

STATE OF WASHINGTON  
Employment Security Department  
SOLE SOURCE POSTING

The Employment Security Department (ESD) contemplates awarding a sole source contract to Fast Enterprises, LLC to provide ESD with seven Fast developers to augment ESD staff, leverage their knowledge of the system, and assist with ongoing maintenance and operational support the Unemployment Tax and Benefits System requires.

Under the terms of the proposed contract the Vendor will:

- Assist with implementation of changes and enhancements to the UTAB system;
- Analyze problems and develop solutions;
- Assist with critical production incident resolution;
- Assist with knowledge transfer to ESD developers

The contract will be issued on or about August 6, 2019 for approximately 23 months. The dollar value is estimated at \$4,900,000.

Offerors contemplating the above requirements are required to submit capability statements detailing their ability to meet the state's requirements by August 2, 2019.

In the absence of other qualified sources, it is the state's intent to make a sole source award of the contract.

To submit capability statements or for questions, contact:

Contact Name: Eric Tompkins  
E-mail: [esdgpcontractsoffice@esd.wa.gov](mailto:esdgpcontractsoffice@esd.wa.gov)  
Phone: (360) 902-9327

**CONTRACT K6366 BETWEEN  
WASHINGTON STATE  
EMPLOYMENT SECURITY DEPARTMENT  
AND  
Fast Enterprises, LLC**

**1. INTRODUCTION**

This Contract is made and entered into by and between the Washington State Employment Security Department, hereinafter called "ESD", located at 212 Maple Park Avenue SE, Olympia, WA 98501 and Fast Enterprises LLC, hereinafter called "Contractor", at 7229 S. Alton Way, Centennial CO 80112.

**2. PURPOSE**

The purpose of this Contract is to make enhancements to the Unemployment Tax and Benefits System ("UTAB") as described in Exhibit A.

Therefore, in consideration of the mutual promises and covenants as hereinafter set forth, and other good and valuable consideration, the Parties agree to the following Contract:

**3. STATEMENT OF WORK**

The Contractor shall furnish the necessary personnel and services and otherwise do all things necessary for or incidental to the performance of the work set forth in Exhibit A, Statement of Work, attached hereto and incorporated herein.

**4. CONTRACT MANAGEMENT**

ESD's Contract Manager shall provide the Contractor the assistance and guidance necessary for the performance of this Contract. ESD's Contract Manager shall be responsible for the review and acceptance of the Contractor's performance, deliverables, invoices and expenses, and accepting any reports from the Contractor.

The ESD Contract Manager responsible for management of this Contract is:

Name: Deb Calcote

Title: Unemployment Insurance Information Technology Systems Manager

Phone Number: 360-507-9539

E-mail: [dcalcote@esd.wa.gov](mailto:dcalcote@esd.wa.gov)

The Contractor staff member responsible for management of this Contract is:

Name: James Harrison

Title: Partner

Phone Number: 877-275-3278

E-mail: [jharrison@fastenterprises.com](mailto:jharrison@fastenterprises.com)

**5. TERMS AND CONDITIONS**

All rights and obligations of the parties to this Contract shall be subject to and governed by the Terms and Conditions contained in the text of this Contract instrument and the General Terms and Conditions attached hereto as Exhibit B and incorporated herein.

## **6. PERIOD OF PERFORMANCE**

Subject to its other provisions, the period of performance of this Contract shall start on August 6, 2019 or when signed by both parties, whichever is later, and end on June 30, 2021 unless funding has been exhausted or terminated sooner as provided herein.

## **7. REPORTING**

The Contractor shall provide the ESD Program Manager monthly status report(s) on Contract activity. The status report will document the work accomplished related to the UTAB system enhancements detailing deliverables and schedules.

## **8. COMPENSATION**

The total maximum consideration under this Contract K6366 will be **\$4,900,000.00, including all taxes, fees and other expenses**. The work to be performed during this project is time and materials based at \$190 per hour. Payment is approved monthly once ESD has reviewed and verified that the Contractor has performed work as detailed herein.

## **9. PAYMENTS**

ESD will pay Contractor within 30 calendar days of receipt of properly executed invoice vouchers. Invoices shall include such information as is necessary for ESD to determine the date and exact nature of all expenditures. Each voucher will clearly reference the ESD Contract number **K6366** and percent of the cost of each deliverable, which the Contractor would pay to any subcontractors, if any, to accomplish the tasks and to produce the deliverables under the ESD Contract.

No payment in advance or in anticipation of services or supplies under this ESD Contract shall be made by ESD. Claims for payment submitted by the Contractor to ESD for costs due and payable under this ESD Contract that were incurred prior to the expiration date shall be paid to the Contractor, if received by ESD within 90 days after the expiration date.

