

Department of Natural Resources and Environmental Control
CONTRACT FOR PROFESSIONAL SERVICES (Amendment to Extend)
Federal Funds

THIS CONTRACT, is made between **Vel Micro Works, Inc.** "CONTRACTOR" and the Department of Natural Resources and Environmental Control ("DEPARTMENT"), as follows:

1. Service Contract. **(Amendment to Extend Contract One (1) Year - 1 July 2012- 30 June 2013)**

DEPARTMENT agrees to pay CONTRACTOR and CONTRACTOR agrees to perform certain technical or professional services.

2. Scope of Services.

The Department proposes to extend for one (1) year (1 July 2012 - 30 June 2013) the contract to develop a toll free IVR telephone-based and web-based automated data collection application for four different hunter-related programs. This contract was awarded last year and is attached as Attachment 1. Also attached are the amendments to this previous contract pertaining to Information and Technology (IT) requirements associated with these services (Attachments 2 and 3). These amendments are to be signed and incorporated into this new amended contract.

Data Furnished to CONTRACTOR.

DEPARTMENT shall furnish all information, data, reports, records, and maps as existing, available, easily retrievable and necessary for the execution of the work to CONTRACTOR, without charge by DEPARTMENT, and DEPARTMENT shall reasonably cooperate with CONTRACTOR in carrying out the work.

3. Personnel.

- A. CONTRACTOR represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract.
- B. CONTRACTOR, or persons under CONTRACTOR'S supervision, shall perform all of the services required by this Contract, and all personnel engaged in the work shall be fully qualified and shall be authorized to perform such services.
- C. CONTRACTOR shall not subcontract any of the work or services covered by this Contract without the prior written approval of DEPARTMENT.

4. Time of Performance.

The services of CONTRACTOR are to commence as soon as practicable after the execution of this Contract and shall be undertaken in such sequence as to assure their expeditious completion in the light of the purposes of this Contract, but in any event all of the services required by this CONTRACT shall be completed for Year 1 no later than **30 June 2013 with additional agreed upon dates for specific data deliverables.** Time is of the essence in this Contract. This Contract includes the option of renewal for **one additional year** upon agreement of both parties and at the DEPARTMENT'S sole discretion.

5. Total Cost and Compensation.

- A. It is agreed that the total cost for the services provided under this Contract shall not exceed **\$18,455 (\$3,000 onetime payment for program upgrades/modifications and \$0.55/successfully completed record).**
- B. CONTRACTOR is responsible for costs incurred in excess of the total cost of this Contract and DEPARTMENT is not liable for such costs.
- C. Notwithstanding other terms and conditions of this Contract, it is understood and agreed that the total cost and compensation under this Contract shall not exceed the funds made available to the **State of Delaware and DEPARTMENT by the U.S. Fish and Wildlife Service for this project.**

D. Condition Precedent: The rights and obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed purchase order is approved by the Secretary of Finance and received by CONTRACTOR. The rights and obligations of DEPARTMENT under this Contract are limited to the amount of any approved purchase order.

6. Obligations and Payment.

A. The obligations of the DEPARTMENT under this Contract shall be subject to the receipt of sufficient funds appropriated **by either the General Assembly or the United States Fish and Wildlife Service** and the obligations of the DEPARTMENT are limited to the amount of such appropriation.

B. A first payment, in the amount of **\$3,000**, shall be made upon satisfactory completion, in DEPARTMENT's sole discretion, of **redeployment and upgrades/modifications of the Harvest Information Program and License Exempt Hunter and Trapper Program into Vel Micro's staging servers** and upon submission of an invoice by CONTRACTOR. **Additional payments**, in the amount of **\$0.55/successfully completed record**, shall be made upon satisfactory completion, in DEPARTMENT'S sole discretion, of **transfer of successfully completed records to the Department** and upon submission of an invoice by CONTRACTOR **no more frequently than monthly**. Invoices shall be paid within 30 days after receipt by DEPARTMENT, if services are performed satisfactorily, in DEPARTMENT'S sole discretion.

C. The obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed purchase order has been approved by the Secretary of finance, and all the procedures of the Department of Finance have been complied with.

D. CONTRACTOR will maintain accurate financial records and make them available to Federal and State auditors, as needed, up to 3 years following Contract termination.

