



**Commonwealth of Virginia
Virginia Information Technologies Agency**

STATEWIDE INTERNET SERVICES

OPTIONAL USE CONTRACT

DATE: June 11, 2007

CONTRACT #: VA-020102-VN

VENDOR: Continental Visinet Broadband LLC
4551 Cox Road, Suite 400
Glen Allen, VA 23606

FIN: 54-2020992

CONTACT PERSON: Paul Diemer
Phone: 804-270-6063 - Main
804-672-4160 – Direct
Cell: 804-306-3617
Email: pdiemer@nettelcos.com

TERM: July 1, 2007 – September 30, 2007

PAYMENT: 30 Days

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency
Supply Chain Management Division

Stuart Thacker
Phone: 804-371-5543
E-mail: stuart.thacker@vita.virginia.gov
Fax: 804-371-5969

NOTE: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this agreement.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

**MODIFICATION #8
TO
CONTRACT NUMBER VA-020102-VN
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CONTINENTAL VISINET BROADBAND , LLC**

This MODIFICATION #9 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and CONTINENTAL VISINET BROADBAND , LLC, hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #8 is hereby incorporated into and made an integral part of Contract VA-010412-CVLR, as modified.

Reference: Page C-10 of C-17, Paragraph 33, entitled "Term":

Both of the above referenced parties agree to the following:

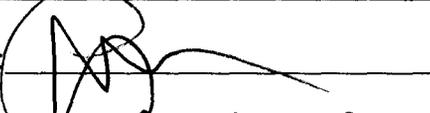
The term of Contract VA-020102-VN shall be extended from July 1, 2007 through September 30, 2007.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020102-VN and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE
TERMS AND CONDITIONS OF THE CONTRACT.**

CONTINENTAL VISINET BROADBAND , LLC COMMONWEALTH OF VIRGINIA

BY:  _____

NAME: PAUL DIEMER

TITLE: GENERAL MANAGER

DATE: June 4, 2007

BY:  _____

NAME: Douglas Crenshaw

TITLE: Strategic Sourcing Manager

DATE: 6/4/07

**MODIFICATION # 7
TO
CONTRACT NUMBER VA-020102-VN
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CONTINENTAL VISINET BROADBAND LLC**

This MODIFICATION #7 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and CONTINENTAL VISINET BROADBAND LLC, hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #7 is hereby incorporated into and made an integral part of Contract VA-020101-VN, as modified.

Both of the above referenced parties agree to the following:

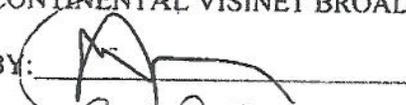
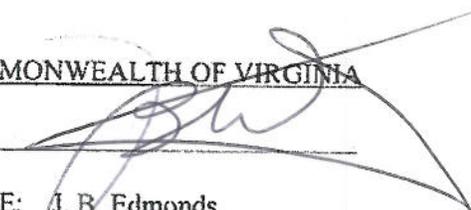
Reference: Page C-10 of C-17, paragraph 33, entitled "Term":

The term of Contract VA-020110-MIND shall be extended from January 2, 2007 through June 30, 2007.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020102-VN and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

CONTINENTAL VISINET BROADBAND LLC.	<u>COMMONWEALTH OF VIRGINIA</u>
BY: 	BY: 
NAME: <u>PAUL DIEMER</u>	NAME: <u>J. B. Edmonds</u>
TITLE: <u>GENERAL MANAGER</u>	TITLE: <u>Acquisition Manager</u>
DATE: <u>12-29-06</u>	DATE: <u>1/3/07</u>



COMMONWEALTH *of* VIRGINIA

Virginia Information Technologies Agency
110 SOUTH SEVENTH STREET
RICHMOND, VIRGINIA 23219

July 24, 2006

CONTINENTAL VISINET
Paul Diemer
pdiemer@NETTELCOS.COM
4551 Cox Road
Suite 400
Glen Allen, VA 23606

Re: Contract # VA-020102-VN Notice

Dear Paul Diemer,

As you may be aware, in November 2005, the Commonwealth of Virginia and Northrop Grumman Information Technology, Inc. ("NG") formed a partnership to modernize the state's information technology infrastructure. Under the Comprehensive Infrastructure Agreement arising from this partnership, NG will be providing the Commonwealth with the equipment and services necessary to build and operate IT infrastructure effective July 1, 2006. You may have already been contacted by NG to establish a contract for future goods and services.

In conjunction with those efforts, we anticipate that NG will be managing all of the Commonwealth's needs covered by your contract with the Commonwealth and therefore your assistance is requested. For telecommunication services purchased by the Commonwealth, NG and its contractors will act as our agent for the purpose of contacting you regarding these services. Kindly accept their requests for trouble inquiry, maintenance, support, receiving and reviewing billing, billing inquiry, and or like services, on the Commonwealth's behalf, for the remainder of the term of the above referenced Contract.

Should you have any questions regarding this request, please do not hesitate to contact me. Your cooperation in support of the Commonwealth's new partnership is greatly appreciated.

Sincerely,

Tammy Trexler
tammy.trexler@vita.virginia.gov
Supply Chain Management
VITA

**MODIFICATION #6
TO
CONTRACT NUMBER VA-020102-VN
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CONTINENTAL VISINET BROADBAND LLC**

This MODIFICATION #6 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and CONTINENTAL VISINET BROADBAND LLC, hereinafter referred to as "Contractor" or "Continental Visinet" relating to the modification of the above contract. This Modification #6 is hereby incorporated into and made an integral part of Contract VA-020102-VN.

Both of the above referenced parties agree to the following:

1. Reference: Page C-10 of C-17, Paragraph #33 entitled "Term":

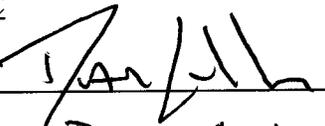
The term of Contract VA-020102-VN shall be extended from January 2, 2006 through January 1, 2007.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020102-VN and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE
TERMS AND CONDITIONS OF THE CONTRACT.**

CONTINENTAL VISINET BROADBAND
LLC

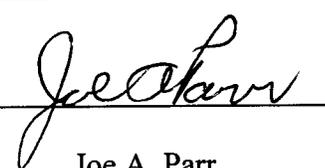
BY: 

NAME: DAN CULLEN

TITLE: GENERAL MANAGER

DATE: 10/17/05

COMMONWEALTH OF VIRGINIA

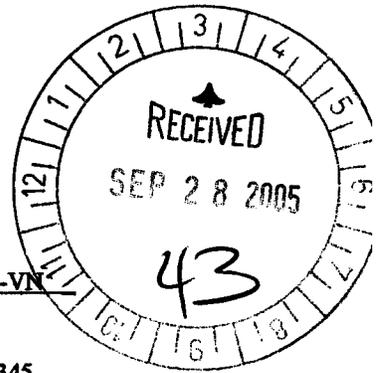
BY: 

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 10/19/05

**VIRGINIA INFORMATION TECHNOLOGIES AGENCY
RENEWAL ACCEPTANCE FORM**



DATA PROCESSING: NON-DATA PROCESSING: CONTRACT NO.: VA-020102-VN

SECTION I

DATE: 9/26/05 DIVISION: Telecommunications COST CENTER: 345

VENDOR: Continental VisiNet

PRODUCT/DEVICE/SERIAL NUMBER: Statewide contract for Internet services

PAYMENT METHOD: Annually Quarterly Monthly

DESCRIPTION - Warranty or Maintenance or Rent/Lease or Service Contract

EXPIRATION DATE: 1/01/06 COMMENTS: To renew the contract, complete Section IV.

