within the operating specifications and instructions supplied by SAIC and only makes maintenance adjustments within the tolerances listed in the maintenance or operating manuals provided. Any and all warranties will be void and do not apply to failures or damage to hardware caused by sources outside the goods furnished hereunder including, but not limited to, events such as: misuse

whether by fault, negligence, or otherwise, damage from peripheral power sources or equipment not delivered with the original system, conditions resulting from improper use of the equipment or operation of equipment outside the specified environmental conditions, conditions resulting from any modifications or repairs to the equipment other than made by SAIC or SAIC's vendor, acts of God, war, riots, insurrections, or force majeure events. SAIC shall not be liable for loss of profit, indirect, consequential, or special damages arising from any breach of warranty.

- F. Any trouble calls or other costs incurred by SAIC for repair of an item returned with "no trouble found" or which has a voided warranty shall be billed to the Buyer at the current service parts and labor rates, portal to portal, with the explanation of said misuse, abuse, or damage. Likewise, calls required because of operational errors, maladjustment's, broken or disconnected cables, or other failures created and caused outside the direct control of SAIC or Buyers maintenance personnel not following the maintenance guidelines provided shall be billed as described in this paragraph.

THE EXPRESS WARRANTIES AND REMEDIES IN THIS ARTICLE ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY SAIC. SAIC SPECIFICALLY DISCLAIMS AND BUYER WAIVES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, STATUTORY OR OTHERWISE, AS WELL AS ANY WARRANTIES ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE OR PAST DEALINGS BETWEEN THE PARTIES.

25. Modifications, Complete Agreement

No modifications of these Terms and Condition shall be effective unless in writing and signed by authorized representatives of the parties. The Contract constitutes the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of the Contract.

SAIC's proposal and these Terms and Conditions shall be included in the Contract by reference.

26. Applicable Law and Disputes

- A. The Contract shall be interpreted, construed and governed by, and the relations between the parties determined by the laws in force in the State of California, United States of America.
- B. Should any disputes or differences of any kind arise between the Buyer and SAIC, in connection with or arising out of the Contract, or the performance hereunder, these will be settled by mutual agreement, which after having been written and signed by both parties, will become final and binding upon both Parties.
- C. If no binding agreement can be reached, then the Buyer and SAIC will have the right to proceed to resolve the dispute through arbitration as follows: (1) **For Buyers within the United States**, arbitration shall be conducted according to the Rules of the American Arbitration Association ("AAA") for arbitration in the State of California, United States of America before one or more arbitrator(s) appointed in accordance with such rules; (2) **For Buyers outside the United States**, arbitration shall be conducted under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrator(s) appointed in accordance with such rules. The Arbitrator's decision will be final, binding and irrevocable upon both the Buyer and SAIC and not

subject to any direct or indirect legal means. Arbitration shall take place in San Diego, California, U.S.A.

- D. The judgment rendered by the Arbitrator upon the award may be entered in any court having jurisdiction for the purposes of obtaining an order of enforcement or judicial acceptance of the award, as the case may be. Buyer and SAIC hereby waive any immunity, sovereign or otherwise, that it would otherwise have to such jurisdiction and agrees that its rights, obligations and liabilities hereunder shall be determined in the same manner and to the same extent as those of a private litigant under like circumstances.
- E. The Arbitrator's award may include compensatory damages against either party, but under no circumstances will the Arbitrator be authorized to nor shall he or she award consequential, special, punitive or multiple damages against either party.

27. Severability

If any provision of the Contract is held by a court of competent jurisdiction to be void, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

28. Order of Precedence

In the event of a conflict arising between the documents constituting a formal offer or quotation, the following descending order of precedence shall be given: (a) the formal quotation to which these terms are attached; (b) these terms and conditions; and (c) and Statement of Work or specification referenced or attached hereto; (d) any other attachments.

29. Survival

The provisions of paragraphs 11, 12, 16, 18, 19, 20, 21, and 26 above shall survive termination, cancellation or expiration of the Contract.

Exhibit C: SAIC STANDARD SOFTWARE LICENSE AGREEMENT

1. Parties

1.1 The parties to these Standard Terms and Conditions (hereinafter, "Agreement") are Science Applications International Corporation, a Delaware corporation with a place of business at 10260 Campus Point Drive, San Diego, California 92121 (hereinafter, "SAIC"), and Buyer (hereinafter, "Licensee").

1.2 The effective date of this Software License Agreement is commensurate with the date of execution of the Purchase Agreement.

2. Definitions

2.1 "Software" shall mean the computer software program in executable code developed and owned by SAIC, the media on which it resides and the software documentation provided by SAIC to Licensee.

2.2 "Specific Equipment" shall mean the single processing unit(s) and / or the associated equipment designated and furnished by SAIC. If Licensee provides its own processing unit(s), Licensee warrants that its processing unit(s) is(are) in conformance with SAIC's specifications to support the Software.

2.3 "Third Party Software" is Software which is identified by SAIC as being owned, in whole or in part, by an independent third party and licensed to SAIC for distribution.

3. License

SAIC hereby grants to Licensee a personal, perpetual, non-exclusive, non-transferable license to use the Software on the Specific Equipment solely for its internal business purposes. Notwithstanding the foregoing, Licensee, as the end user specified in the accompanying Terms and Conditions, may allow third party consultants, agents, independent contractors, and other service providers to use the Software for the sole purpose of providing services to Licensee.

4. Restricted Rights

4.1 Licensee shall not decompile, reverse engineer, disassemble, translate, copy or otherwise duplicate the Software, in whole or in part, except as expressly authorized by prior written consent of SAIC. Licensee shall not use the Software to process or permit to be processed the data of any third party. Licensee shall not use or permit the use of the Software in the operation of a service bureau, timesharing or related arrangement. SAIC hereby authorizes Licensee to copy the Software solely for the Licensee's own internal use for restart purposes or to replace a worn copy, provided the Software is used only on the Specific Equipment. Licensee shall keep copies of all Software, together with the original Software, at the location of the Specific Equipment except that archival or emergency restart copies may be kept elsewhere at a secure location controlled by Licensee.