Payment by ESD will be considered timely if a check or warrant is postmarked within 30 days of receipt of properly executed invoice vouchers.

The Contractor will not be reimbursed for any travel expenses.

## **10. BILLING PROCEDURE**

Fast will provide tracking and timesheet summaries to account for time and materials charges. Contractor shall submit invoices monthly for work performed under this Contract. Invoices shall include such information as is necessary for ESD to determine the date and exact nature of all expenditures. Invoices shall be submitted electronically to ESD at [VendorPayments@ESD.WA.GOV](mailto:VendorPayments@ESD.WA.GOV) with a mandatory copy to ESD's Contract Manager identified in Section 3 (Contract Management).

## **11. SOLE SOURCE CONTRACT**

Under the provisions of Chapter 39.26 RCW, this Contract is required to be filed with the state of Washington, Department of Enterprise Services (DES). Contracts required to be so filed are not effective, and no work may be commenced nor payment made therefore, until ten (10) working days following the date of filing, and until approved, if required, by DES. ESD will, prior to the effective date of this

Contract, notify the Contractor of the date this Contract was so approved and its effective date. In the event DES fails to approve this Contract, it shall be null and void.

## **12. ADDITIONAL/FUTURE SERVICES**

ESD reserves the right to purchase additional enhancements, maintenance, and installation from the Contractor. The decision to add additional services shall be at ESD's sole discretion and is based upon budget availability. A contract amendment to add any additional funding would be required for these additional purchases or services.

## **13. NO AUTOMATIC RENEWAL**

This Contract will not automatically renew. ESD will provide written notice to Contractor of its intent to renew this Contract at least sixty (60) days before the scheduled termination date.

## **14. REVIEW, APPROVAL, AND ACCEPTANCE PROCESS**

Unless otherwise noted in this Contract or agreed upon in writing by both Parties, acceptance testing will be performed on-site, on ESD's platform, using ESD's SharePoint Site, the Fast Tool suite FCR, SQR and workbench.

Prior to acceptance testing, Contractor will furnish ESD with documentation of the deliverable item, the expected performance, and agreed upon acceptance criteria.

The review, approval, and acceptance process for all contract deliverables as specified in Statement of Work (Exhibit A) will be the responsibility of ESD's Contract Manager. ESD's Contract Manager will be responsible for ensuring that the approval process follows the proper procedures prior to acceptance/rejection of deliverables by ESD in accordance with the processes identified in ESD's project management plan.

## **15. FINAL ACCEPTANCE**

"Final Acceptance" is defined as: The successful completion of deliverables prioritized and worked through SQR or when funding has been exhausted. Tentative priorities are stated in the attached Statement of Work (Exhibit A) and will follow the Review, Approval and Acceptance Process defined above.

## **16. REPRESENTATIONS AND WARRANTIES**

Contractor represents and warrants to ESD that neither Contractor, in connection with performing the services in performance of this Contract, nor the completed product delivered by Contractor, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. Contractor further represents and warrants to ESD that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this Contract or in delivery of the completed product. Contractor further represents and warrants to ESD that neither Contractor nor any other company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.

## 17. CONFIDENTIALITY

Contractor shall not use or disclose any information it receives from the ESD under this Contract, that the ESD has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by ESD. ESD shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential. The duty of the ESD and Contractor to maintain confidentiality of information under this section continues beyond the term of this Contract. The misuse or unauthorized release of private and confidential information may subject Contractor, its employees or agents to a civil penalty of Five Thousand dollars (\$5,000) per incident and other applicable sanctions under state and federal law.

## 18. PROTECTION OF CONFIDENTIAL INFORMATION

a. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Confidential Information **includes, but is not limited to**, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency or third party source code or object code and associated documentation, agency security data, or Unemployment Insurance Claimant information, or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without ESD's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by ESD. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

b. Immediately upon expiration or termination of this Contract, Contractor shall, at ESD's option: (i) certify to ESD that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to ESD; or (iii) take whatever other steps ESD requires of Contractor to protect ESD's Confidential Information.

c. Contractor, upon request and to the extent available without significant additional cost to Contractor, provide documentation of the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection

d. ESD reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

e. Violation of this Section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

**f. Injunctive Relief and Indemnity.** Contractor will immediately report to the Department any and all unauthorized disclosures or uses of the Department's Confidential Information of which it or its staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of the Department's Confidential Information to others may cause immediate and irreparable harm to the Department. If Contractor should publish, use or disclose such Confidential Information to others without authorization, the Department shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Contractor shall indemnify and hold harmless the Department from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) to the extent caused by or arising from Contractor's failure to fulfill its obligations related to the Department's Confidential Information.

