

## MARKETING AGREEMENT

**THIS MARKETING AGREEMENT** ("Agreement"), dated July 26, 2005, is between **BEARINGPOINT, INC.**, a Delaware corporation with an office at 301 Congress Avenue, Suite 1300, Austin, Texas 78701 ("BearingPoint"), and **KNI, Incorporated**, a Texas corporation doing business as "KATHY L. NEALY & ASSOCIATES" having its principal place of business at 1211 Willow Glen Drive, Dallas Texas 75232 ("Contractor").

**1. PURPOSE OF ENGAGEMENT.** BearingPoint agrees to retain Contractor to perform the services described in Exhibit "A" hereto ("Services") and Contractor agrees to furnish the Services to BearingPoint on the terms and subject to the conditions set forth in this Agreement.

If Contractor is not a natural person, the Services will be performed for Contractor by the persons listed on Exhibit "A" hereto, and such additional personnel of Contractor as shall, from time to time, be required. BearingPoint shall have the right to approve such additional personnel prior to their being assigned to perform any of the Services or any replacements for the persons listed on Exhibit "A" in the event such persons become unavailable to perform the Services for reasons beyond Contractor's control. In addition, upon BearingPoint's request, Contractor shall immediately replace any of its personnel performing the Services with other personnel approved by BearingPoint. In the event that Contractor is unable to replace any individual performing the Services (regardless of whether such individual is being replaced due to the his/her unavailability or a BearingPoint request for removal) with an individual acceptable to BearingPoint, acting reasonably, within seven (7) days of such individual being unavailable/removed, BearingPoint may reduce the scope of the Services to remove the Services being performed by such individual (with an equitable adjustment in price if the Services are being performed on a fixed price basis), or, at BearingPoint's sole option, if such individual was essential to the effective performance of this Services, terminate this Agreement by written notice to Contractor.

If Contractor is a natural person and becomes unavailable to perform the Services for fifteen (15) days or more (other than scheduled hiatuses in the Services), BearingPoint may immediately terminate this Agreement by written notice.

In performing the Services, Contractor agrees to provide its own equipment, tools and other materials at its own expense. BearingPoint may make its facilities and equipment available to Contractor to the extent necessary to perform the Services as the parties may mutually agree. It is expressly understood that Contractor is an independent contractor of BearingPoint and that Contractor shall use its professional discretion in determining the best means by which to perform the Services.

**2. TERM.** The term of this Agreement shall begin on the date hereof and shall continue until completion of the Services or termination pursuant to Paragraphs 1 or 7 hereof.

**3. CONTRACTOR'S COMPENSATION.** During the term of this Agreement, BearingPoint agrees to compensate Contractor at the hourly or other billing rate identified in Exhibit "A" for the Services. Contractor shall only be reimbursed for the out-of pocket expenses set forth in Exhibit A, subject to any limitations set forth therein. No other expenses or any expenses exceeding the limitations set forth in Exhibit A will be reimbursed by BearingPoint unless BearingPoint has agreed in writing to reimburse such expenses prior to Contractor incurring

them. All permitted expenses will be reimbursed at Contractor's actual out of pocket cost. Contractor shall bill BearingPoint at monthly intervals. Invoices shall be mailed to:

BearingPoint, Inc.  
301 Congress Avenue, Suite 1300  
Austin, TX 78701  
Attention: Helena Tantillo

Each invoice submitted by Contractor will provide complete supporting detail for each day on which Services were performed by Contractor, the dates of Services, hours worked at the negotiated rate on each day, and receipts or other suitable detail concerning related to permitted reimbursable expenses. BearingPoint shall pay correct invoices within 45 days of receipt.

**4. OWNERSHIP OF MATERIALS RELATED TO SERVICES.** The parties agree that all information (tangible and intangible), data, drawings, documents, designs, models, inventions, copyrightable material and other tangible materials authored, prepared, created, made, delivered, conceived or reduced to practice, in whole or in part, by Contractor in the course of providing the Services (collectively, the "Works") are the sole and exclusive property of BearingPoint and shall be considered works made for hire. In the event any such Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, Contractor hereby irrevocably, expressly and automatically assigns all right, title and interest worldwide in and to such Works to BearingPoint, including, without limitation, all copyrights, patent rights, trade secrets, trademarks, moral rights and all other applicable proprietary and intellectual property rights. If Contractor has any rights to the Works that cannot be assigned to BearingPoint, Contractor unconditionally and irrevocably: (1) waives the enforcement of such rights; and (2) grants to BearingPoint during the term of such rights, an exclusive, irrevocable, perpetual, worldwide, royalty-free license to reproduce, create derivative works of, distribute, publicly perform and publicly display such Works, by all means now known or later developed, with the right to sublicense such rights through multiple levels of sublicensees. Contractor agrees to render all reasonably required assistance to BearingPoint to protect BearingPoint's rights hereinabove described. In the event that BearingPoint is unable to secure Contractor's signature on any documents deemed necessary by BearingPoint to carry out the purposes of this paragraph, Contractor hereby irrevocably designates and appoints BearingPoint or its designee(s) as Contractor's agent and attorney-in-fact, which appointment is coupled with an interest, to act for and in Contractor's behalf to execute, verify and file any such documents.

