

RESOLUTION NO. 33-2020

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND VIRTRA FOR A V-300 TRAINING SYSTEM FOR THE DEPARTMENT OF POLICE.

WHEREAS, the lease of a VirTra V-300 Training System will allow for in-house training resulting in less travel for training.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into a lease agreement by and between the City of Monroe and VirTra for a V-300 Training System for the Department of Police pursuant to the terms and conditions set forth on Exhibit "1" attached hereto and made a part hereof.

SECTION 2: This measure shall take effect and be in full force from and after the earliest period allowed by law.

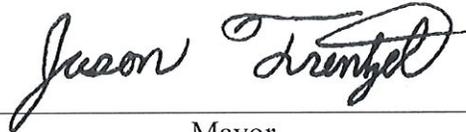
PASSED: May 26, 2020

ATTEST:



Clerk of Council

APPROVED:



Mayor

First Reading: May 2, 2020

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.



**Clerk of Council
City of Monroe, Ohio**



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Account Name	City of Monroe Police Department	Created Date	2/6/2020
Contact Name	Michael Rosenbalm	Quote Number	00002824
Phone	(513) 539-9234	Expiration Date	5/29/2020
Email	rosenbalm@monroeohio.org		
Ship To Name	City of Monroe Police Department	Prepared By	Steve DiIullo
VirTra STEP Annual Contract Offering		Phone	(480) 968-1488
		Email	steve.diullo@virtra.com

VIRTRA, INC.

SIMULATED FIREARM EQUIPMENT AND TRAINING SERVICES AGREEMENT

AGREEMENT: Simulated Firearm Equipment and Training Services Agreement (the "Agreement") is made and entered by and between the organizations or entities set forth below to provide Agency with certain hardware, software, documentation, installation, training, maintenance, and support (collectively, the "System").

CONTRACT PRICE SUMMARY:

Contract initiation payments (one time.)

Setup & Training: \$6,270.00
S&H \$3,000.30

Annual Recurring Payment:

Annual Contract Rate (STEP) \$45,117.62

TERM: This Agreement will become effective upon the date the customer receives and accepts control over a substantial portion of the equipment listed on Exhibit D and services listed on the System Acceptance Checklist (Exhibit C) but not more than 90 days after Contract execution date. Unless terminated as set forth herein, this Agreement shall remain in force for a period of twelve (12) months (the "Term") from the Effective Date. After the Term, this Agreement will be renewed for additional periods of twelve (12) months (each a "Renewal Term"), up to a total aggregated term of sixty (60) months), unless and until one party provides the other party with written notice of termination at least sixty (60) days prior to the end of the Term, or any subsequent Renewal Term.

EXHIBITS: The following exhibits are incorporated herein by reference and form a material part of this Agreement.

- Exhibit A: General Terms and Conditions.
- Exhibit B: Maintenance and Support Agreement.
- Exhibit C: System Acceptance Check List.
- Exhibit D: Services, Equipment, and Pricing Summary

SIGNATURES: By signing below, each signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed below to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

FOR AGENCY

Signature _____

Date _____



Printed Name and Title

FOR VIRTRA

Signature

Date

Printed Name and Title

7970 South Kyrene Road
Tempe, AZ 85284
(480) 968-1488

EXHIBIT A
VIRTRA, INC.
AGREEMENT FOR SIMULATED FIREARM EQUIPMENT AND TRAINING SERVICES
GENERAL TERMS AND CONDITIONS

1. NON-EXCLUSIVE AGREEMENT

The Agreement does not establish an exclusive contract between the Agency and VirTra. Each party expressly reserves rights to, without limitation, the following: the right to utilize others to provide products, support and services; the right to request proposals from others with or without requesting proposals from VirTra; and the unrestricted right to bid and supply any such product, support or service.

2. PRODUCTS AND SERVICES

VirTra agrees to provide the Agency with the System, including all goods and services in accordance with the terms and conditions set forth in the Agreement, including all Exhibits that are attached to the Agreement and incorporated herein, as well as all necessary manpower and other necessary resources.

