

**STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
SOFTWARE  
MASTER MAINTENANCE AGREEMENT-FISCAL YEAR  
2016 and 2017**

**THIS CONTRACT** is between the State of Ohio, Department of Administrative Services ("DAS"), Office of Information Technology, located 30 East Broad Street, 40th Floor, Columbus, Ohio, 43215 ("Customer"), and Alliance Enterprises, Inc. ("Contractor"), with offices at 2625 Willamette Drive N. E., Lacey, WA 98516.

**DEFINITIONS**

The following terms will have the meanings described below whenever they are used in this Contract:

- A. "Software" is software listed on Attachment A and the Equipment's operating system, word processing software, utilities, drivers, communication software and other manufacturer software options that are integrated with Contractor's systems. "Software" does not include compilers, development software or applications unless listed on Attachment A.
- B. An "Error" is a malfunction in the Software, excluding all external factors, that prevents the Software from conforming to applicable manufacturer's specifications.
- C. An "Update" is a software release that manufacturer has made generally to all customers and that replaces or modifies a prior software release to correct errors or omissions.
- D. An "Upgrade" is a software release that the manufacturer has made generally available to all customers that include enhancements, options or new features that improve the Software's performance.
- E. "Equipment" means the hardware and items other than Software listed on Attachment A.
- F. The term of this Contract is from July 1, 2015 ("Commencement Date") to June 30, 2017 ("Expiration Date").

**1. MAINTENANCE SERVICE RESPONSIBILITIES OF CONTRACTOR**

For charges stated on any attached schedule (the "Charges"), Contractor will furnish the following service (the "Maintenance") under the terms and conditions of this Contract.

- A. Contractor will provide maintenance services to those sites designated by Customer in the attachments during the term of this Contract.

- B. Telephone Support. Contractor will provide reasonable technical telephone consultation concerning the use of any updates, enhancements and corrections to all sites.
- C. New Releases. From time to time Contractor may modify or enhance the Software by a new release of the Software. In such case, Contractor shall provide the Customer one copy of every new release of the Software listed in the attached schedules, including all modifications, enhancements and documentation.
- D. Contractor will correct errors or replace the Software in a reasonably expeditious manner after notification that a Software correction is required.
- E. Contractor will provide Maintenance for the then-current release and the immediately preceding release of the Software. Contractor will provide maintenance support for the immediately preceding release for six months after a new version is released.

**2. SERVICE AVAILABILITY PERIOD**

- A. The "Call Window" is 8:00 am Eastern Time to 5:00 pm Hawaii Time.
- B. All software on a schedule will have the same Call Window.
- C. Repairs and replacements necessitated by any of the items excluded from coverage hereunder will be undertaken by Contractor only on Customer's written approval of estimated additional charges, Customer's Contract to pay the actual charges, and Customer's issuance of a purchase order.
- D. Annual maintenance will continue to the effective date of this Contract. The State will have the right to participate in the Licensor's annual maintenance program by giving the Licensor annual notice of its intent to do so or by paying the annual fee for the maintenance on or before the due date for the annual payment, but in no event more than sixty (60) days after the due date for the annual payment, but in no event more than sixty (60) days after the due date unless the State pays interest on the late payment in accord with the applicable provisions of the Ohio Revised Code. If the State fails to pay the annual maintenance fee or materially breaches this Contract, then, unless otherwise agreed, the State may not continue to participate in the maintenance program. The Licensor will bill the State annually for maintenance, 60 days in advance of the due date for the maintenance fees, at the Licensor's then-current rates for maintenance, subject to the limitation on increases provided below.
- E. The annual maintenance fee will not increase from year to year by more than ten percent over the prior year's annual maintenance fee for the same services for the same licensed software.

**3. RESPONSIBILITIES OF CUSTOMER**

- A. Customer will provide Contractor's personnel reasonable access to the Software at mutually agreed upon times to perform maintenance services (including preventive maintenance). Customer will also provide adequate working space and facilities, including heat, light, ventilation, electric current and outlets and the like for use by Contractor personnel. All such facilities will be within a reasonable distance from the Equipment to be serviced and will be provided at no charge to Contractor.
- B. Customer will not perform, attempt to perform, nor cause to be performed, maintenance or repair to the Software during the term of this Contract except simple daily or weekly preventive maintenance on the Software as allowed or reasonably required by Contractor. Customer, at Contractor's request, will maintain the service reports issued by Contractor. Customer, at its own expense, will establish and maintain an environment consistent with the specifications furnished by Contractor for the Software.

**4. PAYMENT DUE DATE**

- A. Contractor will invoice Customer 30 days prior to the annual term for Maintenance and Support. Contractor will invoice Customer for any approved deliverables funded through Block Services by the 10<sup>th</sup> of the month following approval.
- B. Payments under this Contract will be due on the 30th calendar day after the later of:
  - 1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or
  - 2. The date the Service is delivered and accepted.
- C. The date of the warrant is issued in payment will be considered the date payment is made.

**5. CONTRACTOR QUARTERLY SALES REPORT**

The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract by calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.

The Contractor shall be required to report the quarterly dollar value of sales to the State on a form prescribed by DAS. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period.

The Contractor shall also submit a close - out report within one hundred and twenty (120) days after the expiration of this Contract. The contract expires upon the physical completion of the last, outstanding task or delivery order of the Contract. The close - out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If

the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close - out report.

The Contractor must forward the Quarterly Sales Report to the Following address:

Department of Administrative Services  
Office of Finance  
30 E. Broad Street, 40th Floor  
Columbus, OH 43215

If the Contractor fails to submit sales reports, falsifies sales reports or fails to submit sales reports in a timely manner the State may terminate or cancel this Contract.

6. **CONTRACTOR REVENUE SHARE**

The Contractor must pay the State a revenue share of the sales transacted under this Contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals .0075 of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering activities.

The Contractor must remit any monies due as the result of the close - out report at the time the close - out report is submitted to DAS.

The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the following information with the payment:

Applicable State Term Schedule Number, report amount(s), and reporting period covered.

Contractor must forward the check to the following address:

Department of Administrative Services  
L-3686  
Columbus, OH 43260-3686

Please make check payable to: Treasurer, State of Ohio.

If the full amount of the revenue share is not paid within thirty (30) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off of payments or employ the remedies available under Ohio law for the non-payment of the revenue share.

If the Contractor fails to pay the revenue share in a timely manner the State may terminate or cancel this Contract.

7. **GENERAL WARRANTIES**

The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will: (1) be in accordance with sound professional standards and the requirements of this Contract and without any defects; (2) unless otherwise provided in Attachment A, be the work of solely of the Contractor; and (3) no Software will infringe on the intellectual property rights of any third party.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) the Contractor has the right to enter into this Contract; (2) the Contractor has not entered into any other contracts or employment relationships that restrict that the Contractor's ability to perform the contemplated services; (3) the Contractor will observe and abide by all applicable laws and regulations, including those of the Customer regarding conduct on any premises under the Customer's control; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the Customer; (5) the Contractor has the right and ability to grant the license granted in any Software in which title does not pass to the Customer; (6) the Contractor further warrants that the Software is merchantable and fit for its intended use.

The warranty regarding professionalism and material defects is a one-year warranty. All other warranties will be continuing warranties. If any portion of the Software or Hardware fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for such portion of the Software or Hardware. The Contractor will also indemnify the Customer for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where the Customer has modified or misused the Software and the claim is based on the modification or misuse.

8. **SOFTWARE WARRANTY**

On delivery and for twelve (12) months after the date of acceptance of any Software, the Contractor warrants as to all Software developed under this Contract that: (a) the Software will operate on the computer(s) for which the Software is intended in the manner described in the relevant Software documentation, the Contractor's proposal, and Attachment A; (b) the Software will be free of any material defects; (c) the Contractor will deliver and maintain relevant and complete Software documentation, commentary, and source code; and (d) the source code language used to code the Software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and (e) the Software and all maintenance will be provided in a professional, timely, and efficient manner.

**9. SOFTWARE MAINTENANCE**

During the warranty period, the Contractor will correct any material programming errors that are attributable to the Contractor within a reasonable period of time, provided that the Customer notifies the Contractor, either orally or in writing, of a problem with the Software and provides sufficient information for the Contractor to identify the problem.

The Contractor's response to a programming error will depend upon the severity of the problem as outlined in Attachment C, Maintenance and Support Agreement

**10. PRINCIPAL PERIOD OF MAINTENANCE**

Maintenance will be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventive maintenance will not be considered billable but will be included in the Contractor's firm, fixed Fee for the Project during the warranty period and a part of the annual maintenance fee during later annual maintenance periods.

**11. MAINTENANCE ACCESS**

The Contractor will keep the Software or Hardware in good operating condition during the warranty period and any annual maintenance period during which the Customer contracts for continued maintenance and the Customer will provide the Contractor with reasonable access to the Software or Hardware to perform maintenance. All maintenance that requires the Software or Hardware to be inoperable must be performed outside the Customer's customary working hours except when the Software or Hardware is already inoperable. Preventative or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

**12. INTEREST ON OVERDUE PAYMENTS**

Section 126.30 of the Ohio Revised Code (the "Code") is applicable to this Contract and requires payment if interest on overdue payments for all proper invoices. The interest charge will be at the rate per calendar month, which equals one-twelfth of the rate per annum prescribed by Section 5703.47 of the Code.

**13. INVOICE REQUIREMENTS**

Invoices must be submitted in an original of the office designated in the purchase order "bill to address" to receive invoices. A proper invoice must include the following information and/or attached documentation:

- A. Name and address of the Contractor as designated in this Contract.
- B. Federal Tax Identification Number of the Contractor as designated in this Contract.
- C. Invoice remittance address as designated in this Contract.

- D. The purchase order number authorizing the delivery of equipment, materials, supplies or services.
- E. Description including time period, serial number when applicable, unit price, quantity and total price of equipment, materials, supplies or services actually delivered or rendered as specified in the purchase order. If the invoice is for lease purchase, the payment number, e.g., 1 of 36 must also be indicated.
- F. Only labor hours actually worked may be billed by the Contractor.

**14. IMPROPER INVOICES**

If an invoice contains a defect or impropriety and/or it is not a proper invoice as defined in this section, a written notification and the improper invoice will be sent to the Contractor at the address designated for receipt of purchase orders within 15 calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information necessary to correct the defect or impropriety. If such notification has been sent, the required payment date will be thirty (30) days after receipt of a proper invoice or product acceptance, whichever is later.

**15. NON-APPROPRIATION OF FUNDS**

The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.

**16. OBM CERTIFICATION**

This Contract is subject to Section 126.07 of the Code, which provides, in part, that orders under this Contract will not be valid unless the Director of the Office of Budget and Management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations.

**17. NOTIFICATION OF PRICE INCREASE**

Notice of any price increases for Maintenance or other charges, as allowed by this Contract, must be submitted to the purchase order bill to address no later than sixty (60) days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price and purchase order number. The annual maintenance fee will not increase from year to year by more than ten (10) percent over the prior year's annual maintenance fee.

**18. INDEMNITY**

The Contractor will indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of the performance of this Contract, providing such bodily injury or property damage is due to

the negligence of the Contractor, its employees, agents, or subcontractors. The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement, is based on the modification. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one, (1) of the following four (4) things:

- (1) Modify the Deliverable so that is no longer infringing.
- (2) Replace the Deliverable with an equivalent or better item.
- (3) Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or
- (4) Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

#### **19. CONFIDENTIALITY**

The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor agrees to treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor agrees not to disclose any Confidential Information to third parties and to use it solely to perform under this Contract.

The State acknowledges that, in connection with this Agreement and its relationship with Contractor, it may obtain information relating to the Products or to Contractor that is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, financial information, and sales and marketing plans or information which the State knows or has reason to know is confidential, proprietary or trade secret information of Contractor. The State shall at all times, both during the term of this Agreement and for a period of at least three (3) years after its termination, keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by Contractor under this Agreement, nor shall the State disclose any such Confidential Information to third parties without Contractor's written consent.

The parties' obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the possession of the Receiving Party before disclosure by the Disclosing Party, and was received by the Receiving Party without obligation of confidence; (2) is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Receiving Party from a third party without obligation of confidence; (5) is disclosed by the Receiving Party with the written consent of the Disclosing Party; or (6) is released under a valid order of a court or governmental agency, provided that the Receiving Party (a) notifies the Disclosing Party of the order immediately upon receipt of it and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Receiving Party will return all originals of any Confidential Information and destroy any copies it has made for its own internal use on termination or expiration of this Contract or as requested by the Disclosing Party.