7. Contractor and Subcontractor Agreements

CONTRACTOR shall indemnify, save and hold harmless and defend the DEPARTMENT, its director's employees, representatives or agents against any demand, claim, suit, loss, costs, or damages sustained in connection with performance of services provided under this agreement.

CONTRACTOR shall require each and every contractor or subcontractor for the project to indemnify, save and hold harmless, and defend the DEPARTMENT, its directors, employees, representatives, or agents against any demand, claim, suit, loss, costs, or damages sustained in connection with performance of services provided under this agreement.

8. Termination of Contract for Cause.

If, for any reasons, or through any cause, CONTRACTOR shall fail to fulfill in timely or proper manner its obligations under this Contract, or if CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Contract, DEPARTMENT shall have the right to terminate this Contract by giving written notice to CONTRACTOR of such termination and specifying the effective date, at least 5 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by CONTRACTOR under this Contract shall, at the option of DEPARTMENT, become its property, and CONTRACTOR shall be entitled to receive reasonable compensation as determined by DEPARTMENT in its sole discretion for any satisfactory work completed on such documents and other materials which is usable to DEPARTMENT. Whether such work is satisfactory and usable is determined by DEPARTMENT in its sole discretion.

9. Termination for Convenience of DEPARTMENT.

DEPARTMENT may terminate this Contract in its sole discretion at any time for any reason by giving written notice of such termination and specifying the effective date, at

least 15 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of DEPARTMENT, become its property and CONTRACTOR shall be entitled to receive reasonable compensation as determined by DEPARTMENT in its sole discretion for any satisfactory work completed on such documents and other materials which is usable to DEPARTMENT. Whether such work is satisfactory and usable to is determined by DEPARTMENT in its sole discretion. Such reasonable compensation shall be CONTRACTOR'S sole compensation. Exercise of this right by DEPARTMENT shall not be deemed a breach of this Contract, and no damages shall be awarded to CONTRACTOR for exercise of this paragraph. If this Contract is terminated due to the fault of CONTRACTOR, Paragraph 9 hereof relative to termination shall apply.

10. Changes; Fragmentation Prohibition.

DEPARTMENT may, from time to time, require changes in the Scope of Services of the CONTRACTOR to be performed under this Contract in DEPARTMENT'S sole discretion, provided, however, if such changes include any decrease in the amount of CONTRACTOR'S compensation, then such changes must be mutually agreed upon by DEPARTMENT and CONTRACTOR, and shall be incorporated in written amendments to this Contract. The parties represent and agree that this Contract is not a fragmentation of a project, and that this Contract is not part of or a continuation of an ongoing project. The parties understand that any intentional fragmentation of a project, in order to make a professional services contract subjects a violator to a fine of not less than one thousand (\$1,000) dollars nor more than two thousand (\$2,000) dollars, and to imprisonment for not more than one year, pursuant to 29 Del. C. §6903.

11. Interest of CONTRACTOR.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. CONTRACTOR further covenants that in the performance of this Contract, no person having any such interest shall be employed.

12. Publication, Reproduction and Use of Material.

No material produced in whole or in part under this Contract shall be subject to copyright in the United States or in any other country. DEPARTMENT shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Contract. CONTRACTOR shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for DEPARTMENT'S support will be given in the publication.

13. Assignment of Antitrust Claims.

As consideration for the award and execution by DEPARTMENT of this Contract, CONTRACTOR hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by DEPARTMENT or CONTRACTOR pursuant to this Contract.

14. U.S. Fish and Wildlife Service Funding.

A. General:

- 1) CONTRACTOR shall comply with all applicable State and Federal laws and regulations. If applicable State and Federal laws and regulations conflict with the provisions of paragraph 15, then applicable laws and regulations supersede the provisions of paragraph 15. The provisions of paragraph 15 shall apply to the work to be performed under this Contract and such provisions shall supersede any conflicting provisions of this Contract.

