

**Response to Questions Received for RFQQ #08-RFQQ-901,
Marketing and Advertising Services**

NOTE: The sample contract originally attached as Exhibit D to this RFQQ is replaced with Attachment A to this Response to Questions Received for RFQQ # 08-RFQQ-901. The following questions and answers are also added to the RFQQ and become incorporated by reference into the RFQQ as an amendment. Both the questions and answers and Attachment “A” have been posted on the CTED “Bids and Contracts” page.

- 1. Q: As detailed in the Marketing Plan, several categories in the FY2009/2010 Draft Expenditures could be considered to be part of the advertising contract in whole or part: Advertising, International, Research, and Consumer Marketing/Fulfillment. Can you provide a more specific indication of what the contract award for this RFQQ will cover?**

A: The majority of the activities under this contract will be those that are specified in the Scope of Work (Exhibit B). Occasionally there may be additional activities in public relations or internet projects but these will not be significant.

- 2. Q: The Marketing Plan indicates that Canada is the only International market for advertising. Is that an accurate assumption or will there be a need for advertising in any other foreign countries? Will advertising materials need to be localized for PR or other use in countries besides Canada? Does the Internet advertising portion of the campaign include any foreign-language sites?**

A: The majority of overseas activities are handled by contractors in the target markets of UK, Germany, France, Japan and Benelux. The Tourism Office partners with the Port of Seattle and Seattle’s Convention and Visitors Bureau in these target markets. Due to advertising costs, in these markets, the primary marketing activity is public relations targeting travel trade representatives and media in these markets with only very occasional paid advertising and occasional collateral production that will be the responsibility of the Contractor. Translation of the consumer website is something we may address in the future, but not a part of the current 2009/2010 marketing plan.

- 3. Q: Are there file size limitations on proposal and attachments? In particular, video advertising samples inserted into a PDF will make the document quite large. We’re concerned that a large file could be rejected by your servers. Would you accept or prefer hyperlinks in the proposal to video files located on our web site?**

A: We believe that the submitted proposals will probably be printed for review by the review team so links to another web site would make it difficult to review all submissions. The file size limit is 30MB. Do not send zip files.

- 4. Q: Who are the current PR and Web contractors for the Tourism marketing effort?**

A: The Contractor for Public Relations is Edelman (Seattle, WA). The Web Development contractor is Ascentium (Bellevue, WA).

- 5. Q: The Department reserves the option at its sole discretion to extend the contract. Is the Department willing to allow the Contractor to agree to such extension? Suggested language would be: The Department may extend the contract for two additional one-year periods, subject to written agreement by the Contractor at least 90 days prior to the termination date.**

A: Contract terms are negotiated with the successful bidder. There is nothing in the contract that requires that the Contractor agree to an extension of the contract if they do not wish to.

- 6. Q: Section 2.3 - The Department shall own all data, materials, and reports produced in the performance of services rendered under contract from this procurement. Please clarify that the Department understands that such ownership may be subject to certain third party rights that must be purchased by the Contractor on the Department's behalf?**
A: The Department understands that use rights for photography and other art work may need to be purchased and that the copyright for such materials may not be owned by the Department unless purchased.
- 7. Q: Section 3.4 - Materials submitted in response to this competitive procurement shall become the property of the Department. Please clarify the Department understands that such physical materials may be retained by the Department, but the copyright for these materials remains with the proposer unless and until a contract for services is agreed.**
A: The physical material submitted in response to the RFQQ remains with the Department. The intellectual rights and properties of that material are subject to rules of copyright and other laws defining proprietary rights.
- 8. Q: Section 6.1 - The Department has requested a list of rates, but also provides opportunity for a monthly fee. May the proposer suggest only a monthly fee that encompasses all services related to the scope of work (i.e. retainer)?**
A: Yes
- 9. Q: If a monthly fee is not appropriate, should the proposer suggest a maximum budget for hourly service fees, as indicated in the Compensation section of the Draft Contract?**
A: The compensation section of the sample contract is a not-to-exceed total amount paid to the Contractor for the life of the Contract for all activities. If no monthly service fee is proposed it is assumed that costs for all activities would be based on a blended hourly fee that the Contractor must submit in response to this RFQQ. Work not included in a monthly fee or that is based on a blended hourly fee would require that the Contactor first submit an estimate for Department review and approval in advance of any work being initiated .
- 10. Q: If a maximum budget for hourly service fees is required, should it cover a one or two-year period?**
A: See question # 9 above. Maximum budget should be an annual amount applicable for two years.
- 11. Q: The Department has requested an average hourly rate. Should this actually be a blended rate based on the proposed staffing needed to service the scope of work? Such a rate can be provided even under a monthly fee agreement.**
A. Yes
- 12. Draft Contract - PURPOSE**
Q: The purpose of this contract is to provide web marketing/consulting services for all websites. Please confirm that this sample will be revised to reflect the type of advertising services to be provided per the scope of work. We just want to ensure you are not actually seeking a web-only company.
A. The sample (Exhibit "D") is attached to this response as Attachment "A" and has also been added to the RFQQ that is posted on the CTED "Bids and Contracts" page. See the "NOTE" at the top of the first page.