The parties agree that the disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party shall be entitled to temporary and permanent injunctive relief to enforce the provisions hereof without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

## **20. CONFIDENTIALITY AGREEMENTS.**

When the Contractor performs services under this Contract that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that the State in its sole discretion deems sensitive, the State may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidential agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor's and its subcontractors' personnel may be required to sign a different confidentiality agreement or acknowledgement for each agency. The Contractor must immediately replace any of its or its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed.

## **21. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANY LIMITATION PROVISIONS CONTAINED IN THE DOCUMENTS AND MATERIALS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

## **22. TERMINATION / SUSPENSION.**

1. **Termination, Effectiveness, Contractor Responsibilities.** The notice of termination whether for cause or without cause will be effective as soon as the Contractor receives the notice. Upon receipt of the notice of termination, the Contractor must immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor must immediately prepare a report and deliver such report to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any deliverables completed or partially completed but not delivered to the State at the time of termination. Any and all work, whether completed or not, must be delivered to the State along with the specified report. The report and any delivered work is subject to approval by the State. However, if delivery in that manner would not be in the State's interest, then the Contractor must propose a suitable alternate form of delivery.
2. **Contract Remedies.**
  - a. **Actual Damages.** The Contractor is liable to the State for all actual and direct damages caused by the Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by the Contractor. The State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by the Contractor's default.
  - b. **Liquidated Damages.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default, for every day that the default is not cured by the Contractor.

- c. Deduction of Damages from Contract Price. Upon issuing written notice to the Contractor, the State may deduct all or any part of the damages resulting from the Contractor's default from any part of the Contractor compensation still due on the Contract. In the case of suspension for default, the State will be entitled to all remedies available under this Contract.

3. **Contract Suspension.**

- a. If the Contractor fails to perform any one of the Contractor's obligations under this Contract, the Contractor will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve the State's interest.
- b. In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension.
- c. The notice of suspension whether, with or without cause, will be effective immediately, on the Contractor's receipt of the notice. The Contractor must immediately prepare a report and deliver such report to the State as is required in the case of termination.

4. **Contract Termination.**

- a. **Termination for Convenience.** The State may terminate this Contract for its convenience after issuing written notice to the Contractor. If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and is available to the Contractor only after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.
- b. **Termination for Cause.** If the Contractor fails to perform any one of its obligations under this Contract, the Contractor will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.
  - 1. **Termination for Default.** If the Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.

2. **Termination for Defaults not Remedied.** If the Contractor's default may be cured within a reasonable time, the State will provide written notice to the Contractor specifying the default and the time within which the Contractor must correct the default. If the Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of default to the Contractor, the State has not waived any of the State's rights or remedies concerning the default.
3. **Termination for Persistent Default.** The State may terminate this Contract by written notice to the Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified the Contractor of its third default, the State may terminate this Contract without providing the Contractor with an opportunity to cure, if the Contractor defaults for a third time. The three defaults are not required to be related to each other in any way.
4. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State.
5. **Termination for Financial Instability.** The State may terminate this Contract by written notice to the Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.
6. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if the State determines that the Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision. The State also may cancel this Contract, if the State determines that the Contractor has violated any law during the performance of this Contract. However, the State may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current.
7. **Termination for Subcontractor Default.** The State may terminate this Contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them.

Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.

8. **Termination for Failure to Retain Certification.** Pursuant to Section §123.151 and §123.152 of the Revised Code, the State may certify businesses for participation in state sponsored business assistance programs. After certification is obtained it is the responsibility of the Contractor to maintain certification. If the Contractor is awarded a contract pursuant to a certification program and fails to renew its certification and/or is decertified, the State may immediately cancel the Contract.

**23. DELIVERIES**

All deliveries shall be F.O.B. Destination.

**24. HEADINGS**

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

**25. ASSIGNMENT**

Neither party will assign this Contract without the written consent of the other party.

**26. TAXES**

The Customer is exempt from all State and local taxes, and does not agree to pay any taxes.

**27. EXCUSABLE DELAY (FORCE MAJEURE)**

Neither party to this Contract will be responsible for failure to perform service due to causes beyond its control, including, but not limited to, work stoppages, fires, floods, civil disobediences, riots, rebellions acts of God and similar occurrences.

**28. ENTIRE CONTRACT**

This contract document contains the entire Contract between Contractor and Customer relating to maintenance service on the Software and supersedes any other Contracts, written or oral.

**29. NOTICES**

All notices, requests and other communications pursuant to this Contract will, unless otherwise provided herein, be in writing and will deemed to have been duly given on the date of service, if served personally, or three days after mailing, if mailed by first class mail, postage prepaid, to the address of the parties set forth in the attached Equipment Schedule.

**30. SEVERABILITY**

If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity.

**31. EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: <http://business.ohio.gov/efiling/>

Section 125.081 of the Ohio Revised Code requires state agencies to set-aside purchases for MBE and Executive Order 2008-13S encourages use of EDGE businesses. Therefore the state encourages the Contractor to purchase goods and services from Ohio certified Minority Business Enterprises (MBE) and Encouraging Diversity, Growth and Equity (EDGE) vendors.

**32. DRUG FREE WORKPLACE**

Contractor agrees to comply with all applicable state and Federal laws regarding drug-free workplace. Contractor will make a good faith effort to ensure its employees, while working on state property, will not possess or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

**33. OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS**

All Contractors who are actively doing business with the State or who are seeking to do business with the State are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09.

The Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in O.R.C. Section 3517.13 are in full compliance with O.R.C. Section 3517.13.

If the Contractor accepts a Contract and/or purchase order issued under the Contract without proper certification, the Department of Administrative Services shall deem the Contractor in breach and the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State.

Additional information regarding Contribution Restrictions is available on the Office of Budget & Management's website at: [www.obm.ohio.gov](http://www.obm.ohio.gov).

**34. SECURITY & SAFETY RULES**

When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

**35. LAW AND VENUE**

This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

**36. UNRESOLVED FINDINGS**

The Contractor warrants that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty is deemed to be false on the date the parties sign this Contract, the Contract will be void ab initio.

**37. ANTITRUST**

The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.

**38. GOVERNING THE EXPENDITURE OF PUBLIC FUNDS ON OFFSHORE SERVICES (EO 2011-12K)**

The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract. The Contractor agrees to complete the attached Executive Order 2011-12K Affirmation and Disclosure Form which is incorporated and becomes a part of this Agreement.

**39. REGISTRATION WITH THE SECRETARY OF STATE**

By providing a Charter Number and signature within the Certification Offer Letter, the Contractor attests that the Contractor is:

An Ohio corporation that is properly registered with the Ohio Secretary of State; or

A foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under O.R.C. § 1703.01-1703.31, which transacts business in the state of Ohio, without being so licensed, or when its license has

expired or been canceled, shall forfeit not less than \$250.00 nor more than ten thousand dollars. No officer of a foreign corporation (<http://codes.ohio.gov/orc/1703.01>) shall transact business in the state of Ohio, if such corporation is required by O.R.C. § 1703.01-1803.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree. Questions regarding registration should be directed to (614) 466-3910, or visit <http://www.sos.state.oh.us>

**TO SHOW THEIR AGREEMENT**, the parties have executed this Contract on the date(s) identified below, and this Contract will be effective as of the date it is signed on behalf of the State.

**40. INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT**

It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in O.R.C. Section 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under the contract complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link: <https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80>.

Contractor's failure to complete and submit the Independent Contractor/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this contract, shall serve as Contractor's certification that contractor is a "Business entity" as the term is defined in O.R.C. Section 145.037.

ACCEPTED BY:

CONTRACTOR,

ACCEPTED BY:

THE STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE  
SERVICES  
OFFICE OF INFORMATION  
TECHNOLOGY  
30 E. BROAD ST, 40<sup>TH</sup> FLOOR  
COLUMBUS, OH 43215



SIGNATURE

CHRIS M. PIEPER

PRINTED NAME

CEO

Title

5-5-15

Date

Robert Blair/GRD

SIGNATURE

ROBERT BLAIR  
DIRECTOR

5/29/15

Date

chris.pieper@allianceenterprises.com

Email Address

**ATTACHMENT A**

**Aware Rates and Conversion Table – Effective 7/1/2015**

**FY15-16 and FY16-17**

**Maintenance Costs (Annual Fees) – Framework and Application**

Item	Standard Price	Discounted Price	Unit
Aware VR Application UMS	\$25,375.00	\$0	One
Aware Framework UMS	\$17,763.00	\$0	One

**Maintenance Costs (Annual Fees) – Named User Fees**

Item	1000 Quantity Discount Price*	OOD Additional Discounted Price	Unit
Aware Named User UMS	\$420.00	\$365.00	Named User*
Aware VR Productivity Suite (Private Release) BMS	\$21.00	\$10.00	Named User*

**Maintenance Costs (Annual Fees) - VIS**

Item	4/16 Quote	Unit
Aware VIS BI Adapter	\$4,441.00	One
Aware VIS Tableau Library	\$1,776.00	One
Aware VIS Tableau OEM Professional Desktop	\$203.00	User
Aware VIS Tableau Retail Professional Desktop	\$406.00	User
Aware VIS OEM Server - Web Client Interactor	\$102.00	Named User
Aware VIS Retail Server-Web Client Interactor	\$203.00	Named User

**Other Costs**

Aware Named User License	\$630.00	Named User*
Block Service Units (Block of 500 units)	\$60,900.00	One**
Aware VIS Retail Desktop License	\$1,624.00	One
Aware VIS Retail Web Client Interactor License	\$812.00	One

**Hourly Rates**

Senior I / Remote	\$228.00	Hour
Senior II / Remote	\$254.00	Hour
Senior I / On-Site	\$305.00	Hour
Senior II / On-Site	\$345.00	Hour

**Block Service Unit Conversion Table**

Senior I / Remote	1	Block Units/Hour
Senior II / Remote	1.5	Block Units/Hour
Senior I / On-Site	2.25	Block Units/Hour

Senior II / On-Site	2.5	Block Units/Hour
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**Notations**

\* 1000-qty discount applied to the 998 current licenses; extended to additional licenses, if purchased.

\*\* Purchased in blocks of 500 Units

**ATTACHMENT B**

**STANDARD AFFIRMATION AND DISCLOSURE FORM**

**EXECUTIVE ORDER 2011-12K**

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

---

By the signature affixed hereto, the Contractor affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Contractor to sanctions. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

2625 Willamette Dr NE  
(Address)

Lacey, WA, 98516  
(City, State, Zip)

Name/Principal location of business of subcontractor(s):

N/A  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

2625 Willamette Dr NE  
(Address)

Lacey, WA, 98516  
(City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

N/A  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

2625 Wilamette Dr NE  
(Address)

Lacey, WA, 98516  
(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

N/A  
(Name)

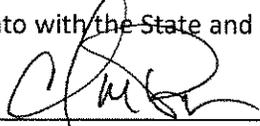
\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By:   
Contractor

Print Name: CHRIS M. PIEPER

Title: CEO

Date: 5-5-15

**ATTACHMENT C**  
MAINTENANCE AND SUPPORT AGREEMENT  
TO THE MASTER MAINTENANCE CONTRACT  
BETWEEN  
THE STATE OF OHIO,  
BY THE  
DEPARTMENT OF ADMINISTRATIVE SERVICES,  
OFFICE OF INFORMATION TECHNOLOGY

**ALLIANCE MAINTENANCE AND SUPPORT AGREEMENT**

THIS MAINTENANCE AND SUPPORT AGREEMENT (this "Agreement") was made as of the date of approval of the original implementation Agency Contract (defined below) by the Ohio Rehabilitation Services Commission, which is the 28th day of October, 2009 (the "Effective Date"), by and between Alliance Enterprises, Inc., a Washington corporation, having its principal place of business at 2625 Willamette Drive NE, Lacey, WA 98516 ("Alliance"), and the State of Ohio ("State"), acting by and through the Rehabilitation Services Commission("Agency"), an agency of the State.

**1. RECITALS**

A. Alliance and Agency are parties to an original implementation agreement (the "Agency Contract"), dated October 28<sup>th</sup>, 2009.

B. Pursuant to the Agency Contract, Alliance and Agency have entered into that certain AWARE Software License Agreement of even date herewith (the "License Agreement") in which Alliance has granted to Agency a license to use the AWARE Software. A copy of the License Agreement is attached hereto as **ATTACHMENT D**.

C. Agency has requested and Alliance has agreed to provide certain upgrade, maintenance and support services for the AWARE Software pursuant to the terms and conditions hereof.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Definitions.** Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the definition assigned such terms in the License Agreement. Defined terms herein shall mean both the noun and verb form even if only defined in one form. Definitions shall include the singular and the plural even if only defined in one form.

a. Acceptance means acceptance of deliverable 6.4 System Implementation Acceptance as described in the Alliance Statement of Work attached to the Agency Contract.

b. Annual Maintenance Fee means the annual fee set forth on **ATTACHMENT A** for Maintenance Services (and, if indicated in this Agreement, Support Services) charged by Alliance and payable in accordance with the terms of this Agreement. The Annual Maintenance Fee is based on the number of Users (set forth in the License Agreement).