- 2) This Contract is funded by a grant from the U.S. Fish and Wildlife Service. Neither the United States nor any of its departments, agencies, or employees is a party to this Contract.
 - 3) The rights and remedies of DEPARTMENT provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.
- B. Remedies: Except as may be otherwise provided in this Contract all claims, counterclaims, disputes and other matters in question between DEPARTMENT and CONTRACTOR arising out of or relating to this Contract or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Delaware.
- C. Audit; Access to Records: CONTRACTOR shall maintain books, records, documents and other evidence directly pertinent to performance on the U.S. Fish and Wildlife Service grant work under this Contract in accordance with generally accepted accounting principles and practices. CONTRACTOR shall also maintain the financial information and data used by CONTRACTOR in the preparation or support of the cost submission, and a copy of the cost summary submitted to DEPARTMENT. The United State's Department of Labor, DEPARTMENT (and the State of Delaware) or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. CONTRACTOR will provide proper facilities for such access and inspection.
- D. Subcontracts: Any subcontractors and outside associates or consultants required by CONTRACTOR in connection with the services covered by this Contract will be limited to such individuals or firms as were specifically identified and agreed to in writing during negotiations, or as are specifically authorized in writing by DEPARTMENT during the performance of this Contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of DEPARTMENT.
- E. Equal Employment Opportunity: CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.
- F. Utilization of Small and Minority Business: CONTRACTOR agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of the U.S. Fish and Wildlife Service grant-assisted contracts and subcontracts.
- G. Covenant Against Contingent Fees: CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, DEPARTMENT shall have the right to annul this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- H. Gratuities:
- 1) If it is found, after notice and hearing, by DEPARTMENT that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by CONTRACTOR, or any agent of DEPARTMENT or of the U.S. Fish and Wildlife Service with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this Contract, DEPARTMENT may, by written notice to CONTRACTOR, terminate the right of CONTRACTOR to proceed under this Contract and/or may pursue such other rights and remedies provided by law or under this agreement; provided that the existence of the facts upon which DEPARTMENT makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this Contract.
 - 2) In the event this Contract is terminated as provided in paragraph 13.H.1) hereof, DEPARTMENT shall be entitled (i) to pursue the same remedies against

CONTRACTOR, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by DEPARTMENT), which shall be not less than three nor more than ten times the costs incurred by CONTRACTOR in providing any such gratuities to any such officer or employee.

- I. Patents: If this Contract involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this Contract, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 C.F.R. Part 30, in effect on the date of execution of this Contract including the Appendix of said Part 30. In such case, CONTRACTOR shall report the discovery or invention to the U.S Fish and Wildlife Service directly or through DEPARTMENT and shall otherwise comply with DEPARTMENT'S responsibilities in accordance with Subpart D of 40 C.F.R. Part 30. CONTRACTOR hereby agrees that the disposition of rights to inventions made under this Contract shall be in accordance with the terms and conditions of aforementioned Appendix. CONTRACTOR shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

15. DEPARTMENT'S Responsibilities. DEPARTMENT shall:

- A. Examine and review in detail all letters, reports, drawings and other documents presented by CONTRACTOR to DEPARTMENT and render to CONTRACTOR in writing findings and decisions pertaining thereto within a reasonable time so as not to delay the services of CONTRACTOR.
- B. Give prompt written notice to CONTRACTOR whenever DEPARTMENT observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR'S services.

16. The Parties Agree:

- A. The laws of the State of Delaware shall apply to the construction and operation of this Contract.
- B. This contract is the entire agreement between the CONTRACTOR and the DEPARTMENT and supersedes any prior agreement, whether oral or written, between the CONTRACTOR or any predecessor of the CONTRACTOR and the DEPARTMENT. It may be altered only by a written agreement signed by the CONTRACTOR and the DEPARTMENT. The CONTRACTOR's rights and obligations under this agreement will be binding on the CONTRACTOR's successors and assigns.
- C. The CONTRACTOR shall not assign any interest in this Contract, and shall not transfer any interest in it, without the prior written consent of the DEPARTMENT.
- D. The Contractor shall comply with 30 DE Code Chapter 23 regarding business licenses throughout the term of this agreement.

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

Collin P. O'Mara, Secretary

VEL MICRO WORKS, INC.

(Attachment 1)

Department of Natural Resources and Environmental Control
CONTRACT FOR PROFESSIONAL SERVICES
Federal Funds

THIS CONTRACT, is made between **Vel Micro Works, Inc.** "CONTRACTOR" and the Department of Natural Resources and Environmental Control ("DEPARTMENT"), as follows:

1. Service Contract.

DEPARTMENT agrees to pay CONTRACTOR and CONTRACTOR agrees to perform certain technical or professional services.

2. Scope of Services.

The development of a toll free IVR telephone-based and web-based automated data collection application for four different hunter-related programs. The specifics of which are clearly outlined in the INVITATION TO BID for Contract# 11-001-Wilddata (Wildlife Automated Data Acquisition) and Vel Micro Works, Inc., proposal for said Contract dated 25 April 2011.