**5. COMPLIANCE WITH BEARINGPOINT POLICIES AND BUDGETS.** Contractor agrees to perform the Services to the best of Contractor's abilities in accordance with BearingPoint's policies and applicable budgets. Contractor's personnel performing the Services on BearingPoint's premises shall comply with BearingPoint's rules and regulations. Without limiting the foregoing, Contractor shall perform the Services in a timely and professional manner in accordance with applicable professional and industry standards.

**6. CONTRACTOR'S WARRANTIES.**

Contractor warrants that:

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(a) Contractor's performance of the Services called for by this Agreement, including without limitation, the development and delivery of the Works, does not and shall not violate: (1) any applicable law, rule, or regulation; (2) any contracts with third parties; or (3) any third-party rights in any patent, trademark, copyright, trade secret, or any other proprietary or intellectual property right;

(b) Contractor has full authority and sufficient right, title, and interest in and to the Works, to grant and convey the rights accorded to BearingPoint under Paragraph 4 hereof; and,

(c) All Services will be performed by Contractor, or if the Contractor is not a natural person, by regular employees of Contractor who have signed written agreements with Contractor that: (1) assign all work product created by such employees to Contractor in a manner substantially consistent with Paragraph 4; and (2) have restrictions on the use of confidential information no less restrictive than those contained in this Agreement.

## 7. TERMINATION.

(a) BearingPoint may terminate this Agreement at its convenience and without any breach by Contractor upon fifteen (15) days written notice to Contractor without any liability to Contractor other than to pay amounts due.

(b) In addition, either party may terminate this Agreement upon thirty (30) days written notice to the other, in the event the other party breaches a material term of this Agreement and fails to cure such breach within such thirty (30) day period. BearingPoint may also terminate this Agreement immediately by written notice in its sole discretion upon Contractor's material breach of Paragraphs 9 or 13.

(c) BearingPoint reserves the right, if Contractor is a natural person, to conduct a background check on Contractor that may include items with respect to Contractor's civil, criminal, litigation, credit and educational background. If Contractor refuses to provide BearingPoint information required to conduct such a check or such a check is conducted and yields an adverse result in any of the aforementioned areas, BearingPoint may immediately terminate this Agreement by written notice. In addition, if Contractor is not a natural person, at BearingPoint's request, Contractor shall conduct a background check covering the areas stated above on all individuals performing or proposed to perform the Services; Contractor shall immediately remove or shall not propose for performance of the Services any individual for whom an adverse result was obtained.

**8. INDEMNIFICATION.** Contractor hereby agrees to indemnify, hold harmless and defend BearingPoint and any member, director, officer, employee or agent thereof (each of the foregoing being hereinafter referred to individually as an "Indemnified Party") against all claims, liabilities, losses, expenses (including attorney's fees and legal expenses related to such defense), fines, penalties, taxes or damages (collectively "Liabilities") asserted by any third party where such Liabilities arise out of or result from: (1) the negligence of Contractor in the course of providing any Services hereunder; or (2) the representations or warranties made by Contractor hereunder, or their breach. BearingPoint shall promptly notify Contractor of any third party

claim and Contractor shall, at BearingPoint's option, conduct the defense in any such third party action arising as described herein at Contractor's sole expense and BearingPoint shall cooperate with such defense.

**9. BEARINGPOINT OR CLIENT CONFIDENTIAL INFORMATION.** All information, documents, software, reports, data, records, forms and other materials developed by Contractor for BearingPoint or obtained by or disclosed to Contractor in the course of performing the Services are the proprietary, confidential and trade secret information of BearingPoint, its clients and/or its other contractors or licensors. Contractor will deliver to BearingPoint all tangible forms of such proprietary confidential and trade secret information and all copies thereof (and all other property obtained from or through BearingPoint) when BearingPoint requests the same or immediately upon termination of this Agreement, whichever occurs earlier. Contractor agrees during the term of this Agreement and thereafter that it will take all steps reasonably necessary to hold BearingPoint's and any of its client's proprietary, confidential and trade secret information in trust and confidence. Contractor shall not use or disclose to any person, firm or entity any proprietary, confidential or trade secret information of BearingPoint, its clients and/or its other contractors or licensors without BearingPoint's express, prior written permission.