- c. Block Services has the meaning set forth in Section 6.2.
- d. Business Hours and Days means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by government agencies and/or Alliance.
- e. Error means a failure of the Core System to operate as described in the User Documentation and Technical Documentation, provided that Agency reports such condition to Alliance during the term of this Agreement and that it can be verified by both Parties as further described below. The further definition and classification of Errors is set forth in Section 3 hereof.
- f. Hourly Billing Basis means billing on an hourly basis as reflected in Attachment A.
- g. Hourly Rate means the rate(s) charged to Agency for time associated with services provided by Alliance to Agency, as measured on an hourly basis, and not included in the Primary Services, as defined below.
- h. Mandated Business Operations shall refer to Agency staff members using the system to meet the requirements specified in U.S. Department of Education, Rehabilitation Services Administration ("RSA") Regulations and RSA reporting Policy Directives within the scope of the system as defined by the User Documentation and Technical Documentation for the current version.
- i. New Release means any Hot Fix, Service Pack, Update, Upgrade or New Version of the AWARE Software.
- (i) Hot Fix and Service Pack means a software release containing a correction to a specific Error(s) used to quickly install and correct the problem. Hot Fixes are designated by Alliance, in its sole discretion, generally as a change to the right of the third decimal point (e.g. Version 5.11.1.0 to Version 5.11.1.1) in the version number.
- (ii) Update means a software release containing correction of Errors. Updates are usually designated by Alliance, in its sole discretion, as a change to the right of the second decimal point (e.g., Version 5.11.0 to Version 5.11.1) in the version number.
- (iii) Upgrade means a software release containing modification to the AWARE Software that incorporates new features, legal and regulatory changes, correction of Errors, and functional and/or performance improvements. Upgrades are usually designated by Alliance, in its sole discretion, as a change to the right of the decimal point (e.g., Version 5.11.0.0 to Version 5.12.0.0) in the version number.
- (iv) New Version means a substantially improved version of the AWARE Software, incorporating significant new features and/or new functionality. New Versions are usually designated by Alliance, in its sole discretion, as a change to the left of the decimal point (e.g., Version 5.0.0.0 to Version 6.0.0.0) in the version number.
- j. Primary Contacts means personnel designated by Agency, pursuant to Section 7.2 hereof, to act as the sole individuals who may report Errors and request Services under this Agreement.

k. Production System means the version of the AWARE Software that is operating on the Agency's on-line transaction processing (OLTP) server. This version of the system is used by Agency staff to perform their business of case management and is the agency's system of record for case management.

l. Renewal Term means the one-year term, or such other term as may be agreed to between the Parties in writing, applicable to any renewal or extension of this Agreement commencing immediately upon the expiration of the then-current term of this Agreement.

m. Resolution means the date on which an Error in the AWARE Software is corrected and the fix and associated documentation is released.

n. Resolution Time means the elapsed time between the completion of Verification of the Error and Alliance's release of the correction to the Error, less time spent waiting for information or actions by the Agency.

o. Response Time means the elapsed time between Alliance's receipt of a Support Request and Alliance's confirmation to a Primary Contact that Alliance has received the Support Request and has made an entry in Alliance's problem log tracking database.

p. Services means the services provided by Alliance to Agency hereunder as agreed upon between the parties as of the Effective Date. The Services may include Primary Services, Additional Services and/or Managed Software Services. The "**Primary Services**" shall mean the Support Services and Maintenance Services as further described below and in **Exhibit A**. The "**Additional Services**" shall mean Off-Site Services and On-Site Services as further set forward in Section 6 below.

(i) Managed Services means certain managed services provided by Alliance upon request and subject to the terms of the **Managed Services** Addendum which will be executed between the parties in the event such services are requested

(ii) Maintenance Services means the services Alliance provides to maintain the Core System so that it operates in conformity with the User Documentation and Technical Documentation provided by Alliance in connection with any New Releases of the AWARE Software which Agency has been licensed to use.

(iv) Off-Site Services means those Services provided by Alliance staff not at or near the Agency site (remotely from Alliance's place of business or temporary office location) including but not limited to consulting, training, customizations and communication via email, telephone, video conference, webinar.

(v) On-Site Services means those Services provided (i) onsite at an Agency location or (ii) from another location in the city where Agency's premises are located (e.g. remotely from a hotel).

(vii) Support Services means collectively, the Telephone and E-Mail Support, Online Support, Installation Support, and System Administration Support services Alliance provides to Primary Contacts to answer questions about the Core System.

q. Support Hours and Days shall mean Monday through Friday, 8:00 a.m. to 8:00 p.m., Eastern Time, except for holidays observed by government agencies and/or Alliance.

r. Support Request means the event of a Primary Contact telephoning or emailing Alliance to report an Error in the Core System, or to request assistance in resolving an Error.

(i) Telephone and E-mail Support and Remote Support means assistance given by Alliance personnel by telephone, e-mail, video conference, or webinar respectively, during normal Support Hours and Days.

(ii) Online Support means remote access to Agency's equipment and Agency's copy of the AWARE Software by Alliance personnel from Alliance's place of business or another remote location via telecommunications, during normal Business Hours and Days.

(iii) Installation Support means the Support Services provided by Alliance to assist an Agency employee or agent who was previously trained by Alliance in installing a New Release of the Core System on Agency's servers, during normal Business Hours and Days unless previously arranged with Alliance.

(iv) System Administration Support means the Support Services provided by Alliance to Primary Contacts (a) to answer routine questions regarding the use of the Core System during normal Business Hours and Days; (b) to assist Agency in identifying and reporting Errors that may need correction during normal Support Hours and Days; and (c) to provide work-around solutions when reasonably available, during Support Business Hours and Days.

(v) Developer Support means the Support Services provided by Alliance to Agency's programmers and analyst(s) regarding AWARE database, Licencee's Extensions, Xtend capabilities, hardware, and other software programs as it relates to the AWARE Software, during normal Business Hours and Days.

(vi) Additional Support means the Support Services provided by Alliance other than as specified in Installation Support, System Administration Support, or Developer Support subsections (i) through (v) above.

s. Verification means the process of Alliance and the Agency working together to verify that an Error exists, to determine the source of the Error, to agree upon the Classification of the Error, and agree upon the schedule for releasing the correction or Work-Around. At the culmination of the Verification process, Alliance shall provide a written summary of the Support Request. If it is an Error in the Core System, the written summary also shall include the jointly defined Error Classification and a Resolution date based on the Classification of the Error and Alliance's release schedule. The Agency shall then confirm this documentation or provide additional information until Alliance and the Agency agree upon the Classification and resolution plan. If the Error cannot be easily verified within the timeframes set forth below, Alliance will

provide the Agency a written report of the efforts being taken to verify and resolve the error and any additional steps necessary for verification.

t. Warranty Period means the 90 calendar day period commencing on the date of Acceptance or as defined in the Agency Contract.

u. Work-Around means a by-pass or method of using the AWARE system that avoids an Error and therefore temporarily resolves the issue until a complete Resolution can be released.

**2. Primary Services.** In consideration of the payments to be made to Alliance in this Agreement, Alliance agrees to provide the Primary Services as further set forth in this Agreement.

**3. Error Classification and Response Time.**

**3.1 Error Classification.** If Agency can reproduce the Error independently of any Extensions, it shall then report it to Alliance by electronic mail at the address "[support@allianceenterprises.com](mailto:support@allianceenterprises.com)," "[support@getaware.com](mailto:support@getaware.com)" or such other address as may be designated from time to time by Alliance, specifying in detail the nature of such Error and the circumstances under which the Error occurs.

Errors shall be classified by Alliance as Severity 1 - Critical, Severity 1 - High, Severity 2 - Medium, Severity 3 - Low, or Agency-introduced, as follows:

(i) Severity 1 - Critical: (1) Within the Production System, whole or part of Production System is down and recovery efforts are failing, or (2) within the Production System, whole or part of Mandated Business Operations workflow is inoperative and an entire business process or an entire functional program is impacted and a Work-Around has not yet been identified or may not be possible.

(ii) Severity 1 - High: Within the Production System, the AWARE Software is saving data incorrectly or the Error is causing a commonly used report to calculate statistics or financial data incorrectly.

(iii) Severity 2 - Medium: Within the Production System, information cannot be input or retrieved from the system within the required deadline of a lower priority. One or more staff cannot perform an assigned task through the system but can process other work.

(iv) Severity 3 - Low: The AWARE Software exhibits formatting or other cosmetic problems, but is still functional.

(v) Agency-Introduced Error: An Error introduced by Agency modifications, Extensions, or misuse of the system.

**3.2 Response, Verification, and Resolution Time.** Alliance will respond to and resolve Support Requests as follows:

(i) Severity 1 - Critical: Alliance will give the highest scheduling priority and devote its best available resources to resolve Severity 1 - Critical-level Errors. If reasonably feasible, Alliance shall respond to the Agency within 4 hours after receipt of the Support Request and will work with the Agency to verify the Error as soon as possible after the initial response. If reasonably feasible, Alliance shall provide a Work-Around procedure to overcome the effect of the Error immediately after Verification of the Error. Alliance shall devote reasonable commercial

efforts to resolve the Severity 1 - Critical-level Errors after Verification. Even if a Work-Around procedure is implemented, Alliance will continue to devote its best available resources until the Critical-level Error is resolved.

(ii) Severity 1 - High: Alliance will give the next highest scheduling and resource priority to Severity 1 - High-level Errors. If reasonably feasible, Alliance shall respond to the Agency within one (1) Business Day after receipt of the Support Request. Verification of the problem will be concluded within five (5) Business Days after Alliance has responded to the Support Request. Alliance will use commercially reasonable efforts to resolve Severity 1 - High-Level Errors no more than fifteen (15) days after Verification for those functions that are used on a daily basis or needed by an immediate date. Otherwise, Alliance will release the correction within the next software Release but no later than 45 days after Verification. The Agency and Alliance will jointly set the release schedule based on the frequency of use of the feature.

(iii) Severity 2 - Medium: Alliance will give the next highest scheduling and resource priority to Severity 2 Errors. Alliance shall devote commercially reasonable efforts to respond to Severity 2 Errors within one (1) Business Day after receipt of the Support Request. Verification of the problem will be concluded within seven (7) Business Days after Alliance has responded to the Support Request. Alliance will use commercially reasonable efforts to resolve Severity 2 Errors no more than thirty (30) days after Verification for those functions that are used on a daily basis or needed by an immediate date. Otherwise, Alliance will release the correction within the next software Release but no later than 90 days after Verification. The Agency and Alliance will jointly set the release schedule based on the frequency of use of the feature.

(iv) Severity 3 - Low: Alliance in its sole discretion will determine whether or not to respond to Severity 3 Errors in a future New Release.

(v) Agency-Introduced Error: If, in its sole discretion, Alliance believes such Errors can be resolved, Alliance will correct these on an Hourly Billing basis or as part of Block Services, if applicable as mutually agreed upon between the parties, as its schedule and resources permit. Otherwise, Alliance shall have no obligation to correct any Agency-introduced Error.

**4. Scope of Primary Services.** Agency shall elect the Primary Services by way of a written, countersigned document such as a side letter or Purchase Order.

**4.1 Conditions Covered.** The Primary Services provided under this Agreement shall be in support and maintenance of the AWARE Software and any Hot Fixes, Service Packs, Updates, Upgrades and New Versions furnished to Agency by Alliance under this or any other Agreement. Following the release by Alliance of an Upgrade or New Version, Alliance will support the immediately preceding version (the "Prior Version") of the AWARE Software for a period of six (6) months. At the end of that six (6) month period, Alliance shall have no obligation to provide Services for the preceding version. In addition, Alliance shall support the Prior Version for six (6) months following the initial delivery of the AWARE Software under this Agreement. Agency may select from the following types of Support Services:

(i) Basic Maintenance and Support Program (the "Basic Maintenance and Support Program"). During any time period when Alliance provides basic maintenance and support, as elected by Agency in a letter countersigned by both parties, Alliance shall provide the Agency Installation Support, System Administration Support, Maintenance Services for the

AWARE Software, and Maintenance Services for extensions developed for the Agency by Alliance.

(ii) Upgrade, Maintenance and Support Program (the "Upgrade, Maintenance and Support Program"). During any time period when the Agency participates in the Upgrade, Maintenance and Support Program Alliance shall:

(a) provide the Agency Installation Support, System Administration Support, and Maintenance Services for the AWARE Software.