SECTION II

RENEWAL PERIOD: 1/02/06 - 1/01/07 RENEWAL AMOUNT: _____

PREVIOUS AMOUNT: _____

NOTE: To avoid a lapse in coverage and to be in compliance with the terms and conditions of the current contract, your reply must be received by the Purchasing and Support Services Branch, Attention Carmen Holmes no later than 10/17/05.

SECTION III

APR or PEOPLESOFT REQUISITION REQUIRED DUE TO THE FOLLOWING -

- 1) Terms and Conditions of the current contract have changed.
- 2) Product warranty will expire and maintenance was not included in the original contract/order.
- 3) No renewal provisions in the current contract.

NOTE: To avoid a lapse in coverage, an APR/a PeopleSoft Requisition must be prepared by your Division and forwarded to the Purchasing and Support Services Branch, Attention: Carmen Holmes no later than _____.

SECTION IV

APPROVAL Renew or Cancel

Reason: _____

Authorized By *[Signature]* Date 9/28/05
Division Associate Director

Budget Review _____ Date _____
Budget Analyst

Procurement Certification Sheet Required: Yes or No

*OK
ste*



**MODIFICATION #5 TO
CONTRACT NUMBER VA-020102-VN
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CONTINENTAL VISINET BROADBAND LLC**

This MODIFICATION #5 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and CONTINENTAL VISINET BROADBAND LLC, hereinafter referred to as "Contractor" or "Continental Visinet" relating to the modification of the above contract. This Modification #5 is hereby incorporated into and made an integral part of Contract VA-020102-VN.

Both of the above referenced parties agree to the following:

1. **Reference: Page C-10 of C-17, Paragraph #33 entitled "Term":**

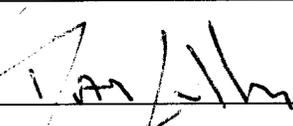
The term of Contract VA-020102-VN shall be extended from January 2, 2005 through January 1, 2006.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020102-VN and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES
OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH
PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE
CONTRACT.**

CONTINENTAL VISINET BROADBAND
LLC

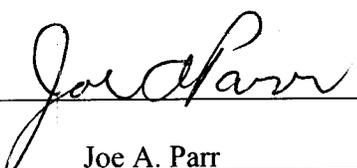
BY: 

NAME: DAN CULLEN

TITLE: GENERAL MANAGER

DATE: 12/20/04

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 12/29/04

**MODIFICATION #4
TO
CONTRACT NUMBER VA-020102-VN
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CONTINENTAL VISINET BROADBAND LLC**

This MODIFICATION #4 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and CONTINENTAL VISINET BROADBAND LLC, hereinafter referred to as "Contractor" or "Continental Visinet" relating to the modification of the above contract. This Modification #4 is hereby incorporated into and made an integral part of Contract VA-020102-VN.

1. **Reference: Page C-5 of C-17, Paragraph #16 entitled "Modifications":**

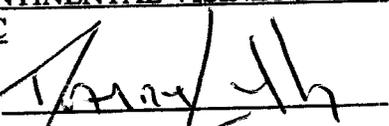
Both of the above referenced parties agree to add toll-free dial-up access service at \$.10 per minute to the Agreement.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020102-VN and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE
TERMS AND CONDITIONS OF THE CONTRACT.**

CONTINENTAL VISINET BROADBAND
LLC

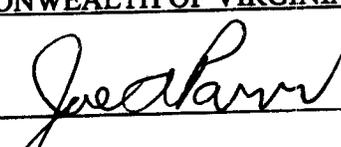
BY: 

NAME: DANNY CULLEN

TITLE: GENERAL MANAGER

DATE: 8/31/04

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 8/8/04

**MODIFICATION #3
TO
CONTRACT NUMBER VA-020102-VN
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CONTINENTAL VISINET BROADBAND LLC**

This MODIFICATION #3 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and CONTINENTAL VISINET BROADBAND LLC, hereinafter referred to as "Contractor" or "Continental Visinet" relating to the modification of the above contract. This Modification #3 is hereby incorporated into and made an integral part of Contract VA-020102-VN.

1. Reference: Page C-5 of C-17, Paragraph #16 entitled "Modifications":

Both of the above referenced parties agree to add Fixed Wireless Internet Access to the Agreement, as follows:

Fixed Wireless Internet Access is available in the Hampton Roads area, in which Continental VisiNet Broadband has "built-out" its own Wireless Network for Internet connectivity. The service is dependent on a positive Line of Sight from the customer premise to the Continental VisiNet Broadband wireless Network. A line of sight survey is provided at no charge.

Pricing

		Price / Month
128Kbps	Dedicated Symmetrical Full Duplex Internet Access	\$99.00
256Kbps	Dedicated Symmetrical Full Duplex Internet Access	\$150.00
512Kbps	Dedicated Symmetrical Full Duplex Internet Access	\$275.00
768Kbps	Dedicated Symmetrical Full Duplex Internet Access	\$400.00
1.54Mbps	Dedicated Symmetrical Full Duplex Internet Access	\$549.00
2.0 Mbps.	Dedicated Symmetrical Full Duplex Internet Access	\$799.00
3.0 Mbps	Dedicated Symmetrical Full Duplex Internet Access	\$1250.00
4+ Mbps		*

* Available upon request

Other Charges

One Time Charges: \$250.00 installation includes demarc extension to desired location with Ethernet handoff. Any equipment provided by Continental VisiNet to deliver service will remain the property of Continental Visinet.

Point-To-Point Connectivity

Continental VisiNet Broadband has the ability to provide 8Mbps Symmetrical Full Duplex Point to Point Connectivity between two or more locations with positive line of sight up to 3 miles throughout Virginia. This connectivity provides an Ethernet handoff at each location for "fiber" quality connectivity.

Price

\$4000.00 per link plus any travel expenses in accordance with the Virginia Travel Regulation.

Other services and capacity are available on a case-by-case basis.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020102-VN and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

CONTINENTAL VISINET BROADBAND
LLC

BY: 

NAME: Dan Cullen

TITLE: General Manager

DATE: 7/9/04

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 6/30/04

**MODIFICATION #2
TO
CONTRACT NUMBER VA-020102-VN
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CONTINENTAL VISINET BROADBAND LLC**

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and CONTINENTAL VISINET BROADBAND LLC, hereinafter referred to as "Contractor" or "Continental Visinet" relating to the modification of the above contract. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-020102-VN.

Both of the above referenced parties agree to the following:

1. **Reference: Page C-10 of C-17, Paragraph #33 entitled "Term":**

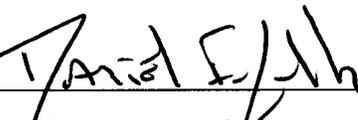
The term of Contract VA-020102-VN shall be extended from January 2, 2004 through January 1, 2005.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020102-VN and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

CONTINENTAL VISINET BROADBAND
LLC

BY: 

NAME: Daniel F. Cullen

TITLE: General Manager

DATE: 11/20/03

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 12/1/03

**MODIFICATION #1
TO
CONTRACT NUMBER VA-020102-VN
BETWEEN THE
COMMONWEALTH of VIRGINIA
AND
VISINET LLC**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and VisiNet LLC, hereinafter referred to as "Contractor" relating to the modification of the above contract effective as of April 14, 2003. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-020102-VN, as modified.

