



Commonwealth of Virginia
Virginia Information Technologies Agency

STATEWIDE ALERT NETWORK

Authorized Users: State agencies, Institutions, and other public bodies as defined in Section 2.2-4301 of the VPPA

Date: February 3, 2010

Contract #: VA-040615-VA

Contractor: Global Secure Systems Corporation
8601 Ranch Road
Austin, TX 78730

FIN: 75-2992094

Contact Person: Eric Shaffer
Phone: 916-640-1600 Ext. 3023
Fax: 916-640-1478
Email: eshaffer@globalsecurecorp.com

Pricing: See Attachment A

Term: June 14, 2009 – June 14, 2010

Payment: Net 30 days

For Additional Information, Please Contact:
Virginia Information Technologies Agency
Supply Chain Management Division

Mike Novak
Strategic Sourcing Specialist
Phone: 804-416-6168
Fax: 804-416-6361
E-Mail: mike.novak@vita.virginia.gov

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase products or services for their personal use from this Contract.

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

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.



COMMONWEALTH of VIRGINIA

George F. Coulter
Chief Information Officer
Email: cio@vita.virginia.gov

Virginia Information Technologies Agency
11751 Meadowville Lane
Chester, Virginia 23836-6315
(804) 416-6100

TDD VOICE -TEL. NO.
711

**MODIFICATION NO. 6
TO
CONTRACT NUMBER VA-040615-VA
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
GLOBAL SECURE SYSTEMS CORPORATION**

This administrative modification updates the language regarding eVA terms to be consistent with our current contract requirements and eVA terms. Therefore, the current language regarding eVA terms and fees in the above referenced Contract is hereby replaced with the following language:

"The required eVA provisions at:
<http://www.vita.virginia.gov/uploadedFiles/SCM/eVATsandCs.pdf> are incorporated by reference.

The then-current terms and conditions posted to this URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in VITA policy, or the adoption of revised eVA business Requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URL periodically."

The foregoing is the complete and final expression of this modification. All other terms and conditions of the contract remain unchanged.

Philip L. Pippert
Associate Director
Supply Chain Management

cc: Contract File

Agreed by Supplier:

Signature: 

Name (Printed): Andrew Nunemaker

Date: 1/22/2010

**MODIFICATION #5
TO
CONTRACT NUMBER VA-040615-VA
BETWEEN THE
COMMONWEALTH OF VIRGINIA, through the
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
GLOBAL SECURE SYSTEMS CORP.**

This MODIFICATION #5 is an agreement between the Commonwealth of Virginia, through the Virginia Information Technologies Agency, hereinafter referred to as "VITA" or "Commonwealth", and Global Secure Systems Corp., hereinafter referred to as "Contractor", relating to Contract VA-040615-VA as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #5 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #5 is to document the parties' agreement to the following:

Referencing Section AI of the Contract, "Term", the parties agree that the term shall be extended from June 14, 2009 through June 14, 2010.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-040615-VA. Contract VA-040615-VA cannot be modified, except by a writing signed by a duly authorized representative of both parties.

ALL OTHER TERMS AND CONDITIONS OF CONTRACT VA-040615-VA REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT MODIFICATION 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.

Global Secure Systems Corp.

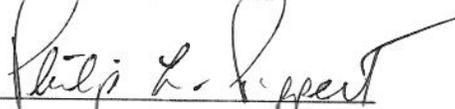
BY: 

NAME: Robert Hedgecock

TITLE: CTO

DATE: 5/26/2009

Commonwealth of Virginia

BY: 

NAME: PHILIP L. PIPPERT

TITLE: ASSOC. DIRECTOR, SEM

DATE: 5/26/09

**MODIFICATION #4
TO
CONTRACT NUMBER VA-040615-VA
BETWEEN THE
COMMONWEALTH OF VIRGINIA, through the
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
GLOBAL SECURE SYSTEMS CORP.**

This MODIFICATION #4 is an agreement between the Commonwealth of Virginia, through the Virginia Information Technologies Agency, hereinafter referred to as "VITA" or "Commonwealth", and Global Secure Systems Corp., hereinafter referred to as "Contractor", relating to Contract VA-040615-VA as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #4 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #4 is to document the parties' agreement to the following:

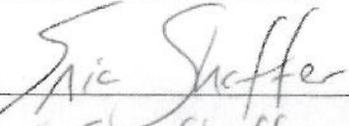
Referencing Section AI of the Contract, "Term", the parties agree that the term shall be extended from June 14, 2008 through June 14, 2009.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-040615-VA. Contract VA-040615-VA cannot be modified, except by a writing signed by a duly authorized representative of both parties.

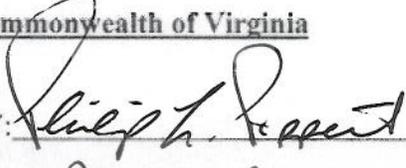
ALL OTHER TERMS AND CONDITIONS OF CONTRACT VA-040615-VA REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT MODIFICATION 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.

Global Secure Systems Corp.

BY: 
NAME: Eric Shaffer
TITLE: President
DATE: 5-21-08

Commonwealth of Virginia

BY: 
NAME: PHILIP L. PIPPERT
TITLE: ASSOC. DIRECTOR, SEM
DATE: 5/27/08

**MODIFICATION #3
TO
CONTRACT NUMBER VA-040615-VA
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
GLOBAL SECURE SYSTEMS CORP.**

This MODIFICATION #3 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "Commonwealth," and Global Secure Systems Corp., hereinafter referred to as "Contractor."

Reference Contract VA-040615-VA, Page 10, Paragraph U entitled "Industrial Funding Adjustment"

Both Commonwealth and Contractor do hereby agree to replace the language in the above reference of the Contract with the following revised language effective as of the date signed by Contractor below.

"Supplier's Report of Sales and Industrial Funding Adjustment

By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted and contact information for submission is available at <http://www.vita.virginia.gov/scm/default.aspx?id=4450> under "Supplier Reporting". The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.

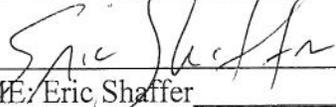
The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at <http://www.vita.virginia.gov/scm/default.aspx?id=4450> under "Supplier Reporting".

Failure to comply with reporting, payment and distribution requirements of this section may result in default of the Contract."

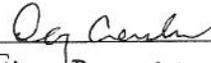
ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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.

Global Secure Systems Corp.

BY: 
NAME: Eric Shaffer
TITLE: President
DATE: 12/20/07

COMMONWEALTH OF VIRGINIA

BY: 
NAME: Doug Crenshaw
TITLE: Sourcing manager
DATE: 11/2/07

**MODIFICATION #2
TO
CONTRACT NUMBER VA-040615-VA
BETWEEN THE
COMMONWEALTH OF VIRGINIA, through the
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
GLOBAL SECURE SYSTEMS CORP.**

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, through the Virginia Information Technologies Agency, hereinafter referred to as "VITA" or "Commonwealth", and Global Secure Systems Corp., hereinafter referred to as "Contractor", relating to Contract VA-040615-VA as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #2 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #2 is to document the parties' agreement to the following:

Referencing Section AI of the Contract, "Term", the parties agree that the term shall be extended from June 13, 2007 through June 13, 2008.

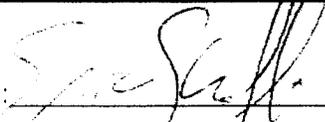
The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-040615-VA. Contract VA-040615-VA cannot be modified, except by a writing signed by a duly authorized representative of both parties.

ALL OTHER TERMS AND CONDITIONS OF CONTRACT VA-040615-VA REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT MODIFICATION 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.

Global Secure Systems Corp.

Commonwealth of Virginia

BY: 
NAME: Eric Shetter
TITLE: President
DATE: 5-24-07

BY: 
NAME: Doug Clemshaw
TITLE: Strategic Services Mgr
DATE: 5/29/07

**MODIFICATION #1
TO
CONTRACT NUMBER VA-040615-VA
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
GLOBAL SECURE SYSTEMS CORP.**

This MODIFICATION #1 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth", and Global Secure Systems Corp., hereinafter referred to as "Contractor."

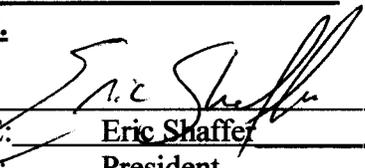
Reference Contract VA-040615-VA, Page 17, Paragraph AI, entitled "Term."

Both above-referenced parties do hereby agree to extend the term of the Agreement from June 13, 2006 through June 13, 2007.

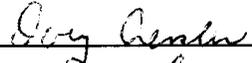
ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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.

**GLOBAL SECURE SYSTEMS
CORP.**

BY: 
NAME: Eric Shaffer
TITLE: President
DATE: 5/16/2006

COMMONWEALTH OF VIRGINIA

BY: 
NAME: Doug Greenhouse
TITLE: Strategic Services Manager
DATE: 6/16/06

**ASSIGNMENT AGREEMENT
TO
CONTRACT VA-040615-VA**

This is an agreement relating to Contract VA-040615-VA (the "Contract") between the Commonwealth of Virginia ("Commonwealth") and Virtual Alert, Inc., (the "Assignor"). The parties to this Assignment Agreement are the Commonwealth, the Assignor, and Global Secure Systems Corporation, a California corporation located at 8601 Ranch Road 2222, Austin, TX 78730 (the "Assignee"). The Contract is incorporated herein by reference.

1. Assignment of Rights. Assignor hereby certifies and warrants to the Commonwealth that Assignor has irrevocably assigned to Assignee all of Assignor's rights under the Contract. Without limiting the foregoing, this assignment includes any outstanding right to payment for work or deliverables rendered prior to the assignment, and Assignor agrees it retains no right to assert any contractual claim whatsoever in connection with the Contract.

2. Acceptance of Assignment of Rights. Assignee acknowledges and agrees that its rights against the Commonwealth in connection with this assignment are no greater than such rights would have been in the hands of the Assignor. Without limiting the foregoing, all rights to payment are subject to such offset, and all other performance by the Commonwealth shall be subject to such defenses as the Commonwealth would have been able to assert against the Assignor in the absence of this assignment.

