Virginia Information Technologies Agency

COMMONWEALTH OF VIRGINIA

AND

BEARINGPOINT, INC.

CONTRACT #VA030815-BP

I. This Contract establishes the provisions and contractual terms and conditions in which the Commonwealth of Virginia, through its Virginia Information Technologies Agency (VITA), hereinafter referred to as the "Commonwealth" or "VITA", 110 South 7th Street, Richmond, VA 23219, will purchase Information Technology (IT) Resource Specialist Services and advanced level (reflective in skill level and years of experience) Consulting Services from "subject matter" experts requiring specific IT business, functional, operational and technical skills and experience for on-site services from BearingPoint, Inc., hereinafter referred to as the "Contractor." BearingPoint is located at 1021 East Cary Street, Suite 2102, Richmond, Virginia 23219.

This contract is for the provision of services to the Commonwealth only; no goods may be purchased or provided pursuant to this contract. Certain needs for IT technical and functional specialty resource services may be required in any of the following Commonwealth Secretariats: Administration, Commerce and Trade, Education (includes Higher Education), Finance, Natural Resources, Public Safety, Health and Human Resources, Technology, Transportation. A representative sample of these skills and specialties is identified in Attachments A, B, and C to this Contract.

Additionally, this contract provides the Commonwealth with the flexibility to address the challenges and opportunities resulting from new government initiatives, while responding to increasing citizen expectations for better and more responsive operations and improved outcomes. This contract also enables the Commonwealth to address technology business and functional needs in a quick and expeditious manner, and provides the Commonwealth with access to technology solutions that take advantage of new and emerging technologies in a timely and efficient manner.

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia, § 2.2-4343.1* or against a Contractor because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

II. **Contract Users:** This Contract may be used by state agencies, state institutions of higher education, localities and other Public Bodies as defined in the *Code of Virginia § 2.2-4301*, hereinafter referred to as the "Users."

III. **Contract Term:** The initial "Term" of this Contract will be for a period of three (3) years with three (3) one-year renewal options

IV. **Contract Execution:** The procurement giving rise to this Contract was done in accordance with the *Virginia Public Procurement Act (VPPA)*. The Commonwealth of Virginia, through its Virginia Information Technologies Agency, issued a Request for Proposal 2003-28 to prospective Contractors for IT Resource Specialists and Consulting Services. Contractor responded with a proposal, participated in negotiations to the referenced Request For Proposal and desires to provide said services per the agreed upon provisions, terms and conditions set forth and included herein.

V. **Subcontractor Verses Prime Contractor:** It is understood and agreed to by the Contractor that in the event the Commonwealth desires to work with a specific subcontractor instead of the Prime Contractor in a Statement of Work, that request will be honored and granted.

VI. **Pricing Options:** The Contractor agrees to bill the contract "User" under the pricing structure attached hereto as Attachment D. The User and the Contractor may agree upon a more favorable or discounted price than the pricing structure provided herein prior to the issuance of an "Order." The pricing structure attached hereto reflects the maximum prices that the Contractor may bill the User under this contract.

VII. **Contract Usage Procedure:** See Attachment E.

VIII. **Contractor Reporting Requirements:**

A. Contractor Monthly Report of Sales

The Contractor shall submit the "Contractor Monthly Report of Sales" which is available on line at: http://www.asd.virginia.gov/report.xls. The report shall be submitted in electronic form to the VITA Contract Administrator and the VITA Controller (email addresses to be provided upon award), by the 10th day of every month, reporting all invoices paid by the Commonwealth for the preceding month. The report shall also show an accumulative record of all sales which shall carry forward for the duration of the Contract. The Contractor Monthly Report of Sales Excel template indicated at the link above is required to be used by the Contractor and provided to the Commonwealth. Reference Special Term and Condition "R".

The "Contractor Monthly Report of Sales" is a detailed record that is prepared from actual invoices submitted to and paid by User pursuant to this Contract. Data submitted shall include Name of Project, Contractor's tax identification number, invoice date,

invoice number, order number, name of requesting entity, User name and telephone number, amount billed for services performed for previous month, and IT service category.

B. Industrial Funding Adjustment (IFA)
The Contractor shall submit IFA payment at the same time as submitting the "Contractor Monthly Report of Sales" in the form of a check or electronic funds disbursement made payable to the Controller of VITA, based on 2% of total sales as reported on the "Contractor 's Monthly Report of Sales." Failure to comply with reporting and payment requirements of this section will result in default of contract. (Reference Special Terms and Conditions "S".)