3. Data Furnished to CONTRACTOR.

DEPARTMENT shall furnish all information, data, reports, records, and maps as existing, available, easily retrievable and necessary for the execution of the work to CONTRACTOR, without charge by DEPARTMENT, and DEPARTMENT shall reasonably cooperate with CONTRACTOR in carrying out the work.

4. Personnel.

- A. CONTRACTOR represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract.
- B. CONTRACTOR, or persons under CONTRACTOR'S supervision, shall perform all of the services required by this Contract, and all personnel engaged in the work shall be fully qualified and shall be authorized to perform such services.
- C. CONTRACTOR shall not subcontract any of the work or services covered by this Contract without the prior written approval of DEPARTMENT.

5. Time of Performance.

The services of CONTRACTOR are to commence as soon as practicable after the execution of this Contract and shall be undertaken in such sequence as to assure their expeditious completion in the light of the purposes of this Contract, but in any event all of the services required by this CONTRACT shall be completed for Year 1 no later than **30 June 2012 with additional agreed upon dates for specific data deliverables.** Time is of the essence in this Contract. This Contract includes the option of renewal for two additional years upon agreement of both parties and at the DEPARTMENT'S sole discretion.

6. Total Cost and Compensation.

- A. It is agreed that the total cost for the services provided under this Contract shall not exceed **\$25,455 (\$10,000 onetime payment for program development and \$0.55/successfully completed record).**
- B. CONTRACTOR is responsible for costs incurred in excess of the total cost of this Contract and DEPARTMENT is not liable for such costs.
- C. Notwithstanding other terms and conditions of this Contract, it is understood and agreed that the total cost and compensation under this Contract shall not exceed the funds made available to the **State of Delaware and DEPARTMENT by the U.S. Fish and Wildlife Service for this project.**
- D. Condition Precedent: The rights and obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid

executed purchase order is approved by the Secretary of Finance and received by CONTRACTOR. The rights and obligations of DEPARTMENT under this Contract are limited to the amount of any approved purchase order.

7. Obligations and Payment.

- A. The obligations of the DEPARTMENT under this Contract shall be subject to the receipt of sufficient funds appropriated **by either the General Assembly or the United States Fish and Wildlife Service** and the obligations of the DEPARTMENT are limited to the amount of such appropriation.
- B. A first payment, in the amount of **\$10,000**, shall be made upon satisfactory completion, in DEPARTMENT's sole discretion, of **deployment of the Harvest Information Program and License Exempt Hunter and Trapper Program into Vel Micro's staging servers** and upon submission of an invoice by CONTRACTOR. **Additional payments**, in the amount of **\$0.55/successfully completed record**, shall be made upon satisfactory completion, in DEPARTMENT'S sole discretion, of **transfer of successfully completed records to the Department** and upon submission of an invoice by CONTRACTOR **no more frequently than monthly**. Invoices shall be paid within 30 days after receipt by DEPARTMENT, if services are performed satisfactorily, in DEPARTMENT'S sole discretion.
- C. The obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed purchase order has been approved by the Secretary of finance, and all the procedures of the Department of Finance have been complied with.
- D. CONTRACTOR will maintain accurate financial records and make them available to Federal and State auditors, as needed, up to 3 years following Contract termination.

8. Contractor and Subcontractor Agreements

CONTRACTOR shall indemnify, save and hold harmless and defend the DEPARTMENT, its director's employees, representatives or agents against any demand, claim, suit, loss, costs, or damages sustained in connection with performance of services provided under this agreement.

CONTRACTOR shall require each and every contractor or subcontractor for the project to indemnify, save and hold harmless, and defend the DEPARTMENT, its directors, employees, representatives, or agents against any demand, claim, suit, loss, costs, or damages sustained in connection with performance of services provided under this agreement.

9. Termination of Contract for Cause.

If, for any reasons, or through any cause, CONTRACTOR shall fail to fulfill in timely or proper manner its obligations under this Contract, or if CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Contract, DEPARTMENT shall then have the right to terminate this Contract by giving written notice to CONTRACTOR of such termination and specifying the effective date, at least 5 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by CONTRACTOR under this Contract shall, at the option of DEPARTMENT, become its property, and CONTRACTOR shall be entitled to receive reasonable compensation as determined by DEPARTMENT in its sole discretion for any satisfactory work completed on such documents and other materials which is usable to DEPARTMENT. Whether such work is satisfactory and usable is determined by DEPARTMENT in its sole discretion.