- 4.2 As between SAIC and Licensee, the Software, any derivative works based on the Software, any related materials, and any copies, in whole or in part, made by either party shall remain the sole and exclusive property of SAIC.
 - 4.3 Licensee shall not sell, rent, lease, assign, or sublicense to any third party, directly or indirectly, the Software or any license or right granted hereunder, in whole or in part.
 - 4.4 Licensee shall not export or re-export the Software, in whole or in part, without first securing the appropriate approvals, clearances, and export licenses in accordance with U.S. Bureau of Industry and Security Export Administration Regulations or the International Traffic in Arms Regulations of the U.S. Department of State as required.
 - 4.5 The Software may contain Third Party Software. In addition to being governed by this License Agreement, Licensee's right to use any Third Party Software shall also be subject to any separate license terms and conditions of the vendor; in the event of conflict, the stricter or more restrictive obligations upon Licensee shall control. Products running Microsoft® embedded software are subject to the applicable Microsoft® terms and conditions.
5. Non-Disclosure
- 5.1 Licensee acknowledges that the Software constitutes a valuable asset of SAIC and is to be considered proprietary information of SAIC, and that, by virtue of this Agreement, Licensee shall acquire only the right to use the Software under the terms and conditions hereof and shall not acquire any rights of ownership in or title to the Software.
 - 5.2 Licensee warrants that all persons who it has authorized to use the Software will observe and perform the covenants set forth in this Article 5. Licensee agrees to maintain the Software in secure premises to prevent any unauthorized person from gaining access thereto and to give SAIC written notice of any unauthorized disclosures or use of the Software as soon as Licensee becomes aware of it.
 - 5.3 Licensee shall notify and inform its employees and any third parties having access to the Software of Licensee's limitations, duties and obligations regarding non-disclosure and copying of the Software. The Software shall be used only by employees of the Licensee and any third parties who are necessary to Licensee's exercise of its rights hereunder and then only at the location of the Specific Equipment. Licensee shall take all such security measures as are necessary to prevent unauthorized employees and third parties from acquiring access to the Software.
 - 5.4 Licensee acknowledges that unauthorized disclosure of the Software will diminish substantially the value of the Software. If Licensee violates the provisions of this Agreement, SAIC shall be entitled to obtain equitable relief to protect its interest herein, including, but not limited to, injunctive relief, without the requirement of posting a bond or other security, as well as monetary damages.
 - 5.5 Licensee shall reproduce and include copyright and proprietary notices on all copies of the Software in the same form and manner that such copyright and proprietary notices are included on the Software by SAIC.
 - 5.6 The obligations set forth in this Article shall survive the expiration or earlier termination of this Agreement.

6. Warranty

- 6.1 SAIC warrants that the Software will substantially operate according to specifications published by SAIC for a period of one (1) year from the date of delivery to the FOB point. If it is determined that the Software does not operate according to such specifications, SAIC's only responsibility will be to apply reasonable efforts to cure the non-conformance. SAIC does not warrant or guarantee that the Software will be bug-free or all errors will be corrected.
- 6.2 The warranties of SAIC contained herein are applicable only if the Software is used, without modification or alteration, in accordance with the terms of this Agreement, in the environment specified in the documentation, for the uses contemplated therein, and on the Specific Equipment at the location specified. SAIC shall not be liable for any damages including any loss of data, business interruption, lost profits or other special, punitive, exemplary, incidental, indirect or consequential damages arising in any way from this Agreement, or from the use of the Software or any updates, whether alleged as a breach of contract or tort, and even if SAIC has been advised of the possibility of such damages. Licensee agrees that the maximum liability of SAIC relative to the Software is limited to no more than the license fees actually paid by Licensee for the Software.
- 6.3 THE EXPRESS WARRANTIES AND REMEDIES IN THIS ARTICLE ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY SAIC. SAIC SPECIFICALLY DISCLAIMS AND LICENSEE WAIVES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, STATUTORY OR OTHERWISE, AS WELL AS ANY WARRANTIES ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE OR PAST DEALINGS BETWEEN THE PARTIES.
- 6.4 Upon purchase of an annual Software maintenance agreement, SAIC will make available to Licensee any announced updates to the Software, if any. SAIC does not warrant or guarantee the updates nor does it warrant or guarantee the updates will be compatible with previous versions of the Software.

7. Termination

- 7.1 This Agreement and the license to use the Software shall terminate when Licensee discontinues the use of the Software on the Specific Equipment or discontinues the use of the Specific Equipment, whichever first occurs.
- 7.2 This Agreement may also be terminated by SAIC if the Licensee fails to comply with any term or condition of this Agreement and fails to correct such noncompliance within 15 days after receipt of SAIC's written notification thereof or such longer period as SAIC may allow in writing.
- 7.3 Within 30 days after the expiration or any termination of this Agreement, the Licensee shall return to SAIC all copies of the Software supplied or made under this Agreement together with a signed letter certifying that the Licensee has discontinued all further use of the Software and that all copies have been returned to SAIC or that they have been destroyed.

8. Miscellaneous

- 8.1 This Agreement, including any attachments or exhibits hereto, constitutes the complete and exclusive statement of the parties relating to the Software delivered hereunder and supersedes all

proposals and all other communications, either oral or written, between the parties, unless specifically incorporated herein by reference.

8.2 This Agreement may not be amended except by a writing signed by duly authorized representatives of both parties.

8.3 This Agreement shall be interpreted, construed and governed by, and the relations between the parties shall be determined by, the laws in force in the State of California, United States of America, without regard to conflict of law principles.

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY – SCIENCE
APPLICATION INTERNATIONAL CORPORATION SERVICES AGREEMENT**

This Agreement (hereinafter referred to as "Services Agreement" or "Contract") is entered into this 1st day of November, 2008 (the "Effective Date") by and between the Illinois State Toll Highway Authority (hereinafter referred to as the "Tollway" or "Buyer"), an instrumentality and administrative agency of the State of Illinois, with offices at 2700 Ogden Avenue, Downers Grove, Illinois 60515, and Science Application International Corporation (hereinafter referred to as "SAIC" or "Vendor"), a Delaware Corporation, having an office at 2985 Scott Street, Vista, California, 92081. The Tollway and SAIC may be referred to herein collectively as the "Parties".

WHEREAS, the Tollway's current Violation Enforcement System ("VES") uses SAIC technology and proprietary system known as "TollVision"; and

WHEREAS, due to compatibility concerns and as the sole economically feasible source for spare parts needed for the VES, SAIC has proposed to provide the repair services and spare equipment during the term of this Services Agreement as set forth in Exhibit "A" attached hereto; and

WHEREAS, it is in the best interests of the Tollway to allow SAIC to provide the repair services and spare equipment pursuant for the VES system.

NOW THEREFORE, for and in consideration of the above recitals and the terms and conditions set forth below, the Parties agree as follows:

1. **Agreement.** Attached hereto are the following documents that together with this Services Agreement comprise the Parties' agreement with respect to the services and equipment to be provided by SAIC during the term of this Services Agreement:
 - a. This Services Agreement, including all Exhibits attached hereto;
 - b. The Department of Central Management Services ("CMS") "Standard Terms and Conditions" attached hereto as Appendix "A";
 - c. SAIC Terms and Conditions attached hereto as Appendix "B".
2. **Order of Preference.** The aforementioned documents shall have the order of precedence listed. Together they comprise the entire agreement between the Parties. In the event of a conflict, the first named document shall take precedence over the subsequent named document – except in those instances where the parties have specifically stated in writing that a provision in a subsequent named document takes precedence over a provision of the same kind in the first named document. SAIC understands that this Services Agreement may be subject to the approval of the Department of Central Management Services (hereinafter "CMS") and that any services performed by SAIC prior to approval and execution of this Services Agreement by CMS are at its sole risk.
3. **Priority of CMS Terms and Conditions.** The Parties acknowledge that the CMS "Standard Terms and Conditions" and the terms and conditions contained within the SAIC Terms and Conditions may contain duplicative and/or conflicting

provisions. The Parties agree that in that event the CMS "Standard Terms and Conditions" shall control.

