



Commonwealth of Virginia
Virginia Information Technologies Agency

CONSULTING SERVICES

Optional Use Contract

Date: September 21, 2005

Contract #: VA-041227-CNJA

Contractor: CNJohnson & Associates
11433 Buttemer Road
Phelan, CA 92371

FIN: 33-0948077

Contact Person: Charlie Johnson
Phone: 760-868-2080
Fax: 760-868-5281
E-mail: Charlie@CNJohnson.com

Term: December 28, 2005 – December 27, 2006

Payment: Net 30 days

For Additional Information Contact:

Supply Chain Management
Virginia Information Technologies Agency

Joe Parr
Phone: 804-371-5563
E-Mail: joe.parr@vita.virginia.gov
Fax: 804-371-5969

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

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

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

**MODIFICATION #1
TO
CONTRACT NUMBER VA-041227-CNJA
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CNJOHNSON & ASSOCIATES, INC.**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and CNJohnson & Associates, Inc., hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-041227-CNJA.

1. Reference: Page 6 of 13, paragraph O, entitled "Contract Term":

Both of the above referenced parties hereby agree to extend the term of Contract VA-041227-CNJA as specified in the above reference, from December 28, 2005 through December 27, 2006.

2. Reference: Page 4 of 13, Paragraph 13 entitled "Modifications":

The Virginia General Assembly passed legislation that abolished the Department of Information Technology (DIT) as of July 1, 2003. All activities and functions of DIT have been consolidated into a new agency that is the Virginia Information Technologies Agency (VITA). Therefore, for purposes of this Contract ("Agreement") all references to either the Commonwealth, or DIT, or VITA, shall have the same meaning.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-041227-CNJA and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

CNJOHNSON & ASSOCIATES, INC.

BY: Charles N. Johnson

NAME: CHARLES N. JOHNSON

TITLE: CEO/PRESIDENT

DATE: 9-20-05

COMMONWEALTH OF VIRGINIA

BY: Joe A. Parr

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 9/20/05

**MASTER AGREEMENT
CONTRACT VA-041227 - CNJA
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
CNJOHNSON & ASSOCIATES, INC.**

A. SCOPE OF AGREEMENT

This is a Master Agreement (the "Agreement" or "Contract") between the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "VITA" (Virginia Information Technologies Agency) and CNJohnson & Associates, Inc. (the "Contractor"), a California Sub-Chapter S corporation having its principal place of business at 11433 Buttemere Road, Phelan, California 92371 for the purchase of consulting services ("Services"). This Master Agreement may only be used subsequent to a valid sole source or other completed appropriate procurement method as delineated in the VPPA.

This Master Agreement is for the procurement of Consulting Services and other "Body Shop" Services as mutually agreed to by both parties on any individual orders.

B. APPLICABLE LAWS AND COURTS

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

C. ANTI-DISCRIMINATION

By submitting their proposal, offeror certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

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

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

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

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

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

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

D. ETHICS IN PUBLIC CONTRACTING

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

E. IMMIGRATION REFORM AND CONTROL ACT OF 1986

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

F. DEBARMENT STATUS

By submitting their proposal, Offeror certifies that they are not currently debarred by the Commonwealth of Virginia from submitting offers on Contracts for the type of Services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

G. ANTITRUST

By entering into this Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of

Virginia, relating to the particular Services purchased or acquired by the Commonwealth of Virginia under this Contract.

H. PAYMENT

1. To Prime Contractor:

a. Invoices for items ordered, delivered and accepted shall be submitted bi-weekly in arrears, by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; project number, or the federal employer identification number (for proprietorships, partnerships, and corporations).

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

c. All Services provided under this Contract or any Order referencing this Contract that are to be paid for with public funds, shall be billed by the Contractor at the Contract price.

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

e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

2. To Subcontractors:

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

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

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

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

I. MODIFICATIONS

This contract maybe modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives authorized to do so. No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

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

J. DEFAULT

In case of failure to deliver Services in accordance with the Contract terms and conditions, VITA, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that VITA or the Commonwealth may have. Contractor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence.

K. INSURANCE

By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded a Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

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

L. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.

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

M. NONDISCRIMINATION OF CONTRACTORS

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

N. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

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

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

a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

O. CONTRACT TERM

The initial Contract term shall be for a one (1) year period. The Contract may be renewed by VITA for one (1) additional one-year period under the terms and conditions herein. Written notice of VITA's intention to renew will be given approximately 60 days prior to the expiration date of each Contract period.

P. TERMINATION FOR CONVENIENCE

This Agreement or any Statement of Work may be terminated, in whole or in part, upon ten (10) days advance written notice by the Commonwealth of Virginia. There are no additional costs or financial obligations to the Commonwealth upon termination for convenience.

Q. PRICE PROTECTION

The Commonwealth shall not pay any costs above those specified in this Agreement or set forth on any Order or Attachment referencing this Agreement. If within twelve (12) months following the acceptance of any Service, the list price of the Service is reduced below the price paid hereunder, then the difference shall be refunded to the Commonwealth. Such refund shall be

made to VITA within thirty (30) days from the date the decrease is announced to the general public. In addition, written notification of the decrease will be provided to VITA at the address identified herein.

