



# FLEET PARTICIPATION AGREEMENT

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**SAMPLE**  
Applus<sup>+</sup>  
Technologies

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Phone 847-616-6000  
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9/4/2008

## FLEET INSPECTION AGREEMENT

This Fleet Inspection Agreement "Agreement" is entered into by and between Applus Technologies, Inc., a Delaware corporation with its principal offices at 444 N. Michigan Ave., Ste 1110, Chicago IL 60611 "Applus+" and \_\_\_\_\_, with offices located at \_\_\_\_\_ "POIS".

WHEREAS, the State of Illinois, through its Environmental Protection Agency, released Request for Proposals EPA-604 Vehicle Emissions Testing Services for the performance of vehicle emissions inspections and related services under the State's Vehicle Emissions Inspection Program;

WHEREAS, Applus+ submitted a response to the RFP as the Prime Contractor;

WHEREAS, Applus+ has been awarded the Prime Contract for such RFP (Agency Service Contract VI-7303, dated June 14, 2007);

WHEREAS, POIS owns and operates a fleet of fifteen (15) or more vehicles and wishes to establish a Private Official Inspection Station as permitted by ILCS 625 5/13C (the "Inspection Law"); and

WHEREAS, Applus+ wishes to extend to POIS certain benefits and obligations under the Prime Contract and the Inspection Law, and POIS wishes to undertake such benefits and obligations to conduct testing of its fleet vehicles.

NOW THEREFORE, in consideration of the terms and conditions herein set forth, the parties agree as follows:

### 1. Definitions

- 1.1. For purposes of this Agreement, each of the following terms shall have the meanings set forth below:
  - a. "Agreement" shall mean the terms and conditions contained in this document, including any Attachments or Exhibits attached hereto and all specifications and documents made a part of this Agreement or incorporated herein by reference.
  - b. "Commencement Date" shall mean the date that POIS begins to perform Inspections.
  - c. "Database" or "VID" shall mean the central computer systems, communications devices, and software that Applus+ shall establish and maintain to collect, store, analyze, and report data on the Program.
  - d. "Day" shall mean calendar day unless otherwise stated.
  - e. "Expiration Date" shall mean the date on which the Prime Contract is scheduled to be completed if it were to be performed to its conclusion without being terminated earlier or otherwise cancelled.
  - f. "Fleet Inspection Permit" means a permit issued to fleet self-testers in accordance with 35 Illinois Administrative Code, Ch. II, Sec.276.701 Subpart G.

- g. "Fleet Inspection Training" means a training course given by the Agency consisting of at least 20 hours of classroom instruction (which will include 10 hours of video/computer-based training) that must be successfully completed by all fleet personnel. In addition, the Fleet Inspection Training will consist of a minimum of 10 hours of field (hands-on) instruction.
- h. "Fleet Inventory" shall mean each vehicle which has been registered with IEPA for the purpose of fleet self-testing and which has been assigned a test month.
- i. "Fleet Vehicle" means any non-exempt vehicle registered with the Agency for the purpose of fleet self-testing.
- j. "IEPA" shall mean the Illinois Environmental Protection Agency.
- k. "ILCS" shall mean the Illinois Compiled Statutes, as amended.
- l. "Initial Term" shall mean the Initial Term as defined in the Prime Contract, as amended.
- m. "Inspection" shall mean the emissions inspection of a motor vehicle conducted by an Inspector at an Inspection Station under the Program in accordance with applicable laws, rules, and regulations.
- n. "Inspection Station" shall mean each POIS which has executed a Station Participation Agreement with Applus+ to perform Inspections in accordance hereto.
- o. "Inspection Station Network" shall mean the entire system of Inspection Stations in the Program.
- p. "Inspector" shall mean an individual who is properly trained and certified to perform Inspections.
- q. "Operating Manual" shall mean the operating manual developed and issued by Applus+ to Franchisees for the proper performance of Inspections.
- r. "Option Term" shall mean Option Term as defined in the Prime Contract, as amended.
- s. "Prime Contract" shall mean the contract between Applus+ and IEPA, as amended (Agency Service Contract VI-7303).
- t. "Prime Contactor or Contractor" means Applus+ Technologies, Inc.
- u. "Official Inspection Station" means a vehicle emission inspection facility operated by the Agency or the Agency's Contractor for the purpose of conducting emission inspections on non-fleet vehicles.
- v. "Private Official Inspection Station" means a vehicle emission inspection facility operated by a registered owner or lessee of 15 or more non-exempt fleet vehicles.
- w. "Program" shall mean the Vehicle Emissions Testing Services Program established by the Illinois Environmental Protection Agency.
- x. "State" shall mean the State of Illinois and its entities.
- y. "Test Fee" shall mean the amount that Applus+ shall receive from Applus+ for emissions test performed. This fee shall compensate Applus+ for all services performed and all goods supplied pursuant to this Agreement, except as specified otherwise.
- z. "Workstation" shall mean the complete set of hardware, software and accessories located at an Inspection Station and used to conduct emissions tests.
- aa. "VID" shall mean Applus+' Vehicle Inspection Database.

- bb. "Video Monitoring Device" shall mean surveillance equipment provided to POIS by Applus+.
- cc. "Vehicle Inspection Report" or "VIR" shall mean a report indicating the results of an emission inspection or waiver determination.

**2. CONTRACT DOCUMENTS.**

- 2.1. The following documents comprise this Agreement:
  - a. The Prime Contract, including any schedules, attachments, references, plans and specifications;
  - b. This Agreement, including any attachments and appendices; and
  - c. Any other contract documents which are incorporated herein by reference and made a part hereof.
- 2.2. In the event of any conflict between the provisions of the foregoing documents, the conflict shall be resolved by giving priority to the documents according to the order set forth in Section 2.1 above.

**3. SCOPE OF WORK.**

- 3.1. **Acceptance Testing.** POIS shall cooperate fully with Applus+ and IEPA staff in the performance of required system acceptance testing prior to the Commencement Date.
- 3.2. **Inspection Services.** All Inspections performed by POIS shall be performed in accordance with this Section and the Prime Contract.
  - a. Inspection Equipment. IEPA shall have the absolute right to approve all inspection equipment prior to and during its use including any modification thereto. All Inspections performed hereunder shall be conducted by properly certified Inspectors with the use of the Workstation and in strict compliance with accepted test protocols as established by Applus+ and IEPA.
  - b. Certification of Inspectors, Other Personnel. POIS shall cause its personnel directly involved in the performance of emissions inspections, including, but not limited to Inspectors and their direct supervisors to participate in Applus+ training and certification programs approved by IEPA. All Inspections performed by POIS shall be performed exclusively by properly trained and certified Inspectors.
- 3.3. **Data.** IEPA shall have and maintain ownership of all emissions test and vehicle repair data and results. In addition to the obligations set forth in Section 13 below, POIS may not use for any purpose other than that which is permitted hereunder any information in connection with the Program, including but not limited to emissions test and vehicle repair data and results, and any Confidential Information as hereinafter defined. In the event of a breach by POIS of its obligations hereunder, POIS shall hold harmless and indemnify Applus+, IEPA, and/or third parties for damages resulting from such breach. In addition, POIS may be liable for damages under any agreements it may have with IEPA and/or other State entities.