(b) provide Agency with a minimum of two (2) New Releases during the term of this Agreement and during each year of any Renewal Term hereof as further detailed in the Release Schedule. New Releases shall be made, at least, to (i) keep the AWARE Software current with the RSA Regulations and RSA reporting Policy Directives within the scope of the system as defined by the User Documentation and Technical Documentation for the current version; (ii) upgrade the AWARE Software in order to maintain compatibility with underlying software technologies comprised within the overall architecture of the application; or (iii) incorporate new features, functions or enhancements developed as a result of continued research and development efforts.

**4.2 Release Schedule.** Alliance will release software to Agency based on the following schedule:

(i) During any time period when the Agency enrolls in the Basic Maintenance and Support Program, Alliance will deliver New Releases to Agency based on prior written agreement between Alliance and the Agency.

(ii) During any time period when the Agency enrolls in the Upgrade, Maintenance and Support Program, Alliance will deliver New Releases based on the schedule established at the beginning of and modified throughout the fiscal year.

### **4.3 Conditions Not Covered**

(i) Agency Changes. Agency shall inform Alliance in writing of any and all Extensions and Modifications (if permitted by the License Agreement) made to the AWARE Software by Agency or made for Agency by third parties (collectively, "Agency Changes"). Alliance shall not be responsible for maintaining or supporting Agency Changes or for maintaining portions of the AWARE Software affected by Agency Changes.

(ii) Improper Use. Alliance shall not be responsible for correcting problems caused by use of the AWARE Software by Agency for any purpose outside the scope intended by the License Agreement.

(iii) Third Party Technology. Alliance shall not be responsible for correcting problems caused by the use of hardware and/or software not included in the Required Hardware and Software.

(iv) Hardware. Alliance shall not be responsible for maintaining Agency's hardware, including but not limited to telecommunications devices, components, computers, peripheral devices, and storage media. In the event any New Release of the AWARE Software

requires additional hardware or software, Agency shall purchase and install such additional hardware and software at its sole expense on six (6) months' written notice from Alliance.

**5. Additional Services.** The Additional Services are available for purchase by Agency in accordance with this Section. Unless otherwise specified, all Additional Services are available on an Hourly Billing basis (subject to below with respect to Off-Site Services and On-Site Services). In addition, unless otherwise specified, all Additional Services must be set forth in a Statement of Work executed by the parties and submitted hereunder.

**5.1 On-Site Services.** The minimum billable increment for On-Site Services shall be 8 hours. Alliance will have no obligation to provide On-Site Services without prior written mutual approval. If Agency desires On-Site Services, it shall provide Alliance with at least fourteen (14) Business Days prior written notice. If Agency cannot or is unwilling to provide such minimum notice, Alliance shall charge Agency directly for travel expenses incurred in addition to any other Support Fees. Agency shall provide Alliance employees or agents with sufficient workspace, access to Agency's equipment, software and servers and shall cooperate with Alliance as necessary to enable Alliance to provide the On-Site Services. Alliance shall have sole discretion to determine the appropriate staffing for On-Site Services.

**5.2 Block Services.** Agency shall have the option to commit to purchasing Block Services. Block Services must be committed to in blocks of 500 units per annual term. If Agency elects to purchase Block Services it shall commit to such services through an Agency-executed document such as a side letter or purchase order. The Additional Services (not including Managed Software Services) are assigned a unit designation for purposes of calculating the Block Services unit amounts and balances, as set forth in **ATTACHMENT A**, for Off-Site Services and On-Site Services.

Block Services shall be calculated as follows: Alliance shall bill Agency, on a monthly basis, for the work deliverables completed and the Block Services Units they represent (as set forth in **ATTACHMENT A**). Agency's Block Services commitment will be debited by the corresponding number of Services units (depending on the Services provided). Agency may use the remaining units for up to three (3) months following expiration of the applicable annual term.

This Section does not require Agency to pay the amount corresponding to the Block Services commitment if Agency does not reach the minimum commitment. Agency shall only be required to pay for Services rendered.

**5.3 Provision of Block Services.** When Agency wants to engage Alliance for Block Services described herein, Agency shall contact Alliance by email to request such Block Services (Agency may call but must confirm approval for Services with an email.) The following protocol will apply:

(i) Agency pre-approves use of up to eight (8) Off-Site Service units based on email request by authorized staff member (which such staff member shall have been previously identified by Agency). When Alliance receives the email, Alliance may work up to eight (8) units without Statement of Work or other definition.

(ii) If Alliance determines that the work will require more than eight (8) units (at the time the request is received OR after spending some hours to determine the scope):

- Alliance will submit a written Statement of Work ("SOW") to Agency defining

the type of service (Off-Site Services or On-site Services) and the Staff Classification (Senior I or Senior II), steps to complete the work, deliverables, and a payment schedule (fixed bid).

- Alliance and Agency will work together to revise the SOW as needed.
- Authorized Agency representative approves the SOW in writing.
- When SOW deliverables are complete, Alliance submits a Deliverable Acceptance Notice ("DAN") to the Agency.
- Agency must approve the DAN within 5 working days or communicate in writing requested changes or modifications to the DAN.
- Upon receipt of DAN, Alliance will invoice customer for fixed number of units per SOW, deduct the units used, and calculate the Block Service unit balance.

## **6. Responsibilities of the Agency.**

**6.1 Compliance.** Agency shall at all times be in full compliance with all terms and conditions of this Agreement and of the License Agreement.

**6.2 Primary Contacts.** Agency shall at all times ensure that its personnel are properly trained in the operation and use of the AWARE Software. Agency shall designate at least two (2), but no more than the maximum number recommended by Alliance, individuals to serve as Primary Contacts and to provide support to Agency's users of the AWARE Software. Agency shall provide written notice to Alliance giving the name and contact information for such Primary Contacts. Note that the Primary Contacts may be different than the individuals designated as authorized staff members in Section 6.3(i).

**6.3 Access.** Agency shall provide Alliance with online access to Agency's server in connection with the Services. Such access shall be provided by VPN, webinar, or other similar technology in Alliance's reasonable discretion.

**6.4 Primary Services.** Agency shall pay all fees for the Primary Services under this Agreement in accordance with **ATTACHMENT A**. Except as otherwise provided in this Agreement, Alliance shall invoice Agency at the beginning of each applicable Term.

**6.5 Additional Services.** The Additional Services will be invoiced as set forth in each applicable Statement of Work. Each invoice will include the following information: date, type of service (Off-Site or On-Site), Staff Classification (Senior I or Senior II), subject, and estimated hours. The invoice will also contain a summary of units used and units remaining if Agency has committed to Block Services.

## **7. Warranties and Disclaimers.**

**7.1 General.** Alliance further warrants that the Services will be provided in compliance with all applicable laws, rules and regulations.

**7.2 Exceptions.** Agency acknowledges that Alliance cannot and does not warrant or promise that any New Release (i) will be fully compatible with Agency's Extensions, Additional

Code, Adaptations to the AWARE Software or (ii) that any New Release will operate the exact same way as the Prior Release without additional Modifications by Alliance, which may require additional consulting or programming services. Agency further acknowledges that such additional services would be outside the scope of the Services provided under this Agreement and that Agency and Alliance must contract for the provision of such additional services in a separate written agreement.

### **7.3 Maintenance of Extensions.**

(a) If Agency contracts for the Basic Maintenance and Support Program pursuant to Section 4.1(i), Alliance will provide Support and Maintenance Services for Alliance developed Extensions without additional charge.

(b) If the Upgrade, Maintenance and Support Program is elected pursuant to Section 4.1(ii) the Agency will be responsible for Support and Maintenance Services of all Alliance and/or Agency developed Extensions. Agency may engage Alliance to perform such Support and Maintenance on an Hourly Billing basis at Alliance's then-current rates for such Support and Maintenance, or Agency may purchase Block Services for Support and Maintenance.

**7.4 Disclaimer. ALLIANCE SPECIFICALLY DISCLAIMS AND EXCLUDES, AND AGENCY DOES NOT RELY ON, ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN ADDITION, ALLIANCE DISCLAIMS ANY LIABILITY FOR PERFORMANCE PROBLEMS AND ERRORS AND NON-PERFORMANCE OR ANY EQUIPMENT PURCHASED OR USED BY AGENCY IN THE OPERATION OR STORAGE OF THE AWARE SOFTWARE AND FURTHER DISCLAIMS ANY LIABILITY THAT IS THE RESULT OF AGENCY'S USE OF INVALID OR INCORRECT DATA OR AGENCY DATA CONVERSION PROBLEMS.**

**7.5 Exceptions.** This warranty shall be null and void and unenforceable against Alliance with respect to any portion of the AWARE Software that is Extended and/or Modified by Agency or any portion affected by such Extension(s) or Modification(s).

## **8. Termination.**

**8.1 Term.** This Agreement shall have an initial term of one year (the "Initial Term") and shall automatically renew for successive one-year Renewal Terms at Alliance's then current rates based on the procedure set forth and at the rates set forth in **Exhibit A**. Alliance will give Agency sixty (60) days advance notice of any new rates, and Agency shall be deemed to have accepted such new rates unless it terminates this Agreement within thirty (30) days of the date of notice.

**8.2 Termination of License Agreement.** If the License Agreement is terminated for any reason, this Agreement shall terminate; *provided, however,* that Agency shall remain obligated to pay all amounts owing or accrued under this Agreement prior to termination.

**8.3 Default.** Each party has the right to terminate this Agreement if the other party breaches or is in default of any obligation under this Agreement which default is incapable of cure or which, being capable of cure, has not been cured within fifteen (15) days after receipt of written notice of such default (or such additional cure period as the non-defaulting party may authorize). Agency warrants that this default and cure provision supersedes and takes precedence over any and all other claims resolution procedures as may be otherwise required by the State of residence of Agency.

**8.4 Acts of Dissolution.** If Agency is dissolved or its functions and powers are taken away by legislative act or otherwise, all of the duties, rights and remedies of Agency under this Agreement shall remain in full force and effect and shall be transferred to the successor to Agency. If there is no successor to Agency, Alliance may at its option terminate this Agreement without incurring liability for such termination.

**8.5 Determination of Annual Maintenance Fee on Termination.** The Parties agree that upon any termination of this Agreement before the expiration of any Initial or Renewal Term hereof in accordance with this Section 10.6, the Annual Maintenance Fee applicable to the expired portion of the annual term shall be determined as follows:

(i) Under the Basic Maintenance Program, as elected under Section 4.1(i), the Annual Maintenance Fee applicable to the expired term of the Agreement shall be determined by dividing the Annual Maintenance Fee by twelve (12) and multiplying the resulting quotient by the number of months of the annual term that have expired. Any deficiency in payment due to Alliance as of the date of termination that results from this calculation shall be promptly paid in accordance with the payment procedures agreed to between the Parties.

(ii) Under the Upgrade, Maintenance and Support Program, as elected under Section 4.1(ii),

(a) If Agency terminates the Agreement prior to the delivery of the first New Release in any annual term of the Agreement, the Annual Maintenance Fee applicable to the expired term of the Agreement shall be determined by dividing the Annual Maintenance Fee by twelve (12) and multiplying the resulting quotient by the number of months of the annual term that have expired. Any deficiency in payment due to Alliance as of the date of termination that results from this calculation shall be promptly paid in accordance with the payment procedures agreed to between the Parties.

(b) If Agency terminates the Agreement at any time after the delivery of the first New Release in any annual term of the Agreement, but before the second New Release has been delivered, one-half of the Annual Maintenance Fee shall be deemed fully earned and payable to Alliance pursuant acceptance of such first New Release. The remaining half of the Annual Maintenance Fee shall be divided by twelve (12) and the resulting quotient multiplied by the number of months of the annual term that have expired to determine the balance due and owing to Alliance. Any deficiency in payment due to Alliance as of the date of termination that results from the calculations above shall be promptly paid in accordance with the payment procedures agreed to between the Parties.

(c) If Agency terminates the Agreement at any time after the delivery of the second New Release in any annual term of the Agreement, three-quarters of the Annual Maintenance Fee shall be deemed fully earned and payable to Alliance subject to acceptance of such second New Release. The remaining quarter of the Annual Fee shall be divided by twelve

(12) and the resulting quotient multiplied by the number of months of the annual term that have expired to determine the balance due and owing to Alliance. Any deficiency in payment due to Alliance as of the date of termination that results from the calculations above shall be promptly paid in accordance with the payment procedures agreed to between the Parties.

**8.6 Support Fees.** Agency shall pay to Alliance within the time period proscribed by Agency's applicable state law all accrued and outstanding Support Fees, if any, as set forth on **Exhibit B**.