R. ALTERNATIVE DISPUTE RESOLUTION

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

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

Contractor agrees to submit any and all contractual disputes arising from this contract to VITA's alternative dispute resolution procedures. Contractor may invoke VITA's alternative dispute resolution procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

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

S. PATENT/COPYRIGHT PROTECTION

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

VITA shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-507, Section 2.2-510 of the Code of Virginia or any

successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

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

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

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

T. NON-APPROPRIATION

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

U. CONFIDENTIALITY OF INFORMATION

Contractor agrees to observe complete confidentiality with respect to all aspects of any confidential information, including the contents of any and all PPEA proposals, proprietary data and/or trade secrets and any parts thereof, whether such contents are the Commonwealth's, VITA's, an Authorized User's, or those of another manufacturer, contractor or distributor whereby Contractor or any Contractor's personnel may gain access while engaged by an Authorized User, or while on their respective premises. Revealing, copying or using in any manner whatsoever any such contents which have not been authorized by VITA or an Authorized User are strictly prohibited. The restrictions herein shall survive the termination of this agreement for any reason and shall continue in full force and effect and shall be binding upon the Contractor, his agents, employees, successors, assigns, subcontractors or any party claiming an interest in this Agreement on behalf of or under the rights of Contractor following any termination. Contractor shall advise all Contractors' agents, employees, successors, assigns and subcontractors which are engaged by an Authorized User of the restrictions, present and continuing, set forth herein. Contractor shall defend and incur all costs, if any, for actions which

arise as a result of non-compliance by Contractor, his agents, employees, successors, assigns and subcontractors regarding the restrictions herein.

The Contractor, all Contractors' agents, employees, successors, assigns, and subcontractors that are engaged by an Authorized User for the purposes of this Contract will be required to sign a non-disclosure agreement protecting the confidentiality of all PPEA proposals that may be reviewed during the course of this Contract.

V. PRIME CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for completely supervising and directing the work under this Agreement and all subcontractors that he may use, using his best skill and attention.

Subcontractors who perform work under this Contract shall be responsible to the prime Contractor. The Contractor agrees that he is fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

W. SMALL, WOMEN, AND MINORITY-OWNED BUSINESSES

Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor shall give full and fair consideration to small businesses, women and minority owned businesses. When such business has been subcontracted to these firms, the contractor agrees to furnish the VITA Contracts Manager with quarterly reports that includes the following information: name of SWAM-owned subcontracted firm, contact name and phone number, total dollar amount subcontracted and type of product/service provided by the subcontracted firm.

X. CONTRACTOR ACCESS TO COMMONWEALTH LOCATION/S

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

Y. CONTRACTOR RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to VITA or any Authorized User and their designated agents for a period of three (3) years after final payment for purposes of audit and examination.

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

Z. ASSIGNMENT OF CONTRACT

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

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

AA. LIMITATION OF LIABILITY

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

AB. DELIVERY DATE

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

AC. ORDERS

Authorized ordering officials representing VITA may order Services from this Contract after a valid sole source or other completed appropriate procurement method as delineated in the VPPA:

1. eVA: An order placed through the eVA electronic procurement website portal <http://www.eva.state.va.us>
2. Purchase Order (PO): An official PO form.

The above ordering methods shall incorporate a written Statement of Work (or "Attachment") that has been mutually agreed to and signed by both parties.

AD. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All services are subject to inspection and testing by the State and any that does not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given thirty (30) days from the delivery of services by the Contractor to test, evaluate and accept the services delivered or furnished under this Contract (provided that VITA, in its sole discretion, may accept the same prior to expiration to the thirty (30) day period). If the Contractor's services fail to meet the Contract specifications or other requirements, then the same may be rejected and returned to the vendor. Such rejection will terminate this Contract and exempt the State from all costs incurred by the Contractor.

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

AE. INVOICES

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

- 1 Type and description of the Service;
2. Charge for each item, and;
3. The Agreement Number or Order Number;
4. Contractor's Federal Identification Number (FIN);

AF. TERMINATION AND CANCELLATION

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

In such event, the Commonwealth will only be liable for cost incurred to the date of termination. The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this agreement.

AG. TRAVEL EXPENSES

Travel expenses will only be reimbursed in accordance with State Travel Regulations as incorporated herein by reference and available upon request; to include but not be limited to: airfare shall be coach class, hotel stays shall not exceed \$80.00 per night, excluding local taxes and surcharges, meal expenses shall not exceed \$38.00 per day and car rental expenses shall be for midsize cars and priced not to exceed an average for the Richmond, Virginia area. The Contractor shall submit travel expenses monthly in arrears to VITA as a separate line item on the Contractor's invoice for services.

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

CONTRACTOR

BY: Charles N. Johnson

NAME: Charles N. Johnson

TITLE: President

DATE: 12-27-04

COMMONWEALTH OF VIRGINIA

BY: Joe A. Parr

NAME: Joe A. Parr

TITLE: Senior Sourcing Specialist

DATE: 12/28/04