C. Small Businesses, Minority and Women-owned Businesses Reporting Requirement (SWAM)

The Contractor shall submit to the VITA Contract Administrator (ann.sells@vita.virginia.gov) quarterly reports to show actual SWAM-owned business subcontract results. The report shall include but not be limited to the following:

1) SWAM-owned business subcontractors utilized during the quarter and the dollar value of each subcontract;
2) A description of the type of work performed under each subcontract; and
3) A telephone number and contact name for each subcontractor.

D. User Satisfaction Reporting Requirement
The Contractor shall submit quarterly User Satisfaction reports to the VITA Contract Administrator. The User Satisfaction Report form template will be provided to the Contractor by the VITA Contract Administrator. The User Satisfaction Report will demonstrate to VITA if the Users expectations were successfully or unsuccessfully met. VITA will provide the Contractor with a User Satisfaction Report template which shall be used and submitted to the User. Once completed by the User, the Report will be sent to VITA.

E. Reports
All reports required by the Contractor as stipulated above shall be submitted to the VITA Contract Administrator via email at the following address: ann.sells@vita.virginia.gov.

IX. GENERAL TERMS AND CONDITIONS

A. VENDORS MANUAL

This Contract is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is available for review at the VITA/Acquisition Services Division purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet site (http://www.dgs.state.va.us/dps/).

B. APPLICABLE LAWS AND COURTS

This 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

The Contractor 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 *Code of Virginia and 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 (1) (E).

In every Contract over $10,000 the provisions in 1. and 2. 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 vendor.

D. ETHICS IN PUBLIC CONTRACTING

The Contractor 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 Contractor, 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

The Contractor 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. 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 goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

G. PAYMENT

1. To Prime Contractor:

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

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

c. All services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

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

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

2. To Subcontractors:

a. The Contractor 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.

H. PRECEDENCE OF TERMS

Paragraphs A-I of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this Contract, the Special Terms and Conditions shall apply.

I. TESTING AND INSPECTION

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure services conform to the specifications in accordance with the statement of work (SOW) that results in an order placed against this Contract.

J. CHANGES TO THE CONTRACT

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

1. The parties shall agree in writing to any modification to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written Contract to modify the scope of the Contract.

2. The Commonwealth may order changes within the general scope of the Contract at any time by written notice to the Contractor. Changes within the scope of the Contract include services to be performed. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Commonwealth a credit for any savings. Said compensation shall be determined by one of the following methods:

   a. By mutual agreement between the parties in writing; or

   b. By agreeing upon a unit price or using a unit price set forth in the Contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Commonwealth's right to audit the Contractor's records and/or to determine the correct number of units independently; or

   c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. The Contractor shall present the Commonwealth with all vouchers and records of expenses incurred and savings realized. The Commonwealth shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Commonwealth within thirty (30) days from the date of receipt of the written order from the Commonwealth. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the Contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Contractual Disputes Clause of this Contract. Neither the existence

of a claim nor a dispute resolution process, litigation or any other provision of this Contract shall excuse the Contractor from promptly complying with the changes ordered by the Commonwealth or with the performance of the Contract generally.

K. DEFAULT

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

L. INSURANCE

By signing and submitting a proposal resulting in this Contract, the Contractor certifies that it will have the following insurance coverages at the time of Contract award. The Contractor 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.)

M. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the

actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

N. NONDISCRIMINATION OF CONTRACTORS

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

O. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

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

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

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.

X. SPECIAL TERMS AND CONDITIONS

A. INVOICING/PAYMENT

a. Where performance is longer than one (1) month, the Contractor shall invoice the User entity monthly in arrears.

b. Where performance is completed in less than one (1) month, the Contractor shall invoice the User for the full amount of the order at the completion thereof.

c. Invoices shall provide at a minimum the following information to the User entity:

- Contractor's tax identification number
- Invoice date
- Invoice number
- Order number
- Name of requesting entity
- User contact name
- Project name
- Description of services provided for previous month
- Amount billed (versus total project cost if applicable)
- IT service category

d. A maximum of fifteen percent (15%) of each invoice may be withheld by the Contract User pending completion and acceptance of the total project.

B. REGISTERED OFFICE CERTIFICATION

A Contractor who is a corporation, domestic or foreign stock or nonstock corporation limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth must certify that they shall continuously maintain a registered office in the Commonwealth which may be the same as any of its places of business and a registered agent, who shall be a resident of the Commonwealth and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with such registered office pursuant to Title 13 of the *Code of Virginia*. A Contractor who is a sole proprietorship or partnership must certify that it maintains an office in the Commonwealth and name an individual who is a resident of the Commonwealth to serve as its registered agent for purposes of service of process.

C. CONTRACT TERM

The initial contract term will be for a three (3) year period and may be renewed by the Commonwealth for three (3) successive one-year periods under the terms and conditions of the original contract. Written notice of the Commonwealth's intention to renew will be given approximately 60 days prior to the expiration date of each contract period. All Orders and related documents shall survive the period of performance stated in this section until such time as all Orders (executed prior to the expiration date of the Contract) have been completely performed.