10. Termination for Convenience of DEPARTMENT.

DEPARTMENT may terminate this Contract in its sole discretion at any time for any reason by giving written notice of such termination and specifying the effective date, at least 15 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of DEPARTMENT, become its property

and CONTRACTOR shall be entitled to receive reasonable compensation as determined by DEPARTMENT in its sole discretion for any satisfactory work completed on such documents and other materials which is usable to DEPARTMENT. Whether such work is satisfactory and usable to is determined by DEPARTMENT in its sole discretion. Such reasonable compensation shall be CONTRACTOR'S sole compensation. Exercise of this right by DEPARTMENT shall not be deemed a breach of this Contract, and no damages shall be awarded to CONTRACTOR for exercise of this paragraph. If this Contract is terminated due to the fault of CONTRACTOR, Paragraph 9 hereof relative to termination shall apply.

11. Changes; Fragmentation Prohibition.

DEPARTMENT may, from time to time, require changes in the Scope of Services of the CONTRACTOR to be performed under this Contract in DEPARTMENT'S sole discretion, provided, however, if such changes include any decrease in the amount of CONTRACTOR'S compensation, then such changes must be mutually agreed upon by DEPARTMENT and CONTRACTOR, and shall be incorporated in written amendments to this Contract. The parties represent and agree that this Contract is not a fragmentation of a project, and that this Contract is not part of or a continuation of an ongoing project. The parties understand that any intentional fragmentation of a project, in order to make a professional services contract subjects a violator to a fine of not less than one thousand (\$1,000) dollars nor more than two thousand (\$2,000) dollars, and to imprisonment for not more than one year, pursuant to 29 Del. C. §6903.

12. Interest of CONTRACTOR.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. CONTRACTOR further covenants that in the performance of this Contract, no person having any such interest shall be employed.

13. Publication, Reproduction and Use of Material.

No material produced in whole or in part under this Contract shall be subject to copyright in the United States or in any other country. DEPARTMENT shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Contract. CONTRACTOR shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for DEPARTMENT'S support will be given in the publication.

14. Assignment of Antitrust Claims.

As consideration for the award and execution by DEPARTMENT of this Contract, CONTRACTOR hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by DEPARTMENT or CONTRACTOR pursuant to this Contract.

15. U.S. Fish and Wildlife Service Funding.

A. General:

- 1) CONTRACTOR shall comply with all applicable State and Federal laws and regulations. If applicable State and Federal laws and regulations conflict with the provisions of paragraph 15, then applicable laws and regulations supersede the provisions of paragraph 15. The provisions of paragraph 15 shall apply to the work to be performed under this Contract and such provisions shall supersede any conflicting provisions of this Contract.
- 2) This Contract is funded by a grant from the U.S. Fish and Wildlife Service. Neither the United States nor any of its departments, agencies, or employees is a party to this Contract.
- 3) The rights and remedies of DEPARTMENT provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.

- B. Remedies: Except as may be otherwise provided in this Contract all claims, counterclaims, disputes and other matters in question between DEPARTMENT and CONTRACTOR arising out of or relating to this Contract or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Delaware.
- C. Audit; Access to Records: CONTRACTOR shall maintain books, records, documents and other evidence directly pertinent to performance on the U.S. Fish and Wildlife Service grant work under this Contract in accordance with generally accepted accounting principles and practices. CONTRACTOR shall also maintain the financial information and data used by CONTRACTOR in the preparation or support of the cost submission, and a copy of the cost summary submitted to DEPARTMENT. The United State's Department of Labor, DEPARTMENT (and the State of Delaware) or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. CONTRACTOR will provide proper facilities for such access and inspection.
- D. Subcontracts: Any subcontractors and outside associates or consultants required by CONTRACTOR in connection with the services covered by this Contract will be limited to such individuals or firms as were specifically identified and agreed to in writing during negotiations, or as are specifically authorized in writing by DEPARTMENT during the performance of this Contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of DEPARTMENT.
- E. Equal Employment Opportunity: CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.
- F. Utilization of Small and Minority Business: CONTRACTOR agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of the U.S. Fish and Wildlife Service grant-assisted contracts and subcontracts.
- G. Covenant Against Contingent Fees: CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, DEPARTMENT shall have the right to annul this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- H. Gratuities:
- 1) If it is found, after notice and hearing, by DEPARTMENT that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by CONTRACTOR, or any agent of DEPARTMENT or of the U.S. Fish and Wildlife Service with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this Contract, DEPARTMENT may, by written notice to CONTRACTOR, terminate the right of CONTRACTOR to proceed under this Contract and/or may pursue such other rights and remedies provided by law or under this agreement; provided that the existence of the facts upon which DEPARTMENT makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this Contract.
 - 2) In the event this Contract is terminated as provided in paragraph 13.H.1) hereof, DEPARTMENT shall be entitled (i) to pursue the same remedies against CONTRACTOR, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by DEPARTMENT), which shall be not less than three nor more than ten times the costs incurred by CONTRACTOR in providing any such gratuities to any such officer or employee.