4. **Final Pricing.** The Parties acknowledge that Exhibit "A" attached hereto contains pricing information and that the prices contained/listed in Exhibit "A" are the Parties' final agreed contract value for the parts and services to be provided under this Services Agreement should those spare parts and/or repair services be needed. Said pricing shall remain in effect during the first (1st) year of this Services Agreement. The parties agree that SAIC shall be allowed to increase the unit pricing for spare part and/or repair services by 4% at the beginning of each year of the Initial Term and the beginning of any Renewal Term as provided for in this Services Agreement.
5. **Services.** SAIC will perform the repair services and provide the spare parts described in Exhibit "A", "The Repair Program", hereafter referred to as the "Services", for all SAIC provided VES hardware.
6. **Place of Performance.** Unless otherwise provided in this Services Agreement, SAIC may perform the Services in whole or in part at SAIC's place of business and/or such other locations as SAIC selects.
7. **Term.** Unless terminated earlier as provided herein, the Initial Term of this Services Agreement shall be three (3) years commencing upon the Effective Date. At the end of the Initial Term of this Services Agreement, the Tollway may initiate the first of two 1-year renewals (Renewal Term(s)) provided both parties agree to such extension in writing at least sixty (60) days prior to the expiration of the Services Agreement. At the end of the first renewal period, the Tollway may initiate the second of two 1-year renewals provided both parties agree to such extension in writing at least sixty (60) days prior to the expiration of the first renewal term. Said renewals will only be possible if all terms, including pricing, remain unchanged. Notwithstanding anything in this provision to the contrary, the decision to renew this Services Agreement rests entirely with the Tollway.
8. **Payment.**
 - a. Payments shall be made in accordance with the schedule and provisions set forth in Exhibit "A". Invoiced amounts shall be paid by the Tollway in US Dollars within forty-five (45) days of Tollway's receipt of an invoice from SAIC by either electronic funds transfer (EFT) or by mail to the following locations:

Mailing Remittance Address:

Science Applications International Corporation
P.O. Box 223058
Pittsburgh, PA 15251-2058

For Payments to SAIC via EFT:

Science Applications International Corporation
Citibank, N.A.
399 Park Avenue

New York, NY 10043
Account No. 30547584
ABA No. 021000089
SWIFT: CITIUS33
Contact: Indira Devi
(302) 324-6377

- b. If Tollway's action or inaction results in non-receipt of payment by SAIC for the total amount of an invoice beyond forty-five (45) days of Tollway's receipt of a properly prepared invoice, an interest charge of one and one-half percent (1.5%) per month shall thereafter be added to all amounts unpaid and outstanding. In addition to the foregoing, SAIC shall have the right (exercisable in SAIC's sole discretion and in addition to its other rights and remedies) to cease further performance of the Services hereunder until payment of amounts due is received.
9. **Payment of Tolls.** SAIC shall be required to pay the full amount of tolls, if any, incurred by it during the duration of the Services Agreement. Said tolls will not be refunded by the Tollway. Furthermore, in the event that a final determination is made by the Tollway that SAIC has failed to pay any required tolls and associated fines, the Tollway is authorized to take steps necessary to withhold the amounts of the unpaid tolls and fines from any payment due SAIC by the Tollway and/or other State of Illinois office, department, commission, board or agency.
10. **Audits.**
 - a. The Tollway reserves the right to audit SAIC's records pertaining to this Services Agreement once in every twelve-month period. SAIC shall maintain, for a minimum of three years after the completion of the Services Agreement, adequate books, records and supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with this Services Agreement; the Services Agreement and all books, records and supporting documents related to the Services Agreement shall be available upon reasonable notice during normal business hours for review and audit by the Tollway, the Illinois Auditor General, the Tollway's Inspector General and CMS at SAIC's offices; and SAIC agrees to cooperate fully with any audit conducted by the Auditor General, Tollway Inspector General, CMS or the Tollway and to provide full access to all relevant materials. Failure to maintain the books, records and supporting documents required by this section shall establish a presumption in favor of the Tollway for the recovery of any funds paid by the Tollway under the Services Agreement for which adequate books; records and supporting documentation are not available to support their purported disbursement.
 - b. The Tollway, Tollway Inspector General, CMS and Auditor General reserve the right to audit SAIC's records generated in connection with this Services Agreement upon twenty-four (24) hours notice at a mutually

agreed time, and SAIC will cooperate fully and provide time, space and access to the records as may be required.

- c. All records generated by the Tollway (or by SAIC on behalf of the Tollway in performance of the Services) during the term of this Services Agreement shall remain the property of the Tollway and shall be maintained by SAIC throughout the Services Agreement period. However, upon expiration, termination or cancellation of the Services Agreement, the records must be returned to the Tollway.

- 11. **Governing Law; Exclusive Jurisdiction.** This Services Agreement, and all rights and duties of the parties arising from or relating in any way to the subject matter of this Services Agreement or the transactions contemplated by it, shall be governed by, construed and enforced only in accordance with the laws of the United States and the State of Illinois (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Services Agreement, including arbitration proceedings, shall be brought only in DuPage County, Illinois. **The parties consent to exclusive personal jurisdiction and venue of the courts located in DuPage County, State of Illinois.**

- 12. **Notice.**

Notices shall be in writing, and shall be deemed given if hand delivered or delivered by certified or registered mail, courier (Federal Express or similar reliable courier) or facsimile, and addressed to the following parties at the following addresses:

SAIC:

George Walther-Meade
Director of Client Services
2985 Scott Street
Vista, CA 92081
Phone (858) 826-9870
Fax (858) 826-1560
E-mail george.e.walther-meade@saic.com

Client Service Help Desk: (877) 482-2474

Copy to:

Elizabeth Horan
Contract Representative
2985 Scott Street
Vista, CA 92081
Phone (858) 826-6284
Fax (858) 826-9100
E-mail elizabeth.s.horan@saic.com

Tollway:

Michael Wayne
2700 Ogden Avenue
Downers Grove, IL 60515
Phone (630) 241-6800 ext. 4257
Fax (630) 241-6103
E-mail mwayne@getipass.com

Copy to:

David E. Wilson
Senior Assistant Attorney General
2700 Ogden Avenue
Downers Grove, IL 60515
Phone (630) 241-6800 ext. 1580
Fax (630) 271-7559
E-mail dwilson@getipass.com

13. **Insurance.** Within ten (10) days after the full execution of this Services Agreement, SAIC will provide the Tollway with a certificate of insurance wherein the Illinois State Toll Highway Authority shall be named "Additional Insured" for the commercial general liability and automobile liability coverage. This coverage shall be primary for Additional Insured and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other coverage be primary, contributing or excess. SAIC will maintain Workers Compensation coverage as required by the State of Illinois. SAIC shall maintain minimum limits of liability as set forth in Appendix "A".
14. **Suppliers.** For the purposes of this Services Agreement, SAIC's subcontractors and suppliers who support our normal manufacturing processes will be referred to as "suppliers". These suppliers will be exempt from Appendix "A", Clause 2.3 requirement. In addition, SAIC is not required to obtain approval from the Tollway or provide the Tollway detail reports regarding its suppliers.
15. **Authorized Signatories.** Tollway: This Services Agreement must be authorized by resolution of the Board of Directors of the Illinois State Toll Highway Authority and be approved as to Form and Constitutionality by the Attorney General of the State of Illinois and be approved by the Department of Central Management Services of the State of Illinois.