3. Assumption of Duties. Assignee hereby makes its unconditional commitment to the Commonwealth to assume and perform all of Assignor's remaining obligations under the Contract. Without limiting the foregoing, this assumption includes completion of all work in progress and responsibility for correcting, maintaining or replacing any prior deliverables which were intended by the Contract to be of ongoing use or benefit to the Commonwealth.

4. Consent to Assignment. The Commonwealth hereby consents to the assignment. In the event the Commonwealth mistakenly directs any further payment under the Contract to Assignor (or in the event the Commonwealth has already remitted to Assignor any payment covered by the assignment to Assignee), Assignor agrees that it has and will hold such payment in trust for Assignee and, on behalf of the Commonwealth and without any offset or reduction whatsoever, shall promptly remit same to the Assignee for credit to the Commonwealth's account.

5. No Release; Arrangements as between Assignor and Assignee. This agreement does not release Assignor from its obligations under the Contract. Any arrangements which Assignor and Assignee may make or have already made in regard to rights and duties as between themselves are separate from this Consent To Assignment and shall not affect the Commonwealth's right hereunder to treat the Assignee as holding all rights and obligations of Assignor under the Contract, or the Commonwealth's right hereunder to look to Assignee to fulfill Assignor's responsibilities under the Contract (or to look to Assignor directly).

6. Notice to Assignor. If the Commonwealth sends any notice terminating the Contract, or any notice warning of possible termination of the Contract, the Commonwealth will send a copy of any such notice to Assignor.

7. Transition Duties. The effective date of this Assignment is March 1, 2006.

8. Applicable law. In accordance with the Contract, this Assignment Agreement shall be governed by the laws of Virginia and any litigation with respect thereto shall be brought only in the courts of the Commonwealth of Virginia. All other terms and conditions of the Contract remain in full force.

9. Complete Agreement. This is the complete and final expression of the Assignor's and Assignee's agreement with the Commonwealth and can be modified only in a writing signed by all parties.

IN WITNESS WHEREOF, the parties have caused this Assignment Agreement to be signed by their duly authorized officers, intending to be bound thereby.

VIRTUAL ALERT, INC

Assignor

BY: *Eric Shaffer*
NAME: Eric Shaffer
TITLE: President
DATE: 3/28/06

COMMONWEALTH OF VIRGINIA

BY:  John Tackley
NAME: _____
TITLE: _____
DATE: _____

Digitally signed by John Tackley
Date: 2006.03.28 15:42:13 -0500
Reason: on behalf of VITA
Location: Richmond, VA

GLOBAL SECURE SYSTEMS CORP.

Assignee

BY: *Eric Shaffer*
NAME: Eric Shaffer
TITLE: President
DATE: 3/28/06

**MASTER CONTRACT
CONTRACT VA-040615-VA
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
VIRTUAL ALERT, INC.**

A. SCOPE

This is an agreement (the "Agreement") between the Commonwealth of Virginia ("Commonwealth" or "State" or "VITA" (Virginia Information Technologies Agency)) and Virtual Alert, Inc., (the "Contractor"), a California corporation having its principal place of business at 5844 Price Avenue, Bldg 1045, McClellan, CA 95652. This Agreement contains the Contractual terms and conditions by which the Commonwealth will establish a Master Contract for State Agencies, Institutions, and other public bodies as defined in Section 2.2-4301 of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users" to acquire Software (the "Product" or "Products") and Services, along with any required support services (the "Services") pursuant to the Commonwealth's Request For Proposal #2004-181 LBR, dated March 12, 2004 (the "RFP") and the Contractor's proposal, dated April 7, 2004 in response thereto.

Upon award, all orders for Software and Services will be placed through VITA. VITA, at its sole discretion, reserves the right to allow "Authorized Users" in the future to order Software and Services directly from the Contractor.

B. INTERPRETATION OF AGREEMENT

As used in this Agreement, "software" and "software product" shall include all related materials and documentation, whether in machine-readable or printed form. Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) this document, consisting of Terms and Conditions labeled A through BN, Attachment "A" entitled Services Pricing, Attachment "B" entitled "Initial Installation Scope of Work, and Attachment "C" entitled Maintenance Agreement; (2) the Contractor's price proposal dated April 12, 2004 and the Contractor's technical proposal dated April 7, 2004 in response to the Commonwealth's RFP #2004-181 LBR dated March 12, 2004; (3) the Commonwealth's RFP #2004-181 LBR; and (4) all executed Orders and Attachments referencing this Agreement. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected. Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

B. 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.

C. 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 §2.2-4311 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, § 2.2-4343.1E).

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

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

- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. ETHICS IN PUBLIC CONTRACTING

By submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, 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.

E. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their proposals, Offerors 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.

F. 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.

G. PAYMENT

1. To Prime Contractor:

- a. 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).
- b. 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.

- c. 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.
- d. 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.
- e. 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*, § 2.2-4363).

2. To Subcontractors:

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.
- c. 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 (b) 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

H. MODIFICATIONS

This contract may be modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives authorized to do so. 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.

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.

I. 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.

J. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the Offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.

K. TRANSPORTATION AND PACKAGING

By submitting their proposals, all Offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

L. 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 §§ 2.2-4332 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:

1. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.
3. 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.

M. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a contract over \$30,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.state.va.us) for a minimum of 10 days.

N. 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.

O. 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.

P. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

1. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum

transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

2. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.
3. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

Q. eVA BUSINESS-TO-GOVERNMENT CONTRACTS

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

1. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.
2. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us.

R. RESERVED

S. NONVISUAL ACCESS TO TECHNOLOGY

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

1. effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
2. the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
3. nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public: and
4. the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (1) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (2) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

T. CONTRACTOR'S REPORT OF SALES

For Authorized Users other than VITA, 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, VITA, and a copy of the report to the Contracts Manager, VITA, 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. VITA 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.

U. INDUSTRIAL FUNDING ADJUSTMENT

For Authorized Users other than VITA, the Contractor must pay VITA, 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 the paragraph herein entitled "Contractor's Report of Sales". 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. VITA 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 VITA that validates agreement, then the payment shall be made by check as described herein made payable to the Controller, VITA.

If the full amount of the IFA is not paid within thirty (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.

V. DEBARMENT STATUS

By submitting their proposals, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals 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.

W. 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 which the Commonwealth may have.

X. ORDERS

Authorized ordering officials representing the VITA may order Software or Services from this Contract by any of the following Order methods, and the Contractor is required to accept any Order from A, and B as shown below. The Contractor may also accept Orders using C, as shown below. VITA, at its sole discretion, in the future, may allow other "Authorized Users" of this Contract to order Software and Services directly from the Contractor:

1. eVA: An order placed through the eVA electronic procurement website portal <http://www.eva.state.va.us>
2. Purchase Order (PO): An official PO form issued by an Authorized User.
3. Charge/Credit Card:
 - a. Any order/payment transaction processed through the Commonwealth's contract with American Express (AMEX). Each Commonwealth Charge Card Order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.
 - b. Any other order/payment charge or credit card process, e.g. AMEX, MASTERCARD, or VISA, under contract for use by an Authorized User.

This ordering authority is limited to issuing Orders for Software, and Services that are available only under this Agreement. Notwithstanding the section herein, entitled

Modifications, no Authorized User or other public body of the Commonwealth shall have the authority to modify this Contract.

Y. 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.

Z. 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.

AA. 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 2.2-510 and Section 2.2-514 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.

AB. 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 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Virginia Information Technologies Agency, its officers, agents and employees, including, without limitation, the Contracts Manager, 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.

AC. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor's liability under this contract for loss or damages to government property caused by the use of any defective or deficient product and/or services delivered under this Contract shall not exceed the greater of \$1,000,000 dollars or two times the total amount of the affected order to be paid to the Contractor resulting from a statement of work (SOW) under this contract as of the date of the event or circumstance giving rise to Contractor's liability. 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. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or willful negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

AD. PROPRIETARY INFORMATION, DUPLICATION AND DISCLOSURE

The Contractor agrees that all software installed and utilized on Contractor's Assets contains information proprietary to the Commonwealth of Virginia and other third party software vendors and that disclosure of such information could cause irreparable damage to the Commonwealth of Virginia and its citizens. Therefore, Contractor agrees to hold all information and or software disclosed through operation of this Agreement in strict confidence, as required by this Section and use such information only in performance of this Agreement. No information or software utilized by the Commonwealth while at Contractor's facilities shall be duplicated or furnished to others without the prior written consent of VITA.

Contractor acknowledges that in the course of performing services hereunder its personnel and subcontractors (if any) will have access to confidential information about COV's business, operations, employees, customers. Contractor agrees that, except as directed by COV, Contractor its employees and its subcontractors shall not at any time during or after the term of this Agreement (a) disclose any Confidential Information to any third party, (b) permit any third party to examine and/or make copies of any reports, documents or electronic data containing Confidential Information (whether they are prepared by Contractor or come into Contractor's possession or under Contractor's control by reason of Contractor's services) or (c) use any Confidential Information for any reason other than in the performance of services hereunder. Upon termination of this Agreement, Contractor shall return to COV or at COV's request destroy, all reports, documents, electronic data and other matter in Contractor's possession or under Contractor's control that contain or relate to Confidential Information. Contractor may disclose Confidential Information to such of its personnel as have a need therefore in the performance of their duties for COV, provided, however, that Contractor shall inform all such personnel of their confidentiality obligations hereunder and shall use its absolute best efforts to ensure their compliance therewith. Contractor shall not be required to treat as confidential any information which:

1. Contractor can demonstrate was in its possession prior to execution of this Agreement
2. has become generally available in the public domain without breach of this Agreement
3. becomes lawfully available to Contractor from a source other than the Commonwealth

ANY RELEASE OF PROPRIETARY OR CONFIDENTIAL INFORMATION BY THE CONTRACTOR OR CONTRACTOR'S EMPLOYEES SHALL BE CONSIDERED A BREACH OF THIS AGREEMENT. THE CONTRACTOR SHALL NOT USE THE CONFIDENTIAL INFORMATION OF THE COMMONWEALTH FOR ITS OWN BENEFIT OR FOR THE BENEFIT OF ANY THIRD PARTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT IN PERPETUITY.