D. eVA BUSINESS-TO-GOVERNMENT CONTRACTS

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.

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

a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from http://www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.

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

c. In some cases, the contract does not lend itself to the development of a catalog and price list. In this case, the Contractor must provide an index page describing the contractor's products, services and contact information. In this case, a TPS is not required.

E. RATES

All pricing as provided in Attachment D to this Contract shall include the 2% Industrial Funding Adjustment (IFA) associated with term and condition S. All travel costs including but not limited to, meals and lodging, shall be in accordance with the then current Commonwealth's Travel Regulations and shall not exceed 15 % of the total "Order" cost of services.

F. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the *Code of Virginia*, Contractual claims, whether for money or other relief, shall be submitted in writing and submitted to the VITA Contract Administrator and Contract User 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 the VITA Contract Administrator and Contract User 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 any amounts agreed to that are due to the Contractor. If the Contract User is a state agency, VITA's Contract Administrator shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim. If the Contract User is a state institution of higher education, locality or other public body as defined in the *Code of Virginia § 2.2-4301,* the Contract User shall render a final decision in writing within 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 VITA's or the User's decision on the claim, unless VITA or the Contract User fail to render its decision within thirty (30) days. The decision of VITA or the Contract User 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.*

VITA and the Commonwealth, its officers, agents and employees, are executing this Contract, any Attachments thereto and any orders issued hereunder by the Commonwealth, in their statutory and regulatory capacity as agents for the Commonwealth. Accordingly, no officer, agent or employee of VITA or the Commonwealth may be joined as a party to any dispute that may arise under this Contract.

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 service hereunder.

G. PATENT/COPYRIGHT PROTECTION

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

The User agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of § 2.2-507, § 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.

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

If the use of such services by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the services, the Contractor agrees to take back any infringing services, documentation or information and refund the total amount the Commonwealth has paid Contractor under this Contract, 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.

H. CONFIDENTIALITY OF INFORMATION

Contractor agrees to observe complete confidentiality with respect to all aspects of any confidential information, proprietary data and/or trade secrets and any parts thereof, whether such contents are the Users or other manufacturer, contractor or distributor whereby Contractor or any Contractor's personnel may gain access while engaged by the User or while on authorized User's premises. Revealing, copying or using in any manner whatsoever any such contents which have not been authorized by the Contract User are strictly prohibited. The restrictions herein shall survive the termination of this Contract 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 Contract 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 the Contract 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.

I. SEVERABILITY

Each paragraph and provision of this Contract is severable from the entire contract, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

J. INVENTIONS AND COPYRIGHTS

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

K. COMMONWEALTH'S RIGHTS TO SERVICES AND DOCUMENTATION

All materials and products generated under an order issued pursuant to this Contract shall be considered work made for hire. The Commonwealth shall have all rights, title and interest in or to all work plans, project reports, products, designs, programs, data bases and documentation developed or generated under this Contract, including, without limitation, unlimited rights to use, duplicate, modify or disclose any part thereof, in any manner and for any purpose and the right to permit or prohibit any other person, including the Contractor, from doing so. To the extent the Contractor may be deemed at any time to have any of the foregoing rights, the Contractor agrees to irrevocably assign and does hereby irrevocably assign such rights to the Commonwealth.

Contractor warrants that all documentation provided under an order issued pursuant to this Contract shall be of sufficient quality and detail to pass without objection and to enable outside parties and Contract User staff to maintain or modify the materials generated hereunder.

L. INTELLECTUAL PROPERTY RIGHTS

The Contractor hereby agrees that the rights granted by "Commonwealth's Rights to Services and Documentation" term are irrevocable. The Contractor's remedy shall not include any right to rescind, terminate or otherwise revoke or invalidate the provisions of "Commonwealth's Rights to Services and Documentation" term. Similarly, no termination of any resulting Contract by the Commonwealth shall have the effect of rescinding, terminating or otherwise invalidating the provisions of "Commonwealth's Rights to Services and Documentation" term of any resulting Contract.

M. AVAILABILTY OF FUNDS

It is understood and agreed between the parties herein that the Commonwealth shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract.

N. PRIME CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for completely supervising and directing all services under this Contract and all subcontractors utilized. Subcontractors who perform services 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.

O. CONTRACTOR RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the Commonwealth and/or the Contract User and its 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 Contract and all attachments thereto.

P. ORDER CHANGES

Any changes to be made after an order has been provided to the Contractor must be made between the Contract User and the Contractor as provided in Attachment E. Both parties shall agree in writing to any changes in the scope of work and any increase or decrease in the price that may result as a consequence of the changes. **No order changes may be made verbally. Only the User has the right to issue a change to any order.**

Q. SMALL BUSINESSES, 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 Contract Administrator 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.