**8.7 Rights and Obligations of the Parties on Termination.** If this Agreement is terminated for any reason, each party shall return to the other all data, materials, and other properties of the other party then in its possession.

**8.8 Continuing Obligations.** The obligations of the parties under Sections 10 (Termination), 11 (Limitation of Liability) and 12 (Taxes) shall survive the termination of this Agreement for any reason.

**9. Assignability.** Agency may not assign this Agreement and the rights and obligations set forth in this Agreement without the written consent of the Alliance; provided, however, that Agency may assign this Agreement to a successor in interest to Agency if, and only if, responsibility for vocational rehabilitation case management and/or independent living case management, as applicable, is transferred pursuant to legislative mandate to another State agency. Alliance shall not assign this Agreement and its rights and obligations under this Agreement without the prior written approval of Agency which consent shall not be unreasonably withheld.

Exhibit A

**Primary Services**

**a. Basic Maintenance and Support Program**

(i) Included in the Base Cost

(a) Basic Maintenance and Support Program as described in Section 4.1(i) of this Agreement

(ii) Provided on an Hourly Billing basis

(a) Developer Support Services, On-site Support and Additional Support.

(c) Systems development of Customizations and/or Extensions.

**b. Upgrade, Maintenance and Support Program**

(i) Included in the Base Cost

(a) Upgrade, Maintenance and Support Program as described in Section 4.1(ii) of this Agreement

(ii) Provided on an Hourly Billing basis or through Block Services.

(a) Developer Support Services, On-site Support and Additional Support.

(b) Systems development of Customizations and/or Extensions.

## ATTACHMENT D

### AWARE SOFTWARE LICENSE AGREEMENT

**The attached document is the original signed agreement between the State and Alliance Enterprises, Inc. As such, the document may reference Exhibits and Attachments which were components of the original project agreement, but have not been included in this agreement, which will now take precedence.**

This AWARE VR Software License Agreement (“Agreement”) was made as of the 28th day of October 2009, the date of approval of the original implementation Agency Contract (defined below) by the Rehabilitation Services Commission (the “Effective Date”), by and between Alliance Enterprises, Inc., (“Alliance”), having its principal place of business at 2625 Willamette Drive NE, Lacey, WA 98516, and the State of Ohio (“State”) acting by and through the Rehabilitation Services Commission (“Licensee”), an agency of the State.

#### RECITALS

A. Alliance has developed certain application software and materials known as the AWARE VR Software, for use by various state agencies in connection with the management of vocational rehabilitation caseloads, independent living caseloads, other program area caseloads, and/or the service delivery at a community rehabilitation programs and/or vocational rehabilitation training and adjustment centers. The AWARE VR Software as used herein, also includes:

- (i) user’s manuals, training materials, online “help”, and other user documentation for the AWARE VR Software (“User Documentation”); and
- (ii) technical specifications and documents, data model documentation, data dictionary, technical standards, and instructional tools for the AWARE VR Software (collectively, “Technical Documentation”).

B. Licensee is an agency of the State that desires a license to use the AWARE VR Software in connection with its vocational rehabilitation case management by and through its Rehabilitation Services Commission.

For and in consideration of the agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Definitions.** Defined terms herein shall mean both the noun and verb form even if only defined in one form. Definitions shall include the singular and the plural even if only defined in one form.

a. Adapt shall mean to edit a system parameter value, to add, edit, or delete a lookup table value, or to add, edit or delete a value in a business table holding agency organizational data. Adaptations do not include any changes or modifications to the Source Code (as that term is defined in this Section 1.1 below).

b. Additional Capabilities shall mean any capabilities not included in the Agency Contract which Licensee requests Alliance incorporate into the Customizations.

c. Agency Contract shall mean the Agreement between the State of Ohio Rehabilitation Services Commission and Alliance Enterprises, Inc.

d. Alliance Proprietary Materials shall mean the AWARE VR Software, User Documentation, Technical Documentation, Customizations, Supplements, Additional Capabilities, Extensions developed by Alliance and Modifications and all modifications and derivatives thereof.

e. AWARE VR Software shall mean version 5.0 of the AWARE VR Software and any New Releases licensed to Licensee hereunder and/or pursuant to the Maintenance and Support Agreement.

f. Core System shall mean the AWARE VR Software system without any extensions.

g. Customization shall mean customization of the AWARE VR Software performed by Alliance in accordance with the Agency Contract.

h. Extend (sometimes referred to internally as "Xtend") shall mean adding functionality to the AWARE VR Software by writing additional code external to the Core System for the purposes of accommodating Licensee's unique business practices and linking such Extension to the AWARE VR Software system by means of the designated extensions provided therein for such purposes.

i. Extension shall mean additional code written either by Licensee or by Alliance to Extend the AWARE VR Software. Extensions include but are not limited to adding additional data elements, adding or modifying computer rules, adding datapages, adding new reports, cloning and modifying Core System reports, aspects system interfaces.

j. Licensee Data shall mean all Licensee (including Licensee clients) data, records, documents and other materials input, stored or processed by the AWARE VR Software.

k. Test and Acceptance Plan shall mean the document described in the Agency Contract which, once completed, sets forth the process of the Licensee's testing and acceptance of the Core AWARE VR Software. The Test and Acceptance Plan is prepared by Alliance with input and cooperation from Licensee and is subject to revision upon mutual agreement of the parties as part of the Installation, Test and Acceptance Deliverable outlined in the Work Plan submitted as part of the Alliance Proposal.

l. Maintenance Agreement shall mean the version of Alliance's standard Maintenance and Support Agreement attached to the Agency Contract.

m. Modify shall mean Licensee's alteration or change to the AWARE VR Software Source Code in any way.

n. Source Code shall mean the human readable version of a software program that requires compilation or other manipulations before it can be executed by a computer and all corresponding source documentation, including application programming interface specifications, release notes and build procedures.

o. User(s) shall mean (i) anyone approved by Licensee including its divisions, political subdivisions of the State, officers, employees, contractors, subcontractors, business partners, customers, or agents so long as such User's use of the AWARE VR Software is on behalf of the Licensee and in the context and for the purposes intended by this Agreement and (ii) who is listed as "active" in the Staff Member table in Licensee's production environment of the AWARE VR Software.

p. Work Plan shall mean the description of the Phases, Deliverables, Work Products, responsibilities, and assumptions included in Alliance's proposal that define the approach Alliance and the Licensee will install, Adapt, Customize, test, and implement the AWARE VR Software. The Work Plan is incorporated into the Agency Contract and is modified by consent of both parties during the life of the Agency Contract.

## **2. Software Development and AWARE VR Software License.**

### **a. Software Development.**

i. Customizations. Alliance shall customize the AWARE VR Software as provided in the Agency Contract. Alliance shall supplement the User Documentation and Technical Documentation (the "Supplements") to incorporate appropriate references to the Customizations. Payment for the Customizations shall be in accordance with the amounts, terms and conditions specified in the Agency Contract or any other written agreement between the parties.

ii. Additional Capabilities. Requests for Additional Capabilities shall be made using the procedure outlined in the Agency Contract and shall be incorporated into the

Customizations at Alliance's sole discretion. In the event such Additional Capabilities are incorporated into the Customizations, Licensee shall pay to Alliance the "Additional Services Fee" as provided in Section 5.

iii. Integration. For all purposes under this Agreement, all Customizations shall be considered an integrated part of the AWARE VR Software and licensed along with the AWARE VR Software hereunder and all Supplements shall be considered an integrated part of the User Documentation and Technical Documentation and licensed along with such User Documentation and Technical Documentation hereunder.

b. License. Subject to payment of the fees set forth in Section 5, Alliance hereby grants to Licensee a perpetual, non-exclusive, non-transferable, revocable license to use the AWARE VR Software, and associated User Documentation and Technical Documentation solely on Licensee's server(s) in connection with Licensee's business purposes as set forth in the Agency Contract. In addition, Licensee may make a reasonable number of copies of the AWARE VR Software for archival, back-up and disaster recovery purposes. Upon execution of this Agreement by both parties and payment by Licensee of any fees payable upon execution (as set forth in the Agency Contract), Alliance shall deliver to Licensee the AWARE VR Software in executable format and Licensee will be given a login name and access code to access Alliance's informational site, AWAREInfo at [www.AllianceEnterprises.com/AWAREInfo](http://www.AllianceEnterprises.com/AWAREInfo) for the associated User Documentation and Technical Documentation. Licensee shall have the right to make back-up copies of the AWARE VR Software, and associated User Documentation and Technical Documentation for disaster recovery purposes and to store such copies at a location away from its physical location in order to facilitate such purposes.

c. Number of Users. The license granted to Licensee hereunder is for use of the AWARE VR Software on Licensee's server(s) by a maximum of 650 Users. Licensee may increase the maximum number of Users, from time to time, by providing written notice to Alliance. Upon receipt of such notice, Alliance will notify Licensee of required additional charges. Upon payment by Licensee of any such additional charges Licensee shall be deemed to be authorized to have the new maximum numbers of Users as specified in Licensee's most current notice.

d. Enhancements to AWARE VR Software.

i. Licensee may Adapt the AWARE VR Software to tailor the functionality to most closely conform to Licensee's business practices. Adaptations do not void or otherwise diminish or restrict Alliance's warranty obligations under the provisions of Section 9.a.ii of this Agreement (as long as the Licensee used acceptable values, as defined by the Technical Documentation).

ii. Licensee shall have the right to Extend the AWARE VR Software, provided, however, such Extensions shall only be made using the designated extensions provided for such purpose within the AWARE VR Software. Extensions to the AWARE VR Software are subject to the warranty restrictions and limitations contained in Section 9.a.ii hereof.

iii. Licensee shall have no right to Modify the AWARE VR Software.

e. Proprietary Rights; Restrictions. Except for the license rights granted herein, Alliance retains all right, title and interest in the Alliance Proprietary Materials and all copies thereof in any form. Licensee shall deliver to Alliance a copy of Licensee's Extensions to the AWARE VR Software semi-annually pursuant to the provisions of Section 11 hereof. Except where prohibited by its obligations to other third parties, Alliance shall at all times have access to all of Licensee's Extensions, as provided in Section 11 hereof. Licensee agrees not to sublicense, loan, trade, or otherwise transfer or make the Alliance Proprietary Materials available to any other person or entity. Licensee shall not remove, obscure or alter any notice of copyright, patent, trade secret, trademark or other proprietary right or disclaimer appearing in or on the Alliance Proprietary Materials and shall ensure that every copy of all or any portion thereof made by Licensee includes such notices. Except to the extent (if any) permitted hereunder or by applicable law, Licensee shall not (i) copy or duplicate, or permit anyone else to copy or duplicate, a physical or magnetic version of the computer programs, documentation or information furnished by Alliance in machine-readable or other form, (ii) create or attempt to create, or permit others to create or attempt to create, by reverse engineering or otherwise, the source programs or any part thereof from the object program or from other information made available under this Agreement or otherwise (whether oral, written, tangible or intangible).

f. Source Code Escrow. If Licensee elects the Upgrade, Maintenance and Support Program under the Maintenance Agreement, within thirty (30) days of the Effective Date, Alliance will ensure that a current version of the Core System Source Code, along with all other Documentation related to the Software ("Deposit Materials") is placed in escrow, which such escrow shall be governed by the escrow agreement ("Escrow Agreement") attached at Exhibit A. In the event a release condition is triggered as set forth in the Escrow Agreement, Alliance hereby grants Licensee a nonexclusive, perpetual, nontransferable license to use the Deposit Materials for internal purposes, including but not limited to, correcting errors, performing bug fixes, or performing maintenance on the AWARE VR Software. Alliance agrees that it shall be solely responsible for all costs and expenses associated with the Escrow Agreement.