The purpose of this Modification #1 is to document the acquisition of VisiNet, LLC by Continental Broadband LLC into a single business entity, as Continental VisiNet Broadband LLC, and doing business as "Continental VisiNet".

Reference: Page C-5 of C17, Paragraph 16 entitled "Modifications":

Contractor represents that VisiNet LLC assets are being acquired by Continental Broadband LLC, d/b/a Continental VisiNet Broadband LLC. Upon such acquisition, references to Continental VisiNet Broadband LLC shall be construed to refer to the Contractor, whether such references are in the Contract or in any correspondence or any document relating thereto.

Both of the above referenced parties hereby agree that, after the execution of this Modification #1 by both parties and consummation of the acquisition, the above referenced Contract shall be referred to as Contract VA-020102-VN, between the Commonwealth of Virginia and Continental VisiNet Broadband LLC (Contractor). All contractual documents and this Agreement, which formerly referred to VisiNet LLC shall now indicate Continental VisiNet Broadband LLC. The Contractor's Federal Employment Identification Number (FEIN) has changed to 54-2020992. All Contract duties of the Contractor and the Commonwealth have not changed.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020102-VN and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

VISINET LLC

BY: _____

NAME: Edward Fung

TITLE: Director

DATE: Apr 14, 2003

COMMONWEALTH OF VIRGINIA

BY: _____

NAME: Joe A. Parr

TITLE: Technology Contracts Manager

DATE: 4/21/03

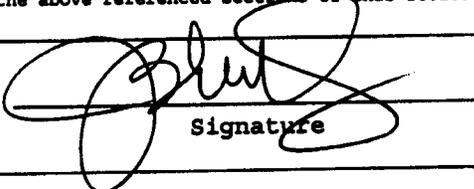
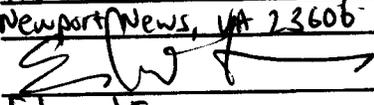
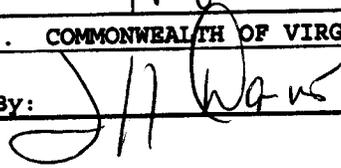
* Additional page attached for Continental Broadband's acceptance.

ACCEPTED AND AGREED:

CONTINENTAL BROADBAND, LLC

A handwritten signature in black ink, appearing to read 'Owen Griffin', is written over a horizontal line.

NAME: OWEN GRIFFIN
TITLE: VICE PRESIDENT
DATE: APR 14, 2003

SOLICITATION, OFFER AND AWARD DATA PROCESSING / TELECOMMUNICATIONS				FIN: 54-2029883	
1. Contract No: VA-020102-VN	2. IFB No: 2002-005	3. Date Issued: Oct 5, 2001	Date Due: Oct 30, 2001	4. APR 23	5. Approval No: D-45
For Information Call: David Butler			(804) 371-5521		
6. ISSUING OFFICE: Department of Information Technology Acquisition Services Division 110 S. 7th Street, Lobby Floor Richmond, Va. 23219-9300 ATTN: Bid Section			7. SHIP TO: Dept. of Information Technology 110 S. Seventh Street 1st Floor, 6th Street Lobby Richmond, VA 23219		
SOLICITATION					
8. Sealed bid(s) for furnishing the Products and Services set forth in the schedule, will be returned to the Issuing Office identified in block 6 above. Please provide an original and 0 copies. If hand carried, deliver to the ASD receptionist located on the Lobby Floor of the address listed in Block 6. Bids must be received prior to 2:00 p.m. local time Oct 30, 2001. CAUTION - LATE OFFERS: See Paragraph 3 of the Solicitation Instructions					
This is an advertised solicitation which consists of (1) the schedule of Products and Services, pages 2 thru 5; (2) the solicitation instructions pages 8-1 thru 8-3; (3) The Contract Terms and Conditions page C-1 thru C-17; and (4) other provisions, representations, certifications or specifications as are attached or incorporated herein by reference. Offers will be publicly opened at: 2:10 p.m. local time Oct 30, 2001, in the ASD Conference Room, 110 South 7th Street, Lobby Floor. All offers are subject to the terms and conditions set forth in the above referenced sections of this solicitation.					
Paul H. Dodson, Director Acquisition Services			 Signature		
OFFER					
In compliance with the terms and conditions set forth in the solicitation, the undersigned agrees, if this offer is accepted within 90 calendar days from the date of receipt of offers, to furnish any or all items awarded at the prices offered in the schedule, delivered to the address in block 7, within the time specified in the schedule.					
9. CONTRACTOR: Company Name: <u>VisiNet - EJA</u> Address: <u>715 Middle Ground Blvd</u> City, State: <u>Newport News, VA 23606</u> Signature:  Name (Typed): <u>Edward Fang</u> Title: <u>President</u> Phone: <u>757-823-4500 x222</u>			10: BILL TO: Dept. of Information Technology Attn: Accounts Payable 110 South 7th Street, 3rd Floor Richmond, Virginia 23219		
AWARD					
11. Accepted as to Item Numbers: <u>all</u>			12. Amount: <u>per orders</u>		13. Award Date: <u>01/02/02</u>
14. Name of Contracting Officer: Jeff Davis Contracts Manager		15. COMMONWEALTH OF VIRGINIA By: 		PAGES: 1 of 5	

DIT-62A		SCHEDULE		IFB NO.	Page:
01/15/91				02-005	2 of 5
NAME OF CONTRACTOR			REQUIRED DELIVERY DATE:	INITIALS	
			(RDD) 30 DAYS ARO		
ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE
	<p>The Commonwealth of Virginia's (COV) Department of Information Technology (DIT) desires to acquire alternative Statewide Internet Services.</p> <p>(1) The Internet Services must be charged at a flat rate with non-distance sensitive pricing. All items listed in Appendix 1 of this solicitation are to be bid as a quantity of one (1) for evaluation/award purposes.</p> <p>(2) Vendor must also include hourly rates for on-site integration support services and telephone support services. These services may be used to support our customers during installation and/or on-going operations.</p> <p>(3) Vendors are also expected to continue to upgrade their service offerings to meet customer demands.</p> <p>NOTES:</p> <p>Please enter all cost figures on Appendix 1, Service Offering List. Vendors may submit a bid for either private line and support services; dial-up support services; and/or frame relay services.</p> <p>The COV is currently using COVANET (WCOM/UUNet) and Visinet for private line and dial-up service.</p> <p>The selected vendor(s) will need to be able to migrate the current users to the replacement product(s) with little or no impact on service.</p> <p>All prices include the IFA.</p>				

DIT-62A	SCHEDULE	IFB NO.	Page:
01/15/91		02-005	3 of 5
NAME OF CONTRACTOR		REQUIRED DELIVERY DATE:	INITIALS
		(RDD) 30 DAYS ARO	

1. Background and General Instructions:

The Commonwealth of Virginia's (COV) Department of Information Technology (DIT) desires to establish multiple contracts for Statewide alternative Internet Services, as defined in this solicitation:

a. The Internet Services must be charged at a flat rate with non-distance sensitive pricing (See Appendix 1). Orders will be placed individually. Vendors do not have to bid on all services (Private Line, rame Relay and Dial-up) but must price all services within the Group(s) hey choose, including registered IP addresses, e-mail, DNS and web hosting.

b. The Vendor must price an hourly rate for on-site integration support services and telephone support services. These services may be used to support our customers during installation and/or on-going operations.

c. Services will be ordered on behalf of DIT or any DIT customer.

d. Vendors are also expected to continue to upgrade their service offerings to meet customer demands. DIT reserves the right to modify this contract with the mutual agreement of the vendor(s) to provide such services through the remainder of the contract period at rates DIT deems to be competitive in the marketplace.