SAIC: This Services Agreement must be executed by a duly authorized signatory of SAIC, evidenced by a corporate resolution certified by the corporate secretary of SAIC.

IN WITNESS WHEREOF, the parties have set their hands and seals by their duly authorized signatories this 1st day of December, 2008.

The Illinois State Toll Highway Authority

By:
ACTING

[Signature]
Executive Director

[Signature]
Chief Fiscal Officer

[Signature]
General Counsel

Science Applications International Corporation

By: [Signature]

Name: Elizabeth Horan

Its: Contract Prep. / 10-16-08

Approved as to Form and Constitutionality

[Signature]
Attorney General for the State of Illinois

EXHIBIT A

SPARES AND REPAIR PROGRAM - PRICE & PAYMENT

A.1 Hardware Spare Parts

This Service Agreement includes the following list of spare parts, to be available for Tollway facilities. SAIC shall ship spare parts within 90 days of receipt of order. Delivery terms are FOB Origin (Vista, CA) and separate charges for shipping will be shown on SAIC's invoice (s).

Item	Product Description	Unit Price
1	429700; EE1100 Camera (does not include lens) Includes 427565-001 blue camera filter	\$1,963
2	422903-001; Zoom lens 12.5-75mm Lens	\$582
3	427582-001; LED Camera Housing (Includes: Mount, Adjustable Pan, Tilt, Roll 427583-001 and Astro Bracket Kit 427575-001)	\$3,157
4	427582-001 SLED; LED Camera Housing SLED with LEDs, heaters, Backplate and control board	\$1,455
5	422957-008; 8' External Cable Assy, Camera Housing to Junction Box	\$357
6	430671-003; ELPAC/PIC, with RAID1, supporting 6 cameras for manual lanes	\$11,210
7	430670-004; ELPAC supporting 8 Cameras	\$9,748
8	422968-001; Plaza Imaging Computer	\$11,748
9	427580-001; 2-port Eurysys digitizers for ELPAC (OEM part DHM-1168). Includes 429552-001 BNC to DB15 connector for Harmony Digitizer	\$860

SAIC will provide a quote upon request for any spare parts not listed and upon provision said quote shall become a part of this Exhibit "A".

A.2 Hardware Repair

When a failure occurs, the Tollway must call SAIC's service coordinator at (877) 482-2474 for a return material authorization number (RMA). The Tollway shall ship parts in accordance with SAIC's return instructions together with any required documentation including any details of the problems or failure, freight prepaid, to SAIC's repair facility. Upon receipt at SAIC's repair facility, SAIC shall be responsible for the costs and risk of loss of returning the repaired or replaced equipment to the Tollway. SAIC will retain and own all parts removed and replaced to affect repair. A flat repair fee, per the following table, will be charged for repairs. Turn around times will be provided following an evaluation of equipment received for repair; provided, however, that the turn around time shall not exceed six (6) weeks. If any item is determined by SAIC to be beyond economic repair, SAIC will notify the Tollway. Upon concurrence by the Tollway, SAIC will replace with a new part, at the price listed in A-1. SAIC will provide a quote upon request for any repairs not listed:

Item	Product Description	Repair Fee
1	427591-001 EE1100 EE1100 Camera	\$800
2.	LED Camera Housing SLED	\$600
3.	ELPAC Computer	
	a) Digitizer card	\$3,820
	b) All other components	\$1,200

A.3 Price and Payment

This section provides pricing and payment terms for the Services Agreement.

1. SAIC's pricing for the VES Repair Program and the accompanying spare equipment are set forth above. SAIC will provide RMA numbers for repair of equipment up to the ceiling value provided by the Tollway. A notice will be provided to the Tollway when the remaining value is within \$5,000 of the ceiling value. For purposes of this Services Agreement, the recommended annual ceiling for repair services is \$60,000.
2. Term of Coverage -- Three (3) years from the "Effective Date" of the Services Agreement and any Renewal Terms as set forth in the Services Agreement.
3. Payment Terms

- Spare Equipment – SAIC will invoice the Tollway for the spare equipment once it is shipped. Payment in full for each invoice is due net 45 days after the Tollway's receipt of SAIC's invoice.
 - Repair Services – Payment in full for each invoice is due net 45 days after the Tollway's receipt of SAIC's invoice. Title and risk of loss shall pass back to the Tollway upon the date on which the Equipment was shipped, and any relevant warranty shall commence.
4. Extension Price Adjustment – SAIC's Repair Program may be renewed as set forth in the Services Agreement.

APPENDIX "A"

CMS STANDARD TERMS & CONDITIONS

This section contains the State of Illinois' standard terms and conditions for all contracts. To the extent that these terms and condition apply to the subject matter of the Agreement to which these terms are appended, and to the extent they are not in conflict with the terms of that Agreement, they will govern the contractual relationship between the Tollway and SAIC and SAIC is bound by them and is responsible for reading and understanding them. The State reserves the right to amend these terms and conditions when and where needed and to supplement them with appropriate addendum, as noted herein.

A. TERMS AND CONDITIONS

1. BILLING AND PAYMENT

1.1 BILLING. The Agency/Buyer's billing practices are set out as follows and Vendor is presumed to have read and understands the following procedures:

1.1.1 Vendor shall submit invoices to the address, on the schedule and with the detail required by the ordering Agency/Buyer. Invoices for equipment and/or supplies purchased and/or services performed and expenses incurred prior to July 1st must be presented to the Agency/Buyer no later than July 31st; otherwise Vendor may have to seek payment of such invoices through the Illinois Court of Claims (30 ILCS 105/25).

1.1.2 Vendor shall not bill for any taxes unless a statement is attached to the bill identifying the tax and showing why it is legally chargeable to the State. The State does not warrant the interest component of any payment, including installment payments, are exempt from income tax liability.

1.1.3 By submitting an invoice, Vendor certifies that the equipment, supplies and/or services provided meet all requirements of the Contract, and the amount billed and expenses incurred are as allowed in the Contract.

1.2 PAYMENT.

1.2.1 Late payment charges, if any, shall not exceed the formula established in the State "Prompt Payment Act" (30 ILCS 540/1) and rules (74 Ill. Adm. Code 900). 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.

1.2.2 The Agency/Buyer shall not be liable to pay for any equipment and/or supplies provided and/or service rendered, including related expenses subject of this Contract incurred prior to the beginning of the term of this Contract. Any Contract or order labeled "subject to financing" or words to similar effect is subject to the Agency/Buyer obtaining suitable financing.