R. CONTRACTOR MONTHLY REPORT OF SALES

The Contractor shall report the monthly dollar value, in U.S. dollars, of all sales under this Contract by month. The report shall also show an accumulative record of all sales which shall carry forward for the duration of the contract. Within the first ten (10) calendar days of the following month, the Contractor shall submit a monthly report of sales, signed, to the VITA Contract Administrator (to be named upon Contract award) and the Controller, VITA, showing all contract sales to include name of individual entity, type of service and total dollar value purchased. A Contract sale is defined as the total of all invoices paid by the Commonwealth during the reported month. The dollar value of a sale is the price paid by the Contract User for services under the contract as recorded by the Contractor. The Contractor shall remit the 2% IFA check (made out to the Controller, VITA) with the signed "Contractor Monthly Report of Sales" to the VITA Controller and in addition shall provide a copy (not actual check) of the submitted check and "Contractor Monthly Report of Sales" to the VITA Contract Administrator in electronic format.

S. INDUSTRIAL FUNDING ADJUSTMENT

The Contractor shall pay VITA an Industrial Funding Adjustment (IFA). It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing,

under this Contract. The Contractor shall remit the 2% IFA with the "Contractor Monthly Report of Sales" to the VITA Controller and in addition shall provide a copy (not actual check) of the submitted check and the "Contractor Monthly Report of Sales" to the VITA Contract Administrator within the first ten (10) calendar days of the following month. The IFA equals two percent (2%) of the total monthly sales reported. VITA may, at its discretion, agree to an electronic funds transfer in lieu of a check. However, in the absence of an express written agreement from VITA allowing for an electronic funds transfer, the payment shall be made by check and made payable to the VITA Controller. The IFA amount due shall be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material.

If the full amount of the IFA is not paid within 30 calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract and the Contractor held in default.

T. ASSIGNMENT OF CONTRACT

Upon written notification to Contractor, VITA or any successor Agency or Organization may assign this contract with all obligations and duties thereunder to any public or private entity. In the event of such assignment, VITA or its successor, as the case may be, shall no longer be a party to, nor have any further right or obligation under the resulting contract.

U. LIMITATION OF LIABILITY

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

V. LIMITATION OF COST

It is hereby stipulated and agreed that the total cost to the Commonwealth or Contract User for the performance of each Order will be within the "Not to Exceed" funding

limitation set forth in the Order, and the Contractor agrees to perform the work specified and all obligations under the Order within such funding limitation. The Contractor agrees to notify the Contract User in writing no later than when the billable amounts reach eighty percent (80%) of the funding limitation and will include in such notification an estimate to complete the requirements of the Order.

The Contract User entity will not be obligated to reimburse the Contractor for billing in excess of appropriated funding up to the funding limitation set forth in the Order, and the Contractor shall not be obligated to continue performance of the Order or to incur costs in excess of the funding limitations unless and until a written amendment to the Order increasing the funding limitation is approved by the Contract User.

W. CANCELLATION OF CONTRACT

The Commonwealth reserves the right to cancel and terminate this Contract and any extension thereto, in part or in whole, without penalty, upon 30 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, this Contract and any extension thereto may be terminated by Contractor, without penalty, after the initial 12 months of the contract period upon 30 days written notice to the Commonwealth. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation. Payment will be made by the Commonwealth to the Contractor for services provided as of the effective cancellation date.

X. PRICE ESCALATION/DE-ESCALATION

The Commonwealth, in its sole option, may permit price adjustments, for requested changes in the Contractor's cost of services using the Consumer Price Index/W (CPI-W) Table 4, Services/"Other Services" category as a guide, as found on website http://STATS.BLS.GOV/NEWS.RELEASE/CPI.T04.HTM.

Once the website is accessed, refer to the section titled COMMODITY AND SERVICE GROUP, within this group, refer to the lines titled SERVICES and OTHER SERVICES and read the figures in the fourth column for the current CPI rate.

No price increase will be authorized until twelve (12) months after the effective date of the contract, and each twelve (12) months thereafter and only where verified and approved to the satisfaction of the Commonwealth. Price increases allowed shall not be retroactive and shall only apply to new statements of work (SOW) or change orders impacting an existing SOW, upon approval of the User.

Contractor shall give not less than thirty (30) days advance written notice of any price increase request to the Commonwealth. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. Documentation shall be supplied with the Contractor's request for increase which will: 1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth; and (2) verify the amount of percentage of increase which is being passed on to or by the Contractor and why the percentage of increase is

necessary to supply IT resource services to the Commonwealth. The Contractor is further advised that decreases which affect the cost of services are required to be communicated and effective immediately to the Commonwealth.