### **3. Acceptance; Professional Services.**

a. Test and Acceptance. Alliance shall assist Licensee in performing Alliance's standard Test and Acceptance Plan to ensure proper functioning of the AWARE VR Software. Upon initial installation, Alliance shall certify in writing to Licensee that the AWARE VR Software has been installed. After such certification, Licensee shall have the period set forth in the Work Plan (the "Test and Acceptance Period") in which to complete the Test and Acceptance Plan. The Test and Acceptance Plan shall be conducted on the AWARE VR Software excluding any Extensions. Upon receipt of written notice from Licensee prior to expiration of the Test and Acceptance Period detailing any way in which the AWARE VR Software does not operate in substantial conformity with the Technical Documentation and User Documentation, Alliance shall have the correction period set forth in the Work Plan in which to (i) correct, reinstall, and recertify the AWARE VR Software as ready for retesting ("Recertification") or (ii) notify Licensee that such item of non-compliance will be either corrected prior to "statewide implementation" or in the next release of the AWARE VR Software ("Notification"). Upon Recertification, if applicable, by

Alliance, Licensee shall have additional period set forth in the Work Plan in which to complete the Test and Acceptance Plan and provide Alliance with a signed copy thereof, or, alternatively, notify Alliance in writing of additional aspects or items not operating as described in the User Documentation and Technical Documentation. In such event the procedures outlined above shall be repeated in sequence until Licensee delivers to Alliance a signed copy of the Test and Acceptance Plan evidencing acceptance of the AWARE VR Software. After three unsuccessful attempts at correcting such nonconformity or if Licensee is unwilling to accept Notification, either party shall have the option of terminating this Agreement, in which case Alliance shall refund any portion of the License Fee paid by Licensee. Upon receipt of the signed copy of the Test and Acceptance Plan, or upon expiration of such time period without receipt of written notice to Alliance of noncompliance with the Technical Documentation or User Documentation, the AWARE VR Software shall be deemed accepted. The parties agree that the installation and acceptance of the AWARE VR Software does not include any Customizations, data conversion or interfaces to other systems necessary for use of Licensee data with the AWARE VR Software.

b. Services. Alliance provides certain services (including but not limited to implementation services, consulting services and training services) in connection with the provision of the AWARE VR Software, which such services are further described in the Work Plan (collectively, "Services"). Subject to the terms and conditions of this Agreement, Alliance shall perform such Services in the manner and to the extent specified in the Work Plan.

**4. Licensee Required Hardware and Software.** As part of the Infrastructure Assessment and Recommendations Deliverable described in the Work Plan, Alliance shall, with Licensee's input and cooperation, determine the minimum hardware and software requirements for Licensee's use in connection with the AWARE VR Software (the "Required Minimum Hardware and Software"). Upon completion of the list of Required Minimum Hardware and Software Licensee shall promptly purchase and install such software and hardware as agreed upon during the Infrastructure Assessment and Recommendations Deliverable.

**5. Fees.** Licensee agrees to pay the license fee set forth in the Agency Contract, in accordance with the payment schedule therein (the "License Fee"). Failure to pay the License Fee on the above schedule shall be a material breach of this Agreement. For any mutually agreed upon Additional Capabilities, Licensee shall pay to Alliance an Additional Services Fee, as determined by Alliance and submitted to Licensee as a formal quotation for the time, materials and services involved. Licensee shall acknowledge and accept Alliance's quotation, in writing, prior to the commencement of any work on the development of the Additional Capabilities by Alliance. Licensee shall make payments to Alliance for the Additional Services Fee within the time-period set forth in the applicable state law.

**6. Term.** The term of this Agreement shall commence upon the Effective Date and shall remain in force perpetually so long as both parties perform as herein provided, subject to the provisions of Sections 7(a)(iii)(A) and 7(a)(iii)(B). Either party shall have the right to terminate this Agreement in the event of any breach by the other pursuant to Section 7.

## 7. Termination.

### a. Termination by Licensee.

i. Termination for Default. If Alliance is in material breach of any provisions of this Agreement, and such material breach is not cured within ten (10) business days after delivery of Licensee's written notice or such longer period as Licensee may specify in such notice, the Licensee may terminate this Agreement. The notice shall specify the acts or omissions relied upon as cause for termination. Upon such termination, Licensee shall remain responsible for (i) work performed and deliverables provided in accordance with this Agreement through the date of termination and (ii) any amounts due under any other agreement between the parties, including without limitation, a pro rata portion of amounts due under a Maintenance Agreement, prior to receipt of notice of termination, less the amount of documented damages caused by Alliance's breach. If the documented damages are more than the compensation payable to Alliance, Alliance will remain liable after termination and the Licensee can affirmatively collect damages. If Licensee elects not to forfeit the perpetual license granted hereunder and continue use of the AWARE VR Software, Licensee shall pay Alliance any unpaid portion of the License Fee.

ii. Termination for Convenience. The Licensee may terminate this Agreement in whole, or from time to time, in part, in accordance with this clause whenever the Licensee shall determine that such termination is in its best interests. The Licensee will pay all reasonable costs associated with this Agreement that Alliance has incurred up to the date of termination, all amounts owing and/or accrued for the License Fee and any services rendered by Alliance hereunder prior to the date of termination (including without limitation fees incurred and pursuant to the Alliance Maintenance and Support Agreement, Section 7.6), and all reasonable costs associated with termination of this Agreement. However, Alliance shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

iii. Termination For Other Reasons. This Agreement and the licenses granted hereunder may be terminated by Licensee, in whole or in part, at any time by thirty (30) days' advance written notice to Alliance after payment in full of any amounts due under a Maintenance Services or any other agreement between the parties, or, immediately upon notice to Licensor, or at such later date as Licensee may establish in such notice, upon the occurrence of any of the following events:

A. Licensee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay Licensor for amounts due under any agreement. Notwithstanding the forgoing, in no event shall Licensor be required to perform any services or incur any expenses if Licensor reasonably determines that funds have not been or will not be appropriated to compensate it for its performance hereunder. Licensee shall remain liable for payments due to Licensor under any Agreement through the date of termination.

B. Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or Licensee is prohibited from paying for such work from the planned funding source.

b. Termination by Alliance.

i. Termination for Cause. Except as otherwise provided in this Agreement, Alliance shall have the right to terminate this Agreement if Licensee is in material breach of any obligation hereunder which default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) business days after delivery of Alliance's written notice of such default or such additional cure period as Alliance may authorize. The license granted hereunder shall be suspended following any notice of default until such default is cured to the satisfaction of Alliance or this Agreement is terminated. Licensee warrants that this default and cure provision supersedes and takes precedence over any and all other claim resolution procedures required by the State.

ii. Automatic Termination. This Agreement shall terminate automatically upon any early termination of the Agency Contract (*i.e.*, any termination prior to the expiration of the stated term of the Agency Contract).

iii. Immediate Termination. In the event Alliance reasonably believes based on producible evidence that Licensee has breached Section 8 (Non-Disclosure) of this Agreement, Alliance shall have the right to immediately terminate this Agreement by written notice to Licensee.

c. Effect of Termination. Upon any termination of this Agreement, Licensee shall immediately: (i) cease all use of the AWARE VR Software, the associated User Documentation and Technical Documentation, in whatever form or media embodied, and any other materials related to the AWARE VR Software and destroy all such software and materials if they exist in electronic form or, alternatively, return them to Alliance; (ii) certify in writing that no copies thereof remain in Licensee's possession or under its control; and (iii) pay in full to Alliance within thirty (30) days after receipt of all outstanding invoices and any other sums owing under this Agreement and any other Agreement between the parties.

**8. Non-Disclosure.** Neither party will use the other party's confidential information other than in furtherance of this Agreement, nor will it disclose the other's confidential information except (i) to obtain advice from legal or financial consultants or (ii) if compelled by law, in which case the disclosing party will use its best efforts to give the other party notice of the requirement so that disclosure can be contested. "Confidential Information" shall mean information marked as confidential or which, under the circumstances surrounding disclosure, ought in good faith be treated as confidential, including without limitation the terms and conditions of this Agreement. Alliance Confidential Information includes, without limitation the AWARE VR Software (including Source Code), User Documentation, Technical Documentation and the trade secrets contained therein. Licensee Confidential Information includes, without limitation, the Licensee

Data. Confidential Information may not be used, disclosed or made available in any form to any person or entity other than to receiving party and those of receiving party's employees, agents, contractors and subcontractors who must have access to such Confidential Information (which for Licensee must be at Licensee's facilities for the licensed use thereof). Each party further warrants that all individuals, employees, agents, contractors and subcontractors having access to the disclosing party's Confidential Information under this Agreement shall observe and be subject in writing to this non-disclosure covenant. In particular, each receiving party recognizes the proprietary and trade secret nature of the Confidential Information, including the ideas, expressions and logic structures incorporated therein and agrees that the same are exempt from public disclosure, and except as otherwise provided in this Agreement, agrees to make no copies, except as permitted herein, of the Confidential Information, or any portion thereof by any means or for any purpose whatsoever. Licensee acknowledges that the use of or failure to use a copyright notice on the Alliance Confidential Information does not indicate that such Alliance Confidential Information has been published without restrictions upon use and disclosure. Licensee shall not alter in any way any copyright or other notice included in the Alliance Confidential Information. The parties agree that the non-disclosure covenant contained in this paragraph shall survive the termination of this Agreement. Nothing in this Agreement is intended nor shall it be construed to prohibit disclosure of information that a court of competent jurisdiction determines must be disclosed under applicable law, provided that the disclosing party has been given notice of the proposed disclosure and the opportunity, with Licensee's reasonable assistance, to attempt to prevent such disclosure in the applicable judicial proceeding.

## **9. Warranty, Limitation of Liability, and Indemnification**

### **a. Warranty and Disclaimer**

i. Warranty. Alliance warrants that for a period of ninety (90) days from the date of acceptance of the AWARE VR Software (the "Warranty Period"), the AWARE VR Software shall substantially conform in all material respects to Alliance's User Documentation and Technical Documentation when properly installed and used in conformance with the provisions of this Agreement for its intended purpose.

ii. Remedies. Alliance's sole liability, and Licensee's sole remedy for any breach of warranty (other than remedy for infringement, which shall be governed by Section 9(c)) shall be the correction of any nonconformities described by Licensee in a written notice to Alliance prior to expiration of the Warranty Period.

iii. Disclaimer. ALLIANCE SPECIFICALLY DISCLAIMS AND EXCLUDES, AND LICENSEE DOES NOT RELY ON, ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN ADDITION, LICENSOR DISCLAIMS ANY LIABILITY FOR PERFORMANCE PROBLEMS AND ERRORS AND NON-PERFORMANCE OF ANY EQUIPMENT PURCHASED OR USED BY LICENSEE IN THE OPERATION OR STORAGE OF THE AWARE VR SOFTWARE AND FURTHER DISCLAIMS ANY LIABILITY FOR BREACH OF WARRANTY THAT IS THE

RESULT OF LICENSEE'S USE OF INVALID OR INCORRECT DATA OR LICENSEE DATA CONVERSION PROBLEMS.

iv. Exceptions. This warranty shall be null and void and unenforceable against Alliance with respect to any Modifications and any portion of the AWARE VR Software which is Extended by Licensee, or any portion affected by such Extension(s), except in the case where such Extension is performed by Alliance as Customizations made for and requisitioned by Licensee pursuant to Section 2.a.i hereof.

b. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY PERSON OR ENTITY FOR INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE AND LOST INCOME, RELATED TO THE ALLIANCE PROPRIETARY MATERIALS, THE USE THEREOF OR ANY PRODUCTS MADE THEREWITH, OR TO THE PERFORMANCE OR BREACH HEREOF BY ALLIANCE EVEN IF ALLIANCE IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing exclusion of damages shall not apply to either party's breach of Section 8 (Non-Disclosure) or to Licensee's breach of or misappropriation of Alliance's intellectual property rights. Licensee agrees that, subject to the immediately preceding sentence and subsection (d) below, regardless of the form of action, Alliance's liability hereunder for damages shall not exceed the License Fee paid under this Agreement. The foregoing exclusion of damages and cap on Alliance's liability shall not apply if (i) Alliance is required upon agreement of both parties to access the AWARE VR Software in Licensee's live production environment provided that both parties shall endeavor to prevent the need for such access and when and if such access is determined to be required, Licensee shall endeavor to limit Alliance's access to any personally identifiable information ("PII"); and (ii) where the circumstances in (i) have been met and Alliance uses or discloses any Licensee PII in breach of this Agreement. Alliance shall not be liable for any failure to perform hereunder where such failure is due to any cause beyond Alliance's control. Alliance shall in no event be liable for any claim or demand made by any third party except as expressly set forth in this Agreement. No action, regardless of form, arising out of a claim for breach of this Agreement may be brought by either party more than one (1) year after the date the alleged breach is discovered by the complaining party.

c. Infringement and Remedies.

i. Indemnity. Alliance will defend Licensee against any claims made by an unaffiliated third party that the AWARE VR Software or any Customization infringes its US copyright, patent or trademark and will pay the amount of any resulting adverse final judgment (or settlement to which Alliance consents). Licensee must notify Alliance promptly in writing of the claim and give Alliance sole control over its defense or settlement. Licensee shall provide Alliance with reasonable assistance in defending the claim, at Alliance's expense. Alliance's obligations will not apply to the extent that the claim or adverse final judgment is based on (i) specifications Licensee provides for Customizations; (ii) Licensee's use of the Aware VR Software and/or Customization after notification from Alliance to discontinue running due to

such a claim; (iii) Licensee's use of the AWARE VR Software and/or Customizations other than in material compliance with this Agreement; (iv) any alteration or modification of the AWARE VR Software and/or Customization other than by Alliance. Licensee will reimburse Alliance for any costs or damages that result from these actions.

ii. Mitigation. If Licensee becomes subject to a suit claiming that Licensee's use of the AWARE VR Software as authorized hereunder constitutes an infringement of any United States patent or copyright, or such a suit is likely to be brought in Alliance's opinion, Alliance shall at its option and expense: a) procure for the Licensee the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item. If, in Alliance's opinion, none of (a), (b) or (c) is possible, Alliance may terminate this Agreement and require Licensee to discontinue all use of the AWARE VR Software upon the refund to Licensee of the License Fee paid hereunder to Alliance, less a deduction of twenty-five percent (25%) of such fee for each full year which has passed since the Agency acceptance of Deliverable 6.4 (System Implementation Acceptance).

iii. Exclusive Remedy. The foregoing constitutes the sole obligation of Alliance and the exclusive remedies of Licensee with respect to any infringements of proprietary rights. Alliance shall have no obligation to cure or indemnify Licensee with respect to claims related to AWARE VR Software to the extent any portion of the infringing and/or allegedly infringing Software is modified, Extended or Adapted by Licensee.

d. Breach of Nondisclosure and Indemnification. Any disclosure of the Confidential Information by receiving party (including with respect to Licensee, its Users) and any breach of the non-disclosure obligations of this Agreement by receiving party shall be considered a material breach of this Agreement. The receiving party shall be liable to disclosing party for all damages suffered by disclosing party in connection with any such material breach, including all actual and indirect, consequential, special and punitive damages.

