

VIRGINIA STATEWIDE AGENCY RADIO SYSTEM CONTRACT

ARTICLE I **General Terms and Conditions**

1.1 Vendors Manual

This Contract is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any revisions thereto, which are hereby incorporated into this Contract in their entirety, including specifically the procedure for contractual claims found in Section 7.19 of the Manual. A copy of the manual is available at the Department of General Services' website <http://www.eva.state.va.us>.

1.2 Applicable Laws And Courts

This Contract will be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto will be brought in the courts of the Commonwealth. Motorola will comply with all applicable federal, state and local laws, rules, codes, and regulations. Any term or condition in this Contract in violation of federal or state law will be void *ab-initio* and have no force or effect. Any cost associated to meet these requirements will be borne by Motorola; provided that said violation was not ordered or caused by the direction of the Commonwealth. Standards, codes, and regulations referred to in this Contract will be those in effect as of December 31, 2003.

1.3 Anti-Discrimination

Motorola will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 11-51 of the *Virginia Public Procurement Act*. Motorola will not discriminate against any recipient of goods, services, or disbursements made pursuant to this 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 will 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 will be subject to audit by the public body. (*Code of Virginia*, § 11-35.1E).

During the performance of this Contract, Motorola agrees as follows:

- a. Motorola 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 where there is a bona fide occupational qualification reasonably necessary to the normal operation of Motorola. Motorola agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. Motorola, in all solicitations or advertisements for employees placed by or on behalf of Motorola, will state that they are an equal opportunity employer.

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

1.4 Ethics In Public Contracting

Motorola certifies that their proposal was 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.

1.5 Immigration Reform And Control Act Of 1986

Motorola certifies 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.

1.6 Debarment Status

Motorola certifies that they are not currently debarred by the Commonwealth of Virginia for the type of goods and/or services Covered by this Contract and Motorola will require its contractors certify that they are not debarred by the Commonwealth.

1.7 Antitrust

Motorola 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.

1.8 Payment

- a. **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$329,673,699. A pricing summary is included with the Payment Schedule, which is attached to this Contract as Exhibit A. Motorola will submit to Commonwealth invoices according to the Payment Schedule. Except for a payment that is due on the Effective Date, Commonwealth will make payments to Motorola within thirty (30) days after the date of each invoice provided all associated milestones have been attained.
- b. Motorola will submit invoices for items ordered, delivered and accepted directly to the payment address shown on the Contract. All invoices will include a descriptive narrative for each line item of the provided goods and/or services. All invoices will show the Contract number and/or purchase order number; and the federal employer identification number.

- c. Any payment terms requiring payment in less than thirty (30) days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This will not affect offers of discounts for payment in less than thirty (30) days, however.
- d. All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, will be billed by Motorola at the Contract price, regardless of which public agency is being billed.
- e. The following will 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.
- f. 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, Motorola 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 will promptly notify Motorola, in writing, as to those charges which it considers unreasonable and the basis for the determination. Motorola may not institute legal action until all applicable dispute resolution requirements of this Contract have been followed. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, § 11-69).
- g. Significant Increases in Cost. The parties acknowledge that change orders may be necessary under this Contract. If any single change order is valued at more than five (5) per cent of the total contract value, or if all cumulative change orders are valued at more than ten (10) per cent of the total contract value, then the Commonwealth may order the cessation of all work until the approval of the Governor and the General Assembly is obtained due to the increased cost of the project. Provided, however, that the Commonwealth may also seek modifications to the contract to mitigate the impact of the change orders. Motorola will be entitled to receive its reasonable costs attributable to the delay, not including any provision for home office overhead, unless a final determination is made that the request for change order was not made in good faith. A "final determination" has occurred when either party, by law or by action or inaction of the party, no longer has the right to seek modification of the decision in an appropriate tribunal or forum. A final determination can be made even though one party is seeking legislative relief outside the terms of this Contract. This provision is intended to supplement, not contradict, the requirements of Sections 1.13 and 4.15 below.

1.8.1 To Subcontractors:

- a. Motorola is hereby obligated:

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

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

b. Motorola is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of its subcontract) on all amounts owed by Motorola that are not paid or withheld in accordance to paragraph 1.8.1(a) 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. Motorola's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

1.9 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 and all payment obligations under the Contract are contingent upon funds being appropriated and legally available for expenditure. 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 Motorola as soon as possible after legislative action is completed. Funds of \$159.3 million for Phase 1 (July 1, 2004 through June 30, 2006) of STARS have been appropriated and legally available by the 2004 General Assembly. The Commonwealth will pay for goods delivered and services rendered prior to date of termination.

1.10 Precedence Of Terms

Paragraphs 1.1 - 1.10 of these General Terms and Conditions will apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this Contract, the Special Terms and Conditions, Article II, will apply.

1.11 Precedence of Documents

In the event there is a conflict between any of the Contract documents or other documents referenced hereunder, the order of authority is listed below:

- This Contract;
 - Terms and Conditions
 - Section Descriptions
 - Appendices and Exhibits
- Manufacturers' documentation incorporated herein.
- Motorola's or others' agreements and licenses incorporated herein.

1.11 Testing And Inspection

Following acceptance of a Division, the Commonwealth reserves the right to conduct any test/inspection, at its own expense, that it may deem advisable to assure goods and services

conform to the specifications. The Commonwealth will coordinate such test/inspection with Motorola. Delays caused by this testing/inspection by the Commonwealth will be subject to the provisions of this Contract regarding compensation for delays.

1.12 Assignment Of Contract

This Contract will not be assignable by Motorola in whole or in part without the written consent of the Commonwealth.

1.13 Changes To The Contract

Changes can be made to this Contract in any of the following ways:

- a. The parties may agree in writing to modify the scope of this Contract. An increase or decrease in the price of this Contract resulting from such modification will be agreed to by the parties as a part of their written agreement to modify the scope of this Contract.
- b. The Contract Officer may order changes within the general scope of the Contract at any time by written notice to Motorola. Changes within the scope of the Contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. Motorola will comply with the notice upon receipt. Motorola will be compensated for any additional costs incurred as the result of such order and will give the Purchasing Agency a credit for any savings. Said compensation will be determined by one of the following methods:
 - (1) mutual agreement between the parties in writing; or
 - (2) agreeing upon a unit price or using a unit price set forth in this Contract, if the work to be done can be expressed in units, and Motorola accounts for the number of units of work performed, subject to the Commonwealth's right to audit Motorola's records and/or to determine the correct number of units independently; or
 - (3) ordering Motorola to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by this Contract. The same markup will be used for determining a decrease in price as the result of savings realized. Motorola will present the Contract Officer with all vouchers and records of expenses incurred and savings realized. The Commonwealth will have the right to audit the records of Motorola, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the STARS PCO within thirty (30) days from the date of receipt of the written order from the STARS PCO. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the Contract price or time for performance will be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this Contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this Contract will excuse Motorola from promptly complying with the changes ordered by the STARS PCO or with

the performance of the Contract generally. Motorola is to provide full documentation for any requested change, providing the Commonwealth a full explanation of all benefits and affects. This section is subject to Section 2.2 below.

- c. Upon mutual agreement, the parties may agree in writing to modify or add terms and conditions as required by the project but not previously negotiated into this Contract.