**g. Nondisclosure of Other State Information.** The use or disclosure by Contractor of any Department or State information not necessary for, nor directly connected with, the performance of Contractor's responsibility with respect to Services is prohibited, except upon the express written consent of the Department.

- 1) **Security Requirements.** Each party, and its officers, employees, subcontractors and agents shall at all times comply with all applicable security standards, practices, and procedures which are equal to or exceed those of ESD, including but not limited to the Washington State Office of the Chief Information Officer IT Standards, with respect to information and materials which come into each party's possession and to which such party gains access under this Contract. Such information and materials include without limitation all Proprietary Information and Confidential Information.
- 2) Contractor will provide ESD with evidence of Contractor's actions to ensure secure development techniques and practices.
- 3) Contractor will allow on-site inspections of records, personnel, equipment, and systems related to the ESD project when required by Washington State policy, ESD policy, or a contract signed by ESD. On-site inspections may be performed by ESD, the US Department of Labor, the Social Security Administration, the IRS, the Office of Child Support Enforcement, the Wage Record Interchange System, the Bureau of Labor Statistics, or their designated representatives. All third parties will be required to sign appropriate nondisclosure agreements to protect Contractor's Confidential Information.
- 4) Contractor will comply with security plan for UTAB.
- 5) The Software provided by Contractor will support identifying all sensitive and federal Data.
- 6) Contractor will ensure the Software is compatible with ESD security infrastructure such as anti-virus protection.
- 7) Contractor will ensure that sessions are automatically closed after a reasonable period of inactivity in accordance with applicable ESD standards.
- 8) The Software will log all access to sensitive and Federal data, including access by administrators.
- 9) The Software will use the agency standard security authentication for internal and external access.
- 10) Contractor and ESD will jointly develop documentation of security controls within the application consistent with IRS Publication 1075.
- 11) Contractor staff will not access Federal Tax Information (FTI) without prior approval by the IRS Office of Safeguards.
- 12) Contractor will correct any reported or identified Software security flaws.
- 13) The Software shall support protection of logging facilities and log information from tampering and unauthorized access.

**Interpretation of Laws.** Contractor is not required or obligated to interpret how any law, ordinance, statute or regulation is or should be implemented into the System. The State is solely responsible for any damages resulting from the System performing in accordance with instructions from the State.

**19. LIMIT ON LIABILITY**

Excluding Contractor’s indemnification obligations, the parties agree that neither Contractor nor ESD will be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. In no event shall one party’s Aggregate Liability to the other party under this Contract exceed the Contract Value.

**20. ELECTRONIC SIGNATURES, COUNTERPARTS, AND DELIVERY**

The parties agree that this contract may be executed in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement; and that electronic signature, or e-signature, of this contract shall be the same as execution of an original ink signature; and that E-mail, electronic, or facsimile delivery of a signed copy of this contract shall be the same as delivery of an original.

**21. ALL WRITINGS CONTAINED HEREIN**

This Contract sets forth in full the entire agreement of the parties in relation to the subject matter hereof. Any other agreement, representation, or understandings, verbal or otherwise, relating to the professional services of the Contractor or otherwise dealing in any manner with the subject matter of this Contract is hereby deemed to be null and void and of no force and effect whatsoever.

**22. ORDER OF PRECEDENCE**

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

- A. Applicable Federal and State Statutes and Regulations;
- B. Those Terms and Conditions as contained in this basic contract instrument;
- C. The General Terms and Conditions attached hereto as Exhibit B and incorporated herein;
- D. The Statement of Work attached hereto as Exhibit A and incorporated herein; and
- E. Any other provisions of this Contract whether incorporated by reference or otherwise.

Washington State Employment  
Security Department

Fast Enterprises, LLC

Jairus Rice

James Harrison

By

By

Chief Information Officer

Partner

Title

Title

Signature

Signature

Date

Date

## **Statement of Work**

### **UTAB Fast Developer Resources**

#### **Purpose**

The Employment Security Department (ESD) will fund the UTAB team to bring on seven Fast developers who will augment ESD staff and leverage their knowledge and expertise with the system to assist ESD with the ongoing maintenance and operational support the system requires. The changes and enhancements include Service Requests (SQRs) prioritized by business to improve service quality and efficiency. The development work related to this effort will be completed by Fast Enterprises, the vendor that maintains our system. ESD has budgeted \$4,900,000 for the development work over the 19-21 biennium.