#### 4. RESPONSIBILITIES OF POIS.

- 4.1. **Cooperation.** POIS agrees that it will fully cooperate with Applus+ and IEPA in the performance of work hereunder and will be available for consultation in meetings at times and places as may be agreed by the parties. Furthermore, POIS shall enter into any necessary agreement with IEPA and/or any other state agencies which require agreements concerning performance of testing under the Prime Contract, including, but not limited to data transfer access agreements with the office of the Illinois Secretary of State.
- 4.2. **Site Assessment.** Applus+ will perform a Site assessment visit to 1) evaluate and verify POIS's eligibility to participate in the Program, 2) determine if POIS meets minimum requirements such as but not limited to adequate and safe on-site parking and queuing areas, a safe, clean, accessible, and well-ventilated waiting area for testing; and 3) determine what minor modifications to POIS's facility (if any are necessary for POIS to participate in the Program). POIS will provide Applus+ representatives and/or their designees with full access to the Site.
- 4.3. **Access.** During the term of this Agreement, POIS shall continue to provide Applus+ and IEPA representatives with full access to the Site and the Workstation, at reasonable times during normal business hours, for purposes of assessing compliance with the Program, the condition of the Site and the Workstation, delivering and installing the Workstation, performing calibration and accuracy checks, performing maintenance and repairs, updating Workstation software and hardware, and conducting audits and evaluations as provided in Section 5.5. Inspection Station shall provide Applus+ with adequate power, light, heat, and workspace for any such activities.
- 4.4. **Testing Limitations.** Within thirty (30) days prior to the Commencement Date, POIS shall provide IEPA with a list of each vehicle owned by POIS ("Fleet Inventory List"). In the event POIS acquires or disposes of any of its vehicles, POIS shall provide an updated list to IEPA within ten (10) days of such acquisition or disposal. POIS may test only those vehicles that appear on the Fleet Inventory List. In the event POIS tests any vehicles other than those listed on the Fleet Inventory List, Applus+ may lockout the Workstation, suspend POIS and/or its Inspector(s), remove the workstation, and/or terminate this Agreement
- 4.5. **Fleet Inspection Permit.** POIS's participation in the Program is conditioned on POIS's obtaining a Fleet Inspection Permit as required by IEPA and applicable law.
- 4.6. **Furnishing of Materials.** Except as otherwise provided herein, POIS shall furnish all supervision, labor, insurance and all other items necessary for the completion of the work described herein and work incidental thereto (collectively, the "Work"), in strict accordance and in full compliance with the Contract Documents, this Agreement, plans and specifications, and any modifications and/or amendments thereto. However, POIS shall not effect any modifications or repairs on the Workstation.

- 4.7. **Quality of Work.** POIS shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services, systems, and products furnished to POIS and their employees, under this Agreement. In performing the specified work POIS shall follow practices consistent with the Prime Contract, generally accepted professional and technical standards, and such other standards as may be established by IEPA and Applus+, and comply with all applicable local, state, and federal laws, regulations and orders. POIS shall also comply with federal, state and local tax law, social security acts, unemployment compensation acts, and worker's compensation acts insofar as applicable to the performance of this Agreement, and all laws applicable to the prevention of discrimination in employment.
- 4.8. **IEPA Approval.** This Agreement shall meet the approval of IEPA. This Agreement shall not be binding upon Applus+ until such time as the Agreement and POIS have been approved by IEPA. In the event Applus+ is unable to obtain IEPA's approval of this Agreement, this Agreement shall then terminate without liability or obligations of any kind from Applus+ to POIS.
- 4.9. **POIS Personnel Performing Work Under This Agreement.** POIS personnel utilized in the performance of POIS's obligations hereunder shall be subject to satisfactory background and drug test results as established by Applus+ and approved by IEPA.
- 4.10. **Inspection Equipment.** The inspection equipment provided by Applus+ hereunder shall remain the property of Applus+ at all times.
- a. Workstation. Applus+ shall provide and deliver a Workstation to POIS's location. At a minimum, each Workstation will consist of the following components:
- i. Computer (processor)
  - ii. Color display monitor
  - iii. Barcode scan tool
  - iv. OBD interface and connector cable
  - v. BAR 97 Gas Bench (optional)
  - vi. Probe Hoses
  - vii. Tachometer module
  - viii. Interconnect cables
  - ix. Video monitoring device
  - x. Iris scan tool

To accommodate the need for Workstation replacement components or additional Workstations, Applus+, in its sole discretion, may substitute any listed component with a similar component. Applus+ may also elect, in its absolute discretion, to provide more than one Workstation to POIS.

- b. Delivery. Under normal circumstances, Applus+ shall deliver and install the Workstation to POIS, provided that POIS's obligations are timely and properly completed in accordance with this Agreement. Upon delivery, POIS

must notify Applus+ within twenty-four (24) hours upon discovery of any inoperable or damaged Workstation or component thereof. POIS shall not move the Workstation or any of its components from the Site without Applus+' prior written consent and instructions. If POIS notified Applus+ that the Site was ready for Workstation installation, and Applus+' installation crew is unable to fully install the Workstation on the first visit due to incomplete or improper Site modifications, Applus+ will charge POIS, and POIS will pay Applus+ at Applus+' then-current rates, for the return of the installation crew for completion of the Workstation installation.

- c. Installation. POIS shall comply with all Applus+-supplied installation requirements and this Agreement in preparing the Site to operate as a Program Station. POIS shall be responsible for all necessary modifications to the Site and all costs associated with such modifications, and shall ensure that all such modifications meet all state and local zoning regulations and building and electrical codes. POIS acknowledges that time is of the essence for Applus+ to meet its obligations to IEPA and POIS further acknowledges that in order for the Program to begin as scheduled, it is critical that POIS timely prepare the Site. If POIS does not timely and properly make all necessary Site modifications, Applus+, in its sole and absolute discretion, may: (a) delay the installation of the Workstation, or (b) terminate this Agreement.
- d. Schedule. To ensure that POIS is ready to perform Inspections by the Commencement Date, POIS shall by that date have: (a) all initial Site modifications required for Workstation installation and operation properly completed within forty-five (45) days following IEPA's approval of the Workstation configuration and successful acceptance testing thereof; (b) provided Applus+ with a certificate of insurance as required in Section 7.2 prior to delivery of the Workstation; (c) final Workstation hookup tasks properly performed within fifteen (15) days following Workstation installation; (d) at least one certified Program inspector on staff pursuant to Section 3.2(c); (e) accepted delivery and installation of the Workstation as scheduled by Applus+; and (f) timely performed all other obligations and provided any other documentation as set forth in this Agreement that are required to be performed or provided before Inspections may begin at the Site.
- e. License. During the Term, Applus+ shall grant to POIS a limited, non-exclusive, and royalty-free license to use the Workstation Software solely in connection with POIS's rights and obligations hereunder. Except as otherwise provided in Section 11, this license shall automatically terminate upon the termination or expiration of this Agreement. License of the Software hereunder shall be terminable by Applus+ in the event of POIS's material breach of such license.
- f. Limitations. POIS shall, during the Term of this Agreement and after the expiration or termination thereof, ensure compliance with the following obligations:

- i. POIS shall not reverse engineer, decompile, or disassemble any of the Software, or transmit or otherwise transfer any of the Software to any third party.
- ii. Should copies of any of the Software bear Applus+' and/or its suppliers' copyright notice(s) and such other proprietary legends as may appear on the Software upon its receipt by POIS, POIS shall not remove any such notices or legends.
- iii. POIS shall treat all Software as confidential and shall not use, copy, disclose, or permit any POIS personnel to use, copy, or disclose, such Software for any purpose that is not specifically authorized hereunder. Any third party desiring to use the Software may do so only with specific prior consent of Applus+ and a mutual written agreement between such third party and Applus+.
- iv. POIS shall not install or download onto the Workstation any software whatsoever, third-party otherwise, including screen savers, except at Applus+' direction or with Applus+' prior express written consent.

g. Ownership. Title to the Workstation shall pass to POIS upon payment in accordance with Section 9 below. The Workstation software and intellectual property including but not limited to trademarks, service marks and logos is and shall remain the exclusive property of Applus+. POIS shall not remove any identification plates, decals or stickers on the Workstation.

All rights in the Workstation and Software not expressly granted herein are reserved to Applus+ and its supplier(s), which shall retain ownership of all Software.

- 4.11. **Video Monitoring Device.** POIS shall permit Applus+ to install and operate, at Applus+' expense, a Video Monitoring Device in each lane or bay where Inspections are conducted.
- 4.12. **No Subcontracting.** POIS shall not subcontract any part of the Work hereunder without the express written approval of Applus+ and IEPA. No subcontract by POIS shall relieve POIS of its obligations under the Contract Documents, including this Agreement. POIS shall comply with all federal, state, and local laws in the performance of this Agreement.
- 4.13. **Access.** During the Term, POIS shall continue to provide Applus+ and IEPA representatives with full access to the Site and the Workstation, at reasonable times during normal business hours, for purposes of assessing compliance with the Program, the condition of the Site and the Workstation, delivering and installing the Workstation, performing calibration and accuracy checks, performing maintenance and repairs, updating Workstation software and hardware, and conducting audits and evaluations as provided in Section 5.5. POIS shall provide Applus+ with adequate power, light, heat, and workspace for any such activities.
- 4.14. **Personnel Training, Certification, Employment and Surveillance.**

- a. Training. Applus+ will provide Inspector Training for POIS's facility employees during each calendar year at a rate of one hundred and fifty dollars (\$150) per trainee. Upon a trainee's successful completion of the training, such trainee shall be certified as a Program Inspector. Applus+ will provide training for POIS's employees at scheduled times. Due to class size limitations, it may not be possible for Applus+ to reschedule POIS's employees who fail to attend their originally scheduled training class.

Applus+ will provide at Applus+' Illinois Program Headquarters' training center or at any other location as determined in Applus+' sole discretion free re-certification training for all certified Program Inspectors every two (2) years during the Term.

Applus+ may require any Inspector who fails to perform inspections in accordance with approved operating procedures to obtain remedial training at Applus+' Illinois Program Headquarters or at any other location as determined in Applus+' sole discretion at POIS's expense.

- b. Certified Program Inspectors. Only Inspectors certified by Applus+ may perform Inspections and each such certified Inspector shall be required to pass an iris scan prior to conducting any inspection. In the event that POIS fails to comply with these requirements, Applus+ may terminate this Agreement.
- c. Employment and Surveillance. POIS will employ person(s) who are or can be qualified to be a Program Inspector(s), informing each such person that (i) their employment is expressly conditioned upon their properly and satisfactorily performing all duties set forth in the Operating Manual, and (ii) they will be subject to video and audio surveillance and unannounced inspections or surveillance by Applus+, its subcontractors, and IEPA.
- d. Compliance With Laws. POIS shall, at all times during the Term, comply with all local, state and federal laws, rules and regulations pertaining to labor and employment.

## **5. PROGRAM OPERATIONS COMPLIANCE**

- 5.1. **Compliance with Operating Manual.** POIS's use of the Workstation and all aspects of POIS's business must comply with the Operating Manual, which shall be provided to POIS along with the Workstation. POIS shall be responsible for ensuring that the Operating Manual is current at all times. The Operating Manual shall be considered a Confidential document, and shall be handled accordingly, provided however, that all Inspectors, managers and customer service personnel have access to the manual. All POIS personnel must comply with all requirements and procedures specified in the Operating Manual. The Operating Manual and its contents shall remain the property of Applus+. Any violation of the Operating Manual may result in

Applus+' lockout of the Workstation, suspension of POIS and/or its Inspector(s), removal of the Workstation, and/or termination this Agreement.

- 5.2. **Compliance with Laws.** POIS's use of the Workstation and all aspects of POIS's business must comply with all applicable local, state, and federal laws, rules and regulations (collectively, "Laws"). POIS shall maintain in good standing at all times during the Term all certificates, permits, and licenses necessary to conduct its operations, including but not limited to a valid motor vehicle dealer/repairer license issued by the State of Illinois, and a Fleet Inspection Permit in accordance with Section 4.5. Any violation of any Laws and/or POIS's inability to maintain a proper Fleet Inspection Fee may result in Applus+' lockout of the Workstation, suspension of POIS and/or its Inspector(s), removal of the Workstation, and/or termination this Agreement. Under no circumstances
- 5.3. **Suspension and Revocation.** POIS's performance hereunder may be suspended by Applus+ at any time in Applus+' sole discretion for a violation of this Agreement. If POIS's performance is suspended during the Term, Applus+ may lock out the Workstation and subsequently reinstate the Workstation or terminate this Agreement.
- 5.4. **Safe Operation.** POIS and its employees shall operate the Workstation for Inspections and/or for vehicle repair diagnostic procedures only in accordance with the Operating Manual, all other instructions provided by Applus+, and all Laws. POIS shall ensure that the Workstation is used at such times and in such a manner as to ensure the safety of the public and POIS's personnel. POIS shall immediately suspend use of the Workstation and so notify Applus+' Program Manager in writing upon any indication that a Workstation malfunction may affect the safety of the public or POIS's personnel or the accuracy of Inspection results.
- 5.5. **Quality Control; Audits.** The Program quality control procedures, which procedures set forth (among other things) standards for record keeping, inspection procedures, safety, security of VIR's, and inspection certificates, and other measures Applus+ may specify, are included in the Operating Manual, and POIS shall comply with all such procedures. POIS shall cooperate in all Program evaluation activities and all Program audits conducted by Applus+ and IEPA representatives, including but not limited to Workstation and POIS inspection procedures. POIS shall also allow Applus+ and IEPA reasonable access to conduct any audit, monitor, or oversight activities.
- 5.6. **Workstation Lockouts.** Applus+ may lock out the Workstation from testing at any time Applus+ deems it reasonably necessary for the security of the Program, accuracy of Inspections, data transmission problems, at the direction of IEPA, or any other matter related to optimum operation of the Program and/or compliance with this Agreement.
- 5.7. **Telecommunications.** POIS shall provide a high speed internet connection and a static IP address to be dedicated solely to the Workstation for purposes of transferring data to and from IEPA and/or Applus+ host computer(s) or other communication devices. POIS shall provide this connection in advance of Workstation installation

and shall maintain availability of the dedicated connection at all times the POIS's facility is an authorized inspection location. The connection, at a minimum, shall allow real-time communication between the Workstation and the VID. All costs associated with the installation, maintenance and use of the dedicated connection are the responsibility of POIS. Applus+ shall be authorized to lock out the Workstation from performing off-line inspections until such time as the connection to the host computer via the dedicated connection is restored.