1.14 Settlement Preferred

Motorola and the Commonwealth will attempt to settle any claim or controversy arising from this Contract (except for a claim relating to intellectual property) through consultation and negotiation in good faith and a spirit of mutual cooperation. The respective project managers will confer and attempt to settle a dispute. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. If cooperative efforts fail, the dispute will be mediated by a mediator chosen jointly by Motorola and the Commonwealth within thirty (30) days after notice by one of the parties demanding non-binding mediation. Motorola and the Commonwealth will not unreasonably withhold consent to the selection of a mediator, and they will share the cost of the mediation equally. The parties may postpone mediation until they have completed some specified but limited discovery about the dispute. The parties may also replace mediation with some other form of non-binding alternative dispute resolution (“ADR”). If efforts to resolve matters pursuant to this Section are unsuccessful after at least sixty (60) days, then the parties may utilize the claims procedures found in the Vendor’s Manual.

1.15 Litigation

Any claim relating to intellectual property, and any dispute that cannot be resolved between the parties through negotiation or mediation as described above in Section 1.14 and utilizing the claims procedures in the Vendor’s Manual, may then be submitted by either party to the Circuit Court in the City of Richmond. Each party consents to jurisdiction over it by such court. The use of ADR procedures will not be considered under the doctrine of laches, waiver, or estoppel to affect adversely the rights of either party. .

1.16 Default

In case of failure to deliver goods or services in accordance with Contract requirements, Motorola will be provided a mutually agreed upon period of time to correct or “cure” the deficiency. If the Parties cannot agree on a period of time, then the Commonwealth will establish a reasonable cure period by written notice to Motorola. If Motorola fails to correct or cure the problem within this period, then the Commonwealth may procure the goods or services from other sources and hold Motorola responsible for any resulting additional purchase and administrative costs. This remedy will be in addition to any other remedies that the Commonwealth may have. Should Motorola fail to deliver the same goods or services on more than two occasions, then the Commonwealth may make permanent arrangements to provide replacement goods or services and Motorola will be responsible for paying any increased purchase and administrative costs.

1.17 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. Deliveries against this Contract will usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

1.18 Transportation And Packaging

Motorola certifies and warrants that the price offered for FOB destination includes Motorola's standard shipping. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers will be used. All shipping containers will be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

1.19 Insurance

The Commonwealth reserves the right to examine, at any time during regular business hours and with reasonable notice to Motorola, at Motorola World Headquarters, in Schaumburg, IL, USA, all the insurance and self-insurance policies and plans applicable to this Contract of both Motorola and its sub-contractors to include reviews of specific insurance policies, coverage, and retentions. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 11-46.3 and 65.2-800 et seq. of the *Code of Virginia*. Motorola and any subcontractors will maintain this insurance coverage during the entire term of this Contract and all insurance coverage will be provided by insurance companies acceptable to the Commonwealth and authorized by the Virginia State Corporation Commission to conduct business in Virginia. Insurance companies must be identified and show the appropriate company rating according to the latest edition of Best's Insurance guide and Key Ratings. For non-admitted insurers, excepting Lloyds, a current financial statement will be provided and, if alien, must include information on the amounts of money on deposit in trust in the United States. Motorola will have the following insurance coverage at the time this Contract is awarded, and will provide evidence of such insurance, to include a Certificate of Insurance identifying each policy and a copy of each endorsement to each policy identifying the Commonwealth as an additional insured as evidence of this coverage to the Commonwealth of Virginia prior to commencing work on the Contract. A new Certificate of Insurance will be provided 30 days prior to the renewal date of each policy.

- a. Worker's Compensation –Virginia- Statutory requirements and benefits.
- b. Employers Liability - \$500,000.
- c. Commercial General Liability \$5,000,000 primary insurance per occurrence with at least a \$5,000,000 excess/umbrella policy following the form of the primary policy .and a \$5,000,000 general aggregate. The Commercial General Liability policy coverage is to include bodily injury and property damage, personal and advertising injury, premises and operations, Products and Completed operations, personal and advertising injury, XCU, blanket contractual and independent contractor's or equivalent coverage. The Commonwealth of Virginia will be endorsed as an additional insured on the primary and excess policies.
- d. Business Automobile Liability - \$1,000,000 Combined Single Limit (CSL) for every owned, non-owned, hired & leased vehicle operated on Commonwealth property. The Commonwealth of Virginia will be listed as an additional insured on the policy.

- e. Director's & Officer's Liability. A minimum of \$25,000,000 commercial insurance or self-insurance for this Contract. Evidence of commercial insurance will be a certificate of insurance with a copy of the policy declaration sheet attached. Evidence of self-insurance will be financial records or reports demonstrating the existence and funding of such program, or formal certification by a responsible financial officer or the senior risk manager of Motorola attesting to the existence and sufficient funding for this Contract of such program of self-insurance.

Subcontractor and Professional insurance coverages and limits required:

1. Commercial General Liability - \$2,000,000 per occurrence/\$3,000,000 general aggregate or a combined single limit of \$3,000,000. Commercial General Liability is to include bodily injury and property damage, Premises and /Operations, Products and Completed Operations, personal and advertising injury, XCU, and Independent Contractor's or equivalent coverage. The Commonwealth of Virginia will be identified endorsed-listed as an additional insured on the policy.
2. Business Automobile Liability - \$1,000,000 per occurrence/\$3,000,000 general aggregate or a Combined Single Limit of \$3,000,000 for each owned, non-owned, hired & leased vehicle operated on Commonwealth property with the Commonwealth of Virginia listed as an additional insured on the policy.
3. **MOTOROLA DOES NOT CARRY THE FOLLOWING INSURANCE**; however, to the extent that Motorola will hire subcontractors to perform the following professional services, the subcontractor will be required to carry the following applicable insurance. Should Motorola use any of its professional employees to provide the services listed below for this Contract, commercial professional liability insurance will be provided in the limits shown, and will be evidenced by certificates of insurance prior to the commencement of any work on this Contract.

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$3,000,000 per occurrence, \$6,000,000 aggregate
Architecture	\$3,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$3,000,000 per occurrence, \$6,000,000 aggregate
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$500,000 per occurrence, \$1,000,000 aggregate
Legal	\$3,000,000 per occurrence, \$6,000,000 aggregate
Professional Engineer	\$3,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$500,000 per occurrence, \$1,000,000 aggregate

1.18 Drug-Free Workplace

- a. During the performance of this Contract, Motorola agrees to (i) provide a drug-free workplace for Motorola'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 Motorola'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 Motorola that Motorola 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. Motorola complies with the Drug Free Workplace Act, applicable regulations of government agencies, and other federal, state and local laws and regulations.

- b. 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 Motorola, 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. Motorola will remove any employee or subcontractor employee from the Project at the first offense.

1.19 eVA Business-To-Government Vendor Registration

Motorola will 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.

- a. 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.
- b. 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.
- c. 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.

Article II **Special Terms and Conditions**

2.1 Asbestos

Whenever and wherever during the course of performing any work under this Contract, Motorola discovers the presence of asbestos or suspects that asbestos is present, they will stop the work immediately, secure the area, notify the Commonwealth or building owner and await positive identification of the suspect material. During the downtime in such a case, Motorola will not disturb any surrounding surfaces but will protect the area with suitable dust covers. In the event Motorola is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work will be allowed Motorola. Motorola will make reasonable efforts to avoid incurring additional costs due to the time extension. The Commonwealth will be responsible for asbestos abatement.