#### **Fast Resources**

Fast will provide additional resources above and beyond ESD's current Fast maintenance resources. These Fast resources will charge to a time and materials budget when working on the prioritized SQRs. During this effort the Unemployment Insurance Benefits Information Technology Systems Manager will be the contact for the vendor unless otherwise specified.

#### **Right of ESD to Reject Employees or Subcontractors**

ESD shall have the right to reject any of Fast's employees (i) whose qualifications, in ESD's good faith and reasonable judgment, do not meet the standards established by ESD as necessary for the performance of the Services; or (ii) whom ESD reasonably identifies as being unacceptable due to poor performance, disrupting the progress on the project, or violation of applicable laws, provided that such rejection does not violate any applicable law or government regulation.

#### **Scope of Work**

This ongoing maintenance and operational support services for the system may include assisting ESD with and of the following tasks, which represents a non-exhaustive list of services that may be required through the term of this contract:

- Business prioritized SQRs
- Problem analysis and solution design
- Critical production incident resolution
- Knowledge transfer to ESD developers



ESD information technology staff will work in conjunction with business on prioritizing the SQRs. Fast will provide resources with the necessary skills to complete as many of the prioritized SQRs as possible under the budget constraint.

**Deliverable Breakdown**

The work to be performed during this project is time and materials based at \$190 per hour. The funding for Fast resources is \$4,900,000. Fast will provide SQR tracking and timesheets to account for time and materials charges.

GENERAL TERMS AND CONDITIONS INDEX

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**EQUAL OPPORTUNITY IS THE LAW ..... 1**

**GENERAL TERMS AND CONDITIONS****PART I - DEFINITIONS**

As used throughout this Contract, the following terms shall have the meanings set forth below.

- A. "CLIENT" shall mean any agency, firm, organization, individual or other entity applying for or receiving services under this Contract.
- B. "CONTRACTOR" shall mean that agency, firm, organization, individual or other entity performing services under this Contract. It shall include any SUBCONTRACTOR retained by the prime contractor as permitted under the terms of this Contract.
- C. "AGENCY" shall mean the Employment Security Department of the state of Washington, any division, section, office, unit or other entity of that Agency or any of the officers or other officials lawfully representing the Agency.
- D. "MINORITY BUSINESS ENTERPRISE," "MINORITY-OWNED BUSINESS ENTERPRISE," or "MBE" shall mean a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by the Office of Minority and Women's Business Enterprises. The minority owners must be United States citizens or lawful permanent residents.
- E. "SUBCONTRACTOR" shall mean one, not in the employment of the Contractor, who is performing all or part of those services under this Contract under Contract from the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" mean SUBCONTRACT(s) in any tier.
- F. "WOMEN'S BUSINESS ENTERPRISE," "WOMEN-OWNED BUSINESS ENTERPRISE," or "WBE" shall mean a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by the Office of Minority and Women's Business Enterprises. The women owners must be United States citizens or lawful permanent residents.

**PART II - GENERAL CONDITIONS****A. ACCESS TO RECORDS AND FACILITIES / AUDITS**

The Office of the State Auditor, federal grantor agency, the Comptroller General of the United States or any of their duly authorized representatives, and any persons duly authorized by the Agency shall have full access to and the right to examine and copy any or all books, records, papers, documents and other material regardless of form or type which are pertinent to the performance of this Contract, or reflect all direct and indirect costs of any nature expended in the performance of this Contract. In addition, these entities shall have the right to access, examine and inspect any site where any phase of the program is being conducted, controlled or advanced in any way. Such sites may include the home office, any branch office, or other locations of the Contractor. The Contractor shall maintain its records and accounts in such a way as to facilitate the audit and examination, and assure that Subcontractors also maintain records that are auditable. Access shall be at all reasonable times not limited to the required retention period but as long as records are retained, and at no additional cost to the Agency.

**B. ADVANCE PAYMENTS PROHIBITED**

No payment in advance or in anticipation of services or supplies to be provided by this Contract shall be made by the Agency. In cost reimbursement contracts, the Contractor shall be entitled only to reimbursement for expenses incurred during the contract period for work accomplished as provided elsewhere in this Contract. In fixed unit price contracts, the Contractor shall be entitled only to payment for work accomplished during the contract period and in accordance with the terms of this Contract.

**C. ASSIGNMENT**

The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

**D. ASSURANCES**

The Agency and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current or future federal, state or local laws, rules and regulations.

If this Contract is funded by the Workforce Investment Act (WIA), the Contractor shall conduct the program in accordance with the existing or hereafter amended WIA, the U.S. Department of Labor's regulations relating to WIA, and the Washington State WIA Policies.