13. :Draft Contract – EXPENSES

Q: The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed \$____. Should we propose a maximum travel and miscellaneous expense budget?

A: No. Miscellaneous costs are normally a minimal amount since the majority of costs are included in project costs. Travel is authorized in advance by the Department and is reimbursed at official state per diem and mileage rates.

14. Draft Contract – Exhibit A, Section 10

(a) Q: The Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. Does the Department generally “buy out” all third party rights to talent, photography, stock art, etc.?

A: See Question 6 above

(b) Q: Since a buy-out is often expensive, will the Department allow purchases that may limit rights, but clearly indicate such limitations? In this way, the Contractor may be able to limit expenses to just what is needed?

A: See Question 6 above

15. Cooperative Relationships:

(a) Q: Based on SHB Substitute Bill 1276, there is a cooperative relationship between the Tourism Office, the Tourism Commission, and private sector to generate matching funds. Please explain how you expect the contractor to assist in developing and growing these partnerships.

A: The Tourism Commission must match State funds. The match amount graduates each year and by 2010 the Tourism Office must demonstrate private sector match of \$4 Million. The match may include co-op advertising and other programs in which the private sector financially supports the marketing activities of the Tourism Office. The Contractor will be expected to develop advertising and marketing campaigns that elicit private sector financial participation.

(b) Q: Where do you see areas for improvement?

A: All marketing campaigns have areas that can be improved. It will be the responsibility of the Contractor to review campaign performance and recommend any areas for improvement.

(c) Q: Would you like to increase, decrease, or maintain the number of trade partnerships you have today?

A: Increase

(d) Q: Please describe the most successful private sponsorship, and explain why it works so well.

A: The Tourism Office has had a long history of partnerships in overseas markets with the Port of Seattle and Seattle’s Convention and Visitors Bureau. The current advertising co-op program can be reviewed on the tourism industry website (www.experiencewa.com/industry). See the “Advertising” menu. Currently there is no private sector “sponsorship” program per se. The Contractor will be expected to assist the Department in developing potential co-op and partnership programs.

(e) Q: Could you explain in more detail, how you expect the contractor to assist in developing and growing these partnerships?

A: It will be the responsibility of the Contractor, working collaboratively with the PR and web contractors, to develop advertising co-op, partnership and sponsorship programs.

16. Decision Making Process:

Q: The RFQQ explains that the evaluation of proposals shall be accomplished by an evaluation team designated by the department. Please tell us who the department/evaluation team is comprised of, and do all participants have an equal vote?

A: The Department reviewers will evaluate the written proposals to select finalists for the oral presentations. The finalist reviewers will include Department and Tourism Commission members. The specific review teams have not yet been designated.

17. Competitive Creative Campaigns:

(a) Q: Which tourism campaigns in the marketplace today or in the past inspire you or that make you say, "I wish we would have done that?"

A: The test of any campaign is whether it meets the established marketing goals and objectives of the advertiser.

(b) Q: Are there any non-tourism campaigns that particularly resonate with you? Why?

A: Whether a campaign resonates with one individual is not as important as whether the campaign has achieved the goals and objectives established for it.

(c) Q: Please tell us who are the Department's web development and PR firms and will they be going into review now or in the near future?

A: See question #4 above. The web contract was effective July, 2007 and the PR contract was effective September 2007. Both contracts are two-year contracts with the ability to be extended for an additional two years.

18. Data Management and Measurement:

(a) Q: What type of database is currently used for traveler information?

A: Currently we only maintain a database of consumers who have requested the Visitors Guide either via the toll-free phone number or the online request form. There is no web survey that captures e-mails at this time although it is in the web development plan.