2.2 Audit

Motorola will retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors will have full access to and the right to examine any of said materials during said period, provided however, Motorola will not be required to disclose proprietary and trade secret information regarding actual product cost and services, otherwise known as “cost pricing data”.

2.3 Authorized Users

Authorized Users are defined as state agencies, institutions and other public bodies as defined in Section 2.2-4301 of the Virginia Public Procurement Act (VPPA) and Federal agencies. Accommodations for the following agencies have been combined within this Contract.

Dept. of Aviation	Dept. of Fire Programs	Dept. of Mines, Minerals and Energy
Dept. of Alcoholic Beverage Control	Dept. of Forestry	Dept. of Motor Vehicles
Capitol Police	Dept. of Game and Inland Fisheries	Dept. of State Police
Dept. of Conservation and Recreation	Dept. of Health	Department of Transportation
Dept. of Corrections	Virginia Information Technologies Agency	VA Marine Resource Commission
Dept. of Emergency Management	Dept. of Juvenile Justice	Dept. of Military Affairs
Dept. of Environmental Quality	Dept. of Professional & Occupational Regulation	Localities within the Commonwealth
Federal Government		

The Department of State Police (VSP) is responsible for administering the program; therefore, correspondence will be directed to the STARS Program Director.

2.5 Background Check

Motorola and/or their employees and subcontractors may be subject to a criminal history/background check. All Motorola employees and subcontractors that enter a Commonwealth operational site, and/or have contact with STARS programmed equipment, must have previously passed a VSP background check and must be responsible for any persons on the premises with them that have not had a background check. All Motorola employees and subcontractors will be VCIN certified prior to being granted access to equipment or software that can access VCIN. Motorola will not escort visitors and workers to a Commonwealth site without the previous approval of the STARS Program Director.

2.6 Termination For Convenience

The Commonwealth reserves the right to cancel and terminate this Contract, in part or in whole, without penalty, upon sixty (60) days written notice to Motorola. Any Contract cancellation notice will not relieve Motorola of the obligation, at the Commonwealth's discretion, to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation. The Commonwealth is obligated to pay for any orders and/or work performed prior to the date of termination.

2.7 Motorola/Subcontractor License Requirement

Motorola certifies that their firm and/or current subcontractors and any future subcontractors have or will have the applicable licenses for the goods/services as required.

Motorola, Inc.

License # 2701011880 (Motorola)
Type: Building, Electronic Communications

Motorola is to provide license information for all subcontractors for which licenses are required during the term of this Contract.

2.8 Contractor Registration

Motorola must have a Virginia Class A Contractors license throughout Contract implementation. In addition, Motorola and all subcontractors must be authorized to conduct business in the Commonwealth of Virginia during any period in which services under this Contract are provided.

Licensed Class A Virginia Contractor No.: 2701011880
Expiration Date: November 30, 2004
Specialties: Building, Electronic Communications

2.9 Project Management Representation

- a. A single person will be designated by Motorola as Project Manager to be the primary source of contact with the STARS Program Director. The Motorola Project Manager will bear full responsibility for supervising and coordinating the installation of the communications system. All inquiries by the Commonwealth about the project will be directed to the Motorola Project Manager. The Motorola Director of Technical Services will serve as the PM's backup for this project.
- b. Within fifteen (15) days after execution of the Contract, Motorola will advise the Commonwealth of the name, address, office and home telephone numbers of their designated Project Manager.
- c. Any changes in Motorola's designated Project Manager will be made only with prior written approval of the STARS Program Director, which approval will not be unreasonably withheld.

- d. A single person will be designated by the Commonwealth as the STARS Program Director (PD) to be the primary source of contact. The Commonwealth STARS Program Director will bear full responsibility for supervising and coordinating the Commonwealth's responsibilities of this Contract. All inquiries about the project will be directed to the Commonwealth STARS Program Director. The current STARS Project Manager will serve as the PD's backup for this project.
- e. Within fifteen (15) days after execution of the Contract, the Commonwealth will advise Motorola of the name, address, office and home telephone numbers of its designated Project Manager.

2.10 Delivery And Storage

It will be the responsibility of Motorola to make all arrangements for delivery, unloading, receiving and storing materials during the implementation. The Commonwealth will not assume any responsibility for receiving these shipments unless arranged in advance. Motorola will make necessary arrangements for security and storage space during installation.

2.11 Extra Charges Not Allowed

The Contract price is for the complete system shipped FOB destination, as described in this Contract, ready for the Commonwealth's use, and includes all applicable freight and installation charges.

2.12 Indemnification

Motorola agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment or by any services furnished by Motorola or its subcontractors, provided that such liability is caused by Motorola's or subcontractor's willful or negligent acts or omissions and is not attributable to the sole negligence of the using agency or to the failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by Motorola on the materials, goods or equipment delivered.

2.13 Extensions of Time, Furnish And Install

- a. Except for work subject to separately agreed scope of work and separate funded mechanism, work under this Contract will begin after receipt of the fully executed Contract and Notice to Proceed, which will be issued within five (5) days of execution. All work will be completed in accordance with the schedule in Section 2 and the requirements of the Contract. Motorola will also provide a detailed CPM schedule, agreed to by the Commonwealth, highlighting the critical milestones that must be met during the performance of this Contract. The Parties acknowledge that time is of the essence for performance of this Contract, but that there are significant areas of uncertainty related to the construction and installation of the facilities necessary to complete the system. The Parties agree that they will each work reasonably and in good faith with the other to determine when and whether extensions of time are appropriate for any work that cannot be specifically ascertained at the time of Contract award. Both Parties acknowledge that this does not mean that either Party is entitled to an

adjustment of time, but that there is a duty to act reasonably and in good faith regarding this question.

- b. Should the completion of this project in any Division, or in its entirety, be delayed as a result of the actions of Motorola, its employees, subsidiaries, agents or subcontractors, then Motorola will identify the problem and develop a plan to rectify the problem within five (5) days after notice of the problem has been given in writing by the Commonwealth. Motorola will diligently implement the plan to rectify the problem. Should Motorola fail to develop such plan or diligently implement it, then the Commonwealth may take such actions as are reasonably necessary to remedy the problem and pass the cost of such actions through to Motorola.

2.14 Project Delays

2.14.1 Commonwealth's Delay

Should the Commonwealth, for its convenience, delay providing the authorization to Motorola for beginning or continuing work, Motorola will be offered an equitable extension of any agreed upon delivery commitments. In the event that the Commonwealth, for its convenience, either delays or is unable to accept delivery of the equipment as agreed between the Parties, the Commonwealth would be liable for any actual costs incurred by Motorola. Such charges may include, but are not limited to, remobilization charges, rescheduling charges, storage charges, maintenance charges, transportation charges, and modification of the payment and warranty terms in the event of such delay.

2.14.2 Motorola's Delay

Should Motorola fail to provide any maintenance or system recovery response as agreed in a timely fashion pursuant to this Contract, thus requiring the Commonwealth to respond when it should not have been required to do so, then the Commonwealth will assess against Motorola, by credit voucher or other mutually acceptable mechanism, the reasonable value of the services performed by the Commonwealth, as calculated using Motorola's man-day rates for such work in Appendix 23.