5.8. **Retention of Records.** To the extent possible, in the event POIS generates or receives any records relating to performance hereof which are not otherwise stored by Applus+, POIS shall maintain books and records relating to performance hereof for a period of at least three (3) years from the later of the date of final payment hereunder or completion thereof. The three 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 State Auditor General, IEPA, the State Inspector General and other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. POIS shall cooperate fully with any such audit.

5.9. **Nondiscrimination.** POIS agrees, in all solicitations or advertisements for employees placed by or on behalf of POIS, to state that it is an "Equal Opportunity/Affirmative Action Employer" in accordance with regulations adopted by the Illinois Department of Human Rights ("IDHR"). POIS agrees to the following provisions: POIS agrees and warrants that in the performance of this Contract, such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the State of Illinois, and that employees will be treated when employed without regard to their sexual orientation; and to post copies of the notice in conspicuous places available to employees and applicants for employment; POIS shall comply with each provision of this Section and with each regulation or relevant order issued by IDHR pursuant to 44 Ill. Admin Code 750; and POIS agrees to cooperate with IDHR and permit access to pertinent books, records, and accounts concerning the employment practices and procedures of Station which relate to the provisions of this Section and 44 Ill. Admin Code 750.

5.10. **Applicability of POIS's Obligations.** POIS's obligations pursuant to this Agreement shall apply to any and all work performed by or for POIS, including but not limited to change order work, extra work, and work performed by POIS on behalf of Applus+ or any third party.

## **6. MAINTENANCE AND REPAIR**

6.1. **Applus+ Maintenance.** Applus+ will provide the maintenance and repairs of the Workstation (including parts and labor) that are not required to be performed by POIS pursuant to this Section 6. Applus+ will provide such services between 8:00 a.m. to 6:00 p.m. CST, Monday through Friday, and 8:00 a.m. to 1:00 p.m. Saturday, excluding State holidays.

- 6.2. **POIS Maintenance.** Upon Workstation installation, Applus+ shall provide POIS with maintenance and calibration procedures documentation and training for POIS's maintenance and calibration obligations on the Workstation ("end-user maintenance"). POIS shall perform all end-user maintenance and calibrations of the Workstation in accordance with the procedures and schedules in such documentation. All such maintenance shall be limited to end-user serviceable items only. At the very least, POIS shall regularly clean the Workstation's exterior surfaces and replace printer paper and toner, as needed. POIS's failure to properly and timely perform end-user maintenance may result in termination of this Agreement.
- 6.3. **Abuse.** Applus+' maintenance obligations shall not include, and POIS shall be responsible for, maintenance and repairs required as a result of any damage caused by POIS's abuse, misuse, or negligence, or as a result of using any parts or supplies not provided by Applus+. POIS will pay Applus+ for any such maintenance and repairs on a time and materials basis at Applus+' then-current rates.

## 7. INSURANCE

- 7.1. **Insurance Coverage Requirement.** Throughout the term of this Agreement, POIS shall procure and maintain in force Worker's Compensation Insurance, Employer's Liability Insurance, Automobile Liability Insurance, Commercial General Liability Insurance, and all insurance required of Applus+ under the Prime Contract. Evidence of required insurance shall be furnished to Applus+ and IEPA prior to the commencement of the Work.

Applus+ (including its officers, employees, parents, subsidiaries, and related corporations) and IEPA (including its officers, officials, employees, agents, boards and commissions) shall be named and added as Additional Insureds on each of these policies except for Worker's Compensation. Failure by Applus+ to request POIS to provide proof of its compliance herewith shall not be interpreted as a waiver of this requirement. POIS's insurance policies shall state that they are primary and not additional to, nor contributing with, any other insurance carried by, or for the benefit of the Additional Insureds. Any such insurance maintained by an Additional Insured shall be excess of that maintained by POIS and Franchise's insurers shall have no right of recovery or subrogation against Applus+ or IEPA. Each liability policy of POIS shall contain a "separation of insureds" provision stating that, except for limits of liability, the policies shall operate as though separate policies had been issued to each insured.

All insurance policies purchased hereunder shall be maintained with insurers and under forms of policies approved by IEPA.

- 7.2. **Garage Liability/Garage Keepers' Insurance.** POIS, at its sole expense, shall secure and keep in full force and effect at all times during the Term, a garage liability/garage keepers' insurance policy(ies). POIS, at a minimum, shall secure one hundred thousand dollars (\$100,000) of such coverage per occurrence for property damage. Any such policy(ies) shall be provided by an insurance company(ies) licensed to do business in the State of Illinois. If a general aggregate is used, the

general aggregate limit shall apply separately to this Agreement, or the general aggregate limit shall be twice the occurrence limit. The garage/garage keeper policy shall cover all of the POIS's activities hereunder and state that it is primary insurance in regard to Applus+, its officers and employees, and shall identify Applus+ and IEPA as additional insured's.

- 7.3. **Additional Coverage.** POIS, at its sole expense, shall maintain in effect at all times during the Term the following additional insurance coverages with limits not less than those set forth below. All coverages shall be primary and noncontributory.

	<u>Coverage:</u>	<u>Minimum Amounts and Limits:</u>
a.	Workers' Compensation:	Illinois Statutory Requirements.
b.	Employer's Liability:	Minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
c.	Automobile Liability Insurance:	\$1,000,000 combined single limit per accident for bodily injury or property damage. Coverage extends to owned, hired and non-owned automobiles in the course of work hereunder.
d.	General Liability	\$1,000,000 per occurrence

If the State raises statutory minimum limits of liability from those required hereunder, then POIS will be required to amend its insurance coverage accordingly.

- 7.4. **Revisions In Accordance With State Requirements.** If the State of Illinois revises statutory minimum limits of liability from those currently in effect, POIS shall amend all insurance coverage accordingly.

- 7.5. **Verification of Insurance Coverage.** POIS will deliver certificates of insurance relating to all of the required insurance coverages to Applus+ and IEPA promptly following execution of this Agreement by POIS and prior to delivery of the Workstation before the POIS may begin its performance hereunder. The certificates shall provide that no less than thirty (30) days advance notice will be given in writing to Applus+ prior to cancellation, termination or alteration of such policies. The certificates shall clearly identify Applus+ and IEPA as additional insured's for all required coverages. Failure to timely provide Applus+ with certificates may result in lock out of the Workstation and/or termination of this Agreement.