(b) Q: What is the current online Search Engine Optimization Plan?

A: Our web firm (Ascentium) has developed a very comprehensive and detailed SEO marketing effort that is currently being implemented utilizing a focused link strategy.

19. Brand Promise:

Q: Curious travelers will have a deep and rich experience because of the endless discoveries Washington has to offer, leaving them wants to come back for more." Based on this, would you say you place more emphasis on driving first-time travelers to Washington State, or generating repeat visits?

A: While both strategies are important we assume the primary strategy for out-of-state targets is generating new visits and for in-state residents the intent is to generate repeat visits or increased travel within the state.

20. Q: Is there an expected media spend for the two year period (% of overall budget) or is the winning bidder to develop the media plan in regards to spending for the two year period?

A: The estimated advertising budget, which must include all fees and production costs, is included in the 2009/2010 Marketing Plan that is posted on the Tourism Industry website home page (www.experiencewa.com/industry). Here is a link to that plan:

http://www.experiencewa.com/images/pdf/M_2008-03-28%20final%20marketing%20plan.pdf

The top figure shown in each column (CTED Advertising Expenses) represents the estimated budget the Tourism Office will actually have to spend. The second figure (Private Sector Advertising) represents the estimated private sector financial participation match needed to meet the funding requirements in SHB 1276 that is referenced in Exhibit C

- 21. Q: Is there an expected hard charges spend for the two year period (% of overall budget) or is the winning bidder to develop a plan around hard charges in regards to spending for the two year period?**
A: No specific production costs have been determined. Proposing a percentage of the total budget to be allocated for production and other "hard" charges is an option by the bidder.
- 22. Q: Based on the available marketing plan, it seems that the winning bidder's role will be to place media where CTED desires, and CTED is not looking for recommendations on media placement at this point. Is that correct? What level of influence will the agency(s) in question have over these decisions in the future?**
A. The current marketing plan assumes that print magazines will be the primary advertising vehicle for out-of-state advertising. If the Contractor has alternate suggestions these would be considered but must be reasonable in terms of ROI measurements. The Contractor will be expected to provide specific media recommendations and a rationale for each recommendation.
- 23. Q: Regarding the statement on Page 19 of the Washington State Tourism Marketing Plan 2009/2010, "Washington Brand Evolution," that states, "2009 will focus on brand refinement in an 'evolutionary' rather than 'revolutionary' process" what level of influence will the winning bidder have over that process and the overall brand creative feel/look, consumer targeting, etc.?**
A: Per Exhibit B, Scope of Work, the Marketing/Advertising Contractor is expected to be the lead organization in developing the brand refinement strategy although it is expected that this work will be done in collaboration with the PR and web development contractors.
- 24. Q: Who is the PR agency that CTED currently works with? Are you planning on continuing that partnership? The budget calls out PR. Is it correct to assume that we should detail out our PR plans for this as opposed to that going to a different agency?**
A: See questions # 4 and # 17(c) above.
- 25. Q: We know that we are currently working on Interactive initiative. Are there other firms that CTED is working with? If so, who are they?**
A. See questions #4 and 17(c) above.
- 26. Q: Should we be a finalist, do we have any input as to when we present?**
A: No.
- 27. Q: It appears that the "Experience Wa(shington)" call to action will continue to drive the conceptual focus of the communications? Is that true?**
A: Yes
- 28. Q: Do you expect spec creative to be part of the RFP?**
A: It is not our plan to request speculative creative presentations.
- 29. Q: For 5.1.G, please advise whether you want us to break down our clients based on their size of revenue or size of capitalized billings.**
A: We are not requesting any financial information for any individual clients. The billing information is for the agency as a whole.
- 30. Q: Regarding delivery of the final PDF response, do you have a file size limitation for attachments?**
A: 30 MB