ANY ADDITIONAL OR DIFFERENT TERMS OR QUALIFICATIONS, INCLUDING, WITHOUT LIMITATION, ELECTRONICALLY OR IN MAILINGS, ATTACHED TO INVOICES OR WITH ANY GOODS SHIPPED, SHALL NOT BECOME PART OF THE CONTRACT BETWEEN THE PARTIES. THE PARTIES AGREE THAT ALL TERMS AND CONDITIONS ARE SET FORTH IN THIS AGREEMENT.

Employees and agents of VirTra, shall, while on the premises of the Agency, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

If required, VirTra shall be responsible for installation, training and knowledge transfer activities in relation to the goods being supplied, as set forth in Exhibit B to this Agreement.

All equipment shall be delivered to a Agency site specified in the contract release purchase order, or if not so specified therein, as otherwise agreed by the parties in writing.

Upon any termination or expiration of this Agreement, the System and all other related materials provided to Agency hereunder shall be returned to VirTra or, at VirTra's option, VirTra may arrange for pickup of the System and related materials. The System and related materials must be returned to VirTra in good repair and functionality, considering reasonable wear and tear.

VirTra shall provide the System and perform work in a professional manner consistent with, at a minimum, general industry standards.

3. NECESSARY ACTS AND FURTHER ASSURANCES

The parties agree that they shall cooperate and execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

4. COUNTING DAYS

Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded.



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5. PRICING

Unless otherwise stated, prices shall be fixed for the first year of the Agreement, with increases in payments in subsequent years to be mutually agreed by the parties in writing. If any product listed in this Agreement is discontinued or upgraded prior to delivery, VirTra shall extend the same pricing towards a comparable replacement that is functionally equivalent or an upgraded version.

Exhibit D of the Agreement is the basis for pricing and compensation throughout the term of the Agreement.

6. MODIFICATION

This Agreement or any contract release purchase order may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement contract release purchase order will be binding on Agency unless it is in writing and signed by an authorized representative of the Agency.

7. HAZARDOUS SUBSTANCES

If any product being offered, delivered or supplied to the Agency is listed in the Hazardous Substances List of the Regulations of the Occupational Safety and Health Administration, or if the product presents a physical or health hazard, VirTra must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

8. SHIPPING AND RISK OF LOSS

Goods shall be packaged, marked and otherwise prepared by VirTra in suitable containers in accordance with sound commercial practices. VirTra shall include an itemized packing list with each shipment and with each individual box or package shipped to the Agency. The packing list shall contain, without limitation, the applicable contract release purchase order number.

Unless otherwise specified in writing, all shipments by VirTra to Agency will be F.O.B. point of destination. Freight or handling charges are not billable unless such charges are referenced on the order. Transportation receipts, if required by contract release purchase order, must accompany invoice. Regardless of F.O.B. point, VirTra agrees to bear all risks of loss, injury, or destruction to goods and materials ordered herein which occur prior to delivery at Agency's destination; and such loss, injury or destruction shall not release VirTra from any obligation hereunder.

9. INSPECTION AND RELATED RIGHTS

All goods and services are subject to inspection, testing, approval and acceptance by the Agency. Inspection shall be made within prior to execution of the System Acceptance Checklist, shown in Exhibit C.

In the event that VirTra's goods are not accepted by Agency due to a material breach by VirTra, VirTra shall be liable to remedy, repair, or replace the rejected goods.

The rights and remedies of Agency provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by Agency of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by VirTra, or of any other claim, right or remedy of the Agency.

Agency's acceptance of the goods and services offered by VirTra hereunder shall be evidenced by an authorized signature on Exhibit C.

10. ADJUSTMENT BY COMPANY

The Agency reserves the right to waive a variation in specification of goods or services supplied by VirTra. VirTra may request an equitable adjustment of payments to be made by Agency if Agency requires a change in the goods or services to be delivered. Any claim by VirTra for resulting adjustment of payment must be asserted within thirty (30) days from the date of receipt by VirTra of the notification of change required by Agency.