Y. IFA ELECTRONIC REPORTING

Contractor(s) shall be required to submit monthly IFA reporting requirements through a web-based system once VITA has completed and implemented the system.

Z. CRIMINAL HISTORY AND CREDIT CHECKS

The Contractor shall conduct criminal history check(s) through the Virginia State Police and credit check(s) through a reputable credit bureau when required by the Commonwealth or any User.

XI. ENTIRE AGREEMENT. This Contract and all attachments thereto contain all the terms and conditions agreed upon by the Contractor and the Commonwealth. No oral agreements or representations shall be valid or binding upon VITA, Contract User, or the Contractor unless expressly contained herein or by a written amendment to this Contract, which is not in conflict with the terms and conditions of this Contract. The effective date of this Contract shall be the date last ascribed herein below.

IN WITNESS WHEREOF, the Contractor and the Commonwealth have caused this Contract to be executed, on the dates shown below their respective names.

The Commonwealth of Virginia, through its Virginia Information Technologies Agency

D. Ann Sells
Signature

Print name: D. Ann Sells

Title: Contracts Engineer

Date: 8-26-03

BearingPoint, Inc.

Signature

Print name: Donald L. Parr

Title: Managing Director

Date: 8/26/03

ATTACHMENT A

IT Business, Functional, Operational and Technical Service Categories

1) Operational and Business Process Skills

This specialty area addresses the skills for fulfilling duties, responsibilities and work tasks necessary to perform the business and administrative functions to assist an organization in addressing the challenges associated with change management, project branding, business process reengineering, and organizational design and management.

2). Technology Advisory Consulting Services

This specialty area addresses the skills, experience and capabilities for providing advice and solutions on a wide range of issues, areas, concepts, trends, best practices, products, etc., related to the comprehensive management of information technology. The management of technology for state and local government involves a broad diversity of business and technical activities such as strategy, planning and performance measurements. Also includes establishing service level agreements and memorandums of understanding associated with the development, implementation and service offerings for delivering and supporting technology initiatives.

3). Major Project Implementation to include Project Management

This specialty area addresses the skills and disciplines required for major IT project implementations using modern and emerging technologies.

Major projects are typically large-scale, significant investment endeavors. In addition, they offer technical, business, and political complexities. It is crucial that these initiatives be delivered on-time, within-budget, and provide the results expected.

Specialty matter experts for major IT implementations **must** have the following capabilities:

1. Project Management – experience and expertise managing large information technology projects. Includes certification and experience in providing experience and training to obtain certification. Includes experience in establishing Project Management Offices and providing multiple levels of PM expertise such as Project Directors, Sr. Project Managers, Project Managers, and/or Project Coordinators.
2. Experience and expertise in both Project Management and System Development Life Cycle/methodology for IT projects.
3. Knowledge and experience with using modern and emerging technologies (such as N-tier client server, E-commerce, data warehousing, applications middleware, open source software, Web services, etc.)
4. Proven methodologies, policies and procedures for the following project aspects:
    a. Budgeting
    b. Deadline management
    c. Deliverables

d. Staff
e. Training
f. Risk management
g. Change management
h. Project management
i. Responsibility and accountability

5. Ability to provide personnel with the skills necessary to perform major projects successfully
6. Ability to accept full responsibility for major project implementations

4). Enterprise Application Integration

This specialty area addresses the skills and discipline necessary to support the integration of existing applications into a strategic enterprise approach. The skills demonstrated in this area will be crucial to assisting the Commonwealth as it develops strategies to migrate existing legacy systems to modern platforms and environments.

5). Core Business Systems Support and Implementation

This specialty area addresses the skills and disciplines required for supporting and/or implementing major core business systems for the Commonwealth. Skills in the following areas are crucial: (1) project management, (2) business process analysis and reengineering, (3) technical analysis, design, programming, implementation and productions support. The ability to provide application management services is a plus. Requirements include:

1. Experience in the design and implementation of large and complex government financial systems, preferably in large governmental entities such as federal government, state government, and/or a large state government agency.
2. Skills and experience in the design and documentation of business policies, procedures, and training needed to support large, complex ERP type implementations.
3. Experience utilizing proven project management methodology.

6). COBIT and Capability Maturity Models

1. Experience in establishing, implementing and practicing industry standards for good IT security control, investment management and software engineering including COBIT and Capability Maturity Models (CMM).

ATTACHMENT B

IT BUSINESS/FUNCTIONAL KNOWLEDGE, SKILLS AND ABILITIES EXAMPLES.
Columns are not related.