- 31. Q: Has the Tourism Group’s mission and vision evolved since the ‘04 Strategic Blueprint? If so, how?**
A: The 2009/2010 Marketing Plan is the most current in terms of defining key marketing issues and strategies, and is the document that is most relevant to this RFQQ. The marketing plan is posted on the home page of the Tourism Industry website: www.experiencewa.com/industry.
- 32. Q: Similarly, how have your objectives changed, if at all?**
A: See the response to Question # 31 above.
- 33. Q: Under FYI ‘06-’08 measurements, you note ROI on marketing expenditures. Can you detail how Longwoods arrived at the 721,500 incremental trips influenced by advertising?**
A: The R.O. EYE method is proprietary to Longwoods. There is a brief description of the methodology included in the study itself which is posted under “Research”... “Advertising” on the Tourism Industry website: www.experiencewa.com/industry
- 34. Q: What are you projecting in terms of travel growth to / within Washington in ‘08 and ‘09?**
A: We are not able to provide projections. Per our annual travel economic impact study that is posted on www.experiencewa.com/industry “Research”... “Economic Impact” we average slightly under a 5% annual increase in travel spending. .
- 35. Q: Is the average visitor spend expected to increase or decrease from \$281 per trip? What market segments represent the greatest growth opportunity going forward?**
A: We have not conducted a visitor profile study since 2003. That type of research provides us with a more reliable and valid per person spending estimate. We will be conducting a Visitor Profile study for 2008/09 and that will give us a better understanding of travel spending. The 2009/2010 Marketing Plan defines the state of the industry, key travel trends and key strategies. We would plan to work with the Marketing and Advertising Contractor to continue to refine the domestic target market segments.
- 36. Q: What goals have been set in terms of regional travel expenditures / total trips within Washington (i.e.: eastern WA vs. western WA)? Can you detail how regional travel expenditures and trips have trended past several years?**
A: No goals have been set for western vs. eastern travel. Washington residents account for a majority (60% per 2003 Visitor Profile) of travel year-round. The most recent statewide Travel Impact Study (Dean Runyan Associates, December 2007) estimates that 36% of all travel spending is attributable to Washington residents. The 1991-2006 County Travel Impact Study does provide a breakdown of spending by Coastal, Western, and Eastern counties, and King County. All research is posted on www.experiencewa.com/industry.
- 37. Q: Your ‘06 - ‘08 marketing plan identifies the “Urban Naturalist” as your core consumer target. Have you conducted any research that details their awareness and travel intent as compared to other audience segments? Have you been able to identify their distribution on a geographic basis?**
A: The Urban Naturalist as a psychographic designation was developed by a previous advertising contractor utilizing MRI data. Since there is no nationally recognized Urban Naturalist profile we have utilized certain attributes that we believe fit the profile and that are used in selecting media within our 13-western state target geographic market. The information reviewed for media selection is posted on www.experiencewa.com/industry under “Advertising”...”Advertising Schedule”, “2008 Media Plan and Information”.

- 38. Q: With the U.S. Dollar significantly off versus foreign currencies, are you forecasting a substantial increase in foreign (other than Canada) visits to Washington? Does this audience generally fit the “Urban Naturalist” profile, or are they significantly different?**
A: It is too soon to tell if overseas markets will be increasing travel to the US as a result of our currency devaluation. If that happens we would assume that Washington State would realize a fair share of that increase. New overseas direct flights have shown an increased lift to Seattle from the markets they cover. With a limited budget, our overseas marketing is geared primarily to travel trade and media. While we believe the Urban Naturalist is a good definition for all target audiences given the state’s visitor product, we have not conducted overseas consumer research.
- 39. Q: The ‘06 marketing plan notes co-op advertising as an important component of the marketing mix. To date, has there been significant demand among partners for co-op opportunities that extend beyond print? If so, what are some of the more common requests?**
A: The current marketing plan (2009/2010) that is posted on the home page of www.experiencewa.com/industry indicates that co-op advertising will continue to be an important source for the required private sector match described in Exhibit C. It will be the responsibility of the Marketing/Advertising Contractor to develop co-op programs that generate financial participation by private sector and Destination Marketing Organizations. The current co-op program is posted on www.experiencewa.com/industry (see the “Advertising” menu page).
- 40. Q: Can you provide insight into how co-op partners are selected /prioritized for opportunities where space or availability is limited?**
A: See question # 39 above. Those participating in the co-op ad program self-select on a first-come, first-serve basis.
- 41. Q: Most of the opportunities identified by the Olympic Tourism Subcommittee appear to be media relations / PR opportunities. Has there been discussion around broadening or expanding marketing initiatives related to the 2010 Winter Olympics? What limitations exist on how Washington can promote itself in relation to the 2010 Winter Olympics?**
A: The 2009/2010 Marketing Plan, posted on the home page of www.experiencewa.com/industry, includes some suggested initiatives. Based on a thorough review of the previous winter Olympics we believe the major impact for travel will be the immediate two years following the Olympics. The limitations for promotion are those established by the Olympic Organizing Committee.
- 42. Q: Which elements of the 2006-2008 marketing plan were most successful and likely to be retained? Which elements failed to meet your expectations? What would be the typical, or historical, timeline for the campaign? More specifically, anticipating a possible new Contractor as of July 1, 2008, and beginning the development process, what approximate date would print and/or broadcast materials for a new campaign be due?**
A: Longwoods conducted an evaluation of the 2007 advertising campaign which is posted on www.experiencewa.com/industry (Research...Advertising). Given a new Marketing Plan (2009/2010) we would expect to immediately begin production for spring/summer 2009 so that media selection and photography or other production would be completed or well underway by mid-August. We also will be reviewing the options for a shoulder season (fall 2008) campaign that could include co-op newspaper inserts as described in the marketing plan.
- 43. Q: Does The Department have an established system in place for the coordination of separate advertising, public relations and/or web development firms? Which of these types of firms, if any, are considered the leader in the development of branded programs?**
A: The advertising/marketing contractor is expected to be the lead organization in the refinement of the Brand in collaboration with the PR and Web Contractors. Also see Question #4 and #17 (c).