## **10. Software Upgrade, Maintenance and Support**

a. Upgrade, Maintenance and Support Services. Licensee shall have the option to enter into the Maintenance Agreement substantially in the form attached to the Agency Contract. Licensee may elect this option by executing the chosen program at the completion of Deliverable 4.2 (AWARE VR User Acceptance Test)), and paying the fees set forth in Alliance's Payment Schedule included in the SOW attached to the Agency Contract. If Licensee does not execute the Maintenance Agreement by that date, then the Maintenance Agreement shall have no effect.

b. Services Provided without an Upgrade, Maintenance and Support Agreement. In the event Licensee does not opt to enter into a Maintenance Agreement with Alliance, any maintenance services requested by Licensee after expiration of the Warranty Period shall be provided by Alliance at its sole option pursuant to a separate agreement.

**11. Access to Code and Data.** During the term of the Agency Contract and any extensions, Licensee shall provide to Alliance at least semi-annually a copy of the Licensee Data (which such Licensee Data provided by Agency in a scrambled format such that it does not disclose any personally identifiable information), Licensee's Extensions for purposes of Maintenance and maintaining system compatibility. Alliance's Maintenance obligations are expressly conditioned upon this requirement; if Licensee is not able to provide access to an Extension (as set forth in Section 2f above), Alliance's ability to provide Maintenance for the AWARE VR Software may be impacted.

**12. Choice of Law.** The laws of the State of Ohio shall govern this Agreement except that if any provision of this Agreement shall be inconsistent with such law, the terms of this Agreement shall prevail.

**13. Taxes.** The License Fee stated in this Agreement is for the use of the Software only and is exclusive of all taxes. Licensee agrees to pay any and all taxes on the license granted hereunder and/or the AWARE VR Software, however designated or levied, whether or not specifically included in this Agreement.

## **14. Miscellaneous.**

a. Assignability. This Agreement and the rights and obligations set forth in this Agreement shall not be assigned or sublicensed by Licensee without the written consent of Alliance; provided, however, this Agreement may be assigned to a successor in interest to Licensee if, and only if, responsibility for equivalent services, as applicable, is transferred to another agency of the State or entity contracted by the State. In addition, Licensee may assign this Agreement to one or more successors in interest in the event that Licensee, due to a required reorganization, is split into separate agencies. In such an event, Licensee and Alliance will work together in good faith to amend this Agreement to reflect the new parties and Licensee agrees to cover Alliance's

reasonable costs (including legal fees) associated therewith. Alliance shall have the right to assign this Agreement and its rights and obligations hereunder to any successor in interest or any third party reasonably capable of performing hereunder. Subject to the foregoing restriction on assignment, this Agreement shall bind and inure to the benefit of the parties' heirs, successors, legal representatives, and assigns. Any such transfer, assignment or attempt to transfer or assign the AWARE VR Software or Licensee's rights hereunder in violation of this Section 14.a shall be a material breach of this Agreement.

b. Notices. All notices and other communications provided for or required in this Agreement, and all legal process in regard thereto, shall be deemed validly given, made or served only if in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the parties at their respective addresses set forth above.

c. Severability. If any provision of this Agreement is finally determined by a court of competent jurisdiction to be unenforceable or invalid, the remaining provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.

d. Entire Agreement. This Agreement and the Agency Contract and the Maintenance Agreement, if entered into by Licensee and any exhibits or attachments hereto constitute the entire understanding between the parties and supersede any previous communications, representations or agreements by either party, whether oral or written. No change or modification of any of the terms or conditions in this Agreement shall be valid or binding on either party unless in writing and signed by an authorized representative of each party. To the extent of any conflict between this Agreement and the provisions of the Agency Contract with respect to the subject matter herein, this Agreement shall control.

e. Force Majeure. If either party is unable to perform any of its obligations under this Agreement because of acts or circumstances beyond the reasonable control of such party (a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Neither party shall hold the other liable for damages or failure to perform due to a Force Majeure Event so long as the party who is temporarily unable to perform resumes performance as soon as it is reasonably possible following the Force Majeure Event and the Force Majeure Event does not arise from actions taken by or collusion of the party seeking delay.

f. Modification. This Agreement cannot be modified, except by a written document signed by an officer of Alliance and an authorized contract officer of Licensee. If any provision of this Agreement shall, to any extent, be declared invalid or unenforceable, the remainder shall not be affected.

g. Warranty of Authority. Licensee warrants that this Agreement and all related agreements with Alliance have been duly authorized and constitute valid and binding obligations of Licensee in accordance with their terms.

h. Survival. The following provisions shall survive termination of this Agreement: 2.e (Proprietary Rights; Restrictions), 7 (Termination), 8 (Non-Disclosure), 9.b (Limitation of Liability), 12 (Choice of Law), 13 (Taxes) and 14 (Miscellaneous).

**Exhibit A**

**Escrow Agreement**



**TWO-PARTY ESCROW AGREEMENT**

**Depositor:** Alliance Enterprises, Inc.

**Product/Project Name:** ***AWARE*** (Alliance's Web-Based Activity and reporting Environment)

**Agreement Date:** February 1, 2006

As of DATE, this Two-Party Escrow Agreement ("Agreement") is effective between Guard-IT Corporation ("Guard-IT"), a Texas corporation and Depositor Company ("Depositor"), a State corporation who subsequently be referred to as "the Parties".

**WHEREAS**, Depositor is the owner, developer, creator or originator of certain proprietary technology, data, documents or other intellectual property ("Deposit Materials") as defined on Exhibit B; and

**WHEREAS**, Depositor and certain third-party Beneficiaries ["Beneficiary(ies)"], designated on a completed Exhibit C (See Sec 5), have executed or intend to execute a contract or license agreement ("Master Agreement") regarding the Beneficiary(ies)' use or deployment of the Deposit Materials; and

**WHEREAS**, Depositor intends to maintain its confidentiality and security regarding the Deposit Materials, except for specific circumstances ("Release Conditions") defined in Section 3; and

**WHEREAS**, Depositor agrees to place the Deposit Materials into escrow with Guard-IT to maintain the confidentiality, security and accessibility of the Deposit Materials;

**WHEREAS**, Depositor intends for this Agreement to supplement the Contract pursuant to Chapter 11, Section 365(n) of the U.S. Bankruptcy Code,

**NOW THEREFORE**, in consideration of these Recitals, the Parties agree as follows:

## SECTION 1: DEPOSITS

- 1.1 Initial Deposit. Depositor shall deliver Deposit Materials to Guard-IT within 30 days of the execution of this Agreement. Deposit Materials may be shipped to Guard-IT at its address stated on Exhibit A via U.S. mail, commercial express mail or other appropriate means.
- 1.2 Labeling. Prior to delivery, Depositor shall label each item to be deposited, and list the items and descriptions in detail by completing Exhibit B.
- 1.3 Receipt and Notification. Upon receipt of Deposit Materials, Guard-IT shall visually inspect the Deposit Materials and compare them with the descriptions listed on Exhibit B. If the Deposit Materials match the descriptions listed on Exhibit B, Guard-IT will sign and date the Exhibit B and return a copy to Depositor, notifying the Depositor and all enrolled Beneficiaries of its acceptance of the Deposit Materials. If the Deposit Materials do not match the descriptions listed on Exhibit B, Guard-IT will return the Deposit Materials and Exhibit B to Depositor, noting the discrepancy. Guard-IT shall have no obligation to this Agreement unless and until it receives and accepts the Deposit Materials.
- 1.4 Depositor's Representations. Depositor represents as follows:
- a) Depositor lawfully possesses all rights and title to the Deposit Materials; and
  - b) with respect to the Deposit Materials, Depositor has the right and authority to grant to Guard-IT the rights as provided in this Agreement; and
  - c) the Deposit Materials placed in escrow shall be maintained and updated in as required by the Master Agreement; and
  - d) the Deposit Materials are readable and useable in their deposited form or if encrypted, the decryption tools have been submitted to Guard-IT.
- 1.5 Updates. Depositor shall update the Deposit Materials within 60 days of a new release or as required under the Master Agreement. Depositor shall perform and complete all updates in accordance with Sections 1.2 through 1.4. All references to the Deposit Materials shall include the initial deposit and all updates. Deposit Update fees shall be paid by the Depositor at the time of the update.
- 1.6 Removal. Deposit Materials may be removed and/or exchanged only upon written instruction from the Depositor or as otherwise provided in this Agreement.
- 1.7 Right to Duplicate. Guard-IT may duplicate or reproduce the Deposit Materials solely as necessary to perform this Agreement. Guard-IT shall transfer all proprietary notices of Depositor in any duplication or reproduction.

1.8 **Testing and Verification.** At Beneficiary's request and expense, Guard-IT may provide various levels of independent testing or verification of the Deposit Materials, per the Beneficiary's written requirement or instruction. Any bid for testing or verification shall be approved by Beneficiary in writing and paid in advance. Depositor hereby authorizes any such testing or verification, provided that Guard-IT shall provide Depositor with written notice of any such testing or verification. Upon completion, written reports of the testing or verification will be issued to Depositor and the Beneficiary(ies) requesting the verification.

## **SECTION 2: SECURITY, CONFIDENTIALITY AND RECORD KEEPING**

2.1 **Security.** Guard-IT shall maintain the Deposit Materials in a secured, fire-proof, environmentally controlled and locked vault which is accessible only to its officers, employees or authorized representatives.

2.2 **Confidentiality.** Guard-IT shall reasonably protect the confidentiality of the Deposit Materials but in no event using less care than it uses to protect the confidentiality of its own confidential or proprietary information. Guard-IT shall not disclose the content of this Agreement to any third party and shall not disclose, transfer, make available or use the Deposit Materials except to the extent provided under this Agreement. Guard-IT shall notify the Parties if it receives a subpoena or court order regarding the disclosure or release of the Deposit Materials. Depositor shall be responsible to challenge any such order. Guard-IT shall reasonably cooperate, at Depositor's expense in any such challenge. Guard-IT shall not waive its rights to present its position with respect to any such order, nor shall Guard-IT be required to disobey any subpoena or other court order.

2.3 **Reports.** Guard-IT will issue semi-annual status reports to Depositor and all enrolled Beneficiary(ies) and also notify the same in writing of any updates to the Deposit Materials.

2.4 **Audits.** During the term of this Agreement, Depositor and Beneficiary(ies) shall have the right to inspect the written records of Guard-IT pertaining to this Agreement. Any inspection shall be held during normal business hours and following reasonable prior notice.

## **SECTION 3: RELEASE CONDITIONS**

3.1 **Ordered Release.** Upon Guard-IT's receipt of written instruction from Depositor, Depositor's receiver or trustee in bankruptcy, or a court of competent jurisdiction, Guard-IT will release a copy of the Deposit Materials to Beneficiary as directed in the written instruction.

3.2 **Other Conditions.** Guard-IT may also release a copy of the Deposit Materials to Beneficiary if it receives either of the following from Beneficiary:

- a) written verification, cosigned by Depositor, that Depositor has ceased business operations or the licensing or maintenance of the Deposit Materials without a successor;
- b) written verification, cosigned by Depositor, that Depositor has materially failed to support the Deposit Materials in breach of the contract or license agreement; or
- c) any other release conditions as set forth in a Master Agreement.