1.2.3 The approved invoice amount will be paid less any retainage, if applicable, and previous partial payments.

1.2.4 Any Contract or order requiring payment of financing interest is subject to the interest rate limitation set by law of the greater of 9% or 125% of the G.O. Bond Index (30 ILCS 305/1).

1.3 DELAY OF PAYMENT DUE TO VENDOR FAILURE. If the Agency/Buyer in good faith determines that the Vendor has failed to perform or deliver any service or product as required by this Contract, the Vendor shall not be entitled to any compensation under this Contract, until such service or product is performed or delivered. In this event, the Agency Buyer may withhold that portion of the Vendor's compensation, which represents payment for service or product that was not performed or delivered.

1.4 SET-OFF AGAINST SUMS OWED TO THE VENDOR. The State may setoff any sum owed to the Vendor on account of any debt owed to the State, specifically under this Contract, unless otherwise required by law, in accordance with the State Comptroller Act (15 ILCS 405). The Vendor agrees that this provision constitutes proper and timely notice under the law of setoff.

1.5 AVAILABILITY OF APPROPRIATIONS (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.

2. VENDOR PERFORMANCE AND RESPONSIBILITIES

2.1 CONSULTATION. Vendor shall keep the Agency/Buyer fully informed as to the progress of matters covered by this Contract. Where time permits and Vendor is not otherwise prohibited from so doing, Vendor shall offer the Agency/Buyer the opportunity to review relevant documents prior to filing with any public body or adversarial party.

2.2 PERFORMANCE REVIEWS.

2.2.1 The State or Agency/Buyer may conduct a performance review of the Vendor's performance under the Contract. The Vendor shall cooperate with the State or Agency/Buyer in this review, which may require that the Vendor provide records of its performance and billing. Vendor shall provide any required information within 30 days of the State or Agency/Buyer's request. This performance review may be used by any State agency in determining whether to enter into other contractual relationships with the Vendor.

2.2.2 Vendor shall have and maintain, during the term of this Contract, internal procedures and processes to monitor performance to ensure full compliance with the Contract. Vendor shall disclose such procedures and processes to the State upon request.

2.2.3 At the direction of the State, Vendor and State shall work together to develop a performance scorecard to record relevant facts related to performance as well as establishing conditions, milestones, requirements or timetables that apply to this Contract.

2.3. AUDIT/RETENTION OF RECORDS (30 ILCS 500/20-65). Vendor shall maintain books and records relating to the performance of the Contract and necessary to support amounts charged to the State under the Contract. 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. 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 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.

2.4 SCHEDULE OF WORK. Any work performed on State premises shall be done during the hours designated by the State and shall in any event be performed so as to minimize inconvenience to the State and its personnel and minimize interference with the State's operations.

2.5 RESPONSIBILITY FOR AGENTS AND EMPLOYEES. Vendor shall be responsible for the negligent acts and omissions of its agents, employees and subcontractors in their performance of Vendor's duties under this Contract. Vendor represents that it shall utilize the services of individuals skilled in the profession for which they will be used in performing services hereunder. In the event that the Agency/Buyer determines that any individual performing services for vendor hereunder is not providing such skilled services, it shall promptly so notify Vendor and Vendor shall act reasonably to replace that individual or otherwise rectify the services provided.

2.6 ASSIGNMENT, SUBCONTRACTING AND DELEGATION.

2.6.1 This Contract may not be assigned, transferred, conveyed or subcontracted in whole or in part by the Vendor without the prior written consent of the State. For purposes of construing this clause, a transfer of a controlling interest in the Vendor shall be considered an assignment. 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.

2.6.2 After notice, the Agency/Buyer may transfer the Contract or payment responsibility to another State Agency, or assign the Contract to a third-party for financing purposes.

2.7 USE OF THIRD PARTIES.

2.7.1 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.

2.7.2 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.

- 2.7.3 Vendor shall identify in an addendum to this Contract, the names and addresses of all subcontractors utilized by Vendor in the performance of this Contract, together with the anticipated amount of money that each subcontractor is expected to receive pursuant to this Contract. The State may request updated information at any time. For purposes of this section, subcontractors are those specifically hired to perform all or part of the work of this Contract or to provide the supplies requested by the State.
- 2.7.4 If Vendor is unable to secure or maintain key personnel named in the Contract to render the services, Vendor shall not be relieved of its obligations to complete performance. Agency/Buyer shall have the option to accept a substitute or to terminate the Contract.
- 2.8 LICENSE. Vendor, directly or through its employees, shall have and maintain any required license. With written consent of the Agency/Buyer, Vendor may meet the license requirement through a subcontractor.
- 2.9 SOLICITATION AND EMPLOYMENT. SAIC's Security and Transportation Technology Business Unit (S&TT BU) shall not employ any person employed by the Agency/Buyer during the term of this Contract to perform any work required by the terms of this Contract. As a condition of this Contract, the S&TT BU shall give notice immediately to the Agency/Buyer's director if S&TT BU solicits or intends to solicit for employment any of the Agency/Buyer's employees during the term of this Contract. Agency/Buyer has no authority to contractually refuse to hire S&TT BU's employees who apply to the State for employment.
- 2.10 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.
- 2.11 TAX COMPLIANCE. Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.
- 2.12 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.
- 2.13 ANTITRUST 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.

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. 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. The Vendor shall immediately report to the Agency/Buyer any unauthorized disclosure of confidential information upon its occurrence. Vendor's obligations regarding confidential information under this Contract shall survive termination of this Contract.

5. 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 herein.

7. INDEMNIFICATION AND LIABILITY

The Vendor agrees to indemnify and hold harmless the Tollway, 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, (d) any infringement of any copyright, trademark, patent, trade dress or other intellectual property right. Neither party shall be liable for incidental, special, consequential or punitive damages. Nothing herein shall be construed to prevent Vendor from bringing an action for contribution if and when Vendor determines that such an action is warranted, including, but not limited to, those instances where such costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments arise from any act or omission of the Tollway or any of its employees, representatives, contractors or agents.

To be entitled to indemnification under this provision, the State must: (i) notify Vendor promptly in writing of the claim or action; (ii) authorize Vendor to take sole control of the defense and any related settlement negotiations; and (iii) cooperate, as Vendor may reasonably request, in defense of the claim or action or in any settlement negotiations. Following Vendor's assumption of the defense or any related settlement discussions, the State may employ its own counsel, at the State's expense, to participate in such defense or settlement discussions.