AE. CONTRACTOR ACCESS TO COMMONWEALTH LOCATION/S

Commonwealth shall grant to Contractor personnel such access to the Commonwealth location as may be necessary or appropriate for Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual Commonwealth location, the Contractor may be required to undergo additional security procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The Contractor may at any time, for any Commonwealth location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Commonwealth would consider reasonable for security measures. These forms may include the individual employee's agreement that all Commonwealth information that is garnered while at the

Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of the Agreement.

AF. PRIME CONTRACTOR RESPONSIBILITY

If the Contractor's proposal includes any goods or services to be supplied by another party, the Contractor agrees as follows:

1. The Contractor shall act as prime Contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.
2. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's product or services, and that such other party has agreed in writing that it has no objection thereto.

AG. PERIODIC PROGRESS REPORTS/INVOICES

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the Offeror will include a section on involvement of small businesses and businesses owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be Contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the Offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

AH. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

FIRM NAME	ADDRESS AND	TYPE GOODS/	ACTUAL	PLANNED	% OF
PHONE NUMBER	TOTAL	SERVICES	DOLLARS	DOLLARS	CONTRACT

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Totals for Business Class		_____	_____	_____

AI. TERM

This Agreement shall take effect on the date of its final execution by both parties, and shall continue for two (2) years, "initial term". The Commonwealth at its sole discretion may extend this Agreement for four (4) additional one (1) year periods. The Commonwealth will issue a written notification to the Contractor stating the extension period, thirty (30) days prior to the expiration of any current term.

AJ. AVAILABILITY OF SOFTWARE

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

AK. OPERATIONAL RESTRICTIONS

Contractor warrants that, except as specifically agreed in writing all Products may be operated at any time for the convenience of the Commonwealth (exclusive of time required for preventive maintenance, remedial maintenance and approved engineering changes). Without limiting the foregoing, Contractor warrants that there are no restrictions as to consecutive hours or length of personnel shifts. The Commonwealth may make the Products available to any Commonwealth agency or any other users under conditions where such use is supervised by the Commonwealth.

AL. CREATION OF INTELLECTUAL PROPERTY

All copyrightable material created pursuant to this Agreement shall be considered work made for hire and shall belong exclusively to the Commonwealth. If the whole or any part of such copyrightable material cannot be deemed work made for hire, the Contractor agrees to assign, and does hereby irrevocably assign, the copyright thereto to the Commonwealth, and shall execute and deliver such further documents as the Commonwealth may reasonably request for the purposes of acknowledging or implementing such assignment.

The Contractor warrants that no individual, other than regular employees of the Contractor or Commonwealth working within the scope of their employment, shall participate in the creation of any copyrightable material to be delivered under this Agreement, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the Commonwealth.

The Commonwealth shall have all rights, title and interest in or to any invention reduced to practice through the performance of this Agreement.

The Contractor hereby agrees that, notwithstanding anything else in this Agreement, in the event of any breach of this Agreement by the Commonwealth, the Contractor's remedy shall not include any right to rescind or otherwise revoke or invalidate the provisions of this Section. Similarly, no termination of the Agreement by the Commonwealth shall have the effect of rescinding the provisions of this Section.

AM. PRICING

Pricing for any Products or Services after the second year of the Contract shall not increase more than 6% annually above the then current pricing.

AN. INSTALLATION RESPONSIBILITY

Except where otherwise expressly provided, "delivery" includes installation and delivery shall not be complete until, the Contractor completes installation of all Products, including, without limitation, shipping FOB destination, all unpacking, positioning and connection of such Products with internal utility services, ready for acceptance testing. All equipment installations shall comply with building and facilities standards established by the Commonwealth.

AO. DELIVERY DATE

The Contractor shall deliver the Products, ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement. If delivery of all Products is not completed within thirty (30) days after the scheduled delivery date, the Commonwealth may cancel the Agreement without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

AP. COMMENCEMENT OF ACCEPTANCE TESTING

The Products shall be considered ready for testing when the Contractor provides the Commonwealth with the documentation of a successful system audit or diagnostic test performed at the site which demonstrates, to the satisfaction of the Commonwealth, that all Products meet the minimum design capabilities specified by Contractor. If the Contractor certifies that the Products are ready to begin acceptance testing prior to the scheduled delivery date, the Commonwealth, at its option, may elect to test the Products and change the delivery date accordingly.

AQ. REQUIRED PERFORMANCE LEVEL

To qualify for acceptance, all Products must concurrently perform in accordance with the technical specifications and functional descriptions, as contained or referenced in this Agreement over a period of seven (7) consecutive days. The Commonwealth shall not pay any charges, either beforehand or retroactively, associated with the Contractor's requirement to achieve this performance level. If any Product does not meet the standard of performance during the initial seven (7) consecutive days, the acceptance period shall continue on a day-to-day basis until all Products concurrently meet the standard of performance for seven (7) consecutive days.

Should it be necessary, the Commonwealth may delay the start of the acceptance period, but such a delay shall not exceed thirty (30) consecutive days.

AR. ACCEPTANCE

The Products shall be deemed accepted on the first day after successful completion of the acceptance period. Upon request, the Commonwealth shall provide written confirmation of acceptance. If the standard of performance has not been met after ninety (90) calendar days have elapsed from the start of the acceptance period, the Commonwealth may require a replacement to be provided or may avail itself of the remedies for breach.

AS. RECORDS

The Commonwealth shall maintain appropriate daily records documenting performance during the acceptance period and such records shall be conclusive for purposes of determining acceptance.

AT. SOFTWARE WARRANTY

Contractor warrants the operation of the Software Product identified in this Agreement as long as the Maintenance Services as described in Attachment "C" are in effect. Software Products which fail to operate in accordance with the Contractor's Proposal or published specifications will be returned, at Contractor's expense, for replacement. Contractor agrees to replace any non-conforming Software Product according to the Maintenance Services as described in Attachment "C". Warranty service shall include, but not necessarily be limited to, detection and correction of errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available as described in Attachment "C".

AU. SERVICES WARRANTY

Contractor shall deliver and maintain the Services as defined below and as specifically set forth in Attachment "C" entitled Maintenance Agreement:

The Service shall be warranted to operate free from failure and shall be available for use by the Commonwealth twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays. The cost of this Warranty is included in Attachment "C", for each Service contained herein and continues throughout the life of the Service.

AV. PRINCIPAL PERIOD OF MAINTENANCE

The Principal Period of Maintenance (PPM) is described in Attachment "C", Maintenance Agreement.

AW. RESPONSE TIME

During the PPM, for Software, the Contractor shall provide response via telephone and support via email.

AX. CONTRACTOR'S MAINTENANCE POINT-OF-CONTACT

The Contractor shall provide the Commonwealth with designated points-of-contact and make arrangements to enable its maintenance representative to receive such notification or other continuous telephone coverage to permit the Commonwealth to make such contact as described in Attachment "C".

AZ. TRAINING

The Contractor shall provide training as per RFP 2004-1811b and as negotiated. Such training will be at a mutual agreeable Commonwealth location.

BA. MANUALS

Contractor shall supply an electronic copy of operations manual for each Product, and in the case of custom-developed deliverables, shall also provide a manual describing the functions, characteristics and operating capabilities that may be expected of such deliverables.

BB. LICENSED SOFTWARE

The Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software/firmware product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

BC. TERM OF LICENSE

All licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis and shall commence upon the acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. This license is perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder. Providing that, Virtual Alert has no responsibility for maintaining, updating or correcting the software if the Commonwealth fails to pay the Annual Maintenance fees described in Attachment "C". All Rights, title and interest in and to the technology shall remain the sole and exclusive property of Virtual Alert, as well as in any invention or discovery, including without limitation, information, improvements, innovations, suggestions, ideas and reports (whether patentable and/or copyrightable or not), conceived or reduced to practice shall remain the sole and exclusive property of Virtual Alert.

BD. CONFIDENTIALITY

Commonwealth agrees that when the Software Product is proprietary to Contractor and has been developed or acquired at Contractor's expense, that it shall hold and use the Software Product in the same manner as it would deal with its own confidential information. Commonwealth shall not knowingly divulge, nor knowingly permit any of its employees, agents, or representatives to divulge, any proprietary information with respect to the Software Product, the technology embodied therein, or any other documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as specifically authorized by Contractor, in writing, or as may be required by the laws of the Commonwealth of Virginia.

Commonwealth shall take all reasonable steps necessary or appropriate to insure compliance with this Section by the Commonwealth's employees, agents and representatives, including copying reproducible legends and markings on all physical components of the Software Product.

The Commonwealth's obligation under this Section shall terminate three years after the Commonwealth ceases using the Software Product containing the proprietary information.

BE. SOFTWARE UPGRADES

So long as the Maintenance Services portion of this Agreement set forth in Attachment "C" are in effect, the Commonwealth shall be entitled to receive any and all upgraded versions of the Software Product that Contractor may make available in the future

including any third party Software Product provided by the Contractor under this Agreement

BF. DISPOSITION OF SOFTWARE

Unless otherwise instructed by the Contractor, the State shall erase, destroy or otherwise render unusable the Software Product within thirty (30) days from the date of the Commonwealth's termination of the license. A letter certifying this destruction shall be sent to the Contractor as soon as this process is completed. The Commonwealth shall have the right to retain one copy for archival purposes.