**8. RESPONSIBILITIES OF APPLUS+.**

- 8.1. **Cooperation.** Applus+ agrees that it will cooperate with POIS in the performance of work hereunder and will be available for consultation in meetings at times and places

as may be agreed by the parties. All representations and agreements made by Applus+ must be approved by Applus+' Authorized Representative identified below.

- 8.2. **Periodic Review of Work.** Work performed by POIS pursuant hereto shall be subject to periodic review by Applus+' Authorized Representative and IEPA's designated representatives. The Authorized Representative shall review POIS's performance hereunder as needed. The Authorized Representative also shall have sole responsibility for notifying POIS of any material deficiency or breach of POIS's performance of its obligations hereunder. All communications relating to any such material deficiency or breach shall be made in writing.
- 8.3. **Provision of Data.** Applus+ may furnish or make available for examination by POIS, upon written request, any data relevant to POIS's work requirements hereunder which Applus+ has available or acquires from IEPA. Upon Applus+' request, POIS shall return or destroy any data provided by Applus+. The parties agree to cooperate to obtain data and documents from public officers or agencies and from private citizens and businesses whenever such material is requested by POIS and is reasonably necessary for the performance of POIS hereunder. In addition, Applus+ shall make available to POIS electronic records showing the number of tests performed by POIS in the Program.
- 8.4. **Inspection Equipment.** Applus+ shall provide a Workstation at no additional cost to POIS in accordance with Section 4.9 above. Applus+ shall provide all expertise, labor and materials required to design, develop, assemble, and test the Workstation. The delivered Workstation shall include all hardware, interconnects, cables, and software (third party and custom-developed software) necessary for its proper operation. Applus+ shall not be required to supply dynamometers, shop air compressors, vehicle cooling fans, facility modifications and any other instrumentation not herein set forth. Applus+ shall provide one copy per POIS of the Operating Manual for the Workstation. Applus+ may, from time to time, update the Operating Manual by issuing and delivering replacement and/or additional pages.
- 8.5. **Consumables.** Applus+ shall provide POIS with toner and VIR forms to be used with the Workstation (the "Consumables") in accordance with this Section. The volume of VIR forms to be provided by Applus+ shall be based on actual usage, as determined in Applus+' sole discretion, and Applus+ shall provide up to four (4) replacement Type 9 Toner Cartridges during each twelve month period during the Term. POIS shall reorder Consumables with sufficient time for Applus+ to provide such Consumables in a timely manner. POIS shall maintain VIRs in a secure location. POIS shall remain liable for stolen or missing VIRs relating to their center as Applus+ is liable to IEPA.
- 8.6. **Acceptance Test Procedure.** Applus+ shall develop a written acceptance test procedure ("ATP") for the Workstation to verify and document full compliance of the Workstation with the Prime Contract. After installation of the Workstation, Applus+ shall perform a test of the Workstation design by testing one or more of the Workstations provided, which specific Workstation location(s) shall be designated by Applus+. This design test shall also be known as the Final Commissioning ATP.

In addition to the Final Commissioning ATP, the Workstation location shall be tested prior to the Commencement Date.

- 8.7. **Applus+ Personnel.** In the design, development and supply of the Workstation, Applus+, at its sole discretion, shall utilize any individuals whom Applus+ believes to possess proper experience and credentials necessary to develop, build and deliver the Workstation.

Applus+ shall provide technical on-site personnel as needed as support to POIS during installation and operation of the Workstations upon commencement of vehicle inspections sufficient to train POIS personnel in the field service of the Workstation. Applus+ shall provide technical on-site personnel as needed to correct material defects in Applus+' design, materials, or workmanship.

- 8.8. **Workstation Software.** Applus+ may periodically develop and install software upgrades and/or updates on the Workstation which may change the operation of the Workstation and/or the VID. Such updates may be downloaded by Applus+ remotely or installed onto the Workstation directly, either by the POIS upon request by Applus+ or by Applus+ technicians. Except in the case of an emergency update, Applus+ shall notify the POIS at least twenty four (24) hours in advance of any upgrade or update that would affect the Inspector's operation of the Workstation. For purposes of this Agreement, an "emergency update" is defined as an instance where the proper operation of the VID is at risk, the ability of the POIS to conduct valid inspections is threatened, or at MEPA's direction.

**9. COMPENSATION.**

- 9.1. POIS shall make payments to Applus in accordance with the terms set forth in this Section 9. Except as otherwise provided herein, the parties stipulate and agree that total compensation to be paid hereunder is as set forth below in this Section 9.

- 9.2. POIS shall compensate Applus+ for equipment and testing hereunder shall be in accordance with one of the two methods listed the following table:

	Option 1 Purchase OBD-Only Workstations	Option 2 Purchase OBD- Only and Gas Bench Workstations
Equipment Cost	\$10,900.00	\$18,900.00
Monthly Maintenance Fee	\$190.54	\$292.38
Per Inspection Fee	\$6.95	\$6.95
Per Inspector Training Fee	\$150.00	\$150.00

POIS may elect either Option, provided however that prior to execution hereof, POIS must inform Applus+ of its selection of Option 1 or Option 2.

- 9.3. During the term of this Agreement, and in addition to payments for equipment and testing described in Section 9.1 above, POIS shall pay Applus+ a monthly maintenance fee which covers the scheduled and unscheduled maintenance of the Workstation in accordance with the following table:

Equipment Type	Price	Monthly		
		Maintenance Fee	Per Inspection Fee	Per Inspector Training Fee
OBD-Only Unit	\$ 10,900.00	\$ 190.54	\$ 6.95	\$ 150.00
OBD + Gas Analyzer	\$ 18,900.00	\$ 292.38	\$ 6.95	\$ 150.00

Applus+ shall invoice POIS on a monthly basis, and POIS shall make payments to Applus+ within thirty (30) days of the invoice date of each invoice received from Applus+.

- 9.4. **Payment for Liquidated Damages.** Applus+ and Franchisee agree that in the event that Applus+ incurs Liquidated Damages as a result of Franchisee's failure to perform its obligations hereunder, Franchisee will pay Applus+ damages calculated in accordance with the provisions set forth in Section 11 below. Any liquidated damages assessed by Applus+ against Franchisee shall be paid by Franchisee within thirty (30) days of receipt of Applus+' written notice of such assessment. In the event that Franchisee does not make such payment of liquidated damages within thirty (30) days of receipt of notice of such liquidated damages, Applus+ shall be entitled to withhold the amount of any outstanding liquidated damages from any earned and unpaid payments due Franchisee. In the event that Applus+ successfully renegotiates with IEPA any liquidated damages amounts which pass to Franchisee in accordance hereto, Applus+ shall equitably adjust those amounts due from Franchisee in the following monthly payment.

**10. CHANGES.**

- 10.1. **Changes to Scope of Work.** Subject to IEPA approval, Applus+ may, at any time and with reasonable notice and time for POIS to comply, by written order of its Authorized Representative, make changes within the general scope of this Agreement. If such changes cause an increase or decrease in POIS's cost or time required for performance of any work hereunder, an equitable adjustment shall be made to POIS's compensation and/or time for completion hereunder and this Agreement shall be modified in writing accordingly. Any claim for adjustment pursuant hereto must be asserted in writing within thirty (30) days from the date of receipt by POIS of Applus+' notification of such change or such claim shall be waived unless Applus+ grants, in writing, an extension of time within which POIS may assert such claim before the date of final payment hereunder.