**10. INDEPENDENT CONTRACTOR.** Contractor agrees that Contractor's relationship with BearingPoint is that of an independent contractor and nothing in this Agreement shall be construed as creating a partnership, joint venture or employer-employee relationship. Neither Contractor nor any of its employees or agents will be entitled to any of the benefits which BearingPoint may make available to its employees, such as group insurance, profit-sharing, or retirement benefits. Contractor shall be solely responsible for complying with all applicable local, state and federal laws governing self-employed individuals, including but not limited to obligations such as payment of federal, state and local taxes, social security, disability and other contributions attributable to the rendition of Services hereunder to BearingPoint. Contractor shall indemnify, hold harmless and defend BearingPoint from any and all claims, liabilities, damages, taxes, fines or penalties sought or recovered by any governmental entity, including but not limited to the Internal Revenue Service or any state taxing authority, arising out of Contractor's alleged failure to pay such taxes or make such contributions. Nothing in this Agreement shall be deemed to constitute Contractor or BearingPoint the agent of the other. Neither Contractor nor BearingPoint shall be or become liable or bound by any representation, act or omission whatsoever of the other.

**11. NON-ASSIGNABILITY.** Contractor shall not assign, transfer, or subcontract (which, includes, without limitation, contracting with individual independent contractors for the performance of the Services) this Agreement or any of its obligations hereunder without BearingPoint's express, prior written permission.

**12. NON-EXCLUSIVITY.** During the term of this Agreement, BearingPoint may engage the services of any individual or entity that competes with Contractor or offers services similar to those offered by Contractor, and any such engagement shall not be considered a breach of this Agreement.

**13. NON-SOLICITATION OF CLIENTS.** During the term of this Agreement and for one year after its termination, expiration or cancellation, Contractor shall not provide or offer to provide services, other than through BearingPoint, to any client of BearingPoint with respect to which the Services provided by Contractor hereunder were related.

**14. SEVERABILITY.** In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**15. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the United States and the laws of the Commonwealth of Virginia. The parties hereby submit to the exclusive personal and subject matter jurisdiction of the state and federal courts located in Commonwealth of Virginia.

**16. INTEGRATION.** This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by each of the parties hereto.

**17. INSURANCE.** Throughout the term of this Agreement, Contractor shall maintain workers compensation insurance in the amount required by statute, comprehensive general liability insurance with coverage of at least one million dollars (\$1,000,000) and professional errors and omissions insurance for bodily injury, property damage or other losses resulting from errors or omissions in connection with Contractor's performance of the Services with coverage of at least one million dollars (\$1,000,000), in connection with the provision of services by Contractor pursuant to the terms of this Agreement. Contractor has provided BearingPoint with Certificates of Insurance or self-insurance evidencing the above coverage and shall provide BearingPoint with prompt written notice of any material change.

**18. NOTICES.** All notices permitted or required under this Agreement shall be in writing and shall be by personal delivery, a nationally recognized overnight courier service, facsimile transmission or certified or registered mail, return receipt requested. Notices shall be deemed given upon the earlier of actual receipt or one (1) day after deposit with the courier service, receipt by sender of confirmation of electronic transmission or five (5) days after deposit with the U.S. Postal Service. Notices shall be sent to the addresses listed below, or to such other address as either party may specify in writing.

If to BearingPoint:

**BearingPoint, Inc.**  
301 Congress Avenue, Suite 1300  
Austin, TX 78701  
Attention: Helena Tantillo

With a copy to:

**BearingPoint, Inc.**  
1676 International Drive  
McLean, VA 22102  
Attention: Group Counsel, Public Services

If to Contractor:

**Kathy L. Nealy & Associates**  
1211 Willow Glen Drive  
Dallas, TX 75232  
Attention: Kathy L. Nealy

**19. SURVIVAL.**

Paragraphs 4, 6, 8, 9, 10, 13 and 15 shall survive the expiration or earlier termination of this Agreement by either party for any reason.

**IN WITNESS WHEREOF**, the parties hereto have or caused this Agreement to be executed by their duly authorized representatives, as of the date first above written.

KNI, INCORPORATED

By: Kathy L. Nealy

Name: Kathy L. Nealy

Title: President

**BEARINGPOINT, INC.**

By: Helena Tantillo

Name: Helena Tantillo

Title: Managing Director

“EXHIBIT A”

**DESCRIPTION OF CONTRACTOR SERVICES**

Contractor shall provide the following services:

1. Identify title companies that purchase real property records
2. Interview the title companies to ascertain the following:
  - a. What information do title companies need
  - b. What information would be of value to title companies
  - c. What information would title companies be willing to pay for
  - d. What is the current amount paid by title companies for what specific information
  - e. What would be an incentive for the title companies to purchase this information from a different provider

Interviews should be conducted starting with the highest volume title companies working down to lower volume title companies until the number of hours dedicated to the effort has been exhausted.

3. Compile the information from each interview and present the information in a written briefing, in a format agreed upon by both parties.

**Compensation**

Contractor’s fees for this statement of work will not exceed \$50,000. Fees will be billed hourly at the rates outlined below:

<u>Individual Name</u>	<u>Billing Rate</u>
Kathy Nealy	\$200