2.14.3 Force Majeure

Neither party will be liable for its non-performance or delayed performance if caused by a "Force Majeure" which means an event, circumstance, or act of a third party that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties will execute a change order to extend or otherwise modify the Performance Schedule for a time period that is reasonable under the circumstances. Notwithstanding anything contained herein to the contrary, however, weather conditions will only provide an acceptable delay under the maintenance and warranty terms under this Contract if circumstances present a real and present danger to life or safety or physical impossibility of performance. If the Commonwealth must perform repairs or maintenance work in order to protect the public then, despite Motorola's invocation of these

Force Majeure provisions. Motorola will be liable to the Commonwealth for the reasonable value of the services provided by the Commonwealth as indicated in Section 2.14.2 above.

2.14.4 Other Legal Remedies

Other legal remedies, including actual damages and equitable relief, may also be sought in appropriate circumstances. Under no circumstances may the Commonwealth assess performance related damages against Motorola when the delays are caused, in whole or in principal part, by the failure of the Commonwealth to perform in accordance with this Contract, or otherwise to act reasonably under the circumstances. Likewise, Motorola may not assess delay or other damages against the Commonwealth when the delays are caused, in whole or in principal part, by the failure of Motorola to perform in accordance with this Contract or to otherwise act reasonably under the circumstances. This provision, however, does not relieve Motorola from its obligation to perform, in a timely fashion, all services required under this Contract nor the Commonwealth from its obligation to perform, in a timely fashion, all of its responsibilities under this Contract or otherwise to act reasonably under the circumstances.

2.15 Minority/Women Owned Businesses Subcontracting and Reporting

Motorola is encouraged to offer business to minority and/or women-owned businesses where practicable when such business has been subcontracted to these firms. Upon completion of the Contract, Motorola agrees to furnish the STARS PCO the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided.

2.16 Non-Visual Access To Technology

The technology access clause required by Section 2.2-3503 is not set forth herein pursuant to the provisions of 2.2-3504(b).

2.17 Performance And Payment Bonds

Motorola will deliver to the STARS PCO executed Commonwealth of Virginia Standard Performance and Labor and Material Payment Bonds, each in the sum of ten percent of the highest valued year of work to be completed in accordance with this Contract. The balance of the total contract balance will be covered by a Corporate Guaranty approved by the Commonwealth. Motorola will provide a copy of its most recent Annual Report and a copy of its 10K Form, along with any other reasonable documentation necessary to assess the appropriateness of accepting the corporate guaranty as a substitute for the performance bond.. The Commonwealth of Virginia will be designated as the obligee on the bonds. The surety will be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment will be due and payable to Motorola, even if the Contract has been performed in whole or in part, until the bond has been delivered to and approved by the Commonwealth and the Commonwealth has approved the corporate guarantee to be provided. Standard bond forms will be provided by the STARS PCO prior to or at the time of award. To the extent Motorola obtains Payment or Performance Bonds from its subcontractors, it will require that the Commonwealth be listed as an additional insured or obligee.

2.18 Motorola's Responsibilities

Motorola will be responsible for completely supervising and directing the work under this Contract and all subcontractors that they may utilize, using their best skill and attention. Subcontractors who perform work under this Contract will be responsible to Motorola. Motorola agrees that they are as fully responsible for the acts and omissions of their subcontractors and of persons employed by them as they are for the acts and omissions of their own employees.

2.19 Product Information

When Motorola includes additional terms and conditions on pre-printed marketing sheets, pre-printed catalogues, or other pre-printed materials, Motorola understands that those terms and conditions are of no consequence to this Contract unless specifically incorporated herein.

2.20 Term Of Contract

This Contract provides for implementation of various aspects of the system over an extended period of time, as well as renewable agreements for various services and equipment repair and replacement. All responsibilities of the parties under this Contract with respect to terms and conditions, pricing and other matters will remain in full force and effect during the term of any other agreement between the parties, unless specifically superceded by such agreements or unless any such provision of this Contract has been terminated in writing, or this Contract has been terminated in full by written agreement of the parties. Motorola is required to pass on any "across-the-board" price reductions immediately to the Commonwealth. The VSP reserves the right to establish and renew annual maintenance contracts as needed. Price changes will be negotiated at time of renewal using the "Other Services" category of the CPI-U, All Urban Consumers, section of the US Bureau of Labor Statistics Consumer Price Index as a guide, for the latest twelve months for which statistics are available.

2.23 Warranty

2.23.1 SYSTEM FUNCTIONALITY

Motorola warrants that the System will perform consistently with the System design and functionality specifications contained in the Statement of Work in all material respects. Upon Division Acceptance or Beneficial Use, whichever occurs first, this functionality representation is fulfilled for each Division. This functionality representation is fulfilled for the Microwave System upon acceptance of the completed digital Microwave System as contemplated in this Contract. Upon Final Acceptance, this functionality representation is fulfilled for the entire System. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons beyond Motorola's control and that are inconsistent with the design assumptions specified in this Contract, such as (i) an earthquake, unusually adverse atmospheric conditions that have not occurred in the relevant locale (this does not include diurnal and seasonal changes that affect reliability of microwave paths and land mobile radio coverage, normal sun-spot activities, and licensed spectrum users within 75 miles); (ii) the new construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; (iii) the addition of frequencies by others at STARS sites that cause RF interference or intermodulation; (iv) Commonwealth changes to load usage or configuration outside the

specifications or authorization; or (v) any acts of third parties that are not controlled by Motorola, and of which Motorola should not reasonably have had knowledge, within eighteen (18) months after Contract award, that violate the design assumptions specified in this Contract. Motorola warrants that the design assumptions for this system, excepting only those assumptions imposed by the Commonwealth, are reasonable for this System and consistent with good industry practice.

2.23.2 Equipment Warranty

For one (1) year from the date of Division Acceptance, Beneficial Use, or six months following acceptance of delivery, whichever occurs first, and as defined in the Motorola Warranty and Support Plan Section of this Contract, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. For three (3) years from the date of acceptance of delivery, Motorola warrants that all mobile computer terminals (MCTs), under normal use and service will be free from material defects in materials and workmanship.

2.23.3 Motorola Software Warranty

Unless otherwise stated in the Software License Agreement, for one (1) year from the date of Division Acceptance, Beneficial Use, or six months following acceptance of delivery, whichever occurs first, and as defined in the Motorola Warranty and Support Section of this Contract, Motorola warrants the Software in accordance with the terms of the Software License Agreement contained within this Contract and the provisions of this Section applicable to the Motorola Software.

2.23.4 Exclusions to Equipment and Motorola Software Warranties

These warranties do not apply to: (i) defects or damage resulting from use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; (ii) defects or damage occurring from misuse, accident, exposure to liquids, neglect, or acts of God beyond those specified in this Contract; (iii) defects or damage occurring from testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in this Contract by Motorola (including all verbal communications reduced to writing); (iv) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (v) defects or damage caused by Commonwealth's failure to comply with all applicable OSHA standards; (vi) Equipment that has had the serial number removed or made illegible; (vii) batteries (because they carry their own separate limited warranty); (viii) freight costs to ship Equipment to the repair depot in excess of Motorola's standard shipping; (ix) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (ix) normal or customary wear and tear.