8. PATENT AND COPYRIGHT INDEMNIFICATION

In the event of an infringement as set forth in section 7(d) above, Vendor, at its own expense, will lead the defense and all negotiations for its settlement or compromise. In the event any Vendor product becomes, or in Vendor's opinion is likely to become, the subject of a claim of infringement of a patent or copyright, Vendor may at its option (1) secure the Agency/Buyer's right to continue using the Vendor product; (2) replace or modify it to make it non-infringing; (3) upon return of all infringing Vendor products, refund to Agency/Buyer the price actually paid by Agency/Buyer for the infringing product, or (4) substitute for the infringing product another suitable, non-infringing product. Vendor shall have no liability for any claim of copyright or patent infringement based on (1) use of other than a current unaltered release of the product available from Vendor if such infringement would have been avoided by the use of such current unaltered release or (2) use or combination of the Vendor product with programs or data not supplied by Vendor. Vendor extends no indemnity whatever against infringement claims against non-U.S. patents, copyrights or other intellectual property.

THE FOREGOING STATES THE ENTIRE LIABILITY OF VENDOR TO AGENCY/BUYER WITH RESPECT TO INFRINGEMENT OF ANY

COPYRIGHTS OR PATENTS OF VENDOR PRODUCTS OR ANY PARTS THEREOF.

9. WARRANTIES

9.1 CONCEPTS, MATERIALS AND WORKS PRODUCED. Vendor represents and warrants that all the concepts, materials and works produced, or provided to the Agency/Buyer pursuant to the terms of this Contract shall be wholly original with the Vendor or that the Vendor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Vendor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Vendor and any other materials, works and methodologies used in connection with providing the services contemplated by this Contract.

9.2 TO BE PROVIDED IN A PROFESSIONAL MANNER. Vendor warrants that all services will be performed in a good and professional manner and that all of the services to be performed hereunder shall be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

9.3 CONFORMITY WITH CONTRACTUAL REQUIREMENTS. The Vendor represents and warrants that the goods and services will appear and operate in conformance with the terms and conditions of this Contract.

9.4 AUTHORIZATION AND CONTRACTUAL AUTHORITY. 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.

The Agency/Buyer 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/Buyer, 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/Buyer that places an order with the Vendor shall have any liability to Vendor.

9.5 OBLIGATIONS OWED TO THIRD PARTIES. The Vendor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Contract are or will be fully satisfied by the Vendor so that the Agency/Buyer will not have any obligations with respect thereto.

- 9.6 TITLE TO PROPERTY AND EQUIPMENT. The Vendor represents and warrants that title to any property assigned, conveyed or licensed to the Agency/Buyer is good and that transfer of title or license to the Agency/buyer is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Vendor further warrants that it has title to or the right to allow the State to use, the equipment, supplies and/or services being provided and that the State may use the same without suit, trouble or hindrance from Vendor or third parties.
- 9.7 EQUIPMENT AND SUPPLIES QUALITY. Unless otherwise agreed, Vendor warrants that all equipment and/or supplies shall be new, unused, of most current manufacture of Vendor and not discontinued, shall be free of defects in materials and workmanship, shall be provided in accordance with Vendor's standard warranty as set forth in Appendix "B", Section 4, and shall perform in accordance with manufacturer's published specifications.
- 9.8 INDUSTRY STANDARDS. The Vendor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the standards in the relevant industry in the performance of this Contract.
- 9.9 SOLICITATION. The Vendor represents and warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

10. INSURANCE

Vendor shall, at all times during the term and any renewals, maintain and provide a Certificate of Insurance naming the State as additional insured for all required bonds and insurance. Certificates may not be modified or canceled until at least 30 days notice has been provided to the State. Vendor shall provide: (a) General Commercial Liability-occurrence form in amount of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and \$2,000,000 Annual Aggregate; (b) Auto Liability, including Hired Auto and Non-owned Auto, (Combined Single Limit Bodily Injury and Property Damage) in amount of \$1,000,000 per occurrence; and (c) Worker's Compensation Insurance in amount required by law. Insurance shall not limit Vendor's obligation to indemnify, defend, or settle any claims. Upon request, Vendor shall provide and maintain any bond required by law or the Agency/Buyer. Vendor shall provide copies of certificates of insurance evidencing the coverage described in this paragraph.

11. 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.

12. 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.

13. 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.ilga.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.*

14. 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.

15. NON-DISCRIMINATION

In compliance with the State and Federal Constitutions, the Illinois Human Rights Act, the U.S. Civil Rights Act, and Section 504 of the Federal Rehabilitation Act, the Agency/Buyer does not unlawfully discriminate in employment, contracts, or any other activity.

16. TERMINATION OF CONTRACT

- 16.1 TERMINATION FOR CAUSE WITH 10 DAY ADVANCE NOTICE. The Agency/Buyer may terminate this Contract for any of the following reasons with ten (10) days prior written notice to the Vendor:

- 16.1.1 The Agency/Buyer determines that the actions, or failure to act, of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause jeopardy to health or safety;
- 16.1.2 The Vendor fails to comply with confidentiality laws or provisions;
- 16.1.3 The Vendor furnished any written representation or certification in connection with this Contract which is materially false or deceptive.

- 16.2 TERMINATION FOR CAUSE WITH NOTICE. The occurrence of any one or more of the following events, unless excusable under the Contract, shall constitute cause for the Agency/Buyer to declare the Vendor in default of its obligations under this Contract:

- 16.2.1 The Vendor fails to perform any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Vendor;
- 16.2.2 The Agency/Buyer determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;
- 16.2.3 The Vendor fails to make substantial and timely progress toward performance of the Contract;
- 16.2.4 The Vendor becomes subject to bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Vendor terminates or suspends its business; or the Agency/Buyer reasonably believes that the Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 16.2.5 The Vendor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;
- 16.2.6 If there is a default event caused by the Vendor, the Agency/Buyer shall provide written notice to the Vendor requesting that the breach or non-compliance be remedied within thirty (30) days

from the Vendor's receipt of the Agency/Buyer's written notice. If the breach or non-compliance is not remedied by the date of the written notice, the Agency/Buyer may either: (a) immediately terminate the Contract without additional notice; or (b) enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

16.3 TERMINATION FOR CONVENIENCE UPON NOTICE. Following fifteen (15) days written notice, the Agency/Buyer may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Vendor, except as provided herein. Following termination upon notice, the Vendor shall be entitled to compensation, upon submission of invoices and execution of a mutually acceptable settlement proposal, for work performed under this Contract to the Agency/Buyer up to and including the date of termination.

16.4 VENDOR'S REMEDIES IN EVENT OF TERMINATION BY AGENCY/BUYER. In the event of termination of this Contract for any reason by the Agency/Buyer, the Agency/Buyer shall pay only those amounts, if any, due and owing to the Vendor for work performed up to and including the date of termination of the Contract and for which Agency/Buyer is obligated to pay pursuant to this Contract and for which the Agency/Buyer is obligated to pay pursuant to this Contract, including the following;

- 16.4.1 a) For completed delivery of Equipment or rendering of services, per Exhibit A.
b) For Vendor's reasonable substantiated cost incurred or other work in process not completed.
c) Termination Settlement costs including the substantiated costs of terminating any suppliers and any other agreed upon costs set forth in the settlement proposal.
d) and a reasonable profit.