Functional Areas	Application Areas	Software
Personnel	ERP	HRIS
Payroll	SAP	FMS
Accounting	Peoplesoft	FAACS
Finance	Oracle Financials	EDI
Procurement	Food Stamp System	SDLL
Asset Management	Administration	CRM
Security	Commerce and Trade	Call Center
nformation Technology Mgt.	Education	
Document Management	Finance	
Electronic Funds Transfer	Health and Human Resources	
Health Care Systems	Natural Resources	
IT Strategic Planning	Public Safety	
Business Process Modeling	Technology	
Process Improvement Modeling	Transportation	
Decision Support Systems	Oracle Human Resources	
IT Consolidation		
Elec. Benefit Transfer		
Case Mgt Systems		
IT Public Relations		
IT Media Relations		
State Government IT Systems		
Local Government IT Systems		
Technology Procurement		
IT Transformation		
IT Organization		
IT Organizational Behavior		
IT Change Management		
Process Improvement Modeling		
Enterprise Architecture		

ATTACHMENT C

IT TECHNICAL KNOWLEDGE, SKILLS AND ABILITIES EXAMPLES:

Hardware & Operating Systems	**Programming & Middleware**	**Tools, Techniques & Methodologies**
IBM	Cobol	RAD
UNISYS	Natural	JAD
AMDAHL	ALC	Data Modeling
Sun	JAVA	Prototyping
Dell	MVS	Web Services
HP/UX	PowerBuilder	Disaster Recovery
CITRIX	Websphere	Application Architecture
Cisco	VisualBasic	Application Integration
NT	Broker	Enterprise Architecture
Wireless	Middleware	Technical Architecture
Nortel Networks	CICS	Data Architecture
	MS Exchange 2000	Rational
	XML	Data Warehousing
	COMPLETE	Network Administration
	FoxPro	Unix Administration
	MAPPER	Server Administration
	Web Services	Document Imaging
	GIS	Telecommunications
	OLAP	Data Center Consolidation
	Linux	On-line Documentation and/or Training
	SAS	CRM
	C, C++	
Teleco	**DBMS**	**Security**
TCP/IP	Access	Firewalls
VPN	Predict	ACF2
LAN	Oracle	RACF
WAN	ADABAS	Digital Signature
VOIP	IMS	PKI
DSL	SQL	
ISDN	DBMS	
Novell, BANYAN	DB2	
Delphi	9iAS	
ATM		
SNA/SDLC, DLSW,RWRB		
IGRP,EIGRP,RIP,OSPF		

ATTACHMENT D

BEARINGPOINT

The following price schedule is intended to provide a range of rates available from the BearingPoint Team. For estimates on the professional rates and discounts available from our team, please refer to the tables below. The categories and associated rates listed below are inclusive of all professionals.

For a more detailed estimate of the costs for a specific project, BearingPoint will consider further discounts based on project attributes such as project risk and other special project considerations. Additionally, BearingPoint will be happy to discuss alternative pricing/payment options to meet the Commonwealth's needs.

***Note: Any hourly rates that are greater than $200 have been bolded, and are subject to the approval of the Chief Information Officer.**

Industry Specialist	•Capable of managing multiple strategic consulting projects simultaneously or large complex projects •Ability to manage at the highest level of project management •Advanced industry and/or technical knowledge •Recognized internally and externally for knowledge and specialty in field •Fosters environment of continuous improvement	$200-**$375***
Project Executive	•13+ years of overall business experience •Understanding of project management methodology to be utilized •10 years experience on large scale projects •Ability to communicate at all levels of an organization and third parties •Experience of similar scale roles and organizations •Delivery focused	$100-$200
Technology Specialist / Project Manager	•8+ years of overall business or technical experience •Understanding of project management methodology to be utilized •5 years experience on large scale projects •Ability to communicate at all levels of an organization and third parties •Experience of similar scale roles and organizations •Delivery focused •5 years experience of project implementation in a consulting role	$75-$200

Team Leader	•6-9 years of overall business experience •Applications being implemented •Management knowledge of methodology •Multiple projects in similar organization •Ability to communicate at all levels of an organization and with third parties •Experience of similar scale roles and organizations •Ability to manage issues and direct teams •Ability to communicate functional requirements into configuration •Ability to train users	$70-$200
Senior Consultant	•4-6 years of overall business experience •Applications being implemented •Management knowledge of methodology •Multiple projects in similar organization •Ability to communicate at all levels of an organization and third parties •Experience of similar scale roles and organizations •Ability to manage issues and direct teams •Ability to communicate functional requirements into configuration •Ability to train users	$60- $200
Consultant	•3-5 years of overall business experience •Knowledge of application being implemented •Knowledge of methodology being adopted •Prior implementation experience in similar organization •Ability to communicate at all levels of an organization and third parties •Experience of similar scale roles and organizations •Ability to communicate functional requirements into configuration •Ability to train users	$50-$175
Staff / Programmer Analyst	•0-2 years experience •Fully trained, prior experience with general SI skills in one or more of the following: systems design, integration, software development, interface development, testing •Ability to work with end users and functional consultants to translate requirements from a technical perspective •Experience with similar scale roles and organizations •Ability to translate functional and business requirements into a technical specification •Prior experience working with client teams	$40-$125