2.23.5 Warranty Claims

No later than the date of the expiration of the warranty period, Commonwealth must notify Motorola in writing if Equipment or Motorola Software does not conform to these warranties. Upon receipt of such notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Commonwealth) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product., or in the event that repair or replacement was not effective, refund the

price of the defective Equipment or Software. Such action will be the full extent of Motorola's liability hereunder. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Commonwealth for responding to the claim on a time and materials basis using Motorola's current labor rates, provided an estimate was provided to and agreed to by the Commonwealth before the investigation is begun. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

2.23.6 Original End User is Covered

These express limited warranties are extended by Motorola to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable to any entity other than an agency of the Commonwealth of Virginia and the non-agency entities referenced in the Authorized Users in Section 2.3 of this Contract.

2.23.7 Disclaimer of Other Warranties

THE EXPRESS WARRANTIES INCLUDED OR INCORPORATED IN THIS CONTRACT ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE,

2.23.8 Grade of Service

Motorola warrants that upon Division Acceptance, the Grade of Service in the Division will be as specified in Section 4 of the Integrated Voice and Data Network Coverage and Traffic of this Contract. For one year following Final Acceptance, Grade of Service in the Division will be as specified in Section 4 of the Integrated Voice and Data Network Coverage and Traffic of this Contract.

2.23.9 Warranty Of Products And Workmanship

- a. Motorola warrants that, unless otherwise specified, all products and equipment incorporated in the work under the Contract will be new, in first class condition, and in accordance with the Contract documents. The Commonwealth agrees that "new" means that equipment was not previously put into service before being sold to the Commonwealth, and that Motorola's current testing and return processes are sufficient to ensure substantial compliance with this requirement. Motorola further warrants that all workmanship will be of the highest quality and in accordance with Contract documents and will be performed by persons qualified at their respective trades.
- b. Work not conforming to these warranties will be considered defective.
- c. Assembly level parts may be refurbished and placed back in service as part of warranty maintenance, but if refurbished more than twice, they will be replaced by a new part. If Motorola fails or refuses to replace such parts or correct the deficiency in its warranty maintenance program, the STARS PCO may have the materials corrected or replaced with similar items and charge Motorola the costs occasioned thereby or obtain an equitable adjustment in the Contract price.

- d. This warranty of products and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in this Contract.

2.24 Extended Support Plan

- a. Expansion, Replacement, or Phased Implementation. If new Equipment is integrated with the existing System to expand the System, replace a major part of the System, or provide a subsequent phase of the System (if it was originally sold as a multiple phase project), the new Equipment will be covered by Motorola for system warranty and support as follows:

- (i) If the existing System is covered under its original Warranty and Support Plan program, the new Equipment will be covered as if it were part of the original system for the remainder of the Warranty and Support Plan Period.

- (ii) If the existing System is not covered under its original Warranty and Support Plan program but is covered under a full Maintenance Service Plan service agreement with Motorola to provide services, then the new Equipment will be Covered at the same level of service for the remainder of the term of that Maintenance Service Plan service agreement and the price for the Maintenance Service Plan service agreement will be increased to cover the additional Equipment.

- (iii) If the existing System is not covered under either its original Warranty and Support Plan program or a service agreement with Motorola, the new Equipment is covered only by the Equipment warranty and not by a Warranty and Support Plan.

- b. Motorola will use reasonable efforts to provide the support services identified in the Warranty and Support Plan of this Contract for a period of ten (10) years from the scheduled date of Final System Acceptance, however, in no event will Motorola be obligated to provide support as specified beyond December 2018. Motorola will provide cost effective, alternative solutions to the Commonwealth for equipment and software that may not be supported by the original equipment manufacturer, with the goal of continuing System operation throughout the Motorola support period. Unless defined in the Warranty and Support Plan of this Contract, support does not necessarily include the physical repair or restoration of any equipment or software provided under this Contract by Motorola, but may only include technical support and troubleshooting assistance.

2.25 EXCLUDED SERVICES

- a. Unless damage is proximately caused by Motorola, warranty service does not include the repair or replacement of equipment that has become defective, malfunctions or damage due to the following causes: use of equipment in other than its normal and customary manner; liquid (beyond that specified in this contract) or chemical damage; physical or electronic abuse or misuse, vandalism, accident or neglect; acts of God, lightning (provided, however, that the grounding system at each site will be rated for dispersal and failure of the grounding system to perform properly is not excused by this provision), fires or other casualty; causes external to the equipment including electrical power failure, surges (see lightning), and inadequate temperature or humidity control for reasons other than the failure of HVAC systems provided under this contract; improper or unauthorized disassembly, testing, operation, maintenance, installation, modification,

adjustment or repair; environmental conditions not conforming to equipment specifications in this Contract. Charges for Commonwealth approved repair or replacement of these excluded damaged items will be invoiced on a time and materials basis at Motorola's then current rates.

- b. Where a transmission medium supplied by a third party (e.g., Verizon), such as but not limited to telephone lines, internet, world wide web, optical fibers, satellite data paths, or other interfacing system, is used in conjunction with the Equipment, Motorola has no obligation or responsibility for such transmission medium support or for Equipment malfunction caused by the transmission medium, except to assist in diagnosis of the problem. Motorola will provide problem triage support on components/facilities listed in this section as part of the network service. If the solution requires extensive technical support and/or field technicians, Motorola agrees to assist the telephone company or other third parties at Motorola's then current service rates.
- c. Unless specifically included in this Contract, service does not include replacement, installation, maintenance or repair of items that are consumed in the course of normal operation of the equipment, such as, but not limited to: batteries, magnetic tapes, cassettes, type elements and computer supplies except defective items during warranty. Service also will not include replacement of antenna, belt clips, speakers, microphones, power cabling, control head push buttons, knobs, other cosmetic items, battery chargers, and like items except defective items during warranty. Service will not include repairs to equipment located in an environment determined by Motorola to be hazardous to the safety or health of Motorola employees, agents, or subcontractors, except for hazardous environments created by Motorola.

2.26 Work Site Damages

Any damage caused by Motorola or its subcontractors to existing utilities, Equipment or finished surfaces resulting from the performance of this Contract will be repaired or restored to the Commonwealth's or appropriate public utility's to the pre-existing or mutually acceptable equivalent state at Motorola's expense.

2.27 eVA Business-To-Government Contract

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates governmental purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. Vendors desiring to provide products and/or services to the Commonwealth will participate in the eVA Internet e-procurement solution and agree to comply with the following:

- a. 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.
- b. Provide an electronic catalog (price list) for items awarded under a term Contract. The format of this electronic catalog will conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us.

Note: Failure to comply with the above requirements will be just cause for the Commonwealth to terminate this Contract for default.

ARTICLE III **Information Technology Terms And Conditions**

3.1 Confidentiality

Any information furnished or produced under this Contract, by VSP, or from any other source that places, might place, or has the propensity to place the System or secure communications at risk for a security breach of any kind is CONFIDENTIAL and that confidentiality will be preserved at all times by Motorola and their employees, subcontractors and partners. Any information furnished to or produced by the mobile computers or VSP CAD is CONFIDENTIAL and that confidentiality will be preserved at all times by Motorola and their employees, subcontractors and partners. Penalties for violations may apply in accordance with the Code of Virginia. Any disclosure of such information without the express, written consent of the STARS Program Director will also be deemed a breach of this Contract and Motorola will pay for any remedial actions necessary to deal with the results of such breach. Motorola materials and documents that are marked trade secret, confidential, or proprietary in accordance with VirginiaCode § 2.2-4342.F before they are delivered to the Commonwealth will be kept confidential to the extent allowed by law.