- 44. Q: What criteria will The Department use to determine if the top-scoring firm(s) will participate in an oral presentation?**
A: It is anticipated that top scoring bidders will be expected to participate in oral presentations. Finalists will receive a set of questions to respond to during the oral presentations. Each will have a possible score. The top scoring finalist will be selected as the apparent successful bidder pending successful contract negotiations.
- 45. Q: Exhibit C states that the FY 2009 and 2010 marketing plan will be available for download on April 1, 2008. As of April 3, the posting is still the plan dated 5/15/06. When will the new draft be available?**
A: The 2009/2010 Marketing Plan was posted on April 2nd on both the CTED Bids and Contracts Page: <http://www.cted.wa.gov/site/1026/default.aspx> and on the home page of: www.experiencewa.com/industry
- 46. Q: How will The Department evaluate the accuracy of plans to generate private sector match for state funds?**
A: By how well the plan actually generates private sector match
- 47. Q: What has worked in the past? What hasn't worked so well?**
A: All research and information on current advertising and website performance is posted on the www.experiencewa.com/industry.
- 48. Q: What kind of measurement tools have been used previously?**
A: See Question #47 above.
- 49. Q: Can you describe your ideal agency relationship?**
A: Outstanding work at reasonable rates along with demonstrated ability to collaboratively engage the PR and Web contractors in responsive creative concepts and execution in their areas or responsibility..
- 50. Q: How will success be defined for the hired agency?**
A: The 2009/2010 Marketing Plan posted on the home page of www.experiencewa.com/industry includes a section on specific performance measures. In addition, the Contractor will be expected to create programs that generate co-op or other advertising/marketing private sector match.
- 51. Q: Is there a long term plan in place for acquiring matching funds from the private sector?**
A: No
- 52. Q: Do you have initiatives already established that will define your creative platform for 2009?**
A: The creative approach is open for review.
- 53. Q: What measurement tools do you have in place to monitor conversion from looking to booking?**
A: Advertising ROI will be measured using the Longwoods model. Website conversion is not possible although we are working toward the ability to measure consumer activity on paid business links and banners that are sold on the Tourism consumer website, www.experiencewa.com.
- 54. Q: With multiple stakeholders and agency partners, who ultimately owns the brand?**
A: Ideally the brand, if it is to be effective, must be owned by the Tourism Industry including private sector and Destination Marketing Organizations and hopefully by all Washington residents.
- 55. Q: From what I can see on that site we need to be a business within Washington (at the most 2 hrs. from your office) to be a part of this RFP. Is this true as far as you know?**
A: The RFQQ requires that the Contractor have an office within 2 hours of the Tourism Office in Olympia.