BG. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE

Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have:

1. Unlimited use of the Software Products on the machines for which it is acquired and on any replacement equipment to the extent and level of the Licenses granted under this Agreement;
2. Use of such Software Products with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;
3. The right to use such Software Products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;
4. The right to copy such software for safekeeping or backup purposes;
5. The right to modify such Software Product or combine it with other programs or material at the Commonwealth's risk; and
6. The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.
7. Right of Use. Virtual Alert will deliver to the Commonwealth one complete copy of the Product described in the relevant Purchase Order, which shall only be used for the purposes described herein. The product shall only be used by persons and for purposes within the Commonwealth of Virginia. Virtual Alert will provide to Licensee, at no charge, Error Corrections for the Product beginning when the Commonwealth accepts the Product and continuing for the term of the Maintenance Services

described in Attachment "C". The License to the Commonwealth hereby granted may not be transferred or sublicensed, but shall extend to any department or subdivision of the Commonwealth including persons granted user authorization by the Commonwealth (collectively, "Affiliates"). The Commonwealth shall be responsible for the compliance by each such Affiliate with the terms and provisions of this Agreement. The Commonwealth shall not reverse engineer, reverse compile or disassemble the Product, or otherwise attempt to derive the Source Code to any software or technology licensed under this Agreement. The foregoing shall not apply to such activities conducted in the ordinary course of technical support of Licensee products such as may occur in the use of debugging tools. Purchasing the Product is similar to purchasing many other "Common, Off-the-Shelf" software products. Licensee is purchasing a license for the right to use the product. The companies that designed and built the product and the related software platforms on which the software operates own the actual code behind the product and the Licensee will not receive Source Code, or the rights to the Source Code.

8. Showcase Account. The Commonwealth agrees, subject to Virtual Alert obtaining the prior written consent of the Commonwealth before commencing any of the following activities, to be a "Reference Account" for Virtual Alert. As a Reference Account, the Commonwealth agrees to cooperate with Virtual Alert (i) in preparation of at least two (2) press releases and two (2) case studies that shall be released upon both parties prior written authorization, where the aforementioned materials can be used for Virtual Alert's marketing purposes (including, but not limited to, placement on Virtual Alert's website, use in marketing materials, etc.) (ii) in providing oral and/or written references to Virtual Alert's prospective customers and occasional site visits by Virtual Alert's prospective customers at Licensee's facility demonstration of Virtual Alert's products in use by Licensee's personnel; provided each site visit is scheduled on a mutually agreeable date at least two (2) weeks prior to the actual site visit; (iii) in providing oral and/or written references to press and industry analysts; (iv) in conducting a video testimonial to be used for Virtual Alert's marketing purposes (i.e. Virtual Alert's website, trade shows, etc.); and (v) in delivering pre-approved quotations to be used in Virtual Alert's marketing materials. The parties further agree that Virtual Alert may include Licensee's logo on publicly displayed customer lists (including Virtual Alert's Internet Web Site) provided a) Licensee's name is not the sole customer listed or emphasized in any manner; and b) Virtual Alert complies with Licensee's trademark guidelines as provided by Licensee to Virtual Alert. Licensee's prior consent shall be obtained prior to each such activity. Such consent shall not be unreasonably withheld.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources.

BH. SOFTWARE SUPPORT AND MAINTENANCE

When requested by the Commonwealth, the Contractor shall always be responsive to maintenance requirements of the Commonwealth as set forth in Attachment "C". Maintenance service shall include, but not necessarily be limited to, detection and correction of errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Maintenance charges shall include all travel, labor, and documentation. The Commonwealth shall have the option of purchasing, at later dates, additional one (1) year periods of maintenance and support after the expiration of the warranty period.

BI. WARRANTY AGAINST SHUTDOWN DEVICES

Contractor warrants that the Products provided under this Agreement shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither the Contractor, nor its agents, employees or subcontractors shall insert any such device after execution of this Agreement.

BJ. DISASTER RECOVERY

By executing this Agreement, Contractor hereby authorizes the Commonwealth to operate Contractor's licensed software products identified in this Agreement at other location(s) for purposes of disaster recovery and disaster recovery testing. In addition, Contractor recognizes that to prepare for such an event the Commonwealth must test the Contractor's software product (normally for a periods of two to three days, twice annually) at a disaster recovery vendor's Cold Site. The use of Contractor's software products by the Commonwealth, at such times and under such events will be in accordance with the terms and conditions of this Agreement. Contractor agrees that there shall be no additional charge to the Commonwealth when Contractor's software products are used during an actual disaster or for disaster recovery testing.

BK. INVOICES

All invoices shall be rendered promptly after all Software and Services covered by the invoice have been accepted. All payments for Software Support Services may be paid annually in advance, at the Commonwealth's discretion. No invoice may include any costs other than those identified in the executed Order or Attachment referencing this Agreement. Without limiting the foregoing, all shipping costs are the Contractor's responsibility, except to the extent such charges are identified on the executed Order or Attachment. Invoices shall provide at a minimum:

- 1 Type and description of the Software or Service;

2. Serial number, if any;
3. Charge for each item, and;
4. The Agreement Number or Order Number;
5. Contractor's Federal Identification Number (FIN);

Payment for maintenance services of less than one month's duration shall be prorated at 1/30th of the basic monthly charges for each calendar day.

BL. 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.

BM. BUY OUTS - THIRD PARTY ACQUISITION OF CONTRACTOR'S SOFTWARE

Contractor shall promptly notify the VITA Contracts Manager in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The terms and conditions of this Agreement including but not limited to the license rights and related services shall not be affected in such event identified above even if the successor or assignee already has an agreement with the Commonwealth covering products and services of the type covered by this Agreement. The Contractor's responsibilities under this Agreement shall not be released by such acquisition. In addition, prior to any acquisition, Contractor shall obtain for the Commonwealth's benefit the assignee's agreement to fully perform this Agreement.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

The failure of any successor or assignee of the Contractor to acknowledge its obligation to adhere to the terms and conditions of this Agreement shall constitute a breach of this Agreement for which the successor or assignee and the original Contractor shall be liable and subject to debarment.

BN. ASSIGNMENT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Contract shall not be assignable, in whole or in part, to any other party without the Virginia Information Technologies Agency's (VITA's) written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the VITA purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on VITA's "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager VITA. Upon VITA's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Controller, VITA of the assignment and shall supply the Controller, with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment.

In the event VITA receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Contract, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after VITA's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Acquisition Services Division of VITA shall promptly notify the Contractor of any assignment notice it receives.

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.

VIRTUAL ALERT

BY:

Eric Shaffer

NAME:

Eric Shaffer

TITLE:

Executive Director

DATE:

6/11/04

COMMONWEALTH OF VIRGINIA

BY:

Philip L. Pippert

NAME:

Philip L. Pippert
~~Joe A. Parr~~

TITLE:

Assoc. Director
~~Tech Contracts Manager~~

DATE:

6/14/04

ATTACHMENT "A"
TO
AGREEMENT VA-040615-VA
FOR THE
VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA-040615-VA between Virtual Alert, Inc. and the Commonwealth of Virginia. In the event of any inconsistency between this Attachment "A" and Agreement VA-040615-VA, the provisions of Agreement VA-040615-VA shall control.

INITIAL INSTALLATION

Contractor shall provide and install the Products and Services as delineated in the Scope of Work in Attachment "B" at the prices contained therein. Attachment "B" is attached hereto and incorporated herein.

PRICE LISTING OF PRODUCTS, SERVICES, AND MAINTENANCE

See Table 1. Virtual Alert Pricing Table herein this Attachment "A".

SHIP TO BILL TO ADDRESSES

VITA
110 South 7th Street
Richmond, VA 23219

ORDERS

Additional orders may be placed by VITA as delineated in Paragraph X of the Agreement for Products and Services contained in the Virtual Alert Price Listing attached hereto and incorporated into the Agreement.

DELIVERY SCHEDULE

Initial delivery is required upon the execution of the Agreement by both parties as delineated in Attachment "B". Additional Products and Services shall be delivered in accordance with the requirements contained in individual Orders.

AGENCY POINTS OF CONTACT

CONTRACT ADMINISTRATION

Carmen Holmes
Supply Chain Management
(804) 371-5614
(804) 371-5969 (Fax)
Carmen.holmes@vita.virginia.gov

CONTRACT MANAGEMENT

Joe Parr
Supply Chain Management
(804) 371-5991
(804) 371-5969
joe.parr@vita.virginia.gov

ACCOUNTS PAYABLE

Genevieve Nelson
Financial Management Services
(804) 371-5666
(804) 371-5505
gen.nelson@vita.virginia.gov

CONTRACTOR POINTS OF CONTACT

CONTRACT ADMINISTRATION

Andrew Trickett
(512) 495-4297
(512) 495-4295 (Fax)
atrickett@virtualalert.com

ACCOUNTS RECEIVABLE

Lynda Christel
(619) 917-8600
(858) 777-3536 (Fax)
lchristel@virtualalert.com

E. Install and Training Fees (not include travel, facilities or materials expenses, which are billed at cost)

	Rate	Comments
Site install: onsite	\$19,000.00	For primary production sites installed in client facilities
Site install: offsite	\$12,000.00	For primary production sites installed in VA partner facilities
Integration Fees (per hour)	\$145.00	Senior project manager, for major projects
Integration Fees (per hour)	\$105.00	Engineer, for execution of major projects and management/execution of minor projects
Training: first week (per day)	\$1,500.00	For first 5 days of training contracted per module
Training: subsequent (per day)	\$1,000.00	Will negotiate discounts for large amounts of subsequent training

F. Standard Maintenance Agreements

Product/module	Annual Rate	Comments
BTRS -- standard configuration	25%	On first \$150,000 of licenses; including vaMessenger software
BTRS -- standard configuration	20%	On next \$150,000 of licenses; including vaMessenger software
BTRS -- standard configuration	15%	For amounts above \$300,000 of licenses; including vaMessenger software
Public Health Data Exchange	35%	
Other modules	25%	For vaVolunteer, Public Health Outreach, vaGateway, vaSNS, PVMS, vaHospCap