3.2 Latest Software Version

Prior to final acceptance, software for the Integrated Voice and Data (IV&D) System will be upgraded to the most current Core Release and Enhancement Release, which can be installed on the IV&D System without hardware upgrades. Pricing includes all mandatory software upgrades at no additional cost, as well as the upgrades referenced above. All other optional software product(s) will be priced and provided based on the latest version available to the general public as of December 1, 2003.

3.3 Operational Components

Unless otherwise expressly stated in this Contract, equipment prices will include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.

3.4 Product Substitution

During the term of this Contract, Motorola is not authorized to substitute any item for that product and/or software identified in the Contract without the prior written consent of the STARS Program Director or its authorized designee.

3.5 Qualified Repair Personnel

All warranty or maintenance services to be performed on the items specified in this Contract as well as any associated hardware or software will be performed by qualified technicians properly authorized by the manufacturer to perform such services. All technicians working on System will meet all appropriate U.S.C. Title 47 Requirements. The Commonwealth reserves the right to require proof of certification at any time during the term of the Contract.

3.6 Relocation Of Equipment

Should it become necessary to move equipment covered by this Contract to another location, the Commonwealth reserves the right to do so at its own expense. If Motorola supervision is required during the warranty period, the Commonwealth will provide prior written notice of the move at least thirty days in advance, in which case Motorola will provide the required services and be reasonably compensated by the Commonwealth, provided, however, that if the relocation of equipment is required during an emergency/disaster situation, Motorola will immediately provide the required services and be reasonably compensated by the Commonwealth.

3.7 Limitation Of Use

The Commonwealth's right to use computer software developed entirely at private expense may be limited by Motorola as stipulated in this Contract and the Software License attached hereto. Notwithstanding any provision to the contrary however, Motorola will not modify the Software Licenses applicable to this project without the prior written consent of the Commonwealth.

3.8 Source Code

In the event that Motorola fails to support Software furnished in this Contract because Motorola has filed for Bankruptcy or exited the public safety radio communications market, Motorola will provide, in its discretion, a copy of its source code to the Commonwealth, if available, or will grant the Commonwealth a license, under separate terms and conditions, to use the source codes for Software for the Commonwealth's internal use by its employees, agents, consultants, and independent contractors; provided that prior to their access to such source code, the Commonwealth's agents, consultants, and independent contractors must enter into a license with confidentiality safeguards in form and substance that is reasonably satisfactory to Motorola. The source code will be used solely as a trouble analysis aid for isolating, diagnosing, and fixing problems in such Software. Before Motorola is required to provide the source code as indicated above, however, the Commonwealth must not be in breach of the Agreement or other applicable license agreement. In the alternative, in Motorola's discretion, Motorola may propose other arrangements for the Software to be supported by a commercially viable entity chosen by Motorola.

3.9 Term Of Software License

Unless otherwise stated in this Contract, the software license(s) identified in the pricing schedule will be purchased in perpetuity.

3.10 Third Party Acquisition Of Software

Motorola will notify the STARS PCO in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. Motorola further agrees that the Contract's terms and conditions, including any and all license rights and related services, will not be affected by the acquisition. Prior to completion of the acquisition, Motorola will obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of this Contract.

3.11 Title To Software

Motorola represents that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this Contract. Title to Software will not transfer to the Commonwealth for any reason whatsoever except pursuant to separate written agreement.

3.12 Infringement

- a. Infringement Claim means a third party claim alleging that Equipment manufactured or furnished by Motorola or its software infringes upon the third parties US patent or copyright.
- b. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense procure for Commonwealth the right to continue using the Equipment or Motorola Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance., or if replacement or modification is not viable grant Commonwealth a credit for such Equipment or Motorola Software and accept its return and provide the Commonwealth with a credit against the Contract Price for the diminished value of the System.
- c. Except in the following circumstances, Motorola will defend and hold harmless the Commonwealth from and against any Infringement Claim related to any equipment or software provided as a part of the System. Unless specified in Motorola's design or the Scope of Work of this Contract, Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon (i) the combination of the Equipment or Motorola Software with any software, apparatus or device not furnished by Motorola; (ii) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Equipment or Motorola Software; (iii) any Equipment that is not Motorola's design or formula, unless said Equipment is supplied by Motorola as part of this Contract; (iv) a modification of the Motorola Software by a party other than Motorola unless done with Motorola's approval or consent; or (v) the failure by Commonwealth to allow Motorola to install an enhancement release to the Motorola Software as specified in subsection (a) above. The foregoing states the entire liability of Motorola with respect to infringement of patents and copyrights by the Equipment and Motorola Software or any parts thereof.

3.13 Warranty Against Shutdown Devices

Motorola warrants that the equipment and software provided under the Contract will not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs or allowing unauthorized access to the system or data. Motorola further warrants that neither it, nor its agents, employees, or subcontractors will insert any shutdown device following delivery of the equipment and software.

3.14 Warranty Of Software. Software will be warranted pursuant to Section 2 of this Contract and Motorola's Software License Agreement, found in Appendix 1.

3.16 Limitation of Liability

To the maximum extent permitted by applicable law, Motorola's liability under this Contract for breach of contract or warranty, indemnity, negligence or otherwise, and loss and damages to government property caused by use of any defective or deficient supplies, products, equipment and/or services delivered under this Contract will not exceed the total value of the Contract. Motorola will not be liable under this Contract for any indirect, incidental, special or consequential damages, or speculative damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Contract except as otherwise specified herein. Motorola remains liable to the Commonwealth, however, for any losses or damages not specifically excluded above. The above limitation of liability is per incident to the extent such loss is covered by Motorola insurance required in this Contract. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death or (b) willful misconduct or gross negligence on the part of Motorola.

ARTICLE IV **Non Capital Outlay Terms And Conditions**

4.1 Laws And Regulations

Motorola will comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work and will give all notices required thereby.

- a. This Contract and all other Contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, *Code of Virginia*, relating to labor unions and the "right to work." Motorola and its subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to the project will comply with all of the said provisions.
- b. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* will apply to all work under this Contract. Inspectors from the Department of Labor and Industry will be granted access to the work for inspection without first obtaining a search warrant from the court.
- c. Building Permit: Because this is a project of the Commonwealth of Virginia, codes or zoning ordinances of local political subdivisions do not apply. Building permits where required, will be obtained and paid for by the Commonwealth.. This does not include any local license fees, business fees or similar assessments that may be imposed by the appropriate political subdivision
- d. Motorola, if not licensed as an asbestos abatement Contractor or a RFS Contractor in accordance with § 54.1-514, *Code of Virginia*, will have all asbestos related work performed by subcontractors who are duly licensed as asbestos Contractors or RFS Contractors as appropriate for the work required.

4.2 Taxes

Motorola will, without additional expense to the Commonwealth, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees, and assessments on the real property comprising the site of the project. If the State Building Official elects to have the local

building official inspect the work as provided by § 36-98.1 of the *Code of Virginia*, the Commonwealth will pay the resulting fees to the local building official.