11. INVOICING

VirTra shall invoice Agency on a periodic basis, in accordance with the pricing set forth in Exhibit B of the Agreement. Invoices shall be sent to the Agency customer or department referenced above or such other person or address as the Agency may provide to VirTra, in writing, from time to time. Invoices for goods or services not specifically listed in the Agreement will not be approved for payment.

Invoices shall include: VirTra's complete name and remit-to address; invoice date, invoice number, and payment term; Agency contract number; pricing per the Agreement; applicable taxes; and total cost.

VirTra and Agency shall make reasonable efforts to resolve all invoicing disputes within seven (7) days.

12. AVAILABILITY OF FUNDING

The Agency's obligation for payment of any fees or charges beyond the Initial Term is contingent upon the availability of funding and upon appropriation for payment to VirTra.

13. PAYMENT

The Agency's standard payment term shall be Net 30, unless otherwise agreed to by the parties. Payment shall be due thirty (30) days from the date of receipt of each invoice issued hereunder.



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14. OTHER PAYMENT PROVISIONS

Notwithstanding anything to the contrary, Agency shall not make payments prior to receipt of service or goods (i.e. the Agency will not make "advance payments").

Sales tax shall be noted separately on every invoice. Items that are not subject to sales tax shall be clearly identified. VirTra shall be responsible for payment of all state and federal taxes assessed on the compensation received under this Purchase Order and such payment shall be identified under VirTra's federal and state identification number(s).

15. TERMINATION FOR CAUSE

Either party may terminate this Agreement or any contract release purchase order, in whole or in part, for cause upon thirty (30) days written notice to the other party. For purposes of this Agreement, cause includes, but is not limited to, any of the following: (a) material breach of this Agreement or any contract release purchase order, (b) violation by a party of any applicable laws or regulations; or (c) assignment or delegation by a party of the rights or duties under this Agreement without the written consent of the other party.

In lieu of terminating immediately upon default, the non-defaulting party may, at its option, provide written notice specifying the cause for termination and allow the defaulting party ten (10) days (or other specified time period in the written notice) to cure. If, within ten (10) days (or other specified time) after such notice has been given, the defaulting party has not cured the default to the reasonable satisfaction of the non-defaulting party, or if the default cannot be reasonably cured within that time period, the non-defaulting party may terminate this Agreement at any time thereafter.

16. TERMINATION FOR BANKRUPTCY

If VirTra is adjudged to be bankrupt or should have a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of VirTra's insolvency, the Agency may terminate this Agreement immediately without penalty. For the purpose of this Section, bankruptcy shall mean the filing of a voluntary or involuntary petition of bankruptcy or similar relief from creditors; insolvency; the appointment of a trustee or receiver, or any similar occurrence reasonably indicating an imminent inability to perform substantially all of the party's duties under this Agreement.

17. DISPUTES

Except as otherwise provided in this Agreement, any dispute arising under this contract that is not disposed of by agreement shall be subject to mediation and then binding arbitration.

18. ACCOUNTABILITY

VirTra will be the primary point of contact for the manufacturer, deliverer or any subcontractors and assume the responsibility of all matters relating to the purchase, including those involving the manufacturer and deliverer or any subcontractor, as well as payment issues. If issues arise, VirTra must take immediate action to correct or resolve the issues.

19. NO ASSIGNMENT, DELEGATION OR SUBCONTRACTING WITHOUT PRIOR WRITTEN CONSENT

VirTra may not assign any of its rights, delegate any of its duties or subcontract any portion of its work or business under this Agreement or any contract release purchase order without the prior written consent of Agency. Notwithstanding the foregoing, VirTra may transfer its rights and obligations under this Agreement in conjunction with a sale of all or substantially all of VirTra's assets.

20. MERGER AND ACQUISITION

The terms of this Agreement will survive an acquisition, merger, divestiture or other transfer of rights involving VirTra. In the event of an acquisition, merger, divestiture or other transfer of rights VirTra must ensure that the enquiring entity or the new entity is legally required to:

A. Honor all the terms negotiated in this Agreement and any pre-acquisition or pre-merger Agreement between VirTra and the Agency, including but not limited to: a) established pricing and fees; b) product support and maintenance until the contract is terminated; and c) no price escalation during the term of the Agreement.