G. Other optional costs for BTRS standard configuration (fees only, does not include expenses)

	Rate	Comments
Co-location / Remote Maintenance Service Options		
Setup Fee (Per Rack)	\$3,000.00	One time fee, per site, only for co-lo sites
Location Expense for system	\$1,200.00	Monthly fee, per site, only for co-lo sites
Internet Access, .5 - 2.5 Mbps Burstable, 95%*	\$750.00	Monthly fee, per site, only for co-lo sites
Internet Access, 1.0 - 3.0 Mbps Burstable, 95%*	\$1,350.00	Monthly fee, per site, only for co-lo sites
Internet Access, 2.0 - 10.0 Mbps Burstable, 95%*	\$2,700.00	Monthly fee, per site, only for co-lo sites
System Services and Maintenance	\$2,100.00	Monthly fee, per site
Managed Security Devices	\$1,100.00	Monthly fee, per site

Administrative Review	\$1,000.00	Monthly fee, per site
Performance Management	\$1,700.00	Monthly fee, per site
Additional Server Management	\$1,100.00	Monthly fee, per site, per new server beyond standard configuration for BTRS
Extended Help Desk Options		
Portal Administration Tasks	\$30.00	Per hour, as incurred, with \$10 minimum charge
Service Desk Support	\$90.00	Per hour, as incurred, for minor technical customizations and developer support
Computer Based Training Module	\$15,000.00	One-time fee
Other Services		
BTRS business rules consulting	\$29,000.00	One time fee
Program management	\$150.00	Per hour, for assistance in planning, organizing, executing and assessing BTRS rollouts and/or exercises
Business rules -- modules	\$150.00	Per hour, for assistance in designing processes, permission rules and web sites
Notes:		
* Billed at 95% usage rate. Higher rates for greater bandwidth		

ATTACHMENT "B"
TO CONTRACT VA-040615-VA
FOR THE
VIRGINIA INFORMATION TECHNOLOGIES AGENCY

STATEMENT OF WORK
FOR
INSTALLATION AND INITIAL ROLLOUT OF BTRS

Attachment "B" is hereby incorporated into and made an integral part of Agreement Number VA-040615-VA between Virtual Alert, Inc. and the Commonwealth of Virginia. In the event of any inconsistency between this Attachment "B" and Agreement VA-040615-VA, the provisions of Agreement VA-040615-VA shall control.

SCOPE OVERVIEW

The Commonwealth will purchase the following system and user configuration for its initial BTRS installation (all elements will be further defined within this document):

- One primary production system.
- User licensing, to be individually priced for each agency that participates on the system. The initial installation anticipates that the Department of Health (VDH) will be the primary participating agency
 - A configuration for each system that provides a standard BTRS install with a single portal designed for VDH purposes. This system will serve as the "kernel infrastructure" for any additional portals that may be built into the system at a later time
 - The initial install will also provide an additional portal for general usage for all authorized Commonwealth users
 - All portals will utilize a single BTRS directory structure
 - All portals will utilize a single BTRS alerting infrastructure
 - With the approval of the Virginia Information Technologies Agency (VITA), other entities may opt to purchase and build completely independent systems from the BTRS instance to be installed initially
- The Commonwealth will procure the standard maintenance agreement for the Commonwealth.

The Commonwealth and Virtual Alert have agreed to pursue design, install and training for the system with the following general chronological approach for Virtual Alert's responsibilities:

- Commence engagement of a Virtual Alert Program Manager

- Conduct a single business rules effort in which VDH, VITA and others, as named, participate in the same on-site sessions
- Install the primary production system by August 3, 2004
- Install the key users (for whom licensing must have been purchased) for the exercise. These users may include:
 - Key VDH/VITA/other staff, as identified and funded by the responsible agency
 - For each district health department: Public Health Officer, Nursing Manager, Admin Assistant, Planner
 - For each District (35): Emergency Services Coordinator, Asst. Emergency Services Coordinator, HazMat Coordinator
 - Others as named
- Commence the Extended Help Desk functions
- Provide onsite support for the exercise
- Prior to August 3rd, perform the following training:
 - One 2-day admin class for Commonwealth of Virginia, not to exceed 25 participants in any one class
- After completion of the exercise, perform the following training:
 - 13 days of admin/user training for health users/others, not to exceed 25 participants in any one class
- Commence the Technical Service Desk functions

GENERAL AND GLOBAL PARAMETERS AND LIMITATIONS

All professional services fees listed herein do not include travel and materials expenses, which will be billed, at cost, in compliance with the Commonwealth of Virginia Travel Regulation. For all hourly rates, prices may increase in accordance with the CPI-W index entitled "Other Services". Price increases shall be effective on the annual date of the Contract. The percentage increase shall not exceed the above index's most recent percentage available to the Commonwealth as published by the Bureau of Labor Statistic's, Philadelphia Office

Completion of deliverables, for Phase 1 in particular, is noted to be highly dependent upon the Commonwealth participants in this phase. Virtual Alert will not be held responsible for missed deadlines which are caused by failure of the Commonwealth participants in securing required equipment, providing data or executing tasks in a timely manner.

BTRS CLIENT ACCESS LICENSES

Client access licenses (CALs) are priced on a per-user basis, which vary depending upon the type of user and the functionality they are allowed to utilize. CALs will only be assessed for primary production sites. Virtual Alert will not charge the Commonwealth incremental user CALs for backup sites or test/training sites. User CALs must be paid in full before the users may be granted access to the system. All CALs are a one-time cost.

The base (list, pre-discount) price of these user CALs is:

- Administrator: \$250 per user
- Collaborator: \$120 per user
- Alert-only: \$20 per user
- Directory only: \$10 per user

The following table details the functional rights that each CAL provides:

	<u>Administrator License</u>	<u>Collaboration License</u>	<u>Alert-Only License</u>	<u>Directory-Only License</u>
Major Functionality Areas				
Administer Other Users	√			
Administer Roles	√			
Administer Groups	√			
Administer Folders	√			
Access to Collaboration Tools (1)	√	√		
Can Send Alerts	√	√		
Access to Read-only Information (2)	√	√	√	
Can Self-Administer Profile Info (3)	√	√	√	
Can Receive Alerts	√	√	√	
Can Authenticate Through Directory (4)	√	√	√	√
(1) Discussions, as well as check-in/check-out, draft/publish, fax/email distribute documents				
(2) Can see posted information and download documents on "semi-public" sites				
(3) Can self-maintain contact data, password/PIN, and alerting profiles				
(4) Whether for BTRS or for other applications				

Virtual Alert grants volume discounts for each type of license, depending upon the number of each license that the Commonwealth purchases. Virtual Alert will allow "pooling" of user counts across all entities that participate on this BTRS system, so that the Commonwealth may enjoy the maximum level of discounting available under the following schedule, which are applied in a "stepwise threshold" manner (meaning that the level of discounting applied at each threshold does not apply to user counts under that particular threshold):

<u>Administrator Licenses</u>	
1	0%
500	-10%
1,000	-15%
2,500	-20%
5,000	-25%
10,000	-50%

<u>Collaboration Licenses</u>	
1	0%
500	-10%
1,000	-15%
2,500	-20%
5,000	-25%
10,000	-30%
<u>Alert-only / Directory-only</u>	
1	0%
5,000	-10%
10,000	-20%
25,000	-30%
50,000	-40%
75,000	-50%
100,000	-60%
200,000	-75%

VDH has indicated an initial user configuration that it desires to purchase (set forth below). The list price and post-discount amounts, using the discount schedules listed above, are set forth in the following table. The following license amounts are due upon acceptance and will be paid in accordance with the The Virginia Prompt Payment Act.

<i>License Type:</i>	<i>Number</i>	<i>List Price</i>	<i>Pre-discount</i>	<i>Post-discount</i>
Administrator	150	\$250	\$37,500	\$37,500
Collaborator	1,000	\$120	\$120,000	\$120,000
Alert-only	2,000	\$20	\$40,000	\$34,000
TOTAL			\$197,500	\$191,500

BTRS SERVER LICENSES

All server licenses are one-time costs. They will be paid in arrears after installation and acceptance of such software. The server licenses for BTRS will be applied on a per-instance-installed basis. The Commonwealth will purchase at least one (1) primary production server license in order to use BTRS. In order to use BTRS on backup sites and test/training environments, Virtual Alert will provide significant discounts for subsequent server license purchases. This arrangement holds true only for an individual “client”. Virtual Alert will maintain the right to interpret whether a subsequent server license is for the same “client” or a new one. The price for primary production server licenses is **\$145,000**. In the initial installation, the Commonwealth will purchase one such license.

Backup sites and test/training environments are defined as exact replicas of the primary production site. The price for such sites is \$45,000. In the initial installation, there are no purchases of such sites. The Commonwealth shall have the option of purchasing these sites from the Agreement by separate Order.

Separate workspace sites are defined as installations in which a separate SharePoint portal (different home page and document library from the “kernel” system) is being utilized, but the original directory and alert infrastructure of the kernel system is being utilized. The price for such sites is \$75,000, which covers all primary production sites and backup/test sites for which the “main” Commonwealth system exists at any point in time. As part of the initial install, Virtual Alert has agreed to provide one such additional portal for general usage by all authorized Commonwealth users, at no charge to the Commonwealth – in terms of server license fees and associated maintenance on those server licensee fees. Additionally, Virtual Alert will not charge incremental install fees for this portal, as long as it is installed at the same time as the “kernel” system. Users will need to purchase CALs to access this portal. The intent is for this portal to be available for cross-agency collaboration and general news, as well as provide access to entities that do not elect to establish their own portal.

vaMessenger is a license for the telephonic execution device that dials phones and faxes. These are priced on a per-instance basis at **\$30,000**. The initial configuration purchased by the Commonwealth will require one such instance.

STANDARD SOFTWARE MAINTENANCE

Maintenance of the BTRS software for this configuration of server and user licenses is priced in annual terms and will be paid upfront on an annual basis. The pricing is based upon the pre-discount amounts of the license base in effect. The annual rates that will apply are:

- 25% On first \$150,000 of licenses; including vaMessenger software
- 20% On next \$150,000 of licenses; including vaMessenger software

15% For amounts above \$300,000 of licenses; including vaMessenger software

The Commonwealth will have rights to the following privileges by subscribing to Maintenance

- Rights to upgrade to subsequent versions of BTRS with no extra license fees
- Basic support for issues with the software product
- Rights to participate in the BTRS User Group

The terms and conditions of the Contract will govern the terms and conditions of such maintenance.