ATTACHMENT A

CTED Contract Face Sheet

Contract Number: <x00-00000-000>

8/8/07

Washington State Department of Community, Trade and Economic Development
 <Select Division, Board, or Commission>
 <Insert Unit or Office>
 <Insert Program(s) and/or Project(s)>

1. Contractor <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		2. Contractor Doing Business As (optional) <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
3. Contractor Representative <Insert name> <Insert title> <Insert phone> <Insert FAX> <Insert e-mail>		4. CTED Representative <Insert name> <Insert mailing address> <Insert title> <Insert physical address> <Insert phone> <Insert location> <Insert FAX> <Insert e-mail>	
5. Contract Amount <Insert contract total>	6. Funding Source Federal: <input type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>		7. Start Date <Insert start date>
8. End Date <Insert end date>			
9. Federal Funds (as applicable)		Federal Agency <Insert agency name>	
		CFDA Number: <Insert CFDA number>	
10. Tax ID # <Insert tax ID>	11. SWV # <Insert SWV>	12. UBI # <Insert award date>	13. DUNS # <Insert end date>
14. Contract Purpose <Briefly describe contract purpose>			
The DEPARTMENT and CONTRACTOR acknowledge and accept the terms of this CONTRACT and attachments and have executed this CONTRACT on the date below to start as of the date and year referenced above in Box # 7. The rights and obligations of both parties to this CONTRACT are governed by this CONTRACT and the following other documents incorporated by reference: CONTRACT Terms and Conditions including Attachment "A" <insert title> Attachment "B" – <insert description> "C" – <insert description>, <etc.>			
FOR THE CONTRACTOR _____ <Insert name> <Insert title> _____ Date		FOR THE DEPARTMENT _____ <Insert name> <Insert title> _____ Date APPROVED AS TO FORM ONLY <Type Name if Signature On File> _____ <Insert name> <Insert title> _____ Date <Insert Name> Boilerplate – Updated <Insert Date>	

SPECIAL TERMS AND CONDITIONS

STATEMENT OF WORK

- A. The Contractor will provide services and staff, and otherwise do all things necessary for or incidental to the performance of the work set forth below or in Attachment A – Statement of Work.
- B. Attachment B contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the Agency and the Contractor, and specific obligations of both parties.

TERM

This Contract must be filed by the Agency with the Office of Financial Management (OFM), and if required, approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void. The start date of this Contract shall be the date of last signature on the contract face sheet, or ten (10) working days after the OFM filing, whichever is later. No payment to the Contractor may be requested or made prior to the start date. The end date of this Contract shall be the date identified as the End Date on the contract face sheet.

COMPENSATION AND PAYMENT

- A. Amount of Compensation. The Agency shall pay an amount not to exceed \$_____ for the performance of all things necessary for or incidental to the performance of work as set forth in the Statement of Work. The Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:
- B. Expenses. The Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the Agency as reimbursable. The maximum amount to be paid to the Contractor for authorized expenses over the term of this contract shall not exceed \$ _____, which amount is included in the Contract total in Paragraph A, "Amount of Compensation." Such expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. The Contractor shall receive compensation for travel expenses at current State travel reimbursement rates. To receive reimbursement, the Contractor must provide a detailed breakdown of authorized expenses, identifying what was expended and when, and provide a receipt for any single expense in the amount of \$50.00 or more.

BILLING PROCEDURES

The Agency will pay the Contractor upon receipt of properly completed invoices, which shall be submitted to the Agency Representative not more often than monthly. The invoices shall include and document to the Agency's satisfaction a description of the work performed, the progress of the project, and fees and expenses.

The Contractor shall submit the final invoice within thirty (30) calendar days after the Contract end date, or no later than ten (10) calendar days past the <end of the biennium or fiscal year, or insert the appropriate date>, whichever is earlier. Payment shall be considered timely if made by the Agency within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this contract.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the State of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give the Agency thirty (30) calendar days advance notice of any insurance cancellation or modification.

The Contractor shall submit to the Agency within fifteen (15) calendar days of the Contract start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, owned or operated by the Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The State of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, or employee who is authorized to act on behalf of a non-governmental Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned advance or reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the Agency as beneficiary.
- B. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.
- C. The Contractor shall provide, at the Agency's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, and the amounts.

ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and State of Washington statutes and regulations
- Contract Face Sheet
- Special Terms and Conditions
- Attachment A –Statement of Work
- Attachment B – General Terms and Conditions
- Attachment C – [add any other attachments incorporated by reference on the contract face sheet]

CONTRACT REPRESENTATIVES

The Contract Representative for each of the parties shall be the contact person listed on page 1 for all communications and billings regarding the performance of this Contract. Each party shall promptly notify the other party in writing of any change in Contract Representative.