B. If applicable, provide the functionality of the software in a future, separate or renamed product, if the acquiring entity or the new entity reduces or replaces the functionality, or otherwise provide a substantially similar functionality of the current licensed product. The Agency will not be required to pay any additional license or maintenance fee.

C. Give the Agency prompt written notice following the closing of an acquisition, merger, divestiture or other transfer of rights involving VirTra.

21. COMPLIANCE WITH ALL LAWS & REGULATIONS

VirTra shall comply with all laws, codes, regulations, rules and orders (collectively, "Regulations") applicable to the goods and/or services to be provided hereunder. VirTra's violation of this provision shall be deemed a material default by VirTra, giving Agency the right to terminate the Agreement. Examples of such Regulations include but are not limited to Occupational Safety and Health Act of 1970 and the standards and regulations issued there under. VirTra agrees to indemnify and hold harmless the Agency for any loss, damage, fine, penalty, or any expense whatsoever as a result of VirTra's failure to comply with the act and any standards or regulations issued there under.

22. FORCE MAJEURE

Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities,



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nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service.

Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

The party asserting *Force Majeure* as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

The Agency shall reserve the right to terminate this Agreement and/or any applicable order or contract release purchase order upon non-performance by VirTra. The Agency shall reserve the right to extend the agreement and time for performance at its discretion.

23. CONFLICTS OF INTEREST

VirTra shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations. In accepting this Agreement, VirTra covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. VirTra further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. VirTra, including but not limited to VirTra's employees and subcontractors.

24. INDEPENDENT CONTRACTOR

VirTra shall supply all goods and/or perform all services pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of Agency. VirTra shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the Agency and VirTra. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of Agency, nor shall any such person be entitled to any benefits available or granted to employees of the Agency.

VirTra is responsible for payment to sub-contractors and must monitor, evaluate, and account for the sub-contractor(s) services and operations.

25. INSURANCE

At all times during the Term of this Agreement, VirTra shall maintain insurance coverage commensurate with VirTra's obligations and liabilities hereunder.

26. DAMAGE AND REPAIR BY CONTRACTOR

Any and all damages caused by VirTra's negligence or operations shall be repaired, replaced or reimbursed by VirTra at no charge to the Agency. Repairs and replacements shall be completed in a timely and expedient manner. The clean up of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from VirTra's vehicles or during performance shall be the responsibility of VirTra. All materials must be cleaned up in a manner and time reasonably acceptable to Agency (completely and immediately to prevent potential as well as actual environmental damage). VirTra must promptly report each incident to the Agency. Damage observed by VirTra, whether or not resulting from VirTra's operations or negligence shall be promptly reported by VirTra to Agency. Agency may, at its option, approve and/or dictate the actions that are in Agency's best interests.

28. LIENS, CLAIMS, AND ENCUMBRANCES AND TITLE

VirTra represents and warrants that all the goods and materials ordered and delivered are free and clear of all liens, claims or encumbrances of any kind. Title to the material and supplies purchased shall pass directly from VirTra to Agency at the F.O.B. point, subject to the right of Agency to reject upon inspection.

29. INDEMNITY

Neither party shall not be liable for, and each party shall defend, indemnify and hold harmless the other party and the employees and agents of the other party (collectively, the "Indemnified Parties") against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including without limitation attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to and arising either directly or indirectly from any act, error, omission or negligence of a party or its contractors, licensees, agents, servants or employees, excepting only Claims caused by the sole negligence or willfulness of a party. A party shall reimburse the other for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which a party is obligated to indemnify, defend and hold harmless the other party as set forth herein.

30. WARRANTY; MAINTENANCE

VirTra shall provide the warranty and maintenance services set forth in Exhibit B to this Agreement. Except as expressly set forth therein, VirTra shall have no other maintenance or support obligations.