The standard maintenance agreement will cover a twelve month period. The Commonwealth has the option to purchase maintenance amounts that cover time periods that commence at a time that is more than one year in advance of the purchase date (“Out Year Maintenance”). The Commonwealth will be granted a 5% discount on such “out year” purchases of maintenance.

The Commonwealth will be responsible for paying all maintenance. For the initial configuration of licenses purchased (specified above in BTRS Client Access Licenses and BTRS Server Licenses), the maintenance cost is **\$78,375.00**.

PROGRAM MANAGER

Virtual Alert will provide a program manager to oversee all of the installation and initial rollout activities. This individual (or group of individuals sharing this role for the first two months after the Effective Date of the contract) will have a background in management of large and complex programs. The program manager’s primary role is to ensure the successful execution of all Virtual Alert responsibilities and to serve as the primary interface between the Commonwealth and Virtual Alert for these issues. The program manager will be expected to be onsite on a frequent basis (at least several days per month). Virtual Alert will provide this program manager immediately after execution of this contract.

The fees for this individual will be \$150/hour, not including travel and expenses. Fees will be billed monthly. It is expected that this individual will devote 500 hours for Phase 1 activities, for an estimated total of **\$75,000** before travel and expenses. Virtual Alert will take due care in separating the fees that can be specifically identified for each agency, if more than one. The expectation is that the majority of such work will be for VDH’s benefit.

BTRS BUSINESS RULES CONSULTING

Within the BTRS Business Rules Consulting package, Virtual Alert will provide guidance to the Commonwealth as it develops the business rules for how the system will actually be used on a day-to-day basis. The Commonwealth understands that the nature

of this work is such that producing deliverables is driven overwhelmingly by the Commonwealth's engagement, availability and speed of decision making. The business rules consulting package is priced on a "per group" basis, driven by how many different sessions Virtual Alert will need to attend – whether all the participants are acting as a unified team or separate teams. The Commonwealth will purchase one package at the price of **\$29,000** (plus travel and expenses, to be governed by the Commonwealth of Virginia Travel Regulation). Additional business rules consulting services may be purchased from Virtual Alert through this package or through a custom engagement at the rate of \$150 / hour (plus travel and expenses).

The following paragraph describes the primary business rules to be established through the initial package purchased:

- Define the directory structure for the "role tree" and the "user tree" within the directory
- Define the role naming conventions that will be utilized by the Commonwealth
- Determine who will have full administration authority and capabilities for the directory
- Develop the basic design of the portal (name, color, logos)
- Set the ground rules for sending alerts—define "alert-worthy events", set roles for who can send/receive different types of alerts, and to whom
- Define the various types of alerts—define a "High" vs. "Medium" vs. "Low" alert.

The initial Business Rules Consulting work will commence immediately upon the Effective Date of the Contract. The deliverables and due dates are set forth as follows:

- Upon the Effective Date, the Commonwealth will establish a date for the onsite work
- Upon the Effective Date, Virtual Alert will provide materials and an agenda for the onsite work, so that the Commonwealth working team may commence off-site research and (if it elects to do so) working sessions to be supported by Virtual Alert off-site
- The onsite work will be comprised of a consecutive Monday through Friday period in which the working group (established by the Commonwealth) will be introduced to the business rules to be set, deliberate the rules and determine which rules require gathering of data and/or approval by senior management. Virtual Alert will facilitate and manage this onsite period, in person. Virtual Alert is also responsible for providing multiple examples for comparable states for every business rule that the working group is deliberating, in order to improve the efficiency and quality of decision making. The Commonwealth has final say on all such rules.
- This will be followed by periodic meetings of the working group. Depending upon the progress made during the onsite period, the frequency of such sessions will be recommended by Virtual Alert, determined by the Commonwealth and

executed by the working team. Virtual Alert will provide off-site support for these sessions

- The Commonwealth will be responsible for documenting all business rules and gathering the data required to install the system. These include names for the organization units and user data to be installed. Virtual Alert's role is to facilitate the process so that it proceeds forth efficiently and promptly.
- The business rules must be completed one week prior to the commencement of installation. Therefore, the business rules are due on **July 19, 2004**.

The fee for the initial Business Rules Consulting Package is due upon completion of the on-site work in accordance with the Virginia Public Procurement Act.

BTRS INSTALLATION

Upon the Effective Date, Virtual Alert will provide a pre-install checklist for the Commonwealth to understand all of the components involved, and for the Commonwealth to commence preparation of the technical environment (i.e., 3rd party components). There will be a preparatory conference call between the Commonwealth technical staff and Virtual Alert's installation team – to ensure that the Commonwealth understands all requirements, so that the environment is ready when the installation team commences its work.

Once the Commonwealth has properly secured and prepared all items on the checklist, the Virtual Alert installation team will arrive at the installation site to fully configure the hardware, software, and networking components. This team will also populate the system with the following business rules, as made available by the Commonwealth working group:

- Structure the role tree organization units
- Install the role names into the Role tree
- Structure the user tree organization units
- Load the users into the root organization unit of the user tree (the users will be those key exercise participants outlined in the "Scope Overview" section)
- Install the portal graphics

The install team will then test the system to ensure full functionality. Typically, install is a 5-day process. In order to meet the Commonwealth's goal for availability of the primary production system for the exercise, the Commonwealth must have verifiably provided all 3rd party components and the business rules by **July 19**, to enable an install the **week of July 26**.

This initial install will provide a fully functional BTRS system. Once this configuration is successfully installed and the exercise has been completed, installation processes will commence in the following priority order (subject to availability of the required 3rd party components and business rules), if such systems are subsequently purchased by the Commonwealth:

- Install separate portals onto the primary production system
- Install backup systems
- Install test/training systems

The fee structure for installation is applied on a per-instance basis. The fee will be \$19,000 (plus travel and expenses) for instances that must be installed at a location other than one where Virtual Alert provides co-location services. The fee will be \$12,000 for instances that are installed at a location where Virtual Alert provides co-location services. Fees are due upon completion of the installation.

- For the initial configuration the Commonwealth will incur a **\$19,000** onsite install fee for the primary production system
- Extra portals that are installed at the same time as the “kernel” system will not incur incremental install fees. Extra portals installed at the hourly rates set forth in this contract for the staff that executes such install (including preparatory work). There will be no such incremental fee for the aforementioned “all Commonwealth” portal, if it is installed at the same time as the “kernel” system

ENHANCED HELP DESK

The standard software maintenance agreement provides direct Virtual Alert support for a small number of business and technical “super administrators”. Under the standard agreement, local administrators and end users may not contact Virtual Alert for support and the Commonwealth will be required to perform the bulk of business rules configuration. The Extended Help Desk arrangement will place this responsibility onto Virtual Alert as long as funds for such work are still available. The scope of work to be performed is:

- Establishing all new users on the system: set up user accounts, send them an introductory message with basic instructions on how to access the system and update their profiles
- Field the help calls directly from local administrators and all users
- Assign users to roles
- Assign alterable roles to each role
- Set up document library and category structure, including permissions, manage this ongoing
- Working with the appropriate officials, run local and statewide alert drills: craft, execute, and assess performance
- Other related tasks, as approved by the Commonwealth
- At the Commonwealth’s discretion, it may elect to utilize any portion of the available pool of dollars to cover support for modules beyond the initial configuration

Work is to be performed against a pre-set “not-to-exceed” pool of dollars. Work will be assessed at the rate of \$30 hour on actual time spent, with a minimum per-ticket charge of \$10. Virtual Alert must organize and execute the work in a best-efforts manner that

minimizes fees, to the extent possible while also providing timely response to incoming requests. Virtual Alert will provide monthly reporting on activity to support the monthly invoices for such work. Virtual Alert will take due care in separating the fees that can be specifically identified for each agency. The expectation is that the majority of such work will be for VDH's benefit. The initial not-to-exceed pool of hours will be **\$30,000**.

ON-SITE EXERCISE SUPPORT

Virtual Alert will provide two executives to support the usage of BTRS for the formal exercise in August. The fees (before travel and expenses) for such program support will be:

- Program Manager: \$150/hour
- Senior Technician: \$145/hour
- The expected number of hours of service for both staff members is forty (40), resulting in fees of **\$6000** and **\$5800**, respectively before travel and expenses

The staff will proactively and reactively facilitate successful usage of the system during the exercise. They will recommend ways to use the functionality, provide support for administrators and users, and address any technical issues that may arise during the exercise.

TRAINING

Virtual Alert will make available the following types of training:

- Portal administrator training
- Training for client trainers (so that they can then train end users)
- Collaborator and Alert-only end user training

Virtual Alert will provide electronic copies of the following types of materials for such training:

- Admin and Collaborator Manuals
- Admin and Collaborator Labs
- Quick Step Guides

Training of Trainers and Portal Administrators

- Trainers and portal administrators can be trained with the same curriculum, and within the same classes
- The curriculum provides two days of training (9:00 am to 5:00 pm, including an hour lunch). This class covers all of the material from the End User class (see below) on the first day and the Administration functions on the second day. The

objectives and outcomes for the Admin class include all of the items for End User class (see below) as well as the following:

- Managing Home Page Content
- Managing Users
- Managing Roles
- Managing Role Groups
- Managing Discussions
- Managing Categories
- Managing Subscriptions
- Managing Folders
- Viewing Reports and Logs

Training of End Users

- The curriculum for end users set forth below is for those with Collaboration licenses. In the circumstances where Virtual Alert is providing training only for alerting functionality, the class time can generally be halved
- End user training is a one-day class (9:00 am to 5:00 pm, including an hour lunch). The objectives and outcomes for the class include:
 - Logging on to the BTRS System
 - Using My Profile Page
 - Using the Home Page
 - Accessing Folders and Documents in the Document Library
 - Document Management and Publishing in the Document Library
 - Using the Search Functionality
 - Using Categories
 - Using Subscriptions
 - Viewing the Directory
 - Sending, Receiving, and Viewing Alerts
 - Using the On-line Help files
 - Logging of the BTRS system

For all class types, size is limited to twenty-five (25) participants. Fees will apply as follows (which do not include travel and expenses):

- First five (5) days of training per module: \$1500/day
- Subsequent training days: \$1000/day, with a minimum purchase of two (2) days to be performed consecutively

These fees are only for conducting the training. They do not include arranging attendance or facilities, which will be the Commonwealth's responsibility unless it contracts with Virtual Alert to perform such functions. Additionally, the fees do not include materials costs, reproductive costs, facilities costs or any costs related to the users' attendance, all of which will be borne by the Commonwealth. If the

Commonwealth subsequently opts for Virtual Alert to manage logistics, such work will be performed at the rate of \$1000/day.