ATTACHMENT A
STATEMENT OF WORK

The Contractor will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Identify in detail all tasks, work elements and objectives of the contract, and timetables by which major parts of the work are to be completed and reviewed by the Agency. If written reports, other written documents or other deliverables are required, use the following language:

The Contractor shall produce the following deliverables by the dates indicated below:

Insert the name and description of each deliverable and its due date

All written reports required under this contract must be delivered to the Contract Representative, in accordance with the schedule above.

ATTACHMENT B

GENERAL TERMS AND CONDITIONS

DEFINITIONS - As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Agency" shall mean the agency of the State of Washington identified on the contract face sheet, any division, section, office, unit or other entity of the Agency, or any of the officers, employees, or other agents lawfully representing that Agency.
- B. "Contractor" shall mean the entity identified on the contract face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor.

ACCESS TO DATA – If this contract is for personal services, in compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this Contract to the Agency, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and the methodology for those models.

ADVANCE PAYMENTS PROHIBITED - No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by the Agency.

AMENDMENTS - This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT – Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Agency.

ATTORNEYS' FEES – In the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

AUDIT REQUIREMENTS

Contractors Meeting OMB Federal OMB Circular A-133 Requirements:

Contractors expending \$500,000 or more in federal funds from all sources during their fiscal year shall obtain an annual audit conducted in compliance with OMB Circular A-133, and the requirements of this Contract. A pro-rated share of reasonable audit costs may be charged by eligible Contractors so long as the audit cost is identified in the Contract budget that Contractors submit to the Department.

Submittal of Audit Reporting Package to the Department:

Contractors shall submit a copy of their audit reporting package to the Department within nine (9) months of the end of the Contractor's fiscal year. The submittal must comply with the report submission requirements of OMB Circular A-133, section 320(e)(1) or (2).

All other Contractors:

Contractors expending less than \$500,000 in federal funds from all sources, but expending \$100,000 or more in state funds during the fiscal year, shall obtain an annual independent financial audit. The audit shall be conducted in compliance with Generally Accepted Auditing Standards (GAAS) as promulgated by the AICPA and in compliance with Generally Accepted Government Auditing Standards (GAGAS) As promulgated in Government Auditing Standards (The Yellow Book) issued by the U.S. General Accounting Office (GAO). Audits Conducted in accordance with the requirements of OMB Circular A-133 are sufficient to meet this requirement. A pro-rated share of reasonable audit costs may be charged by eligible Contractors so long as the audit cost is identified in the Contract budget that Contractors submit to the Department, and so long as the funds so allocated are from state funds only. No federal funds can be used for audit costs by Contractors who do not meet the threshold expenditure requirements of OMB Circular A-133.

Submittal of Audit Report to the Department:

Contractors shall forward a copy of the audit report, corrective action plan for audit findings (if applicable), and management letter (if received), to the Department for this Contract within nine (9) months of the end of the Contractor's fiscal year.

Audits of state and local government entities shall be ordinarily performed by the State Auditor's Office. Audits of not-for-profit organizations shall be performed by Certified Public Accountants. OMB Circular A-133 audits shall be performed by CPAs who meet the requirements of GAGAS and are selected in accordance with OMB Circular A-110.

If the audit was conducted in compliance with OMB Circular A-133 the audit report must include the following in addition to the audit:

1. Schedule of Financial Assistance
2. Data Form
3. Audit Certificate
4. Corrective Action Plan for Audit Findings (if applicable)
5. Management Letter (if received)

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor shall respond to Department request for information or corrective action concerning audit issues within 30 days of the date of request.

Contractors shall maintain records and accounts so as to facilitate these audit requirements. Contractors are responsible for any exceptions found by audit or other monitoring and incurred by its own organization or its subcontractors.

The Department reserves the right to recover from the Contractor all disallowed costs resulting from audit or other monitoring.

The Contractor shall include the above audit requirements in any subcontracts entered into in pursuit of this contract.

As applicable, costs of the audit are an allowable expenditure.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY – If this contract is funded by federal funds, the Contractor certifies by signing this contract that to the best of its knowledge and belief that its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency,
- Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice,
- Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and;
- Have not within a three-year period preceding the signing of this contract had one or more public transactions (Federal, State, or local) terminated for cause of default.

Where the Contractor is unable to certify to any of the statements in this contract, the Contractor shall attach an explanation to this contract.

The Contractor agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Agency.

The Contractor further agrees by signing this contract that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions

1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.”