The COV is currently using COVANET (WCOM/UUNET) and Visinet for private line and dial-up subscription services. Statewide dial-up coverage without tolls is desired. Current coverage is weak outside Richmond, Northern Virginia and/or Tidewater metropolitan areas.

The selected vendor(s) will need to be able to migrate the current users to the replacement product(s) with little or no impact on service. The vendor shall include, in the bid, a plan for transition.

At DIT's option, billing for services must be on an individual line or user basis and be billed directly to the "user" on a monthly basis, in arrears.

2. For Telecommunications Service Order (TSO) instructions, please refer to the appropriate paragraphs within the attached Terms and Conditions. See Attachment B for TSO format.

3. Awards, if made, will be made to the responsive and responsible vendor(s) with the lowest price for each of the three types of service(s) requested (Private Line, Dial-up, and Frame Relay). Vendors may bid on either of the three services requested or all three if desired. The Evaluated Cost is to be entered on Appendix 1, the Service Offering List.

DIT-62A	SCHEDULE	IFB NO.	Page:
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NAME OF CONTRACTOR		REQUIRED DELIVERY DATE:	INITIALS
		(RDD) 30 DAYS ARO	
<p>4. The vendor is expected to provide, along with their bid document a document that fully describes the offering they are bidding to satisfy the Commonwealth's requirements. Vendors should take care to insure that the provided document does not take exception to the technical requirements or the mandatory Terms and Conditions.</p> <p>5. Approximately ten (10) agencies and institutions lease T-1 connections to the Internet and 300 dial-up users through DIT's existing Internet contracts. There are also a large number of State employees using other Internet service providers across the state. It is our intent to move them to the new dial-up service where local dialing is available. The vendor must provide the network routing and physical network to allow a "one-stop" shop for network issues and trouble reporting.</p> <p>6. The initial term of the contract will be for two (2) years. The Commonwealth reserves the right, at its sole discretion, to renew the contract for three (3) additional twelve (12) month periods. The Commonwealth will notify the contractor at least thirty (30) days prior to the expiration of the current term if it intends to renew the contract for an additional period.</p> <p>7. The vendor must provide no charge, 24 hour-a-day, 7 day-a-week support for all internet and equipment services provided. Vendors shall include unlimited telephone support for all services provided under this contract with a thirty (30) minute telephone response acknowledging a service assistance call from the DIT Network Control Center (or end-user in the case of dial-up). The vendor shall provide problem resolution within four (4) hours after notification. A toll-free telephone number for reporting problems must be provided on page 5 of this solicitation.</p> <p>8. The service offered must operate at an end-to-end (or customer premise equipment [CPE] to CPE) availability of 99.83% or higher over a twelve (12) month period. An outage of no more that .17% (15 hours per year) is permissible. The vendor must provide monthly network performance reports to Suzanne Piland, DIT which provide information on the service availability of the Internet service and report on link availability, utilization and errors.</p> <p>9. At the termination of the contract the selected vendor shall assist the COV and the new vendor with the orderly and timely transition of all accounts/IDs and stored e-mail or data to the new vendor's site/equipment. Timely is defined as a network outage of no more than four (4) hours. The vendor shall take no action during the course of the contract that would limit the ability of the COV to transfer this service to a new vendor.</p> <p>10. The vendors must provide a minimum of three (3) customer references of similar size and complexity to COVANET for Private Line and Frame Relay vendors where TCP/IP and Internet services are installed and currently operational. Provide the name address and phone number of persons to contact on a separate addendum to this solicitation.</p>			

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NAME OF CONTRACTOR	REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO	INITIALS
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11. Neither DIT or the using agency will sign or execute any additional contract, license or other agreements containing contractual terms and conditions as a result of this procurement. Any document signed by persons other than the Contracts Manager, DIT, shall have no validity and the attached terms and conditions shall supercede all such agreements. Bidders should read and understand all of the terms and conditions prior to submission of a bid.
12. Any questions concerning this solicitation must be submitted, in writing, to the attention of Dave Butler at the address listed in Block #6, page 1, of this solicitation no later than October 19, 2001. Please mark the outside of your envelope "QUESTIONS CONCERNING IFB 2002-05". Written questions may also be submitted via facsimile to (804) 371-5969 or via e-mail to dbutler@dit.state.va.us No response will be furnished to telephone calls.
13. The Acquisition Services Division of DIT maintains a web site with a URL of <http://asd.state.va.us> This solicitation will be posted to this web site under "Current Bids" IFB #2002-05. This web site provides information about ADS and acquisitions conducted by ASD for Information Technology related items. Vendors are encouraged to check this site regularly.
14. Results of this solicitation will not be given out by telephone. Vendors wishing a copy of the bid results must include a self-addressed, stamped envelope along with their bid. The envelope should be marked with the words "BID RESULTS" and the IFB number. Awards will also be posted to the ASD web site <http://asd.state.va.us>
15. BIDS WILL NOT BE CONSIDERED IF THE VENDOR IS NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY (DIT). A registration form may be obtained by calling (804) 371-5900 or by contacting the Acquisition Services Division web site, at the above URL. The completed form must be received by DIT not later than the award date in order for the bid to be considered.
16. Bidder's attention is directed to Section 2.b, page S-1, of the Solicitation Instructions concerning the requirement for Federal Identification Numbers (FIN) to be placed on page 1 of the Invitation For Bids. Please place this number in the space provided on page 1. PLEASE NOTE THAT FAILURE TO PROVIDE THIS NUMBER MAY RESULT IN OUR INABILITY TO VERIFY YOUR REGISTRATION AND YOUR BID BEING RULED NON-RESPONSIVE.
17. Bidders are advised to read and understand paragraphs entitled "Contractor's Report of Sales" and "Industrial Funding Adjustment" (IFA) in the Terms and Conditions. FAILURE TO COMPLY WITH THESE PARAGRAPHS SHALL RENDER THE VENDOR'S BID NON-RESPONSIVE AND SUBJECT THIS AGREEMENT TO TERMINATION AND CANCELLATION.

TOLL FREE TELEPHONE NUMBER FOR PLACING 24 HOUR SERVICE CALLS AS REQUESTED IN PARAGRAPH 7 ABOVE.