For the initial installation, the following training will be performed by Virtual Alert prior to August 3rd, if possible:

- One 2-day admin class for the Commonwealth at a daily rate of \$1500 for a total of **\$3000** in fees

After completion of the exercise, Virtual Alert will perform the following training:

- 13 days of admin/user training for Commonwealth users. Three days will be assessed the \$1500 “first week” fee, the remaining 10 will be assessed the \$1000 “subsequent training” rate, for a total of **\$14,500** in fees

All fees will be invoiced after completion of each segment of training outlined above in accordance with the Virginia Prompt Payment Act.

TECHNICAL SERVICE DESK

The Contract will initially establish a not-to-exceed pool of dollars for Virtual Alert to perform minor technical support work. Examples of such work include:

- Research “major” technical enhancements
- Perform “minor” technical enhancements
- Support “3rd party” developers’ efforts to provide enhancements, to integrate Virtual Alert-provided systems with other systems, or leverage the web services API’s
- Perform minor integration tasks between Virtual Alert-provided systems’ services and other applications (i.e., extending the directory)
- Perform Integration with other alerting systems

All work must be initiated by the Commonwealth and cannot be independently initiated by Virtual Alert. The Commonwealth must initiate all work orders and no work will begin until written authorization from the Commonwealth after both parties achieve agreement regarding the work order scope and estimated cost and parameters for each work order. The initial pool of dollars to be established is **\$28,800**. Work will be performed at a rate of \$90 / hour. Fees are invoiced monthly, in arrears, as hours are incurred. At the Commonwealth’s discretion, it may elect to order additional hours of Technical Service Desk support at the hourly rates herein.

PRICING FOR THE INITIAL INSTALLATION AND ROLLOUT

INITIAL PURCHASE OF BTRS LICENSES

	<u>Price</u>	<u>Number</u>	<u>Extended</u>
BTRS Server - primary site	\$145,000.00	1	\$145,000.00
BTRS Server - additional portal	\$75,000.00	1	\$75,000.00
Concession on additional portal	(\$75,000.00)	1	(\$75,000.00)
BTRS Server - backup site	\$45,000.00	-	\$0.00
BTRS Server - dev/training site	\$45,000.00	-	\$0.00
<u>vaMessenger software</u>	<u>\$30,000.00</u>	1	<u>\$30,000.00</u>
Total Server Licenses			\$175,000.00
Admin CALs	\$250.00	150	\$37,500.00
Collab CALs	\$120.00	1,000	\$120,000.00
<u>Alert-only CALs</u>	<u>\$20.00</u>	<u>2,000</u>	<u>\$40,000.00</u>
Total CAL Licenses		3,150	\$197,500.00
<i>Total CAL License, post discount</i>			\$191,500.00
<i>License Base, for Maintenance</i>			\$372,500.00
Total Licensing (post discount)			\$366,500.00
<u>Maintenance (per schedule) – no</u>			
<u>assessment of maint on additional portal</u>			<u>\$78,375.00</u>
Total BTRS Software			\$444,875.00

ROLLOUT BTRS – DESIGN AND INSTALL ACTIVITIES

	<u>Price</u>	<u>Number</u>	<u>Extended</u>
Program Manager	\$150.00	500	\$75,000.00
BTRS business rules consulting	\$29,000.00	1	\$29,000.00
Site install: onsite	\$19,000.00	1	\$19,000.00
Site install: offsite	\$12,000.00	-	\$0.00
Portal Administration Tasks (hourly rate)	\$30.00	1,000	\$30,000.00
Exercise support: Program Manager	\$150.00	40	\$6,000.00
Exercise support: Senior Tech	\$145.00	40	\$5,800.00
1st round training: (initial per-day rate)	\$1,500.00	2	\$3,000.00
1st round training: (subsequent per-day rate)	\$1,000.00	-	\$0.00
2nd round training: (initial per-day rate)	\$1,500.00	3	\$4,500.00
2nd round training: (subsequent per-day rate)	\$1,000.00	10	\$10,000.00

Training: set logistics	\$1,000.00	-	\$0.00
Travel Budget	\$40,000.00	1	\$40,000.00
Technical Service Desk	\$90.00	320	<u>\$28,800.00</u>
Total Virtual Alert Services			\$251,100.00

Virtual Alert Contract Costs for Initial BTRS Install		
<u>Summary and Projection</u>	<u>First 12 Months</u>	<u>Ongoing</u>
Virtual Alert Software	\$444,875.00	\$78,375.00
Virtual Alert Services	\$251,100.00	
Virtual Alert Co-Location Services	<u>\$0.00</u>	<u>\$0.00</u>
Subtotal - Virtual Alert	\$695,975.00	\$78,375.00

NOTE: First year “Ongoing” software maintenance (\$78,375) is included in the “First 12 Months”, which covers a period beginning on the Effective Date of the contract. Therefore, the total price of the Virtual Alert Software and Services is **\$695,975**. The \$78,575 shown in the last column of the table is the cost of the annual software maintenance for annual periods beginning in Year 2 of the contract for the VA software and licensing specified above.

ATTACHMENT "C"
TO CONTRACT VA-040615-VA
FOR THE
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
MAINTENANCE AGREEMENT

Attachment "C" is hereby incorporated into and made an integral part of Agreement Number VA-040615-VA between Virtual Alert, Inc. and the Commonwealth of Virginia. In the event of any inconsistency between this Attachment "C" and Agreement VA-040615-VA, the provisions of Agreement VA-040615-VA shall control.

1. Maintenance Services

1.1 Commonwealth shall appoint a maximum of two (2) Maintenance Representatives at each Affiliate upon the Affiliate's receipt of the Software. Such Maintenance Representatives shall thereafter receive the name(s) and telephone number(s) of Virtual Alert's consultant(s). Commonwealth's Maintenance Representatives can reach Virtual Alert's consultant(s) between the hours of 8:00 AM and 5:00 PM, Pacific Standard Time, Monday through Friday, excluding holidays observed by Virtual Alert. Virtual Alert may reasonably choose to change the time zone while maintaining the same nominal hours, as Virtual Alert opens new customer support centers.

1.2 The Maintenance Representatives shall be responsible for providing notice to Virtual Alert's consultant(s) of the desire for Maintenance Services. If Virtual Alert determines, after receiving such notice, that defects exist in the Software, or as a result of Error corrections or Maintenance Services, Virtual Alert shall correct any Errors in accord with this Maintenance Agreement. Virtual Alert's consultant(s) will make the sole and final determination as to whether an Error exists and as to whether such Error is within the scope of the Maintenance Services due Commonwealth hereunder. Virtual Alert does not warrant that the Maintenance Services or Software will be uninterrupted or Error free.

1.3 Maintenance Services. Virtual Alert shall correct all Errors in accordance with this Agreement. During the term of this Agreement, Virtual Alert shall provide the following types of Maintenance Services:

1.3.1 Consultant Support. Virtual Alert shall provide consultant support as Virtual Alert determines is necessary. Such consultants shall serve as the Commonwealth's interface with Virtual Alert for a particular Error and shall ensure that the Error is handled in a timely manner as specified in this Attachment "C". All Errors shall be investigated and if Virtual Alert determines that the Error relates to the Software, or is directly caused by the Software, (a) an Error Report shall be opened, (b) the Error shall be

assigned a Severity Level pursuant to the provisions contained in this Attachment "C", and (c) the Error shall be resolved in accordance with the procedures and processes set forth herein. If Virtual Alert determines that Commonwealth's needs under this Maintenance Agreement necessitate in-person consultant support, Virtual Alert may dispatch a consultant to the Site.

1.3.2 Installation Services. Virtual Alert shall provide Commonwealth with assistance for the implementation or installation of Bypasses and Fixes, either by telephone or in person. Commonwealth's Maintenance Representatives can reach Virtual Alert's consultant(s) between the hours of 8:00 AM and 5:00 PM, Pacific Standard Time, Monday through Friday, excluding holidays observed by Virtual Alert.

1.3.3 Bypasses. Virtual Alert shall provide to Commonwealth such Bypasses as are necessary to ensure the resolution of Errors which can be resolved by a Bypass.

1.3.4 Fixes. Virtual Alert shall provide to Commonwealth such Fixes as are necessary to ensure the resolution of such Errors which can be resolved by a Fix.

1.3.5 Enhancements. Virtual Alert shall provide to Commonwealth such Enhancements as it provides to the users for the Software from time to time. While Virtual Alert encourages Commonwealth's input for Enhancements, Virtual Alert retains the sole right to determine which Enhancements will be included.

1.3.6 Updates. Virtual Alert shall, as soon as they are made available, provide to Commonwealth such Updates as it provides to users for the Software from time to time. While Virtual Alert encourages Commonwealth's input for Updates, Virtual Alert retains the sole right to determine which Updates will be included.

1.3.7 Regular Activity Reports. Upon written request by Commonwealth, Virtual Alert shall provide: (a) a status report of Error resolution activities; and (b) a status report of all outstanding Error Reports. Such status reports shall contain Virtual Alert's tracking number, Error description, Error resolution status and a definitive resolution time frame and release number for all Errors.