The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Agency for assistance in obtaining a copy of these regulations.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION – “Confidential Information” as used in this section includes:

- A. All material provided to the Contractor by the Agency that is designated as “confidential” by the Agency;
- B. All material produced by the Contractor that is designated as “confidential” by the Agency; and

- C. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Agency or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Agency with its policies and procedures on confidentiality. The Agency may require changes to such policies and procedures as they apply to this Contract whenever the Agency reasonably determines that changes are necessary to prevent authorized disclosures. The Contractor shall make the changes within the time period specified by the Agency. Upon request, the Contractor shall immediately return to the Agency any Confidential Information that the Agency reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

The Contractor shall notify the Agency within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

COMPLIANCE WITH LAWS - All activity pursuant to this Contract shall be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

COPYRIGHT PROVISIONS – Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the Agency effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the Agency with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

COVENANT AGAINST CONTINGENT FEES - The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

DISALLOWED COSTS - The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

DISPUTES – Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of the Agency, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

DUPLICATE PAYMENT – The Agency shall not pay the Contractor, if the Contractor has charged, or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

ENTIRE AGREEMENT - This Contract including the attachments identified in the Contract Face Sheet represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

ETHICS/CONFLICTS OF INTEREST - In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (RCW 42.52) and any other applicable state or federal law related to ethics or conflicts of interest.

GOVERNING LAW – This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION – To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the State of Washington, the Agency, all other agencies of State and all officers, agents and employees of the State, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated or reduced by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officers.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the State and its agencies, officers, agents or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR - The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the State of Washington or the Agency. The Contractor will not hold itself out as or claim to be an officer or employee of the Agency or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE - The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Agency may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

LICENSING, ACCREDITATION AND REGISTRATION - The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

LIMITATION OF AUTHORITY - Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS - In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the AGENCY. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION - During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies.

PUBLICITY - The Contractor agrees not to publish or use any advertising or publicity materials in which the State of Washington or the Agency's name is mentioned, or language used from which the connection with the State of Washington's or the Agency's name may reasonably be inferred or implied, without the prior written consent of the Agency.

RECAPTURE - In the event that the Contractor fails to perform this contract in accordance with state laws and/or the provisions of this contract, the Agency reserves the right to recapture funds in an amount to compensate the Agency for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the Agency. In the alternative, the Agency may recapture such funds from payments due under this contract.

Such right of recapture shall exist for a period not to exceed six years following contract termination. In the event that the Agency is required to institute legal proceedings to enforce the recapture provision, the Agency shall be entitled to its costs thereof, including attorneys' fees.

RECORDS MAINTENANCE - The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE – If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

RIGHT OF INSPECTION – At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

SAVINGS - In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the Agency may terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

SEVERABILITY - If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

SITE SECURITY - While on Agency premises, Contractor, its agents, employees, or Subcontractors shall comply with the Agency's security policies and regulations.

SUBCONTRACTING - The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the Agency.

If the Agency approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Agency in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the Agency if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal responsibility and compliance with the applicable terms and conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the Agency and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

TAXES - All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE / SUSPENSION - In event the Agency determines that the Contractor failed to comply with any term or condition of this Contract, the Agency may terminate the Contract upon written notice to the Contractor. Termination shall take effect on the date specified in the notice.

In the alternative, the Agency upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the Agency may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the Agency to terminate the Contract upon written notice to the Contractor.

"Termination For Cause" shall be deemed a "Termination For Convenience" when determined that the Contractor did not fail to comply with the terms of the Contract or when failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).

TERMINATION FOR CONVENIENCE - Except as otherwise provided in this Contract, the Agency may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the Agency shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES - After receipt of a notice of termination, except as otherwise directed by the Agency, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;

- C. Assign to the Agency all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the Agency; and
- D. Preserve and transfer any materials, contract deliverables and/or Agency property in the Contractor's possession as directed by the Agency.

Upon termination of the Contract, the Agency shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. The Agency may withhold any amount due as the Agency reasonably determines is necessary to protect the Agency against potential loss or liability resulting from the termination. The Agency shall pay any withheld amount to the Contractor if the Agency later determines that loss or liability will not occur.

The rights and remedies of the Agency under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

TREATMENT OF ASSETS - Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.

Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved in writing by the Agency, be used only for the performance of this contract.

The Contractor shall be responsible for any loss or damage to property of the Agency which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to recover the property or protect the property from further damage.

The Contractor shall surrender to the Agency all property of the Agency upon completion, termination or cancellation of this contract.

WAIVER - Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the Agency.