Except as otherwise provided herein, no work for which any additional compensation will be charged by POIS shall be furnished without the written authorization of the Applus+ Authorized Representative. All change orders or amendments to the Work must be approved, in writing, by the authorized representative of each party.

No price adjustments shall be made for any such changes performed by POIS that have not been so requested by Applus+.

## **11. LIQUIDATED DAMAGES.**

11.1. **Assessed by IEPA.** If the Contract Documents provide for liquidated or other damages for delay, and are so assessed by IEPA against Applus+, then Applus+ may assess the same against POIS in proportion to POIS's share of the responsibility for such delay. However, the amount of such assessment shall not exceed the amounts assessed Applus+. The proportionate assessment of liquidated damages shall not otherwise limit Applus+' right to collect from POIS the additional actual damages incurred by Applus+ as a result of POIS's delay or default.

11.2. **Failure to Meet Contract Performance Requirements.** The parties agree that if POIS fails to meet the performance standards set forth in this Section, Applus+ will sustain significant and unquantifiable damages. Therefore, the parties agree that if POIS fails to meet the performance standards set forth in this Section, the damages shall be as described below, in addition to any other remedies available to Applus+ under law or equity pursuant to this Agreement.

- a. **Improper Inspection Procedures.** If Applus+ determines that one or more Inspectors are not performing their duties in accordance with Applus+' approved testing procedures, or if the Workstation is being operated or by unauthorized personnel, POIS may be assessed damages of seventy (\$70) dollars for each improper test or customer service function.
- b. **Vehicle Inspection Reports.** POIS shall maintain all Vehicle Inspection Reports as required by IEPA and applicable rules, laws and regulations.
- c. **Failure to Comply with Orders.** If POIS fails to comply with a request from Applus+ in accordance with Section 16.7, POIS shall not be entitled to any fee for tests conducted at such POIS's facility after the effective date stated in the request. In addition, POIS may be assessed liquidated damages of seventy (\$70) dollars for each test so conducted.
- d. **Failure to Cooperate.** POIS may be assessed damages of \$500 per instance per day for refusing to cooperate with Applus+, its designated representatives, and IEPA in the performance of POIS quality assurance audits.
- e. **Failure to Maintain Connectivity.** POIS may be assessed liquidated damages of seventy (\$70) dollars per offline test. At the election of Applus+, any extended failure to maintain connectivity to the Vehicle Inspection Database may result in station lockout until connectivity is restored.

11.3. POIS may appeal to Applus+ any assessment of liquidated damages which may be imposed. Unless such appeal is filed within ten (10) days after the assessment of liquidated damages, the assessment shall be deemed final. Applus+' failure to issue a

final determination within thirty (30) days after receiving POIS's appeal shall be considered a denial by the Applus+ of POIS's appeal. Any continuing dispute as to the liquidated damages assessed shall be governed by Section 19.

**12. PRODUCT OWNERSHIP.**

- 12.1. **Inspection Equipment.** Unless otherwise provided herein, Applus+ shall have and maintain ownership of the Workstation as provided herein. POIS shall have a limited, non-exclusive, royalty-free license to use the non-hardware items of the Workstation (its software, documentation, and results) for vehicle inspections in Illinois.
- 12.2. **Intellectual Property.** Applus+ shall have sole ownership of the intellectual property associated with the inspection equipment including know-how, trade secrets, patents, copyrights, software, and source code. Upon installation of the Workstation as described in Section 4.9(c) above, POIS shall be granted a limited, non-exclusive, royalty-free license to use the intellectual property associated with the Workstation for the purpose of performing vehicle inspections and in the Program.

**13. ADVERTISING.**

- 13.1. **References.** Neither party may use the other party's name, trademark, service mark or logo in any advertising, news release or in any other manner without the written consent of such other party. In addition, POIS may not use trademarks, service marks or logos owned by the State of Illinois in any advertising, news release or in any other manner without the written consent of IEPA.

**14. MUTUAL OBLIGATIONS.**

- 14.1. **Time is of the Essence.** POIS shall perform its obligations hereunder in accordance with its obligations hereunder. Time of POIS's performance is of the essence and POIS agrees to see to the performance of its work and the work of its subcontractors, if any, so that the Work may be completed in accordance hereto. POIS shall supply sufficient labor, material and access to its facility(ies) to enable Applus+ and IEPA to monitor POIS's performance hereunder in the time required by this Agreement or any other agreements between Applus+ and IEPA.
- 14.2. **Obligations Assumed.** POIS, as it relates to POIS's participation in the program, shall assume toward Applus+ all the obligations, risks and responsibilities that Applus+ by the Contract Documents, has assumed toward IEPA as it pertains to POIS's participation in the Program, and POIS is bound to Applus+ by those obligations in the same manner as Applus+ is bound to IEPA. In addition to Applus+' rights and remedies in this Agreement, Applus+ shall also have the benefit of all rights and remedies against POIS which IEPA, under the Contract Documents, has against Applus+, but only as it relates to POIS's participation in the Program.
- 14.3. **Limitation of Remedies.** POIS's rights against Applus+ (as opposed to POIS's obligations, risks, responsibilities and limitations) shall be limited solely to the rights

and remedies provided to POIS hereunder. POIS is not, and shall not, be deemed to be a third-party beneficiary of any of the Contract Documents or any other agreement relating to the Program.

- 14.4. **Approval.** POIS agrees that Applus+ and IEPA will each have the authority to reject the Work of POIS which does not conform to the Prime Contract. Applus+' and IEPA's decisions in this regard will be final and binding on POIS.
- 14.5. **Assignment.** POIS shall not assign this Agreement, nor its proceeds, nor subcontract the whole or any part of POIS's Work hereunder without the prior written approval of Applus+ and IEPA. Notwithstanding the foregoing, no consent shall be necessary for Applus+ to assign this Agreement to IEPA or any corporation or other entity succeeding to substantially all the assets or business of Applus+ whether by merger, consolidation, acquisition, or otherwise.

**15. CONFIDENTIALITY.**

- 15.1. **Confidential Information.** Applus+ and POIS recognize that it may be necessary to exchange certain confidential information during the course of this agreement. For purposes of this Agreement, the term "Confidential Information" shall include without limitation any and all information about the Program, business plans, research and development projects, product formulae, processes, inventions, designs, discoveries, or know-how, sales statistics, marketing surveys and plans, costs, profit or loss, prices and discount structures, and any and all information which Applus+ or its affiliates treat as confidential, and which is disseminated to POIS in connection with this Agreement and which is not readily available to persons not connected with Applus+. All such information shall be identified and treated as confidential by the disclosing party ("Owner").

The recipient ("Recipient") of confidential information shall exercise reasonable care to prevent its disclosure to any third party, and shall limit internal dissemination of confidential information within its own organization to individuals whose duties justify the need to know such information.