Payment will be made NET 45 days from Vendor's submission of Invoices and proper proof of the Vendor's termination settlement proposal. This provision in no way limits the remedies available to the Agency/Buyer under this Contract in the event of termination. However, the Agency/Buyer shall not be liable for any of the following costs:

- 16.4.2 a) The payment of unemployment compensation to the Vendor's employees;
b) The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
c) Any taxes that may be owed by the Vendor in connection with the performance of this Contract, including, but not limited to, sales, taxes, excise taxes, use taxes, income taxes or property taxes.

16.5 VENDOR'S TERMINATION DUTIES. The Vendor, upon receipt of notice of termination or upon request of the Agency/Buyer, shall:

16.5.1 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; to be followed by a termination settlement proposal within ninety (90) days;

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

16.5.3 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; and

16.5.4 Negotiate in good faith with the Agency/Buyer a mutually acceptable settlement (pursuant to the settlement proposal) and arrange for the final payment to Vendor. Failure to agree on this shall be a matter for resolution under the applicable disputes provisions of the Contract.

17. TERMS AND RENEWALS

The length of this Contract, including any renewals, may not exceed that allowed by law pursuant to 30 ILCS 500/20-60 or other applicable statutes. When the term begins on execution, that means the date of final execution by the State. If the commencement of performance is delayed because the Contract is not executed by the State on the start date, the State may change the start date, end date and milestones to reflect the delayed execution. No renewal may be effective automatically. No renewal may be effective solely at the Vendor's option.

18. NON-EXCLUSIVE RIGHTS

This Contract is not exclusive. The Agency/Buyer reserves the right to select other contractors to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.

19. ENTIRE CONTRACT

This Contract, including any attachments or amendments, constitutes the entire agreement between the parties concerning the subject matter of the Contract. Modifications and waivers must be in writing and signed by authorized representatives of the parties. Any provision of this Contract officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions of this Contract shall be interpreted, as far as possible, to give effect to

the parties intent. All provisions that by their nature would be expected to survive, shall survive termination of this Contract, including without limitation provisions relating to confidentiality, warranty, ownership and liability. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included within this Contract. This provision shall not be construed in such a manner so as to negate the obligations of either party arising from the agreement between the parties dated April 11, 2007.

20. CONTRACTING AUTHORITY

Certain contracts must be signed or approved by the Director of the Department of Central Management Services (CMS) before they are binding on the State. In those instances CMS shall not be responsible for costs or funding even though payments may be made through CMS facilities.

21. AMENDMENTS

This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.

22. THIRD PARTY BENEFICIARIES

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

23. HEADINGS OR CAPTIONS

The paragraph heading or captions used in the Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

24. SUPERSEDES FORMER CONTRACT AGREEMENTS

This Contract supersedes all prior contracts or agreements between the Agency/Buyer and the Vendor for the services provided in connection with this Contract.

25. WAIVER

Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency/Buyer and the Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

26. CUMMULATIVE RIGHTS

The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

27. SEVERABILITY

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

28. 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.

29. OBLIGATIONS BEYOND THE CONTRACT TERM

This Contract shall remain in full force and effect until all obligations of the parties have been satisfied, or until terminated or cancelled pursuant to this Contract. All obligations of the Agency/Buyer and the Vendor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the expiration or conclusion of this Contract.

30. COUNTERPARTS

The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

31. FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in carrying out the expressed intention of this Contract.

32. ADDITIONAL PROVISIONS

The parties agree that if an addendum, rider or exhibit is attached hereto be the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

B. CERTIFICATIONS AND CONFLICTS

SAIC Security and Transportation Technology Business Unit (S&TT BU) 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:

1. S&TT BU, 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.
2. S&TT BU is not in default on an educational loan (**5 ILCS 385/3**).
3. S&TT BU has informed the director of the Agency/Buyer 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. S&TT BU 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**).
4. S&TT BU 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. S&TT BU 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 S&TT BU made an admission of guilt of such conduct that is a matter of record (**30 ILCS 500/50-5**).
6. If S&TT BU 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**).
7. If S&TT BU, or any officer, director, partner, or other managerial agent of S&TT BU, 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. S&TT BU 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**).

8. S&TT BU 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 S&TT BU and its affiliates acknowledge the State may declare the Contract void if this certification is false **(30 ILCS 500/50-11)** or if S&TT BU 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)**.
9. S&TT BU 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.
10. S&TT BU 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 S&TT BU, the S&TT BU acknowledges that the State may declare the Contract void **(30 ILCS 500/50-14)**.
11. S&TT BU has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has S&TT BU 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)**.
12. S&TT BU is not in violation of the "Revolving Door" section of the Illinois Procurement Code **(30 ILCS 500/50-30)**.
13. S&TT BU 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)**.
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)**.
15. S&TT BU will, pursuant to the Drug Free Workplace Act, provide a drug free workplace and S&TT BU 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)**.
16. Neither S&TT BU 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**).

17. S&TT BU 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**).
18. S&TT BU 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**).
19. S&TT BU 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**).
20. S&TT BU 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**).
21. S&TT BU 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**).
22. S&TT BU 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".
23. S&TT BU 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.
24. S&TT BU 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 S&TT BU 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 S&TT BU's obligation under this Contract. S&TT BU 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 S&TT BU or the Contract, S&TT BU 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:

- 24.1 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 60% of the salary of the Governor (**currently \$90,414.60**). (The conflict of interest threshold of 60% 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.);
- 24.2 The contract is with a firm, partnership, association or corporation in which a person referenced in 23.1 above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor (**currently \$150,691.00**).
- 24.3 the contract is with a firm, partnership, association or corporation in which a person referenced in 23.1 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 \$301,382.00**) from the firm, partnership, association or corporation.

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).

Company Name: Science Applications International Corporation

Taxpayer Identification Number:

Social Security Number _____
or
Employer Identification Number 95-3630868

(If you are an individual, enter your name and SSN as it appears on your Social Security Card. If completing this certification for a sole proprietorship, enter the owner's name followed by the name of the business and the owner's SSN or EIN. For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.)

Legal Status (check one):

- | | |
|-------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Governmental |
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Nonresident alien |
| <input checked="" type="checkbox"/> Partnership/Legal Corporation | <input type="checkbox"/> Estate or trust |
| <input type="checkbox"/> Tax-exempt | <input type="checkbox"/> Pharmacy (Non-Corp.) |
| <input type="checkbox"/> Corporation providing or billing Home/Cemetery medical and/or health care services | <input type="checkbox"/> Pharmacy/Funeral (Corp.) |
| <input type="checkbox"/> Corporation NOT providing or billing Company (select medical and/or health care services | <input type="checkbox"/> Limited Liability |
| <input type="checkbox"/> Other: _____ | applicable tax classification) |
| | <input type="checkbox"/> D = disregarded entity |
| | <input type="checkbox"/> C = corporation |
| | <input type="checkbox"/> P = partnership |

VENDOR (Official Name and D/B/A)

<u>Elizabeth Horan</u>	<u>10-16-08</u>
Signature	Date
<u>Elizabeth Horan</u>	<u>Contract Rep</u>
Printed Name	Title

APPENDIX "B"