31. COOPERATION WITH REVIEW

VirTra shall cooperate with Agency's periodic review of VirTra's performance. VirTra shall make itself available onsite to review the progress of the project and Agreement, as requested by the Agency, upon reasonable advance notice.

32. NON-DISCRIMINATION

VirTra shall comply with all applicable Federal, State, and local laws and regulations concerning nondiscrimination and equal opportunity in contracting. Such laws include, but are not limited to, the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with



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Disabilities Act of 1990; and The Rehabilitation Act of 1973 (§§ 503 and 504), VirTra shall not discriminate against any employee, subcontractor or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall VirTra discriminate in provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. VirTra's violation of this provision shall be deemed a material default by VirTra giving Agency a right to terminate the Agreement for cause.

33. SEVERABILITY

Should any part of the Agreement between Agency and VirTra or any purchase order be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the Agreement or any purchase order which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

34. NON-WAIVER

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by Agency. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing signed by the Agency so specifies.

35. USE OF COMPANY'S NAME FOR COMMERCIAL PURPOSES

VirTra may not use the name of the Agency or reference any endorsement from the Agency in any fashion for any purpose, without the prior express written consent of the Agency.

36. HEADINGS AND TITLES

The titles and headings in this Agreement are included principally for convenience and do not by themselves affect the construction or interpretation of any provision in this Agreement, nor affect any of the rights or obligations of the parties to this Agreement.

37. ENTIRE AGREEMENT

This Agreement and its Exhibits constitute the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

38. EXECUTION & COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The parties agree that this Agreement, its amendments, and ancillary agreements to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered a method described herein.

39. NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Each party may designate their desired contact person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

40. SURVIVAL

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement, will survive the termination of this Agreement.

41. CONTRACT EXECUTION

Unless otherwise prohibited by law or Agency policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the Agency.

42. AGENCY POINT OF CONTACT

Each party will identify a point of contact to facilitate the contractual relationship, be responsible and accountable for fulfilling the requirements under the Agreement. Updated contact information for each point of contact shall be provided to the other party from time to time, as necessary.

43. THIRD PARTY BENEFICIARIES



This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

44. AUTHORITY

Each party executing the Agreement on behalf of such entity represents that he or she is duly authorized to execute and deliver this Agreement on the entity's behalf, including the entity's Board of Directors or Executive Director. This Agreement shall not be effective or binding unless it is in writing and approved by an authorized representative, as evidenced by their signature as set forth in this Agreement.

45. DATA AND OWNERSHIP

All content generated or stored by the System that is related to the performance and activity of Agency personnel while using the System ("Content") shall be the sole and exclusive property of Agency. Agency acknowledges and agrees that the System provides certain Content backup and verification features and that preservation of the Content is the sole and exclusive responsibility of Agency.

Agency hereby grants VirTra a license to the Content for purposes including, but not limited to, measuring System performance and function, System maintenance, calibration, data aggregation for tests, training results, measurements, etc.

46. CONFIDENTIAL INFORMATION

"Confidential Information" shall include all material non-public information, written or oral, disclosed, directly or indirectly, through any means of communication or observation to a party or any of its affiliates or representatives by the other party. Neither party shall, without the other party's written permission, use or disclose Confidential Information other than in the performance of its obligations under this Agreement. All Confidential Information shall remain the property of the party that developed or legally acquired the Confidential Information. Neither party shall acquire an ownership interest in the other party's Confidential Information by virtue of this Agreement. Each party shall defend, indemnify and hold the other party harmless against any claim, liability, loss, injury or damage arising out of, or in connection with, the unauthorized use, access, and/or disclosure of information by that party and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the other party.

47. LIMITATION OF LIABILITY

Both parties' liability for damages to each other for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the greater of five hundred thousand dollars (\$500,000) or two (2) times the Total Agreement Value. For purposes of this Section, "Total Agreement Value" will mean the aggregate Agreement price and any subsequent amendments to this Agreement. In no event will either party be liable to the other party for any direct, special, indirect, incidental, exemplary, punitive or consequential damages, however caused, whether for breach of warranty, breach of contract, negligence, strict liability, tort or under any other legal theory. The foregoing limitation of liability shall not apply to: (i) any indemnity and defense obligations related to infringement of intellectual property, personal injury, death, property damage; (ii) willful misconduct, gross negligence, or fraud; or (iii) reasonable attorney's fees.