Labor Category	Description	Hourly Rate
Administrative Support	•Microsoft Office experience •Version control administration experience •Prior experience of large project administration •Ability to communicate at all levels of an organization and third parties •Experience with similar scale roles and organizations •Coordination and task focused	$30-$100

The following table outlines the BearingPoint team's discounts related to project duration.

Labor Category	Project Duration		
	Up to 6 months	From 6 to 12 months	Over 1 year
Industry Specialist	$200-**$375***	10%	15%
Project Executive	$100-$200	10%	15%
Technology Specialist / Project Manager	$75-$200	10%	15%
Team Leader	$70-$200	10%	15%
Senior Consultant	$60- $200	10%	15%
Consultant	$50-$175	10%	15%
Staff / Programmer Analyst	$40-$125	10%	15%
Administrative Support	$30-$100	10%	15%

The following table outlines the BearingPoint team's discounts when an agency's aggregate spend reaches the following thresholds.

Labor Category	Project Cost			
	Up to $500,000	From $500,000 to $1 million	From $1 million to $2 million	Over $2 million
Industry Specialist	$200-**$375***	5%	10%	15%
Project Executive	$100-$200	5%	10%	15%

Technology Specialist / Project Manager	$75-$200	5%	10%	15%
Team Leader	$70-$200	5%	10%	15%
Senior Consultant	$60- $200	5%	10%	15%
Consultant	$50-$175	5%	10%	15%
Staff / Programmer Analyst	$40-$125	5%	10%	15%
Administrative Support	$30-$100	5%	10%	15%

The following table outlines the BearingPoint team's discounts when the Commonwealth's aggregate spend reaches the following:

Industry Specialist	$200-**$375***	10%
Project Executive	$100-$200	10%
Technology Specialist / Project Manager	$75-$200	10%
Team Leader	$70-$200	10%
Senior Consultant	$60- $200	10%
Consultant	$50-$175	10%
Staff / Programmer Analyst	$40-$125	10%
Administrative Support	$30-$100	10%

ATTACHMENT E

CONTRACT USAGE PROCEDURE

1. Users of this Contract, depending on the complexity of services required and/or each Contractor's available resources, have the option to select one or more Contractors to provide IT Resource services.

2. The User will notify the Contractor of their requirement for services. The User will provide a Statement of Work (SOW), objective(s), type (fixed cost, time and materials, alternate pricing model as agreed upon by User, etc.) to the Contractor. (See template) Once the Contractor is notified (written, telephonic, faxed or electronic mail) of a requirement by the User, the Contractor shall respond to the User within two (2) working days of receipt of the SOW to indicate their ability or inability to accept the SOW and perform the required services. In the event the Contractor requires more than two days to determine its ability to accept the SOW, the Contractor may contact User to request an extension of time and User may agree to the extension of time needed or discuss and agree upon appropriate response time. Contractor shall respond to User with a proposal and/or the qualifications of the individual(s) being proposed in the time period requested or on a per project basis within ten (10) working days of receipt of notification or as agreed upon by User, job qualifications of the individual(s) available within ten (10) working days by User and an estimated total cost, (or within a time frame negotiated on a per project basis). User may negotiate with the Contractor prior to placing an Order to reach a satisfactory agreement on such things as additional price discounts, specific deliverables, acceptance and testing criteria, acceptable cost, controls and guidelines, etc. Any clarification of the Order must be agreed upon by the User or Contractor prior to initial performance.

3. Prior to issuing an order for consulting services, User reserves the right to interview each individual proposed and has the right of refusal, if it is determined, in the Commonwealth's sole judgment, that an individual lacks sufficient knowledge or experience to perform the required tasks.

4. Upon selection of the proposal, individual(s) assigned and a written "Order" to the Contractor, the individual(s) shall be available to commence work on the reporting date set forth in the respective Ordering document unless the Contractor notifies the User within two (2) working days of receipt of Order that it is not acceptable and the reasons why the Order is unacceptable. Contractor may replace individual after an Order is submitted to the Contractor provided the replacement is before the start of the project provided User agrees.

5. Contractor's personnel shall not be permitted to commence work on any project until a written Order by the User has been obtained. Any work performed by the Contractor or Contractor's personnel prior to the effective date of the Order shall not be billed and/or accepted by the User.