4.3 Patents and Software Licenses

4.3.1 Motorola will obtain all licenses necessary to use any invention, article, appliance, process, technique or other intellectual property of whatever kind and will pay all royalties and license fees. Motorola will hold and save the Commonwealth, its officers, agents, and employees, harmless from any loss or liability for or on account of the infringement of any intellectual property rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Commonwealth, unless such invention, process, technique, article, or appliance is specifically named in the specifications or drawings as acceptable for use in carrying out the work. If, before using any invention, process, technique, article, appliance or other intellectual property specifically named in the specifications or drawings as acceptable for use in carrying out the work, the Contractor has or acquires information that the same is Covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, they will promptly advise the Commonwealth. The Commonwealth may direct that some other invention, process, technique, article, or appliance be used. Should Motorola have reason to believe that the invention, process, technique, article, appliance or other intellectual property so specified is an infringement of a patent, copyright or other intellectual property protection, and fail to inform the Commonwealth, they will be responsible for any loss due to the infringement.

4.3.2 Preservation of Motorola's Proprietary Rights

- a. "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how and other intellectual property rights in an to the Equipment and Software, including those created, produced or supplied by Motorola under this Contract and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.
- b. Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software. Nothing in this Agreement is intended to restrict the Proprietary Rights of Motorola, any copyright owner of Non-Motorola Software, or any third party manufacturer of Equipment. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Commonwealth the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Commonwealth any shared development rights of intellectual property.
- c. Except as explicitly provided in the Software License Agreement or otherwise in this Contract, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Commonwealth agrees not to modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence shall not apply to Open Source Software which is governed by the standard license of the copyright owner.

4.4 Superintendence By Contractor

- a. Motorola will have a competent foreman or superintendent on the job site at all times during the progress of the work. Motorola will be responsible for all construction means, methods, techniques, sequences, and procedures, for coordinating all portions of the work under the Contract except where otherwise specified in the Contract documents, and for all safety and worker health programs and practices. Motorola will notify the STARS Program Director, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.
- b. Motorola will, at all times, enforce strict discipline and good order among the workers on the project, and will not employ on the work any unfit person, anyone not skilled in the work assigned to them, or anyone who will not work cooperatively with those employed by Motorola, the subcontractors, the Commonwealth or the Commonwealth's separate Contractors and their subcontractors.
- c. The Commonwealth may, in writing, require Motorola to remove from the work any employee the Commonwealth deems to be incompetent, careless, not working cooperatively with others on the site, or otherwise objectionable.

4.5 Access To Work

The Commonwealth, the Commonwealth's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry will have access to the work at all times. Motorola will provide proper facilities for access and inspection.

4.6 Contractor's Title To Materials and Equipment

- a. No materials or supplies for the work will be purchased by Motorola or by any subcontractor subject to any security interest, installment or sales Contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. Motorola warrants that they have clear title to all materials and supplies, which they use in the work or for which they accept payment in whole or in part.
- b. Risk of loss for all Equipment, materials, infrastructure and accessories will pass to the Commonwealth upon installation and acceptance of the Equipment. Risk of loss for all portable equipment will pass to the Commonwealth upon issuance to employees, agents or similar personnel.
- c. Title to all Equipment, materials, infrastructure and accessories will pass to the Commonwealth upon acceptance of the delivery of the Equipment. Conditional title to the property passes to the eligible agency when an authorized representative signs for or takes possession, subject to the specified use restrictions. When an agency has complied with all the terms and conditions set forth on the distribution or transfer document, the agency will possess unrestricted title to the item. Nonconforming goods will be rejected by the Commonwealth and title thereto will revert back to Motorola until they conform to the requirements of this Contract.

4.7 Use Of Premises And Removal Of Debris

- a. Motorola will:
 - (i) Perform its Contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any Contractor;
 - (ii) Store its apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of the work or the work of any other Contractor; and
 - (iii) Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
- b. Motorola expressly undertakes, either directly or through their subcontractor(s), to effect all cutting, filling, or patching of their work required to make the same conform to the drawings and specifications, and, except with the consent of the Commonwealth, not to cut or otherwise alter the work of any other Contractor. Motorola will not damage or endanger any portion of the work or premises, including existing improvements, unless called for by the Contract.
- c. Motorola expressly undertakes, either directly or through their subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by their operations, to the end that at all times the site of the work will present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris will be left within the completed work nor buried on the building site, but will be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.
- d. Motorola expressly undertakes, either directly or through their subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from their operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the Contract; and to thoroughly clean all glass installed under the Contract including the removal of all paint and mortar splatters and other defacements. If Motorola fails to clean up at the completion of the work, the Commonwealth may do so and charge Motorola for costs thereof.
- e. During and at completion of the work, Motorola and their sub contractor(s) will prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and of the Contract documents.
- f. Motorola and their subcontractor(s) will not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the Commonwealth. Motorola will give ample (not less than five (5) working days) advance notice of the need for cut-offs that will be scheduled at the convenience of the Commonwealth.

4.8 SITES AND SITE CONDITIONS

- a. Access to Sites. In addition to its responsibilities described elsewhere in this Contract, the Commonwealth will provide (i) a designated escort, if required; (ii) all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites, unless Motorola is required by this Contract to provide the same; and (iii) access to the work sites identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work or other portions of this Contract so indicate, Motorola will either assist the Commonwealth in the local building permit process or obtain any required permits, variances approvals or licenses on its own.
- b. Site Conditions. The Commonwealth will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable state, industry and federal regulations and OSHA standards. To the extent possible, and unless the Statement of Work specifically states to the contrary, the Commonwealth will do its best to ensure that work sites will have (i) adequate physical space for the installation, use and maintenance of the System; (ii) adequate air conditioning and other environmental conditions; (iii) adequate electrical power outlets, distribution and equipment for the installation, use and maintenance of the System; and (iv) adequate telephone or other communication lines for the installation, use and maintenance of the System, including modem access, and adequate interfacing networking capabilities. Before installing the Equipment or Software at a work site, Motorola will inspect the work site and advise the Commonwealth of any apparent deficiencies or inadequacies at least sixty (60) days prior to Motorola beginning work at the site in question. This Contract is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.
- c. Site Issues. If Motorola or the Commonwealth determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, Motorola and the Commonwealth will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If such change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the parties will equitably amend the Contract Price or Performance Schedule, or both, by a change order.

4.9 Protection Of Persons And Property

- a. Motorola expressly undertakes, both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property, which may come on the building site or be affected by Motorola's operation in connection with the work.
- b. Motorola will be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.

- c. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* will apply to all work under this Contract.
- d. Motorola will continuously maintain adequate protection of all their work from damage and will protect the Commonwealth's property from injury or loss arising in connection with this Contract. They will make good any such damage, injury, or loss, except such as may be directly due to errors in the Contract documents or caused by agents or employees of the Commonwealth. They will adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. They will provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority, local conditions, any of the Contract documents or erected for the fulfillment of their obligations for the protection of persons and property.
- e. In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, Motorola, without special instruction or authorization from the Commonwealth, will act, at their discretion, to prevent such threatened loss or injury. Also, should they, to prevent threatened loss or injury, be instructed or authorized to act by the Commonwealth, they will so act immediately, without appeal.

4.10 General Conditions Of The Construction Contract

Appendix P, entitled "Commonwealth of Virginia General Conditions of the Construction Contract" are incorporated as additional terms and conditions for the Contract to provide and install the Statewide Agencies Radio System (STARS), any construction in Motorola's Contract and any subcontracts for construction, except that the Year 2000 warranty is no longer applicable.