Revised

IFB 2002-05
APPENDIX 1

SERVICE OFFERING LIST

FRAME RELAY to IP	Total Monthly Charge	Installation	Managed Service Total Monthly Charge
56kb CIR	\$ 200	2	200
64kb CIR	\$ 225	2	225
128kb CIR	\$ 500	2	500
256kb CIR	\$ 600	2	600
384kb CIR	\$ 675	2	675
DEDICATED PRIVATE LINE SPEED			
56/64 kb	\$ 285	250	285
128 kb	\$ 500	2	500
256 kb	\$ 550	2	550
384 kb	\$ 625	2	625
512 kb	\$ 700	2	700
640 kb	\$ 800	2	800
T-1	\$ 1025	2	1025
6Mbps	\$ 3000	200	3000
10 Mbps	\$ 4800	200	4800
22.5 Mbps	\$ 10,500	200	10,500
INTERNET DIAL-UP (attach dial #'s and map)	\$ 15		
INTEGRATION SUPPORT SERVICE			
	RATE/HOUR		
Via Telephone	\$ 40		
Via On-Site	\$ 80		

* Note: All cost figures should represent a quantity of one (1).

FLAT RATE STATEWIDE INTERNET ACCESS

IFB 2002-05
~~APPENDIX 1~~

Additional

SERVICE OFFERING LIST

FRAME RELAY	Total Monthly Charge	Installation	Managed Service Total Monthly Charge
28kb	\$ 200	0	
64kb	\$ 225	0	
128kb	\$ 500	0	
256kb	\$ 600	0	
512kb	\$ 700	0	
768kb	\$ 750	0	
ATM			
DS-1	\$ 1100	0	
DS-3	\$ 7500	0	
OC-3	\$ 15000	0	
INTERNET DIAL-UP (attach dial #s and map)	\$ 15		
INTEGRATION SUPPORT SERVICE	RATE/HOUR		
Via Telephone	\$ 40		
Via On-Site	\$ 80		

SOLICITATION INSTRUCTIONS
REV. 12/15/00

Effective October 1, 2001 the Virginia Public Procurement Act has been recodified and is now Chapter 43 of Title 2.2 of the Code of Virginia. Any references herein to the VPPA provisions formally in Title 11 should be deemed amended to reflect the amended code citations.

1. EXPLANATION TO VENDORS

Any explanation desired by a vendor regarding this solicitation/invitation for bid must be requested in writing and with sufficient time allowed for a reply to reach the vendor before the submission of their bids. **PRIOR TO SUBMISSION OF A BID, VENDORS ARE REQUIRED TO READ THESE INSTRUCTIONS, REVIEW THE SCHEDULE, READ ALL TERMS AND CONDITIONS AND CHECK THE ACQUISITION SERVICE DIVISION'S (ASD'S) WEB PAGE AT (HTTP://ASD.STATE.VA.US) FOR ANY AMENDMENTS OR CHANGES. THIS SOLICITATION IS SUBJECT TO THE PROVISIONS OF THE COMMONWEALTH OF VIRGINIA VENDOR'S MANUAL WHICH WAS REVISED IN DECEMBER 1998 AND ANY REVISIONS THERETO, WHICH ARE HEREBY INCORPORATED INTO THIS CONTRACT IN THEIR ENTIRETY.** A copy of the manual is available for review at the purchasing office, and can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet Home Page (www.dgs.state.va.us/dps). Any interpretation required by the State will be in the form of an amendment to the solicitation; SEE PARAGRAPH 11 BELOW. Oral explanations or instructions given before the award of the contract will not be binding. In any conflict arising between this solicitation and the Vendors' Manual, this solicitation shall prevail.

2. PREPARATION OF SOLICITATION

- A. Bids shall be submitted on the forms furnished, and must bear an original signature by an individual authorized to bind the company submitting the bid. If erasures or other changes appear on the form, each erasure or change must be initialed by the person signing the bid. Telegraphic or facsimile bids will not be considered. Vendors may not submit multiple bids in a single envelope.
- B. Vendors are required to enter their Federal Identification Number [FIN] in the upper right hand corner on Page 1, DIT Form 62. This number must correspond with the FIN number shown on Page 1 of the DIT Vendor Application For Registration Form submitted by a principal or officer of the firm submitting the bid. Failure to enter a number in the space provided or to provide a correct FIN number may delay award or result in DIT determining that the vendor is not registered to conduct business with DIT. It is the vendor's responsibility to provide the correct FIN number and to keep DIT updated as to any changes in vendor's status.
- C. The bid form may provide for submission of a price or prices for one or more items. All prices shall be entered in the schedule; DIT Form 62A or 62B. Where the bid form explicitly requires that the vendor bid on all items (e.g., an all or none requirement), failure to do so will disqualify the bid. When submission of a price on all items is not required, vendor should insert the words "no bid" in the space provided for any item on which no price is submitted.
- D. Additional bids may be submitted, when in the vendor's judgment they can provide more than one solution which meets the required specifications of the procurement. Additional bids shall be submitted on either a duplicate copy of the bid document or on plain paper and shall be clearly identified with the words "ADDITIONAL BID" written or printed on the face of each additional bid. Additional bids shall not be considered unless detailed specifications or descriptions sufficient to establish quality, utility and merit accompany the bid.

VENDORS SUBMITTING ADDITIONAL BIDS ARE REMINDED THAT THE TERMS AND CONDITIONS WHICH APPLY TO THE ORIGINAL BID SHALL ALSO APPLY TO THE ADDITIONAL BID AND ANY MODIFICATION TO TERMS AND CONDITIONS OF A SOLICITATION OR THE ADDITION OF RESTRICTIVE PROVISIONS BY A BIDDER SHALL BE CAUSE FOR REJECTION OF THE BID.

- E. Modification of bids already submitted will be considered if received at the office designated in the invitation for bids before the time set for opening of bids.

3. SUBMISSION OF BIDS

TO BE CONSIDERED, THE BID MUST BE RECEIVED AT THE ADDRESS GIVEN IN BLOCK #6 OF THE SOLICITATION ON OR BEFORE THE DATE AND HOUR DESIGNATED. Vendors must pay particular attention to ensure that the bid is properly addressed. The State is not responsible if the bid is not properly addressed. The State is not responsible if the bid does not reach the destination specified by the date and time identified in block #8 page 1 of the Bid. Sealed bids received after the date and hour identified in block #8 are automatically disqualified, and will not be considered. All bids must be sealed, marked and addressed, to the address shown in block #6 of the Solicitation, and marked on the outside of the vendor's envelope as in the example below. Failure to do so may result in a premature opening of, or a failure to open, the bid.

From: Name of Vendor
Street or Box Number
City, State, Zip Code
Due Date Time
IFB No.

4. SPECIFICATIONS AND USE OF BRAND NAMES

Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bids to the specific brand, make or manufacturer named. Any item which the State at its sole discretion determines to be the equal of that specified as defined in the Schedule, will be accepted. The award will be made to the lowest responsive and responsible bidder or offeror offering the functional equivalent to the brand name described in the specification. Thus, equivalent products of other manufacturers will be considered only if proof of equivalency is contained in or accompanies the bid.

5. LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWALS OF BIDS

- A. Any bids received at the office designated in block #6 of the Solicitation after the exact time specified for receipt will not be considered for award. (See Paragraph 4.10 of the Vendor's Manual for further discussion.)
- B. A bid may be amended and/or withdrawn by a vendor if the office issuing the bid receives the request in writing before the date and hour set forth in the bid form. The request must be signed by a person authorized to represent the person or firm that submitted the bid. Submission of a subsequent bid shall normally constitute the withdrawal of any prior bid submitted by the same bidder or offeror on the same IFB.

6. PUBLIC OPENING OF BIDS

Bids will be publicly opened at the time and date specified on page 1 of the Solicitation document. The content of these solicitations will be made public in accordance with Paragraphs 1.9 and 2.4 of the Vendor's Manual. Bids will not normally be evaluated at the bid opening meeting. All bids will be opened at the location shown on page 1 of the solicitation.