SAIC STANDARD TERMS AND CONDITIONS

1. **Confidentiality.** In the event either Party determines that it is necessary to provide confidential, proprietary, or trade secret information to the other party in connection with this Services Agreement, such disclosure will be made only after advance written notice to the other party, and the parties have executed a mutually satisfactory non-disclosure agreement. Nothing in this Services Agreement or in any such non-disclosure agreement shall be deemed to restrict or prohibit SAIC from providing to others services the same as or similar to the Services. In providing any such similar services to any third party, SAIC shall keep confidential any Tollway confidential, proprietary or trade secret information which is subject to a non-disclosure agreement executed pursuant to this section, in accordance with the requirements of such agreement.
2. **Intellectual Property.**
 - a. Tollway and SAIC shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing Intellectual Property, and no license, whether express or implied, is granted by this Services Agreement or as a result of the Services performed hereunder. To the extent the Parties wish to grant to the other rights or interests in pre-existing Intellectual Property, separate license agreements on mutually acceptable terms will be executed. Nothing in the section shall be deemed a modification or amendment of any terms relating to intellectual property rights set forth in the Installation Agreement.
 - b. As used herein, "Intellectual Property" shall mean inventions (whether or not patentable), works of authorship, trade secrets, techniques, know-how, ideas, concepts, algorithms, and other intellectual property incorporated into any software or tools and first created or developed by SAIC in providing the Services.
3. **Termination.**
 - a. Either Party may terminate this Services Agreement if (i) the other Party fails to perform a material obligation of this Services Agreement in accordance with its terms and does not cure such failure within a period of thirty (30) days after receipt of notice from the non-breaching Party specifying such failure; or (ii) the other Party becomes insolvent or the subject of proceedings under law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts generally as they become due. If termination occurs due to a material breach by SAIC, the Tollway shall be entitled to a refund of any pre-paid fees for Services for the period commencing at termination through the end of the pre-paid period of performance.

- b. Neither the Tollway nor SAIC shall have the right to terminate this Services Agreement without cause during the Initial Term. For any Renewal Term, either the Tollway or SAIC may terminate this Services Agreement without cause upon thirty (30) days' written notice.

4. **Limited Warranty.**

- a. SAIC warrants repairs against defects in materials and workmanship for a period of ninety (90) days after the date of repair. SAIC warrants that the repairs provided under this Services Agreement shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing the same or substantially similar repairs. In the event of any breach of the foregoing warranty, provided the Tollway has delivered to SAIC timely notice of such breach, SAIC shall, at its own expense, re-perform the non-conforming repairs to this standard.
- b. THE EXPRESS WARRANTIES AND REMEDIES IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES FOR BREACH OF WARRANTY PROVIDED BY SAIC. SAIC SPECIFICALLY DISCLAIMS AND THE TOLLWAY WAIVES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, STATUTORY OR OTHERWISE, AS WELL AS ANY WARRANTIES ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE OR PAST DEALINGS BETWEEN THE PARTIES.
- c. The Tollway represents and warrants to SAIC that the Tollway has the right to use and furnish to SAIC for SAIC's use in connection with this Services Agreement any information, specifications, data or Intellectual Property that the Tollway has provided or will provide to SAIC in order for SAIC to perform the Services and to create any deliverables requested by the Tollway.

5. **Limitation of Liability.**

- a. SAIC's total liability to the Tollway for any and all liabilities, claims or damages arising out of this Services Agreement, howsoever caused and regardless of the legal theory asserted, including breach of contract or warranty, tort, strict liability, statutory liability or otherwise, shall not, in the annual aggregate, exceed the amount paid during the Initial Term; or in the case of a Renewal Term, the amount paid or payable under the current Renewal Term.
- b. In no event shall SAIC be liable to the Tollway for punitive, exemplary, special, indirect, incidental or consequential damages (including, but not limited to, lost profits, lost business opportunities, loss of use or equipment down time, and loss of corruption to data) arising out of or relating to this Services Agreement, regardless of the legal theory under

which such damages are sought, and even if the Parties have been advised of the possibility of such damage or loss.

6. **Non Waiver of Rights.** The failure of either party to insist upon performance of any provision of this Services Agreement, or to exercise any right, remedy or option provided herein, shall not be construed as a waiver of the right to assert any of the same at any time thereafter.
7. **Rights and Remedies Not Exclusive.** Unless otherwise expressly provided herein, no right or remedy of a Party expressed herein shall be deemed exclusive, but shall be cumulative with, and not in substitution for, any other right or remedy of that Party.
8. **Severability.** If any covenant, condition, term or provision contained in this Services Agreement is held of finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such covenant, condition, term, or provision shall be severed from this Services Agreement, and the remaining covenants, conditions, terms and provisions contained herein shall continue in force and effect, and shall in no way be affected, prejudices or disturbed thereby.
9. **Assignment and Subcontractors.** Neither Party may assign its rights or duties under this Services Agreement without the written consent of the other party. The Tollway agrees that SAIC may engage the services of independent contractors to assist in the performance of its duties hereunder; however, such engagement shall not relieve SAIC of its obligations and responsibilities under this Services Agreement.
10. **Compliance with Law.** SAIC shall comply with all local, state and federal laws, regulations and ordinances applicable to the Services to be performed.
11. **Interpretation.** The captions and heading used in this Services Agreement are solely for the convenience of the Parties and shall not be used in the interpretation of the text of this Services Agreement.
12. **Multiple Copies or Counterparts of Agreement.** This Services Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Services Agreement shall not be effective until the execution and delivery between each of the Parties of at least one set of the counterparts.
13. **Force Majeure.** Neither Party shall be liable for any failure of or delay in the performance of its obligations under this Services Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the Party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or

delay of third parties or governmental bodies from whom a Party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach or failure to perform this Services Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither Party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

14. **Relationship of Parties.** SAIC is an independent contractor in all respects with regard to this Services Agreement. Nothing contained in this Services Agreement shall be deemed or construed to create a partnership, joint venture, agency or other relationship other than that of contractor and customer.
15. **Third Party Beneficiaries.** This Services Agreement does not create, and shall not be construed as creating, any rights or interests enforceable by any person not a party to this Services Agreement.
16. **Modifications, Entire Agreement.** No modifications of this Services Agreement shall be effective unless in writing and signed by authorized representatives of the Parties. This Services Agreement, including any and all exhibits or appendices attached hereto, all of which are incorporated herein by this reference, constitute the entire agreement and understanding between the Parties hereto and supersedes and replaces any and all prior or contemporaneous proposals, agreements, understandings, commitments or representations of any kind, whether written or oral, relating to the subject matter hereof or the Services to be provided hereunder.
17. **Fees and Taxes.** The prices set forth herein do not include sales or use taxes or gross receipts taxes or other applicable state or local government taxes which may be applicable to the goods and/or services delivered hereunder. Unless SAIC receives a sales tax certificate which exempts the goods and/or services from such taxes, SAIC shall invoice and the Tollway shall reimburse SAIC for the tax in addition to the stated prices set forth herein.