48. OWNERSHIP PROPERTY

Except as expressly set forth herein, Agency acknowledges and agrees that all right, title, and interest in and to the System (and the intellectual property rights associated therewith) provided to Agency under the terms and conditions of this Agreement shall, at all times, belong to VirTra or VirTra's partners, suppliers, and licensors. Nothing in this Agreement shall be construed or interpreted to confer any ownership interest in or to the System to Agency. Notwithstanding the foregoing, VirTra may, in VirTra's sole discretion, transfer ownership of the System to Agency provided, however, that no transfer of intellectual property shall be inferred by such a transfer and continued use of the System after transference is permitted only by means of a continuing license from VirTra.

49. TAXES

Sales tax, end user tax, pass-through tax, value-added tax (VAT), transaction privilege tax, consumption tax, customs tax and/or duties are the sole responsibility of the Buyer, and Buyer agrees to reimburse Seller for all applicable taxes that Seller is required to collect, regardless of the tax amount being excluded from VirTra's quotes or Buyer's Purchase Orders.

50. TAX EXEMPTION

Buyer must provide Seller with a correct, valid and signed tax exemption certificate applicable to the specific goods and services purchased, relevant to the end use location, prior to Seller invoicing. If an invalid tax exemption certificate is received or no tax exemption certificate is received, it will be the responsibility of the Buyer to pay all required taxes. Additionally, it will be Buyer's responsibility to obtain any tax refunds permitted if Seller has collected and remitted taxes to a taxing authority.

Exhibit B Maintenance and Support Agreement

During the term of the Agreement, and provided that Agency is in material compliance with the terms and conditions set forth in Exhibit B, VirTra includes the following maintenance and support at no additional charge. Notwithstanding the foregoing, warranty and support may be excluded for any and all equipment damaged or destroyed by improper use or misuse in which case, additional charges may apply.

1: VirTra System Technician on installation site one time during Plan Year to perform the following functions as needed and if applicable.

*Annual site visits only available on Contracts with the VirTra V-180 or V-300 Simulator Systems in Exhibit D.

- Upgrade VirTra Operating System (VOS) Features ¹



- Install new VirTra training scenarios²
- Clean Computer, Monitor & Keyboard
- Perform Computer Diagnostics
- Clean Simulator Screens
- Upgrade to most current base library
- Recalibrate System
- Inspect Refill Station & Regulator
- Recondition & Test Recoil Kits
- Zero all Laser Based Items
- Test Threat-Fire™ Devices for Proper Functionality
- Test OC & Taser Devices for Proper Functionality
- Inspect & Test Speakers and Sound FX
- Provide a List of Inspected Items
- Provide User Refresher Training

2: Parts and Labor in the event of a non-functioning system or accessory.³

3: Use of VirTra's Advance Replacement Program.⁴

4: Telephone Support between the hours of 8AM and 5PM AZ Time. After Hours Support calls returned between 8AM and 9AM the following day.

5: Simulator Computer and Projector Upgrade after five (5) years of deployment and if Contract renewal into sixth year of service. Other electronics and hardware to be upgraded at VirTra's discretion.

6: Travel expenses if a VirTra technician must travel to customer location.

7: Overnight Shipping on all replacement or repaired parts⁵

8: Remote Assistance⁶

1 – VirTra Operating Software Version 4 (VOS 4) will be automatically upgraded to the most current 4.XX.XX release during Annual visit. Hardware must be supported by the new release and have enough hard drive space available on the system.

2 – Agency will receive the most current base library at the time of their annual service visit. Not all training scenarios may be compatible with Agency's system and, accordingly, no guarantee of additional scenarios is provided.