4.11 Reimbursement for Travel Expenses

- a. In the event that the Commonwealth is required to reimburse Motorola for travel expenses pursuant to the Contract, reimbursement will be made in accordance with state travel regulations identified in the Department of Accounts CAPP Manual Topic #20335 - State Travel Regulations, a copy of which is available at the Department of Accounts website (<http://www.doa.state.va.us/procedures/AdminServices/capp/summary.htm>) or per request to the STARS PCO. Motorola will not mark up travel and lodging expenses.
- b. The Commonwealth reserves the right to request proof of costs and expenses if determined necessary. The Commonwealth reserves the right to decline payment for travel expenses that exceed the allowances in the state travel regulation, or are disallowed by the regulation.

4.12 Reporting and Delivery Requirements - **Revise upon receipt of Payment Doc.**

See SOW project report for all activities -once a month
Monthly meetings summary report (all documented)

Motorola will provide signed milestones for payment verification.

Move to SOW

- a. Motorola will provide periodic reports to the STARS Program Director on the status of the implementation. The Commonwealth requires that status reports and schedule updates (in MS Project format) for the entire project be issued regularly by Motorola's Project Manager. The Commonwealth requires that, as a minimum, these reports be issued on a monthly basis, with the first report due one (1) month after Award. The Commonwealth requires that upon the initiation of the first on-site activity, reports/updates be issued two (2) times each month, on the working day nearest the 15th of the month and on the working day nearest to the last day of the month or some other schedule agreed upon in writing by the parties. The Commonwealth requires that delivery of issued reports/updates be made in a manner that realistically insures delivery to the STARS Program Director. Refer to Table 4-3 for reporting requirements.
- b. Motorola will provide a report on actual involvement of small businesses and businesses owned by women and minorities as part of their periodic invoices. The involvement report only, should be addressed to the STARS PCO. This report will specify the amount contracted to be spent to date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted with such businesses on this Contract. This information will be provided separately for small businesses, women-owned businesses and minority-owned businesses.

4.13 Final Actual Involvement Report

Motorola will submit to the STARS PCO within 10 days of each calendar year, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of this Contract. At a minimum, this report will include for each firm contracted with, and for each such business class (i.e. small, women-owned, minority-owned) a comparison of the total actual dollars spent on this Contract with the planned involvement of the firm and business class, as specified in their proposal, and the actual percent of the total estimated Contract value.

The format is as follows for each Business Class:
(small business, women-owned, or minority-owned)

FIRM ADDRESS AND PHONE NO.	NAME,	TYPE GOODS/ SERVICES	ACTUAL DOLLARS	PLANNED DOLLARS	% OF TOTAL CONTRACT

TOTAL FOR BUSINESS CLASS			
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4.14 Contractor's Report of Sales

- a. Motorola will furnish the STARS PCO reports of the total sales made under the Subscribers Contract at the end of each reporting period identified below. The intent of these reports is to advise the STARS PCO of where the most usage is, who the primary users are, and determine overall success and patterns of change of the Contract. The report will include: the total dollars paid to Motorola by the Commonwealth of Virginia for the specified period, the total volume of each line item of the Contract, and total expenditure by Agency. The first report will include sales made in the first twelve (12) months of the Subscriber Contract.; the second report will be due approximately (ninety) 90 days from the expiration date, when the renewal option is being evaluated; thereafter, reports will be due approximately (ninety) 90 days from the expiration date of each renewal period, when the Contract is being evaluated.
- b. All reports will be delivered to the STARS PCO no later than 14 calendar days after the request has been made by VSP. Reports will be sent to the attention of the STARS PCO. Failure to submit this information in the required time may result in disqualification from bidding on the next solicitation for this type Contract. Each report will be in two segments: (1) One to report the total dollar volume of sales and the total number of each item ordered by State agencies, institutions and departments; (2) One to report the total dollar volume of purchases and number of each item ordered by all other Commonwealth public bodies (e.g. cities, towns, counties, schools and authorities, etc.) and Federal government, if users of this Contract.

4.15 Modification

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.

4.16 Property Ownership

In the event of termination of this Contract for any reason, all property installed by Motorola or owned by the Commonwealth may become the property of the Commonwealth at its sole option; subject to payment therefor.

4.17 Interpretation Of Contract

If any term or condition of this Contract is found to be illegal or unenforceable, it will be severed, and the validity of the remaining terms and conditions will not be affected. Notwithstanding anything contained in this Contract to the contrary:

- a. The parties understand and acknowledge that the Virginia State Police (VSP) is an

agency and department of the Commonwealth of Virginia. The parties also agree that, with respect to tort liability for any acts or occurrences, including product liability, the Commonwealth and the VSP are either:

- (i) constitutionally immune (or partially immune) from suit, judgment or liability,
 - (ii) insured, or
 - (iii) Covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices.
- b. Motorola acknowledges that the Commonwealth has not agreed to provide any indemnification or save harmless agreements running to Motorola. Motorola agrees to maintain sufficient liability insurance, in such amounts and with such coverage as it deems reasonably necessary to protect Motorola's interest and insure reasonable financial responsibility in the event of liability for injury, loss or damage. No provision, covenant or agreement contained in this Contract will be deemed, in any manner, to be a waiver of the sovereign or Eleventh Amendment immunity of the Commonwealth of Virginia, or of the VSP, from tort or other liability, or as a pledge of its full faith and credit.
- c. This Contract will be governed by, and construed according to, the laws of the Commonwealth of Virginia, and any legal action against the VSP hereunder will be instituted only in the state courts of the Commonwealth of Virginia. No presumption will be created in favor of or against any of the parties to this Contract with respect to the interpretation of any of its terms or provisions due to the fact that this Contract, or any part hereof, was prepared by or on behalf of one of the parties hereto. Nothing in this Contract will 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.

4.18 Independent Contractors

Each party will perform its activities and duties hereunder only as an independent contractor. The parties and their personnel will not be considered to be an employee or agent of the other party. Nothing in this Contract will be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Contract will not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

4.19 Headings and Section References; Construction

The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Contract will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

4.20 Entire Agreement

This agreement, including all Exhibits, constitutes the entire Contract of the parties regarding the subject matter hereof and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to such subject matter. This Contract may be

altered, amended, or modified only by a written instrument signed by authorized representatives of both parties. The preprinted terms and conditions found on any Commonwealth purchase order, acknowledgment or other form will not be considered an amendment or modification of this Contract, even if a representative of each party signs such document.

4.22 Notices

Notices required under this Contract to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service with an asset tracking system, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

Commonwealth of Virginia
Virginia State Police
c/o Patricia T. Trent
STARS Procurement and Contracting Officer
P. O. Box 27472
Richmond, VA 23261-7472
Phone: (804) 674-2422 Fax: (804) 674-2446

With a copy to:

Capt. Michael E. Bolton
STARS Program Director
P. O. Box 27472
Richmond, VA 23261-7472

Motorola Project Manager
(Name and address)

With a copy to:

Motorola, Inc.
Attn: Contracts & Compliance Dept
789 International Parkway
Sunrise, FL 33325
fax: 954-723-5858

4.23 Authority to Execute Agreement

Each party represents to the other that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to do so; (iii) upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and (iv) the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the party.

The parties hereby enter into this Agreement as of the date of the last signature ("Effective Date").

Motorola, Inc.

Commonwealth of Virginia

By: _____

By: _____

Name: Mark F. Moon

Name: Colonel W. Steven Flaherty

Title: Vice President and General Manager

Title: Superintendent Virginia State Police

Date: _____

Date: _____