6. If any individual, provided by the Contractor under this Contract, is unable to perform at an acceptable level within a reasonable length of time, as determined by User's sole judgment, User will have the right to terminate that individual's services. Notice of termination to the Contractor may be as little as one (1) work day. If it can be shown that an individual did not make

productive use of his/her time, the User may, at its sole option, refuse payment for any hours billed against that individual for that period of time.

7. Whenever Contractor personnel are replaced at the Contractor's request, the Contractor shall be responsible for start up costs as negotiated by the User. Such costs shall include costs for training and other necessary expenses needed to bring such replacement individual up to the point of where the services of the previous individual ended.

8. The Commonwealth will provide proper working facilities and consumable supplies commensurate with the task(s) to be performed.

9. The Commonwealth will provide access to project documentation as well as familiarization briefings on requirements.

10. The Commonwealth will provide access to any technical manuals and references required during the normal performance of duties.

11. Contractor personnel shall be expected to follow established directives and policies during the performance of assigned tasks.

12. From time to time, Contractor personnel may be required to work weekends or to travel to locations other than their primary work place. In such cases, the Contractor shall be reimbursed for meals, transportation and lodging in accordance with the Commonwealth's State Travel Regulations as posted on the Department of Account's website at http://www.doa.state.va.us/procedures/adminservices/capp/capp1.htm. All invoices for travel shall not exceed the Commonwealth's reimbursement rates for mileage, meals, lodging and incidental travel expenses and shall not exceed 15% of the total "Order" cost of services. TRAVEL SHALL BE COUNTED AS NORMAL TIME NOT TO EXCEED EIGHT (8) HOURS PER DAY REGARDLESS OF THE ACTUAL TIME REQUIRED. The Contractor shall not charge Users for travel, lodging and meal expenses to relocate information technology consultants hired by User. No overtime payment shall be allowed for hourly individuals only straight hourly rate will be paid. Users and Contractor may negotiate payment of travel expenses for out-of-state individuals within the Commonwealth's reimbursement rates.

13. Should the Contractor, at any time, be unable to provide fully qualified personnel from within his organization due to current workload or other constraints, the contractor may provide personnel under a subcontractor type arrangement, at the rates awarded in the Contract or negotiated rates below those awarded in the Contract if-agreed to by User and Contractor.

ORDERS

14. Orders issued hereunder shall be initiated and processed as follows, which will contain among other provisions:

- A reference to this Contract
- Statement of Work (SOW)
- Statement of Type of Work Order (i.e., time and materials, fixed price or alternate pricing model) and total costs or unit price; and

- Delivery or Performance Schedule
- Any agreed upon invoice holdbacks
- **No additional Contract terms and conditions shall be included in any statement of work or Order by the User or the Contractor**

15. Orders may be written on an hourly rate basis, fixed price or alternate pricing model as agreed upon by Contractor and User against this Contract, however, **no pricing shall exceed the hourly rates as provided in Attachment D**. An hourly rate Order will list the consulting services to be performed by labor category of personnel desired together with hourly costs associated with each. All Orders will contain a "Not to Exceed" limitation. When a "Not to Exceed" limitation is employed, it shall impose obligations upon the parties in accordance with the "Limitation of Cost" provision in section 10, V.

16. A Fixed Price Order will list the deliverables of the project or consulting service to be delivered along with labor category and associated hours and hourly costs. The Commonwealth will also consider alternate pricing models instead of fixed price driven by hourly rates.

17. Pricing for all Orders shall be in accordance with the pricing as provided in Attachment D. Contractor and User may negotiate and agree upon discounted pricing from the prices in Attachment D for specific projects and requirements however, all pricing provided by Contractor must include consulting services to be performed, labor category of personnel, associated hourly costs with each category of personnel and list any project deliverables. The Contractor agrees to bill the contract User under the maximum pricing structure attached hereto as Attachment D. The User and the Contractor may agree upon a lower price than the maximum pricing structure provided herein prior to the issuance of an "Order".

18. Orders shall be incorporated as an integral part of this Contract.

19. Work hours will be established by the User, however, normal work hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, (State holidays excluded). Contractor's personnel may be required to work unusual hours and times to meet project related requirements and /or timelines. When unusual hours are required, the User will provide sufficient advance notice for proper planning.

20. Change Orders shall be issued anytime there is a change to a previously issued Order. The change order shall be issued by the User to the Contractor as a new Order with attached WOS incorporating all changes to date.

ACTIVATION OF ORDERS

21. The following procedure will be used to initiate and activate an Order under this Contract:

    A. User will prepare an Order, together with all necessary technical attachments, and provide the Order to the Contractor.

    B. Contractor upon receipt of an Order shall commence work as stipulated in the Order provided no further clarifications are needed.