I. Patents: If this Contract involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this Contract, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 C.F.R. Part 30, in effect on the date of execution of this Contract including the Appendix of said Part 30. In such case, CONTRACTOR shall report the discovery or invention to the U.S Fish and Wildlife Service directly or through DEPARTMENT and shall otherwise comply with DEPARTMENT'S responsibilities in accordance with Subpart D of 40 C.F.R. Part 30. CONTRACTOR hereby agrees that the disposition of rights to inventions made under this Contract shall be in accordance with the terms and conditions of aforementioned Appendix. CONTRACTOR shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

16. DEPARTMENT'S Responsibilities. DEPARTMENT shall:

- A. Examine and review in detail all letters, reports, drawings and other documents presented by CONTRACTOR to DEPARTMENT and render to CONTRACTOR in writing findings and decisions pertaining thereto within a reasonable time so as not to delay the services of CONTRACTOR.
- B. Give prompt written notice to CONTRACTOR whenever DEPARTMENT observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR'S services.

17. The Parties Agree:

- A. The laws of the State of Delaware shall apply to the construction and operation of this Contract.
- B. This contract is the entire agreement between the CONTRACTOR and the DEPARTMENT and supersedes any prior agreement, whether oral or written, between the CONTRACTOR or any predecessor of the CONTRACTOR and the DEPARTMENT. It may be altered only by a written agreement signed by the CONTRACTOR and the DEPARTMENT. The CONTRACTOR's rights and obligations under this agreement will be binding on the CONTRACTOR's successors and assigns.
- C. The CONTRACTOR shall not assign any interest in this Contract, and shall not transfer any interest in it, without the prior written consent of the DEPARTMENT.
- D. The Contractor shall comply with 30 DE Code Chapter 23 regarding business licenses throughout the term of this agreement.

(Attachment 2)

Contractor Acknowledgement Certification

**State of Delaware
Department of Technology and Information and
Department of Natural Resources and Environmental Control**

89 Kings Highway
Dover, Delaware 19901

**Contractor Confidentiality (Non-Disclosure) and Integrity of Data
Agreement**

The Department of Technology and Information (DTI) is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency data will not be modified without the knowledge and written authorization of the DTI and the Department of Natural Resources and Environmental Control (DNREC). All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware, DTI and DNREC. I/we, as an employee(s) of _____ or officer of my firm, when performing work for the DTI and DNREC, understand that I/we act as an extension of DTI and DNREC, and therefore I/we are responsible for safeguarding the States' data and computer files as indicated above. I/we will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of DTI or DNREC. Furthermore, I/we understand that I/we are to take all necessary precautions to prevent unauthorized use, disclosure, or modification of State computer files, and I/we should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure or modification of State data. Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may mean the loss of my position and benefits, and prosecution under applicable State or Federal law. This statement applies to the undersigned Contractor and to any others working under the Contractor's direction.

I, the Undersigned, hereby affirm that I have read DTI's Policy On Confidentiality (Non-Disclosure) and Integrity of Data and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by the terms above.