1.4 Limitation on Maintenance Services. Notwithstanding any other provisions in this Maintenance Agreement, the following shall not be included in the Maintenance Services:

1.4.1 Resolution of already-existing problems with Commonwealth's current operating system or other applications.

1.4.2 Additions to the Functional Specifications of the Software that Virtual Alert chooses to separately price or market to its existing Commonwealths.

1.4.3 Repair of the Software if it has been modified, changed or altered by anyone other than Virtual Alert or changes made by the Commonwealth under paragraph 5 of Section BG of this Agreement.

1.4.4 Repair or resolution of Errors or damages to the Software caused by Commonwealth's hardware or software system if such hardware or software system does not meet Virtual Alert's specifications and Virtual Alert has previously notified Commonwealth of the deficiency.

1.4.5 Repair or resolution of Errors or damages to the Software caused by the deficient operational order of Commonwealth's computer hardware or an unsuitable operating environment.

1.4.6 Repair or resolution of Errors or damages to the Software resulting from Commonwealth's delay in notifying Virtual Alert of Errors.

1.4.7 Repair or resolution of Errors or damages to the Software resulting from Commonwealth's failure to provide troubleshooting information and access so that Virtual Alert can identify and address the problems.

1.4.8 Repair or resolution of Errors or damages to the Software resulting from failure by client staff to properly install the Software, including failure to follow installation procedures prescribed by Virtual Alert for Errors and Updates.

1.4.9 Repair or resolution of Errors or damages to the Software resulting from the Commonwealth using, or attempting to use, the Software for a purpose other than for that set forth in the Functional Specifications.

1.5 Fee for Professional Services. If Commonwealth desires any of the services listed in section 1.4, Commonwealth and Virtual Alert shall negotiate a separate agreement and separate fees for such services. If Virtual Alert incurs time and/or expense in fixing any of the Errors described in section 1.4, then Commonwealth will be liable for the time and/or expense at Virtual Alert's then prevailing professional services rates, and for actual expenses incurred. These fees and expenses will be paid in accordance with the Virginia Prompt Payment Act. While Virtual Alert will take due care in avoiding the incurrence of such time and/or expense without first getting Commonwealth's prior approval, it is acknowledged by both parties that there may be some incidents in which Virtual Alert, acting in Commonwealth's best interest or serving

an urgent need, must act proactively without first knowing whether the problem or Error falls within the Limitation on Maintenance Services set forth above.

1.6 Training Not Included. Training of users is not part of the Maintenance Services provided herein. Should Commonwealth desire Virtual Alert's Training Services, such services are subject to incremental fees and negotiation.

1.7 All work performed by Virtual Alert in connection with the Software and/or Maintenance Services described in this Maintenance Agreement shall be performed by Virtual Alert as an independent contractor and not as the agent or employee of Commonwealth or as Work for Hire by the Commonwealth. All persons furnished by Virtual Alert shall be for all purposes solely employees or agents of Virtual Alert and shall not be deemed to be employees of Commonwealth for any purpose whatsoever. Virtual Alert shall furnish, employ and have exclusive control of all persons to be engaged in performing Maintenance Services under this Maintenance Agreement and shall prescribe and control the means and methods of performing such Maintenance Services by providing adequate and proper supervision. Virtual Alert shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working condition, payment of wages and payment of taxes, such as employment, social security and other payroll taxes, including applicable contributions from such persons when required by law.

2. Maintenance Fee and Expenses

2.1 Fee. Commonwealth will pay Virtual Alert the appropriate percentage, based upon the Pricing Table in Attachment "A", of all licensing fees as set forth in the relevant Purchase Orders upon acceptance of the software. Any fees due under subsequent renewals of this Maintenance Agreement are payable prior to the performance of any Maintenance Services. The same fees and terms stated in this Maintenance Agreement will apply to any subsequent renewals unless modifications are consented to in writing by both parties. Commonwealth is responsible for the payment of any taxes assessed in connection with payments due under this Maintenance Agreement except for any tax based solely upon Virtual Alert's net income or as delineated in Section I of the Agreement.

2.2 Expenses. Commonwealth shall reimburse Virtual Alert for any and all reasonable travel and living expenses incurred by Virtual Alert in performing services under this Maintenance Agreement. These expenses shall be billed to Commonwealth, and Commonwealth shall pay these billings in accordance with the Virginia Prompt Payment Act.

3. Term and Termination

3.1 Term. This Maintenance Agreement shall commence upon acceptance of the Products and continue for an initial period of one (1) year. The Commonwealth shall have the right to renew maintenance for additional one-year periods. The

Commonwealth shall notify the Contractor, in writing, of its intent to renew maintenance thirty (30) days in advance of the expiration date of the then current maintenance period. All maintenance renewals become effective as of the expiration date of the then current maintenance period. All terms and conditions of the Agreement shall apply during any successive terms.

3.2.1 Termination Either party may terminate this Maintenance Agreement (i) immediately upon the termination or expiration of the Agreement, (ii) upon expiration of the then-current term, provided at least sixty (60) days advance written notice of termination is given by either party, or (iii) upon thirty (30) days advance written notice if the other party has breached this Maintenance Services Agreement and has not cured such breach within such notice period. If Commonwealth later wishes to reinstate Maintenance Services, the reinstated Maintenance Services will commence on the date of the expiration of the prior fully paid maintenance period and be based on Virtual Alert's then current Maintenance Services fees in effect at the time of the reinstatement.

3.2.2 This Maintenance Services Agreement shall be void at the option of Virtual Alert if the number of users of the Software is greater than that allowed under the licenses purchased. Additionally, if Commonwealth violates the provisions of the Contract, the maintenance agreement shall be void at the option of Virtual Alert and shall have no further force or effect.

4. Maintenance Response

4.1 Virtual Alert's consultant(s) shall return calls within the time specified in the Response Schedule set out below. Such response times shall be measured from the time a Commonwealth Contact requests support by one of the means set forth below.

4.2. Commonwealth's Support Representatives shall report errors and defects to Virtual Alert to one of the consultants designated by Virtual Alert. For Severity 1 errors or defects, Commonwealth's Support Representatives shall in addition to any notification by any other means, notify Virtual Alert by telephoning a consultant. In the event Commonwealth cannot make contact with a Virtual Alert consultant, Commonwealth shall continue its efforts to personally notify Virtual Alert by calling the following Virtual Alert representatives in the order listed until a Virtual Alert Representative is contacted in person.

- i Commonwealth Service Manager
- ii Chief Operating Officer
- iii Chief Technology Officer
- iv Chief Executive Officer

4.3. Commonwealth will make an initial nonbinding classification of each Error or defect with the Software or Support Materials and will report such Error or defect to Virtual Alert based on the criteria set forth below. In the event there is a dispute

between the Commonwealth and Virtual Alert regarding the classification of such Error or defect that is not resolved within 24 hours after the report from Commonwealth, such dispute shall be referred to Virtual Alert’s Director-level management for resolution. Virtual Alert retains the sole right to make the final determination as to the classification of such problem.

Error Classification Criteria

- Severity Level 1 Critical Business Impact
- Severity Level 2 Significant Business Impact
- Severity Level 3 Non-Critical
- Severity Level 4 Minimal Impact

4.4. In the event Commonwealth reports a problem to Virtual Alert during Virtual Alert’s normal business hours, Virtual Alert shall use commercially reasonable efforts to respond to such reports in accordance with the following Software Maintenance Response Schedule.

Software Maintenance Response Schedule

Error Classification	1 st Level	2 nd Level	3 rd Level
Severity 1	1 business hour	4 business hours	Next Release
Severity 2	2 business hours	1 business day	Next Release
Severity 3	2 business days	To be scheduled as appropriate	
Severity 4	7 business days	To be scheduled as appropriate	

Level Identification

Level 1: Acknowledgement of receipt and Error report

Level 2: Commencement of patch, work around, temporary fix, Bypass and other temporary resolution of the Error and documentation of corrections.

Level 3: Official Object Code fix incorporated in a Fix, Enhancement or Update to the Software.

“To be scheduled” means that the parties shall address the Error at the next scheduled project review meeting and in good faith agree on a suitable Level 2 response.

“Next Release” means the release of a Fix, Enhancement or Update to the Software that corrects Errors and defects or makes minor improvements in the functionality of the Software which is generally made available to Virtual Alert’s client base.

4.5. Commonwealth must supply Virtual Alert with reproducible Errors in order for the Response Schedule to apply. The manner in which Commonwealth reasonably presents to Virtual Alert the method or means to reproduce such a reported Error is up to Commonwealth. For non-reproducible Errors except for a Severity 1 Error, Virtual Alert will use reasonable efforts to investigate the Error, but shall not be bound by the above schedule. In the event Commonwealth cannot reproduce a Severity 1 Error despite Commonwealth's best efforts, Virtual Alert shall be required to comply with the 1st and 2nd level response times as set forth above, but Virtual Alert shall not be obligated to provide personnel to work on the Error if the Error has not been replicated within 48 hours from the time that Virtual Alert began working with Commonwealth. For any period of time in which Virtual Alert has assigned personnel to address a non-reproducible Error, Commonwealth agrees to assign no fewer development personnel than that which Virtual Alert has assigned, and Commonwealth agrees that such personnel shall work no fewer hours than that worked by Virtual Alert personnel in addressing the problem. Should the parties later discover that the Services provided to address the non-reproducible Error was not within the scope of the Maintenance Services in the Maintenance Agreement or should Commonwealth fail to staff the situation as described in the preceding sentence, Commonwealth shall pay Virtual Alert for all professional time (at Virtual Alert's then-current rates) and related expenses incurred by Virtual Alert in response to such Error.

5. Intellectual Property Rights to Corrections

5.1 All Error Corrections, Bypasses, Enhancements, Fixes, Updates and any other work product created by Virtual Alert in connection with the Maintenance Services provided hereunder ("Work Product") are and shall remain the exclusive property of Virtual Alert, regardless of whether the Commonwealth, its employees or agents may have contributed to the conception, joined in its development, or paid Virtual Alert for the development or use of the Work Product. Such Work Product shall be considered Software, and subject to the terms and conditions contained herein and in the Software License granted under the Contract.