POIS shall not release or disclose to any member of the public, press, business entity or any official body or any third party, unless IEPA and Applus+ provides prior written consent permitting such release or disclosure: (i) any information concerning the services provided pursuant to the Agreement or any part hereof; or (ii) all data provided to POIS by Applus+ or IEPA or developed internally by POIS with regard to IEPA or the Program, including, but not limited to, all files, records, documents or other information as designated, whether prepared by IEPA or others, which may come into POIS's possession during the term of this Agreement. POIS shall forever keep all such information confidential, except where disclosure of such information by POIS is required by law, rule or regulation and such disclosure will be limited to that actually so required. Where such disclosure is required, POIS will provide advance notice to Applus+ and IEPA of the need for the disclosure. Further, POIS and its agents shall not disclose any information in violation of any data access agreement entered into with any State entity, including but not limited to the Office

of the Illinois Secretary of State, the Driver Privacy Protection Act, 18 U.S.C. 2721, C.G.S. Section 14-10, or any other applicable state laws and shall not market any data or information with respect to the Program whether or not obtained as a result of the performance of their responsibilities hereunder.

The Recipient of Confidential Information shall return to Owner immediately upon request and, in any event, upon the expiration or early termination of this Agreement, all documents and tangible items which belong to Owner or which contain or refer to any Confidential Information and which are in the Recipient's possession or under its control.

The Recipient of Confidential Information shall be under no obligation of non-disclosure with respect to information:

- a. Which is available to the general public at the time of disclosure,
- b. Which is obtained by the Recipient from a source other than the Owner,
- c. Which is known to the Recipient when received, or thereafter is developed independently by the Recipient, or
- d. Information that was disclosed by the Owner to a third party, excluding Recipient's affiliates and third parties with whom Recipient has similar confidentiality agreements.

## **16. TERMINATION.**

- 16.1. **Failure to Perform and Notice to Cure.** In the event that POIS fails to perform its obligations hereunder or materially breaches any term or condition of this Agreement, Applus+ may issue a written notice of default and provide a period of time within which POIS shall have the opportunity to cure. The amount of time allowed for cure shall be reasonably determined by Applus+ according to the time afforded to Applus+ under the Prime Contract and shall not diminish or eliminate POIS's liability for liquidated or other damages. Applus+ shall not be required to allow POIS to cure defects if the opportunity to cure is not feasible as reasonably determined by Applus+. Applus+ may terminate this Agreement for nonperformance, breach or default without allowing the opportunity to cure by POIS if IEPA terminates the Prime Contract or such portions thereof relating to POIS's work without allowing Applus+ the opportunity to cure.
- 16.2. **Termination for Convenience.** Subject to the provisions of this Section 16 Applus+ may, in its sole discretion, suspend or terminate this Agreement at any time during the Term by providing thirty (30) days' written notice to POIS. In the event of such termination, payment to POIS shall be limited to the extent of the payment for tests performed prior to the effective date of the termination notice.
- 16.3. **Termination by Mutual Agreement.** Applus+ or POIS may terminate this contract in whole or in part, at any time, by mutual agreement with sixty (60) days written notice and countersignature by the other party.
- 16.4. **Termination for Non-Payment.** POIS may terminate this contract in whole or in part for Applus+' breach of its payment obligations to POIS only after giving

Applus+ written notice of its intent to do so, which notice shall set forth in details any and all amounts claimed to be due and owing from Applus+, and only if Applus+ fails to pay amounts due and owing to POIS within a thirty (30) day cure period to pay any outstanding amounts. Said cure period shall begin on the date notice is received by Applus+.

- 16.5. **Termination for Default.** If POIS fails to perform its obligations hereunder and fails to cure within the period specified by Applus+ in accordance with Section 16.1 above, Applus+ may, in lieu of or in addition to the remedies provided herein, terminate this Agreement.

All of the costs incurred by Applus+ in so performing POIS's obligations hereunder, including reasonable overhead, profit, liquidated or consequential damages, and attorney's fees, shall be added to any monies due or to become due to Applus+. POIS shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Test Fee.

- 16.6. **Default.** Default, or a breach of a term or condition of this Agreement shall mean any one or more of the following events: (1) POIS fails to perform any required actions by the date required or by a later date as may be agreed to in a written amendment to the Agreement signed by both parties hereto; (2) POIS breaches any warranty or fails to perform or comply with any term or provision in the Agreement; (3) the consistent and regular non-performance of POIS hereunder; (4) POIS makes any general assignment for the benefit of creditors; (5) POIS becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (6) POIS becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors; (7) any receiver, trustee, or similar official is appointed for POIS; (8) POIS is determined to be in violation of federal, state, or local laws or regulations and that such determination, in Applus+' reasonable opinion renders POIS unable to perform any of its obligations hereunder.

- 16.7. **Procedure for Termination.** In the event of termination by Applus+ pursuant to this Section 16, Applus+' Authorized Representative shall terminate by delivering to POIS a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of a Notice of Termination and except as otherwise directed by Applus+' Authorized Representative, POIS shall immediately:
- a. Stop all Work as specified in the Notice of Termination;
  - b. Place no further subcontracts or orders for materials, services, or facilities related to POIS's performance of its obligations hereunder;
  - c. Complete performance of the Work or portions thereof not terminated in accordance with this Agreement;
  - d. Take any action that may be reasonably necessary, or that Applus+' Authorized Representative may reasonably direct for the protection and preservation of the property referenced herein that is in the possession of POIS and in which Applus+ has or may acquire an interest;

- e. Submit complete termination inventory schedules no later than thirty (30) days from the effective date of termination, unless extended in writing by Applus+ upon written request of POIS within this thirty (30) period;
- f. Allow Applus+ to access POIS's facility for retrieval of the Workstation;

16.8. **Rights and Obligations Upon Expiration or Termination.**

- a. Within ten (10) days of the expiration or termination of this Agreement, POIS shall provide Applus+ with accurate and complete copies of all written maintenance documentation relating to the Workstation during the Term of this Agreement.
- b. All Remedies. Applus+ may exercise any right or remedy available to it at law or in equity to enforce the provisions of this Agreement. POIS shall pay all of Applus+' costs for enforcing Applus+' rights hereunder, including but not limited to reasonable attorneys' fees. POIS acknowledges that the transactions of which this Agreement are a part are commercial transactions and hereby waives its right to notice and any applicable law with respect to any pre-judgment remedy that Applus+ may desire to use.

17. **FORCE MAJEURE**

- 17.1. **Force Majeure.** Except for payment of sums due, neither party shall be liable to the other or deemed in default hereunder if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" for purposes of this Agreement means an unexpected occurrence that is beyond the control of the affected party and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement.

Applus+ reserves the right to cancel the Agreement and suspend the Work hereunder during the time of force majeure, and POIS shall have no recourse against Applus+. Applus+ agrees to exercise such right only in the event that IEPA requires Applus+ to do so.

A breach by POIS, or a subcontractor or employee of POIS shall not be an event of force majeure for purposes of this Agreement.