7. SOLICITATION TERMS AND CONDITIONS

The terms and conditions contained in this solicitation are considered mandatory and are the only terms and conditions governing transactions under any contract awarded as a result of this solicitation.

If the vendor includes additional terms and conditions on pre-printed marketing sheets, pre-printed catalogues, or other pre-printed materials, then it is understood that those terms and conditions are of no consequence to any resulting contract.

Any other modification, addition, clarification, or change to the mandatory terms and conditions by the vendor shall cause the bid to be rejected.

8. AWARD OF CONTRACT

Bids shall be evaluated and the responsive and responsible bidder offering the lowest price will be awarded the Contract. The State reserves the right to reject any and all bids in whole or in part and to waive any informality in the bids.

9. AWARD NOTICES

Upon the completion of evaluation, the State will either post a NOTICE OF AWARD (NOA) or a NOTICE OF INTENT TO AWARD (NOITA). If a NOITA is used, the notice will be publicly posted ten days prior to the actual award date of the contract. All award notices will be posted on ASD's Web Page ([HTTP://ASD.STATE.VA.US](http://ASD.STATE.VA.US)) and posted in ASD's lobby in written format.

A NOTICE OF INTENT TO AWARD OR A NOTICE OF AWARD will be mailed to any bidder submitting a self-addressed, stamped envelope with their bid.

NOTICES OF INTENT TO AWARD OR NOTICES OF AWARD will be posted in accordance with paragraph 6.3 of the Vendor's Manual.

TELEPHONIC REQUESTS FOR BID RESULTS WILL NOT BE HONORED.

10. FAILURE TO DELIVER

Failure to comply with the terms and conditions of the IFB or to deliver equipment, software or services identified in the solicitation at the price quoted may result in cancellation or rescission of the award/contract by the Commonwealth and may subject the Contractor to removal from DIT's Vendor Registration file and ruled ineligible to participate in DIT's (and other agencies and institutions information technology) procurements for a period of 12 months.

11. AMENDMENT OF SOLICITATION

Any amendment or change to this solicitation will be issued in writing and will identify the changes to be made in the bid. All amendments will be posted to the ASD's Web page at (<http://asd.state.va.us>) and posted in ASD's lobby in written format.

If the bid opening date is extended the new date and time will be clearly shown on the face of the amendment.

Bidders will be required to sign and return a copy of the amendment with their bid to indicate that they have received the document and are aware of the changes made.

12. ANTI-COLLUSION CERTIFICATION

By Bidder's signature on the face of this bid, Bidder certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same equipment, software, or services, and is in all respects fair and without collusion or fraud. Vendor understands collusive bidding is a violation of the Virginia Governmental Frauds Act and Federal Law and can result in fines, prison sentences, and civil damage awards. Bidder agrees to abide by all conditions of this bid and certifies that he or she is authorized to sign this bid for the bidder' firm.

13. DEMONSTRATIONS

The State reserves the right to require the Bidder to demonstrate to the satisfaction of the State, that the products offered will perform in a completely acceptable manner and to meet or exceed the specifications referenced in the solicitation. The demonstration site and time is subject to agreement between the State and Bidder. A Bidder refusing to demonstrate his products bid after determination that he is the apparent low responsive and responsible bidder may be removed from DIT's vendor registration file and ruled ineligible to participate in DIT's (and other agencies and institutions information technology) procurements for a period of 12 months.

14. PROTESTS OF AWARDS

All protests of awards shall be conducted in accordance with Chapter 9 of the Vendors Manual.

15. VENDOR REGISTRATION

AN AWARD WILL NOT BE MADE TO ANY BIDDER NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY (DIT). A completed registration form must be on file or received by DIT (Acquisition Services Division) not later than the award date. Call (804) 371-5900 to request a registration form.

16. CONTRACT

Any contract which is awarded as a result of this solicitation, offer and award shall be between DIT and the Contractor. No other agency, institution or public body may negotiate in any way with the vendor concerning the items identified in the schedule or any terms and conditions of the contract. All problems associated with the resulting contract shall be brought to the attention of the Contracts Manger, DIT.

Specifications - Any comments or questions concerning the specifications, terms and conditions or any note contained in this solicitation shall be submitted, in writing to the issuing office (See Block #6 DIT Form #62) at least ten (10) days prior to the closing date.

17. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder must invoke the protections of *Code of Virginia*, Section 11-52D, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid document, line item prices and/or total bid prices as proprietary or trade secrets is not acceptable and will result in rejection of the bid.

Terms and Conditions
IFB 2002-005

Effective October 1, 2001 the Virginia Public Procurement Act has been recodified and is now Chapter 43 of Title 2.2 of the Code of Virginia. Any references herein to the VPPA provisions formally in Title 11 should be deemed amended to reflect the amended code citations.

1. SCOPE OF CONTRACT

The following paragraphs contain the Contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "DIT" (Department of Information), will establish a Firm-Fixed Price, Master Contract for the use by any State Agencies, Institutions and other Public Bodies, as defined in Section 11-37. *Definitions* of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users", to acquire statewide alternative Internet Services including, but not limited to, installation, warranty, and time and materials (T&M) integration support Services ("Services") from the Contractor identified in block #9, page 1 of the Solicitation, hereinafter referred to as "Contractor."

DIT is the only authorized ordering entity under this Contract. Contractor to bill the Authorized User directly.

2. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet site (www.dgs.state.va.us/dps/).

3. APPLICABLE LAWS AND COURTS

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

4. ANTI-DISCRIMINATION

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §11-51 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of

goods, Services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 11-35.1E).

In every Contract over \$10,000 the provisions in a. and b. below apply:

a. During the performance of this Contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

b. The Contractor will include the provisions of 1) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

5. ETHICS IN PUBLIC CONTRACTING

By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, Services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

6. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their bids, bidders certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

7. DEBARMENT STATUS

By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids on Contracts for the type of goods and/or Services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

8. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or Services purchased or acquired by the Commonwealth of Virginia under said Contract.

9. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs

Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the Contract shall be effective unless reduced to writing and signed by the parties.

10. CLARIFICATION OF TERMS

If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

11. PAYMENT

a. To Prime Contractor:

1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

3) All goods or Services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 11-69).

b. To Subcontractors:

1) A Contractor awarded a Contract under this solicitation is hereby obligated:

(a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or

(b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

12. PRECEDENCE OF TERMS

Paragraphs 1-12 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

13. QUALIFICATIONS OF BIDDERS

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the Services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid/proposal if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the Contract and to provide the Services and/or furnish the goods contemplated therein.

14. TESTING AND INSPECTION

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and Services conform to the specifications.

15. ASSIGNMENT OF CONTRACT

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

16. MODIFICATIONS

This contract maybe modified in accordance with Section 11-55 of the Code of Virginia. Such modifications may only be made by the representatives noted below No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the contract, the only authorized representative for the Commonwealth shall be the individual identified in block #14 of this solicitation or his duly designated alternate, and for the Contractor the person identified in block #9 of the solicitation.

Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

17. DEFAULT

In case of failure to deliver goods or Services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commonwealth may have.

18. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

19. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 11-46.3 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. **Worker's Compensation - Statutory requirements and benefits.**
- b. **Employers Liability - \$100,000.**
- c. **Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.**
- d. **Automobile Liability - \$500,000 - Combined single limit. (Only used if motor vehicle is to be used in the Contract.)**

20. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, ASD will publicly post such notice on its website at <http://asd.state.va.us/> for a minimum of 10 days.

21. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the

Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

22. NONDISCRIMINATION OF CONTRACTORS

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, Services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, Services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, Services, or disbursements from an alternative provider.

23. TERMINATION FOR CONVENIENCE

This Agreement may be terminated upon thirty (30) days written notice by the Commonwealth of Virginia. There are no additional financial obligations to the Commonwealth upon termination for convenience. The Commonwealth shall be responsible for any costs solely associated with circuit or service de-installation.

24. TERMINATION OF INDIVIDUAL TSO

Any individual TSO under this Agreement may be terminated, in whole or in part, by the Commonwealth for its convenience, at any time by 30 days advance written notice to the Contractor. There are no other costs or obligations for termination for convenience, i.e., circuit or service life. The Commonwealth shall be responsible for any costs solely associated with circuit or service de-installation.

25. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

26. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor in this solicitation as to hardware or software performance, or other physical design or functional characteristics of that which is offered.

27. SERVICE COMMENCEMENT DATES

- a. The Contractor shall commence the Service(s) within 30 days from the receipt of an individual Telecommunications Service Request (TSO) (see Attachment "B") issued by DIT's Ordering Officers.
- b. Any amendment by the State to this Contract or any part thereof may require the establishment of a new mutually agreed-to required Service date(s). The State may delay the Service commencement date of any TSO by notifying the Contractor at least ten (10) days before the required Service commencement date.
- c. If the Service(s) is/are not delivered within the time specified in each individual TSO, the State reserves the right to cancel the award of this Contract and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder. Contractors are cautioned that failure to deliver the proposed Services as stated in response to a solicitation document may result in removal from DIT's Vendor Registration File as per Section 7.20 of the Division of Purchases and Supply's Vendor's Manual dated December 1998.
- d. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

28. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.1-122 and Section 2.1-127 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above of paragraph 7.

29. NON-APPROPRIATION

All funds for payment of equipment, software or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or Services dependent on such federal funds without further obligation.

30. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

31. ENTIRE AGREEMENT

This Contract, the solicitation, bid response, solicitation instructions and all equipment and software specifically listed in the Schedule, and the notes in the Schedule constitute the entire Agreement between the parties with respect to the subject matter of this Contract. All prior Agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to equipment and/or software acquired by the State under the terms and conditions of this Contract.

No other written documents regardless of form or content shall be executed by any agency or institution for equipment acquired under this Contract unless signed by the Contracts Manager, DIT, or his alternate as designated by the Director, DIT.

32. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

33. TERM

This Agreement shall take effect on the date of award, and shall continue in full force and effect for two (2) years thereafter. At the Commonwealth's sole discretion, this Agreement may be renewed for three (3) additional one-year periods after the initial two-year Term. The Commonwealth shall issue a written notice to the Contractor thirty (30) days in advance, for any renewal period after the initial two (2) year Term.

All pricing identified in the schedule shall remain the same for the Contract Term and any extensions thereof.

34. INVENTIONS AND COPYRIGHTS

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

35. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this Agreement.

36. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or Services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement..

37. CONTINGENT FEE WARRANTY

Contractor warrants that he/it has not employed or retained any person or persons not generally associated with Contractor for the purpose of soliciting or securing this Agreement. Contractor further warrants that he/it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon the award or making of this Agreement. For breach of one or both of the foregoing warranties, the Commonwealth shall have the right to terminate this Agreement without liability, or in its discretion, to deduct from the agreed fee, payment or consideration, or otherwise recover, the full amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.

38. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All materials, equipment, software and Services are subject to inspection and testing by the State, as delineated herein under TESTING AND INSPECTION, and any that does not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given thirty (30) days from the completion of installation by the Contractor (or thirty (30) days after delivery if customer installed) to test, evaluate and accept the materials, equipment, software and Services delivered or furnished under this Contract (provided that the using agency, in its sole discretion, may accept the same prior to expiration to the thirty (30) day period). If the Contractors materials, equipment, software or Services fail to meet the Contract specifications or other requirements, including the specifications of the brand name (see paragraph 4 of the Solicitation Instructions), or those required by the Contractor's own technical documentation, then the same may be rejected and returned to the vendor. Such rejection will terminate this Contract and exempt the State from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of determining title to that which is delivered and for making payment, however, acceptance by the State following testing and evaluation during the thirty (30) day period shall not be conclusive that the materials, equipment, software or Services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the State after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the materials, equipment, software or Services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the State may exercise the remedies provided in the section herein entitled "Termination and Cancellation," in addition to and not in lieu of any other remedies available under Virginia law.

39. INVOICES

All invoices shall be rendered promptly after all Services covered by the invoice have been accepted. All payments under this Agreement shall be monthly in arrears. No invoice may include any costs other than those identified in the Schedule. Invoices shall provide at a minimum:

1. Type and description of the Service;
2. Charge for each item (Service);
3. This Contract Number, and;
4. Contractor's Federal Identification Number (FIN);

All invoices are to be sent directly to the Authorized User identified in the applicable TSO.

40. TELECOMMUNICATIONS SERVICE ORDER (TSO)

During the term of this Agreement, the Commonwealth may deliver written Telecommunications Services Orders (TSOs) to the Contractor. To be valid, the TSO must be signed by an Ordering Officer authorized to bind the Commonwealth contractually for telecommunications Services acquired under this Agreement. The TSO must identify the Service(s) to be acquired, the price for each Service, and the required Commencement Date for each Service. The Contractor shall provide a dedicated FAX number to receive all TSOs, and telephone numbers of both primary and backup ordering contracts.

Upon receipt of a TSO via either regular mail, facsimile or electronically, the Contractor shall provide acknowledgement of receipt of the TSO within 24 hours via facsimile. The Contractor shall provide a written confirmation of each Order to DIT no less than 72 hours prior to DIT's requested due date. This written confirmation shall include but not limited to the following:

1. A verification of service to be provided, including phone or circuit numbers, and verification that the TSO is technically correct, and
2. The date the Services will begin, and

3. The Contractor's service order number, and
4. Name and telephone number for the Contractor contract for the TSO, and
5. A verification of the charge for each item (Service) to be provided

41. ORDERING OFFICERS

The Contracts Manager, Acquisition Services Division, DIT, appoints the following authorized Ordering Officers. The Ordering Officer(s) authority is limited to ordering the Services as identified herein, by written TSO(s) which reference this Contract, and does not include the ability to add any additional Services not set forth herein or to change or modify any prices, terms and or conditions agreed upon by the parties hereto. All changes to this Contract must be incorporated in a formal modification to this Contract by the parties identified in paragraph 34 of this Contract.

The Contractor is hereby notified that the Commonwealth will only make payment only against valid TSOs executed by an authorized Ordering Officer and confirmed by the Contractor. Contractor shall be advised in writing by the Contracts Manager, DIT or his appointed designee, of any change in the identity of Ordering Officers.

Ordering Officers are Phil Johnson, Don Spangler and Margaret Moran.