3 – TASER X26 blue handle units found to be defective will be replaced with laser sim cartridges and customer will be required to supply working TASER handle.

4 – Limited Quantities and not available for all components.

5 – Where Available.

6 – Agency must allow remote access to System.

Exhibit C System Acceptance Checklist

Initial Setup and Testing (Some items may not be applicable)

Visually Inspect the System and Explain it's Components

Open each box/container and verify all items are accounted for

Setup and Position Screen(s) and CPU Rack

Layout Speakers, All Wiring and Balance all Sound Levels

Install Training Platform (If Applicable)

Install and Align all Projected Images and Camera Views

Test all Weapon Kits and Wireless Accessories

Ensure all User Manuals are Correct for System & Accessories

Instructional Training (**Some items may not be applicable)

Explain Proper Maintenance and Environmental Conditions

Explain the importance of Firearm Safety

Explain and Demonstrate how to Install Weapon Kits

Explain and Demonstrate how to properly Maintain Weapon Kits

***Explain and Demonstrate how to use the VirTra Refill Station & Tank Filling

Explain and Demonstrate how to Fill the Weapon Magazines

Explain and Demonstrate how to Properly Boot Up and Shutdown the System

Explain the functionality of Wake-On-LAN

Explain and Demonstrate how to Run VOST™

Explain the Different Scenario Types and how to run Each Type of Scenario

Explain and Demonstrate how to Create Scenario Tags and Filters

Explain and Demonstrate how to Create Scenario Playlists

Explain and Demonstrate how to Add Scenario Favorites

Explain and Demonstrate Proper Projector Alignment

Explain and Demonstrate V-Tracking Camera Calibration through V-Tracking Tools

Explain and Demonstrate how to use Diagnostics through V-Tracking Tools

Explain Laser ID's vs Pulse Lengths

Explain and Demonstrate how to Add a New Weapon Kit

Explain and Demonstrate how to Enter a New Trainee

Explain and Demonstrate how to assign Trainee's and Weapons



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- Explain and Demonstrate how to Zero a Weapon
- Explain and Demonstrate Directional Surround Sound
- Explain and Demonstrate how to run and Configure VirTra Accessory Controller
- Explain and Demonstrate how to use VirTra Wireless Devices
- Explain and Demonstrate how to Run a Video Scenario
- Explain and Demonstrate Scenario Branching
- Explain and Demonstrate Scenario Debrief
- Explain and Demonstrate Presentation Mode
- ***Explain and Demonstrate Low-Light
- ***Explain and Demonstrate TMaR
- ***Explain and Demonstrate Breach Door
- Explain and Demonstrate how to Create a Marksmanship Trainee Set
- Explain and Demonstrate how to Boresight in Marksmanship
- Explain and Demonstrate how to Run a Free Fire Course in Marksmanship
- Explain and Demonstrate how to Run a Pre-built Course in Marksmanship
- Explain and Demonstrate how to Run Marksmanship Debrief
- Explain and Demonstrate how to Create and Import a Custom Target
- Explain and Demonstrate how to Create and Import a Custom Course of Fire
- Explain and Demonstrate how to use VirTra Remote Desktop
- Explain how to access VirTra Administration, including as an Administrator
- Explain all Icons and their functions of VirTra Administration
- Explain the Safety Precautions and Waiver
- Explain what consumable items are
- Explain the VirTra Warranty and Customer Service & Support Procedures
- Show client where manuals are located for System/Accessories
- ***Explain and Demonstrate how to run V-Author™
- ***Explain and Demonstrate how to use the VirTra Pano Edit Tool
- ***Explain and Demonstrate how to Import a V-Author™ Scenario
- ***Explain and Demonstrate how to Export a New V-Author™ Scenario
- ***Explain and Demonstrate how to Author a Single Screen Scenario