3.3 Release Request. If Beneficiary believes in good faith that a Release Condition has occurred, Beneficiary may provide to Guard-IT written notice of the occurrence and its request for the release of the Deposit Materials by certified mail, return receipt requested. Upon receipt, Guard-IT shall forward a copy of the Release Request to Depositor by certified mail, return receipt requested. Release Request must include Beneficiary's specific delivery instructions and non-refundable payment of the Deposit Release Fee.

3.4 Contrary Instructions. Depositor shall have ten (10) days from the certified mail postmark date on the copy of the Release Request forwarded to it by Guard-IT to reply with Contrary Instructions, stating that the Release Condition has not occurred or has been resolved. Contrary Instructions shall be delivered to Guard-IT via certified mail, return receipt requested. Guard-IT shall forward a copy of the Contrary Instructions to Beneficiary via fax or first class mail, and notify the Parties that there is a dispute to be resolved pursuant to Section 6. Guard-IT shall retain the Deposit Materials pending a) joint written instructions from Depositor and Beneficiary to release the Deposit Materials; b) alternative dispute resolution pursuant to Section 6; or c) written order from a court of competent jurisdiction.

3.5 Deposit Release. If Guard-IT does not receive Contrary Instructions from Depositor in accordance with Section 3.4, Guard-IT shall release a copy of the Deposit Materials to the Beneficiary per its Release Request. This Agreement will terminate with respect to the applicable Beneficiary upon the release of the Deposit Materials to such Beneficiary.

#### **SECTION 4: FEES AND PAYMENT TERMS**

4.1 Fee Payment. Unless otherwise set forth in a Master Agreement, Depositor shall be solely responsible for any and all fees charged by Guard-IT for administering this Agreement.

4.2 Fee Schedule. Guard-IT shall be paid in accordance with its current Fee Schedule (Exhibit D). Fees for annual maintenance and deposit updates shall be fixed for the duration of this Agreement and for subsequent renewals for a maximum of three (3) years, if and only if the Agreement is renewed by the Depositor in accordance with the terms stated in Section 6.1. Guard-IT will provide a written quote to Depositor for any services not listed on Exhibit D. All fees paid to Guard-IT are non-refundable.

4.3 Payment Terms. Payment of one-time Setup Fee and first-year's Annual Maintenance Fee is due in full upon receipt of this signed Agreement. Without payment of these fees, Guard-IT will not take delivery of Deposit Materials. Late fees and interest on past due amounts shall accrue at the rate of one percent per month (12% per annum) from the invoice date.

## **SECTION 5: ENROLLMENT OF MULTIPLE BENEFICIARIES**

5.1 Enrollment Procedure. Guard-IT may concurrently or subsequently enroll for a fee any number of the Depositor's licensees, clients or other designated parties as third-party Beneficiaries to this Agreement. Depositor must complete a copy of Exhibit C manually or online for each Beneficiary and submit its accompanying payment of Guard-IT's Beneficiary Enrollment Fee. Guard-IT will issue an initial notification letter and subsequent status and update reports to each Beneficiary enrolled to this Agreement.

5.2 Enrollment Term. Each Beneficiary shall be enrolled for one (1) year from the date of Depositor's Exhibit C. Each Beneficiary's enrollment shall automatically renew annually unless the Depositor terminates the Beneficiary in writing with at least 30 days' notice or this Agreement is otherwise terminated in accordance with Section 7.

## **SECTION 6: INDEMNIFICATION AND DISPUTE RESOLUTION**

6.1 Indemnification. Depositor agrees to indemnify and hold Guard-IT harmless against any and all losses, costs, damages, expenses, claims or attorneys' fees suffered or incurred by Guard-IT as a result of or arising from a Party's acts or omissions, other than acts that constitute negligence or willful misconduct of Guard-IT, its officers, employees, agents, attorneys or assigns. Guard-IT shall not be responsible for failure to act as a result of causes beyond the reasonable control of Guard-IT. Guard-IT agrees to indemnify and hold Depositor harmless against any and all losses, costs, damages, expenses, claims or attorneys' fees suffered or incurred by Depositor as a result of or arising from (i) Guard-IT's release of the Deposit Materials other than in accordance with this Agreement; and (ii) Guard-IT's negligence or willful misconduct.

6.2 Alternative Dispute Resolution. Any dispute relating to or arising from this Agreement shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Unless otherwise agreed by Depositor, arbitration will take place in Austin, Texas, USA. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator(s). Service of a petition to confirm the arbitration award may be made by first class mail or commercial express mail to the attorney for the Party or, if not represented, to the Party at its last known business address.

6.3 Controlling Law. Unless otherwise set forth in the Master Agreement, this Agreement is to be governed and construed in accordance with the laws of the State of Texas, USA, without regard to its conflict of law provisions.

6.4 Notice of Requested Order. If any Party intends to obtain an order from the arbitrator(s) or any court of competent jurisdiction that may direct Guard-IT to take or refrain from taking any action, the requesting Party shall:

a) give Guard-IT at least five (5) business days' prior notice of the hearing; and

b) include in any such order that, as a precondition to Guard-IT's action, Guard-IT be paid in full for any amounts due and also be paid for reasonable value of the services to be rendered pursuant to the order; and

6.5 Right to Rely on Instructions. Guard-IT may act upon any written instruction, instrument or signature reasonably believed to be genuine. Guard-IT will assume that any company officer of the Depositor or Beneficiary who gives any written notice, request or instruction has the authority to do so.

## **SECTION 7: TERM AND TERMINATION**

7.1 Initial Term and Automatic Renewal. The initial term of this Agreement is one (1) year. This Agreement shall automatically renew annually unless a) Depositor terminates the Agreement in writing with at least 30 days' notice; b) Depositor and Beneficiary jointly instruct Guard-IT in writing that this Agreement is terminated as it applies to such Beneficiary; c) Guard-IT terminates the Agreement for non-payment in accordance with Section 7.2; or d) Guard-IT resigns its role as escrow agent in accordance with Section 7.3.

7.2 Termination for Non-Payment. If any payment for services is not received in full by Guard-IT within 30 days of the invoice date, Guard-IT may terminate this Agreement at any time thereafter by sending written notice of delinquency to the Parties if the Parties have not resolved the delinquency within 30 days of its receipt of such notice. Guard-IT shall have no obligation under this Agreement as long as the escrow account is delinquent. subsequent to the date of termination.

7.3 Resignation. Guard-IT may resign and thus terminate this Agreement at any time by giving the Parties at least 30 days' notice of its intended resignation. Upon resignation, Guard-IT shall return, destroy or otherwise dispose of the Deposit Materials per the Depositor's written instruction.

7.4 Surviving Terms. The following shall survive upon termination of this Agreement: a) Depositor's Representations per Section 1.4; b) Guard-IT's obligation of confidentiality with

respect to the Deposit Materials; c) Responsible Party's obligation to pay Guard-IT any fees or expenses due; d) the provisions of Section 8; and e) any provisions in this Agreement which specifically state they survive the termination or expiration of this Agreement.

7.5 Return of Deposit Materials. Guard-IT shall return, destroy or otherwise dispose of the Deposit Materials upon termination, per the Depositor's written instruction.

## **SECTION 8: GENERAL PROVISIONS**

8.1 Entire Agreement. This Agreement and its Exhibits embody the entire understanding among the Parties with respect to its subject matter and supersedes all previous oral or written communications, representations or understandings. No modification to this Agreement shall be valid or binding unless signed by the Parties.

8.2 Correspondence. All correspondence, including notices, invoices, payments or other deliveries, shall be delivered to the Parties at their respective addresses designated on Exhibit A. The Parties shall be responsible to notify each other in the event of any change in their designated contact information. The Parties shall have the right to rely on the last known address of the other Parties. Unless otherwise provided in this Agreement, all documents and communications may be delivered by first class mail.

8.3 Other Third Parties. Guard-IT shall have no obligation to any other third party, except those designated as Depositor or Beneficiary(ies) to this Agreement. Depositor and Guard-IT shall have the right to collectively modify or cancel this Agreement upon their mutual, written consent.

8.4 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the Parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.5 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. Guard-IT shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor unless Guard-IT receives authoritative and conclusive written evidence of the change of Parties.

8.6 Regulations. Depositor is responsible for and warrants compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with this Agreement.



Agency Contract Number RSC0100012

**AWARE VR License Amendment**  
***(Derivative Works Authorization)***

This Amendment No. 1 to Aware VR Software License Agreement & Alliance Maintenance ("License Agreement") and Support Agreement ("UMS Agreement"), each made pursuant to the Agency Contract referenced above, is made and entered into by and between Alliance Enterprises, Inc. and the State of Ohio for the use & benefit of the Ohio Rehabilitation Services Commission for the purpose of amending the License Agreement and UMS Agreement. All terms used but not defined in this Amendment will have the meanings assigned to such terms in the Agreement, as amended.

1. As set forth herein, Alliance hereby grants to Agency a non-exclusive, non-transferable, revocable license to prepare derivative works based on the User Documentation solely for Agency's internal business purposes (resulting in "Derivative Works"). Specifically, Agency may, edit, modify, tailor and/or customize the User Documentation such that it accommodates personalization's in Agency's implementation of the AWARE VR Software as follows:

Agency may:

- a. Remove specific content that is inapplicable and/or inconsistent with Agency's implementation;
  - b. Edit/modify specific content that is inapplicable and/or inconsistent with Agency's implementation; and/or
  - c. Add and/or combine new content into the User Documentation.
2. In no event may Agency in any manner delete or obfuscate any of Alliance's branding and/or proprietary notices contained in the User Documentation. Agency shall, to the extent possible, make it clear which portions of any derivative works are Alliance materials and which portions are Agency contributed materials by way of a notation and/or symbol in the applicable text. Alliance will notify Agency if such notation and/or symbol were missing in order to correct the identification of derivative works referred to in this section.

3. Any Agency Derivative Works based on the User Documentation made by or on Agency's behalf shall be deemed "Extensions" for purposes of the Agreement and subject to all the rights and restrictions governing the Extensions as set forth in Sections 1d and 2e of the AWARE VR License Agreement contained in the Agency Contract.
4. Agency agrees to the following:
  - i. To keep the Agency Derivative Works current and complete, including all features and functionality reflected in the AWARE VR Licensed Software that is currently installed and used by Agency.
  - ii. Provide electronic copies of the Agency Derivative Works, and any changes to such works, to Alliance. Changes shall be represented in a format making such changes clear (e.g., redlining).
  - iii. To accurately reflect all copyright notices from the User Documentation in the Agency Derivative Works.
  - iv. To identify all Agency Derivative Works, and the Agency, as the author of such derivative works.
  - v. To provide end-user support for the Agency Derivative Works.
  - vi. To not assert patents, owned or licensable, that claim any inventions in any enhancements or processes developed in association with using or related to the Agency Derivative Works or any such

inventions that might derive from the Agency Derivative Works against Alliance and Alliance affiliates and customers.

vii. To not use the Agency Derivative Works for any fee based or commercial purposes.

viii. Agency represents and warrants that any Agency Derivative Works (i) shall not alter or affect Alliance's ownership in the User Documentation (ii) shall be originally created by or on Agency's behalf and shall not infringe upon or misappropriate the intellectual property or other rights of any third party.

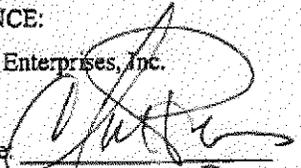
ix. Agency's failure to comply with the restrictions and obligations in this letter shall be deemed a material breach of the AWARE VR License Agreement and the UMS Agreement giving rise to Alliance's rights to terminate as set forth therein.

5. Agency acknowledges and agrees that Alliance has the right to review and approve (or, in its sole discretion, reject) any changes proposed by Agency. This right shall in no way alter the risk allocation set forth in the License Agreement with respect to Extensions. Notwithstanding the foregoing, any review or approval by Alliance of any changes proposed by the Agency shall not subject the Agency to breach under Section 4(ix) above arising from Sections 4(i) - (iv) above. The parties shall use good faith and best efforts to resolve such review and approvals that are contrary to the restrictions and obligations of this license amendment.

Except as specifically amended by this amendment, all provisions of the master agreement shall remain unchanged and in full force and effect. This amendment is not legally binding until executed by Alliance. When this amendment is fully executed, you will receive a confirming copy.

ALLIANCE:

Alliance Enterprises, Inc.

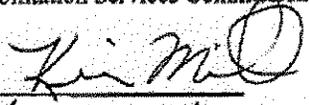
Signature: 

Name: CHRIS M. PIEPER

Title: CEO

AGENCY:

Ohio Rehabilitation Services Commission

Signature: 

Name: Kevin Miller

Title: Executive Director