42. SERVICES WARRANTY

Contractor shall deliver and maintain Services as defined below:

- a. Services shall be warranted to operate on an end-to-end or Customer Premise Equipment (CPE) to CPE availability rate of 99.83%, or higher, over a twelve (12) month period, twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year, including all holidays. This standard of Service shall be in accordance with the technical specifications and functional descriptions, as contained or referenced in this Agreement, with a Service outage rate of no more than .17% (15 hours per year).
- b. Contractor shall provide unlimited Telephonic Support Service with a toll-free telephone number for reporting problems, and respond telephonically within thirty (30) minutes after receipt of notification of any Service problem from either the DIT Network Control Center, or any Authorized User in the case of dial-up Services.
- c. Contractor shall provide problem resolution and restoration of Services to normal operation within four (4) hours after initial notification of failure.
- d. Contractor shall offer Telephonic Support Service during the principal period of maintenance (PPM), defined herein as twenty-four (24) hours per day, seven (7) days per week, three hundred and sixty-five (365) days per year, including all holidays, for the duration of this Agreement at no cost to the Commonwealth.

43. TERMINATION AND CANCELLATION

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this Agreement, (a) the vendor shall fail to deliver the equipment or Services required by this Contract or (b) the vendor shall repeatedly fail to respond to requests for maintenance or other Services within the time limits set forth in the Contract or (c) the vendor shall breach any of the other terms set forth within this Agreement or (d) the vendor shall fail to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the vendor ten (10) days to cure the failure/nonperformance. If the vendor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the Agreement for Default.

In such event, the Commonwealth will only be liable for cost incurred to the date of termination. All costs of de-installation and return of the equipment will be the vendor's expense.

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this Agreement.

44. FAILURE TO DELIVER

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the items set forth in the Schedule, the Commonwealth, at its own discretion, may give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the items from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this Agreement and the laws of the Commonwealth of Virginia.

45. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the

claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4366, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

DIT, its officers, agents and employees, including without limitation the Contracts Manager, DIT, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or Services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support Services hereunder.

46. SUBSTITUTIONS

During the term of this Contract, the Contractor is not authorized to substitute any Service(s) identified in the Schedule without the written permission of the Director, Acquisition Services Division, DIT. Violation of this condition shall be considered grounds for termination of the Contract.

47. CREDITS

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

48. CONTRACTUAL RECORDS

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

49. CONTRACTOR'S REPORT OF SALES

The Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and Services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the

end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express Agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

50. INDUSTRIAL FUNDING ADJUSTMENT

The Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in paragraph 52, above. The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written Agreement from DIT that validates Agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within 30 calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

51. UNIVERSAL SERVICE FUND

The Contractor agrees to make available to all requesting USF participants, all products and Services as listed and priced herein. The Contractor agrees to provide the Products and Services directly to the USF participant, and to bill each USF participant directly. The Contractor agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as well as administration of said Contract for USF participation shall be the sole responsibility of the Contractor.

The Contractor warrants that it is qualified under applicable Federal Communications Commission and Virginia State Corporation Commission rules to apply for and receive Universal Service Fund allocations/disbursements for Services provided pursuant to this Contract to agencies and entities and users which are eligible for those allocations/disbursements on behalf, and for the benefit, of those

agencies and institutions. The Contractor also agrees to maintain those qualifications, and to assist agencies and entities in applying for and receiving these allocations/disbursements.

52. INTEGRATION SUPPORT SERVICES

Contractor shall provide integration support Services, comprising installation and configuration assistance, as described on the attached Schedule and at the price identified therein. The Contractor may provide either On-site or via telephone, the Intergation support services requested by DIT in a TSO. The Contractor will receive requests for such Service by a written Telecommunications Service Request (TSO). The TSO will state the requirement and the approximate number of hours requested. The Contractor will be advised on each TSO as to the name and address of the Point-of-Contact (POC) at the requesting agency, institution, or public body. The Contractor will also be advises on the TSO of the appropriate billing address.

53. PRIORITY OF SERVICE

The Commonwealth of Virginia requires that Contractor provide Services that are equal to or better than provided to its commercial and retail customers. Contractors who fail to comply with this provision are advised that such action shall be considered to be grounds for termination of this Agreement. Contractors whose Agreements are terminated for such action may be placed on DIT's list of Debarred/Ineligible bidders in accordance with Section 7.20 of the Division of Purchases and Supply's Vendor's Manual dated December 1998.

54. COMPLIANCE WITH FEDERAL LOBBYING ACT

a. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

b. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

c. A representative of Contractor shall sign the certification attached as Attachment "A" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

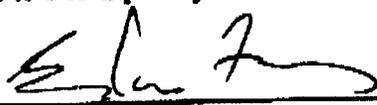
ATTACHMENT "A"
TO
AGREEMENT VA- _____
FOR THE
VIRGINIA DEPARTMENT OF _____

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative Agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: 

Printed Name: Edward Fang

Organization: Visi Net

Date: Jan 1, 2002



SCOTT D. FAIRHOLM
Agency Director

COMMONWEALTH of VIRGINIA
Department of Information Technology
Acquisition Services Division
110 S. 7th Street
Richmond, Va. 23219-3900

Phone: (804) 371-5931
Fax: (804) 371-5969
Email: jedmonds.dit@state.va.us

October 22, 2001

MEMORANDUM

TO: Potential Vendors for Invitation for Bids (IFB) #2002-05
RE: Amendment #1

Replace:

Please replace the original Appendix #1 with the attached revised Appendix #1.

The due date/time for this solicitation is not extended as a result of this change.

Vendors should sign the attached acceptance and include it with their proposal submission.

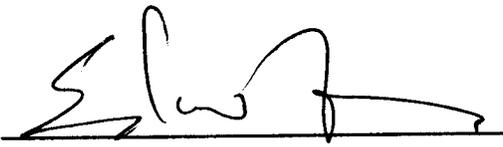
A handwritten signature in black ink, appearing to read 'J. B. Edmonds', written over a circular stamp or seal.

J. B. Edmonds, Deputy Director
Acquisition Services Division

AN EQUAL OPPORTUNITY EMPLOYER

Agreement with Amendments to IFB #2002-05

The undersigned, as a representative of the named firm, acknowledges receipt and compliance with all provisions of Amendments 1 of the above referenced Invitation for Bids.

Signature: _____

Firm: Vizinet- EJA

Date: Oct 30, 2001



COMMONWEALTH of VIRGINIA
Department of Information Technology
Acquisition Services Division
110 S. 7th Street
Richmond, Va. 23219

TDD VOICE-- TEL NO
804/371-8076

Scott D. Fairholm
Agency Director

January 2, 2002

Mr. Edward Fang
VisiNet
715 Middle Ground Blvd.
Newport News, VA 23606

RE: IFB# 2002-005, Contract VA-020102-VN (Contract)

Dear Mr. Fang:

Please accept this letter as your official notice of award for the above referenced procurement. A copy of the fully executed contract is enclosed with this notice. Please reference the contract number shown above in all future correspondence/invoices concerning this agreement.

Correspondence concerning acceptance of the products and services should be addressed to the attention of the individual identified, as shown in block #7, Page 1, of DIT Form 62 / the contract. The DIT point of contact for this procurement is Mr. Dave Butler, and the DIT point of contact for the resulting contract is Mr. Robert Gleason.

Sincerely,

A handwritten signature in black ink, appearing to be "JD" with a large loop.

Jeff Davis
Contracts Manager

Enclosure
cc: File