Contractor Signature _____

Date: _____

Contractor Name: _____

Contract Number and Name: **11-001-Wilddata (Wildlife Automated Data Acquisition)**

(Attachment 3)

Department of Natural Resources and Environmental Control

AMENDMENT TO CONTRACT FOR PROFESSIONAL SERVICES

THIS AMENDMENT, is being made to the contract between **Vel Micro Works, Inc.** “CONTRACTOR” and the Department of Natural Resources and Environmental Control (“DEPARTMENT”), associated with **The development of a toll free IVR telephone-based and web-based automated data collection application for four different hunter-related programs. The specifics of which are clearly outlined in the INVITATION TO BID for Contract# 11-001-Wilddata (Wildlife Automated Data Acquisition) and Vel Micro Works, Inc., proposal for said Contract dated 25 April 2011.**

Cloud and Offsite Hosting

The CONTRACTOR and DEPARTMENT here to agree to the **attached set of 12 terms and conditions (T&C) and 20 statement of work (SOW) clauses** that have been approved by Delaware’s Department of Technology and Information (DTI) and the State Department of Justice effective 17 May 2011 (Attachment 3a). **These contractual clauses apply both to cloud and external hosting engagements.** Contracts for cloud-based and external hosting engagements must include these contractual clauses as they along with the existing contract will mitigate risks and maximize benefits associated with cloud computing and offsite hosting. **Included in Attachment 3a are modifications and comments to the T&C and SOW made by the Contractor to accommodate these contractual clauses.**

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

Collin P. O’Mara, Secretary

VEL MICRO WORKS, INC.

Sakthi A. Vel, President

ATTACHMENT 3a

Terms and Conditions for Cloud Providers and External Hosting Engagements as of 17 May 2011

No.	Doc	Item
1	T&C	Ownership of Information The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract.
2	T&C	Privacy of Information Protection of personal privacy must be an integral part of the business activities of the Service Provider to ensure that there is no inappropriate use of State of Delaware information at any time. To this end, the Service Provider shall comply with the following conditions: Personal information obtained by the Service Provider will become and remain property of the State of Delaware. At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by the Service Provider or any party related to the Service Provider for subsequent use in any transaction that does not include the State of Delaware. The Service Provider may not use any personal information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
3	T&C	When requested by the State of Delaware, the provider must destroy all requested data in all of its forms, disk, CD / DVD, tape, paper, for examples. Data shall be destroyed according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction must be provided to the State of Delaware.
4	T&C	The Service Provider shall not store or transfer State of Delaware data outside of the United States.
5	T&C	The Service Provider must inform the State of Delaware of any security breach or detection of any suspicious intrusion that is or has occurred that jeopardizes the State of Delaware data or processes. This notice must be given to the State of Delaware within 24 hours of its discovery. Full disclosure of the assets that might have been jeopardized must be made. In addition, the Service Provider must inform the State of Delaware of the actions it is taking or will take to reduce the risk of further loss to the State. If the breach requires public notification, all communication shall be coordinated with the State of Delaware.
6	T&C	The Service Provider must encrypt all non-public data in transit to the cloud. In addition, the Service Provider will comply with the ISO/IEC 27001 standard for information security management systems, providing evidence of their certification or pursuit of certification. The website uses https protocol and all communication is encrypted. No control over IVR data.
7	T&C	The Service Provider shall disclose to the State of Delaware a description of their roles and responsibilities related to electronic discovery, litigation holds, discovery searches, and expert testimonies. The provider shall disclose its process for responding to subpoenas, service of process, and other legal requests.

8	T&C	<p>In the event of termination of the contract, the Service Provider shall implement an orderly return of State of Delaware assets and the subsequent secure disposal of State of Delaware assets.</p> <p>Suspension of Services:</p>
		<p>During any period of suspension, the Service Provider will not take any action to intentionally erase any State of Delaware Data.</p> <p>Termination of any services or agreement in entirety: In the event of termination of any services or agreement in entirety, the Service Provider will not take any action to intentionally erase any State of Delaware Data for a period of 90 days after the effective date of the termination. After such 90 day period, the Service Provider shall have no obligation to maintain or provide any State of Delaware Data and shall thereafter, unless legally prohibited, delete all State of Delaware Data in its systems or otherwise in its possession or under its control.</p> <p>Post-Termination Assistance: The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</p>
9	T&C	<p>The Service Provider shall:</p> <ol style="list-style-type: none"> 1. Ensure that State information is protected with reasonable security measures, 2. Promote and maintain among the Service Provider's employees and agents an awareness of the security needs of the State's information, 3. Safeguard the confidentiality, integrity, and availability of State information, 4. Ensure that appropriate security measures are put in place to protect the Service Provider's internal systems from intrusions and other attacks.
10	T&C	<p>The Service Provider shall not utilize any staff (including sub-contractors) to fulfill the obligations of the contract who has been convicted of a felony or class A misdemeanor.</p>
11	T&C	<p>The Service Provider will make the State of Delaware's data and processes available to third parties only with the express written permission of the State.</p>
12	T&C	<p>The Service Provider will not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of data center operations, (ii) response to service or technical issues or (iii) at State of Delaware's written request.</p>
SOW		
1	SOW	<p>The Service Provider must allow the State of Delaware access to system logs, latency statistics, etc. that affect its data and or processes.</p>
2	SOW	<p>The Service Provider must allow the State of Delaware to audit conformance to the contract terms and test for vulnerabilities. The State of Delaware may perform this audit or contract with a third party at its discretion.</p>
3	SOW	<p>Advance notice (to be determined at contract time) must be given to the State of Delaware of any major upgrades or system changes that the Service Provider will be performing. The State of Delaware reserves the right to defer these changes if desired.</p>