**Exhibit D:
Services, Equipment, and Pricing Summary**

Product Code	Product Description	Quantity
V-VICTA-01	VirTra-Virtual Interactive Coursework and Training Academy™ certified simulator training curriculum. V-VICTA™ is a progressive science based approach to the use of simulation as a training system. Program materials include teacher lesson plans, student outline, presentation material, pre-tests, post-tests, course evaluation and all interactive video learning material in conjunction with the simulator for each available course. Virtual Instructor scenarios teach, train, test and sustain methodology to ensure participants dynamically absorb information to facilitate long term transfer of critical psycho-motor skills. Available exclusively to all VirTra simulation systems under a current Service or Subscription plan.	1.00
V-ATCC-5-STEP	Advanced Trainer Certification Course (ATCC): 40-hour high demand course on how to incorporate video simulation into your training program properly and successfully. Includes 32 hours of "The Science of Simulation Training," and "Train the Operator Certification." The Science of Simulation is a critical overview and application of the recent science into adult learning specifically as it applies to simulation. Adult learning concepts in this course apply to all modes of learning both inside and outside the simulator. Training occurs at VirTra Global HQ in Tempe, AZ. Included with initial term of STEP Contracts only. Travel and expenses not included and are the responsibility of the customer.	1.00
V-300LE-1	VirTra Systems 300 LE-1 simulator uses five interconnected screens to create fully immersive active engagements in a 300 degree environment surrounding the trainees. Multi-directional audio and seamless real video create an environment and situation that will challenge trainees. Comes with LE content library, computer rack, UPS backup, and audio/projection equipment. System is configurable to fit in a variety of spaces (within minimum requirements). One year warranty and support services included.	1.00
VHU-BS-300	Eliminates the 5 inch black border between screens to increase immersion on VirTra 300 systems.	1.00
VATU-LL-G2X	Hardware and software for low light training, includes 2 flashlights. For use with advanced handheld lights only (VATU-FLT-G2X).	1.00
VATU-TMAR	Trainee monitor and recording. Real-time monitoring, recording, and playback during debriefing sessions of trainees. Includes software and hardware that integrates into the VirTra line of simulators.	1.00
	VirTra V-Author™ software and desktop computer. Create and edit custom scenario content using included or site specific panoramic photographs and included assets. Includes standard asset and background	



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VATU-ASU-VA	package. Two day on-site training and installation included (CONUS.) Additional hardware required. For use with V-180 and V-300 systems.	1.00
VTRK-M4S	VirTra engineered tetherless rifle recoil kit for AR15, M4 and M16. Includes internal laser and one double sealed standard magazine (VTRK-M4-SM). Includes one micro USB charger. (All recoil kits convert real firearms which must be supplied by the customer)	1.00
V-M4-SM	VirTra engineered, refillable, double seal, standard magazine. One refill station (VWSA-RFS) and one adapter plate (VWSA-VATRM16-AP) required for CO2 refill. M16, AR-15, M4, 30 Rd.	1.00
VWSA-VATRM16-AP	Adapter plate for the VATR-M16-MAG (Requires VirTra refill station).	1.00
VWSA-RFS	Table-top refill station for all refillable magazines. Includes automatic push button activation and one CO2 tank which must ship empty.	1.00
VTRK-G17	Micro-switch activated tetherless handgun recoil kit for the Glock 17. Includes one magazine (All recoil kits convert real firearms which must be supplied by the customer).	2.00
VTRK-G17-MAG	Additional magazine for use with the VTRK-G17 recoil kits.	2.00
VWSA-VTRKG17-AP	Adapter plate for the VTRK-G17-MAG (Requires VirTra refill station).	1.00
VATU-TFII	VirTra Systems patented Threat-Fire™ return-fire-simulator device delivers a safe and adjustable electrical impulse to simulate hostile fire and enhance realism during training. No eye-protection required (Requires wireless station).	1.00
VWSA-WS	Required for wireless recoil kits and the Threat-Fire™ to connect to the VirTra simulator (Only one wireless station needed per system).	1.00
VNLW-TAS-X2	TASER® X2 cartridges package (left & right assembly)	2.00
VNLW-OCC-MK3	Laser-based MK3 model OC training device.	2.00
VLSI-40MM-LSR	40MM laser based sponge round for use with tube launchers.	1.00

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