18. **INDEMNIFICATION**

- 18.1. **Indemnity.** To the fullest extent permitted by law, POIS shall indemnify and hold harmless IEPA (including its officers, agents, officials and employees), the State

(including its officers, agents, officials and employees), and Applus+ (including its officers, employees, affiliates, parents, subsidiaries, and related corporations) from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of POIS's Work provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, where arising out of POIS's performance of this Agreement, or alleged to arise out of the performance of this Agreement, in whole or in part by any act or omission of POIS or anyone directly or indirectly employed by POIS. Such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section.

- 18.2. **Additional Indemnification.** POIS shall indemnify, defend and hold harmless IEPA (including its officers, agents, officials and employees) and Applus+ (including its officer, employees, affiliates, parents, subsidiaries, and related corporations) from and against any and all claims, demands, suits, actions, expenses, judgments, losses and liabilities, including fines and penalties, costs and attorney, consultant and expert fees arising out of POIS's performance of this Agreement, including those arising out of injury to or death of POIS's employees, subcontractors, employees of IEPA or the State of Illinois, or a member of the general public, whether arising before, during, or after completion of POIS's services hereunder and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence of POIS or its employees, agents, Franchisees, subcontractors, or a member of the general public, provided that the claim, demand, suit, action, expense, judgment, loss or liability is alleged to arise out of POIS's performance of this Agreement.
- 18.3. **Duty to Defend.** POIS shall: (i) at its own cost, expense and risk, appear and defend all claims defined in this Section that are brought or instituted by third persons, including, but not limited to, governmental, state, or local agencies, or employees of POIS against Applus+ or IEPA or the State of Illinois, or the agents or employees of any of them; (ii) pay and satisfy any judgment or decree that may be rendered against Applus+ or IEPA or the State of Illinois, or the agents or employees of any of them arising out of any such claim; and (iii) reimburse Applus+ or IEPA or the State of Illinois or their agents or employees for any and all legal expenses incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section.
- 18.4. **Intellectual Property.** POIS, at its own expense, will defend any claim or suit which may be brought against IEPA, the State or Applus+ for the infringement of United States patents or copyrights arising from POIS's performance of its obligations hereunder, Applus+', IEPA's or the State's use of any equipment, materials, or information prepared or developed in connection with performance of this Agreement and in any suit will satisfy any final judgment for infringement. Applus+ will give POIS prompt written notice of any such claim or suit and full right and opportunity to conduct the defense thereof, together will full information and all reasonable cooperation.

18.5. **Independence From Insurance** POIS's indemnity obligations remain independent from and not limited in any way by the insurance coverage requirements set out in Section 7. Nothing in this Section is intended to prejudice POIS's right to file counterclaims, third-party claims, or cross claims, as permitted by law.

**19. DISPUTE RESOLUTION.**

19.1. **Law and Effect.** This Agreement shall be governed by the law of the State of Illinois. POIS hereby agrees to accept jurisdiction of and service of process in the State of Illinois. In the event of any dispute involving this Agreement or POIS's Work performed or to be performed, or any claims by POIS, POIS shall continue to perform its Work without interruption, deficiency or delay in a diligent manner.

19.2. **Attorney's Fees.** Should Applus+ or POIS employ an attorney to initiate suit to enforce any provisions hereof, to protect its interest in any matter arising hereunder, or to collect damages for the breach of this Agreement, then all costs, expenses expended or incurred by the prevailing party in connection therewith, including reasonable attorney's fees, shall be paid by the non-prevailing party.

**20. MISCELLANEOUS PROVISIONS.**

20.1. **Further Assurances.** Upon request by Applus+, POIS shall execute and deliver such other documents and take such other actions as may be necessary to effect the terms of this Agreement.

20.2. **No Assignment.** POIS may not assign, sell, or transfer the Workstation or POIS's interest hereunder without Applus+' prior written approval. Notwithstanding, in the event the POIS's business is acquired by any purchaser, the POIS shall assign this Agreement and all of POIS's rights and obligations hereunder to such purchaser or the entity created by the purchaser for this business to which this Agreement pertains. In addition, in the event of such assignment, POIS shall not be subject to liquidated damages under Section 16.2 above, provided that POIS provides Applus+ with no less than thirty (30) days notice of such assignment. Applus+ may sell, assign, or transfer Applus+' rights in the Workstation or assign its rights hereunder to Applus+' financing institution(s) any successor entity or affiliate, or IEPA or a subsequent contractor designated by IEPA. Notwithstanding any other provision of this Agreement, all rights of POIS in and to the Workstation shall be subject and subordinate to the rights of Applus+.

20.3. **No Waiver.** No waiver, delay or failure to enforce any of Applus+' rights hereunder shall be effective unless in writing, and no such waiver shall preclude Applus+ from enforcing any such rights at a later time.

20.4. **Entire Agreement.** This Agreement represents the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior agreements or understandings, written or oral. No attempted modification or waiver of any of the provisions hereof shall be binding on either party unless in writing and signed by both parties. This Agreement may be executed in multiple counterparts,

each of which shall be deemed to be an original and all of which shall constitute one Agreement. This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

- 20.5. **Severability.** Each of the Sections contained in this Agreement shall be enforceable independently of every other Section in this Agreement, and the invalidity of any Section shall not invalidate or render unenforceable any other Section contained herein. If any Section or provision in a Section is found invalid or unenforceable, it is the intent of the parties that a court of competent jurisdiction shall reform the section or provisions to produce the nearest enforceable economic equivalent.
- 20.6. **Notice.** All notices required or permitted to be given hereunder by Applus+ to POIS shall be in writing and are effective when delivered by hand, facsimile, registered mail or electronic mail to the other party at the principal place of business of such other party.

Unless otherwise required by POIS, all notices required or permitted to be given hereunder by Applus+ to POIS shall be in writing and addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unless otherwise required by Applus+, all notices required or permitted to be given hereunder by POIS to Applus+ shall be in writing and addressed to:

Program Manager  
201 Hansen Court  
Suite 112  
Wood Dale, IL 60191  
(847) 616 - 6000

With a copy to:

Legal Department  
Applus Technologies, Inc.  
444 North Michigan Ave.  
Suite 1110  
Chicago, IL 60611  
(312) 644 - 3272

In addition, all notices required or permitted to be given in accordance with Section 15.1 above by POIS to IEPA shall be in writing, with a copy to Applus+, and are effective when delivered by hand, facsimile, registered mail or electronic mail to the IEPA at the following address:

Christopher P. Demeroukas  
1021 North Grand Ave., East  
P.O. Box 19275  
Springfield, Illinois 62794-9275

20.7. **No Agency or Joint Venture.** Nothing contained herein shall be construed to cause POIS to become an agent for, or joint venturer with, Applus+ for any purpose whatsoever.

20.8. **Term.** This Agreement shall commence on the date first set forth above and continue through the Initial Term and one or both of the Option Terms (if exercised by IEPA) contained in the Prime Contract, so long as POIS remains a POIS in the Program. The rights and obligations of the parties which by their nature survive termination or completion of the Agreement, including but not limited to, those set forth in Sections relating to indemnity, nondisclosure and confidentiality, shall remain in full force and effect following the term of this Agreement.

IN WITNESS WHEREOF, intending to be bound as of the Effective Date, each of the Parties has caused this Agreement to be executed by its duly authorized representative.

**Applus Technologies, Inc.**

**POIS.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_