4	SOW	The Service Provider shall disclose its security processes and technical limitations to the State of Delaware such that adequate protection and flexibility can be attained between the State of Delaware's and the Service Provider. An example might be virus checking and port sniffing – the State of Delaware and the Service Provider must understand each other's roles and responsibilities.
5	SOW	The Service Provider will cover the costs of response and recovery from a data breach. The State will expect to recover all breach costs from the provider. If the cost is less than 10% of the annual contract cost.
6	SOW	The State of Delaware will provide requirements to Service Provider for encryption of the data at rest
7	SOW	The Service Provider shall have robust compartmentalization of job duties, perform background checks, require/enforce non-disclosure agreements, and limit staff knowledge of customer data to that which is absolutely needed to perform job duties.
8	SOW	The Service Provider will provide documentation of internal and external security controls, and their compliance level to industry standards.
9	SOW	The State of Delaware and the provider shall identify a collaborative governance structure as part of the design and development of service delivery and service agreements.
10	SOW	The State of Delaware must have the ability to import or export data in piecemeal or in its entirety at its discretion without interference from the Service Provider.
11	SOW	The Service Provider will be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environment are the responsibilities of the Service Provider. The environment and/or applications must be available on a 24 hours per day, 365 days per year basis, providing around-the-clock service to customers as defined in this RFP.
12	SOW	The web portal hosting site environment shall include redundant power, fire suppression, and 24 hours per day, 365 days per year on-site security. The hosting environment shall include redundant Internet connectivity, redundant firewalls, Virtual Private Network (VPN) services, secured remote access methods, fault tolerant internal network with gigabit Ethernet backbone, clustered central file and database servers, load balanced, application, and web servers, hardware, accelerator, three tier development environment, nightly backups, and 24x365 monitoring of all services and servers. No fire suppression, redundant connectivity, load-balancing or onsite security. The data center is secure as all of our assets
13	SOW	The Service Provider shall identify all of its strategic business partners who will be involved in any application development and/or operations.
14	SOW	The State shall have the right at any time to require that the Service Provider remove from interaction with State any Service Provider representative who the State believes is detrimental to its working relationship with the Service Provider. The State will provide the Service Provider with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Service Provider shall immediately remove such individual. The Service Provider shall not assign the person to any aspect of the contract or future work orders without the State's consent.
15	SOW	The Service Provider will ensure the State of Delaware's Recovery Time Objectives (RTOs) is met.

16	SOW	<p>The Service Provider will provide evidence that their Business Continuity Program is certified and mapped to the international BS 259999 standard.</p> <p>VMWI is a 16 year old Delaware Small Business. Its BCP is not certified and not mapped to the international BS 259999 standard.</p>
17	SOW	<p>The Service Provider shall ensure that State of Delaware backed-up data is not commingled with other cloud service customer data.</p>
18	SOW	<p>SLA/SOW - Return of Customer Data/Unique Post Termination:</p> <p>The Service Provider shall make available to the State all Customer Data in a state defined format based on vendor and state platforms including: Database, O/S and physical media, along with attachments in their native format.</p>
19	SOW	<p>Service Providers shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Master Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available at: www.DTI.Delaware.gov</p>
20	SOW	<p>The Master Contractor may deliver two copies of each software source code and software source code documentation to a State-approved escrow agent with the State's prior approval. The Master Contractor shall cause the escrow agent to place the software source code in the escrow agent's vaulted location, in Delaware, and that is acceptable to the State. Two copies of the source code shall be stored on compact discs or other media designated by the State in a format acceptable to the State, and shall be easily readable and understandable by functional analysts and technical personnel with the skill set for that type of component, subcomponent, or software code.</p>