**Assurances Under Title I of WIA**

As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- a. Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship status as a lawfully admitted immigrant authorized to work in the United States, or participation in any WIA Title I – financially assisted program or activity;
- b. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;
- c. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
- d. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- e. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
- f. The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I – financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I – financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

#### **E. ATTORNEY FEES AND COSTS**

If any litigation is brought to enforce this Contract or any litigation arises out of any contract term, clause or provision, each party shall be responsible for its own expenses, costs and attorney fees.

#### **F. CHANGES AND MODIFICATIONS**

- a. The Agency or Contractor may, from time to time, request changes in the services to be performed, or in the project undertaken. Such changes, including any increase or decrease in the amount of payment or reimbursement, which are mutually agreed upon by and between the Agency and the Contractor shall be incorporated in written modifications to this Contract.
- b. The Contractor may make changes to the budget, without a formal modification to the contract and without securing the prior approval of the Agency, under the following conditions:
  - i. The revisions must not result in the need for additional funding.
  - ii. Such changes must not alter the scope of the Contract's Statement of Work and must not be prohibited by applicable federal or state statutes or regulations.
  - iii. No transfers are allowed from the training category or direct payments to trainees to other expense categories without a formal contract modification.
  - iv. The Contractor may vary actual expenditures within the major cost categories of the budget without securing the prior approval of the Agency when such

variances do not exceed ten percent (10%) of the total costs originally budgeted in that category. Such variances may be between line items only and may not alter the total amount of money originally budgeted in the major cost category. The Contractor will send written notices of such changes to the Agency.

- c. Alteration of the terms of this Contract shall be valid only when in writing and signed by the authorized representatives of the parties.

#### **G. CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by the Agency that there is a violation of the Ethics in Public Service Act, RCW 42.52, or any similar statute involving the Contractor in the procurement of, or performance under, this Contract.

In the event this Contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agency makes any determination under this clause shall be an issue and may be reviewed as provided in the DISPUTES clause of this Contract.

#### **H. CONFORMANCE**

If any provision of this Contract is in conflict with or violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### **I. CONTRACTOR REGISTRATION**

The Contractor agrees to complete registration with the Department of Revenue, Department of Labor and Industries New Account Division and Employment Security Tax Administration by having filed a master business application prior to the execution of this Contract and to pay any taxes, fees, or deposits required by the state as a condition of providing services under this Contract. Contractor will provide the Agency with its Washington Unified Business Identifier (UBI) number and its Washington Department of Revenue tax account number, and, if applicable, its Labor and Industries account number and its Unemployment Insurance tax number, if registration with these agencies occurred prior to January 2, 1987. Required information will be provided prior to the Contractor commencing services under this Contract.

#### **J. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced for the sole use of the State 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 "Materials"). 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, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, 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 created for the sole use of the State. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under this Contract, but that incorporate preexisting materials not produced under this Contract, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display in accordance with the License granted to use Contractor's FastUI Software and subject to the ESD's confidentiality obligations. The Contractor warrants and represents that 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.

In cases where such materials have been purchased with federal funds, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes;

- a. The copyright in any work developed under a contract; and
- b. Any rights of copyright to which a contractor purchases ownership with contract funding support.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of data 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 Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

#### **K. 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 otherwise recover by other means the full amount of such commission, percentage, brokerage or contingent fees. In no event shall the Agency be liable for any brokerage or contingent fees.

#### **L. DEBARMENT AND SUSPENSION**

The Contractor has provided, in Exhibit D to this Agreement, its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549, and "Debarment and Suspension, codified at 29 CFR part 98.



**M. DISALLOWED COSTS**

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

**N. DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a disputes hearing, a Dispute Resolution Board, or arbitration.

**O. DUPLICATION OF BILLED COSTS**

The Contractor shall not bill the Agency for costs if the Contractor is being paid by another funding source for those same costs. Workforce Investment Act (WIA) costs are defined as any (1) administration, (2) direct training or (3) training related or supportive service charges.

**P. 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.

**Q. INDEMNIFICATION, INSURANCE AND BONDING**

- a. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the state of Washington, the Agency, and all officials, agents, and employees of State, from and against all claims for injuries or death to the extent arising out of or resulting from the performance of this Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any Subcontractor, or its employees.

Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this Section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to Purchaser within five Business Days of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at Purchaser's sole option, result in this Contract's termination.

All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.

Vendor shall furnish to Purchaser copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide evidence of coverage may, at Purchaser's sole option, result in this Contract's termination.

By requiring insurance herein, Purchaser does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to Purchaser in this Contract.

For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall continue such coverage and provide Purchaser with certificates of insurance for one year beyond the expiration or termination of this Contract.

Vendor shall pay premiums on all insurance policies. Such insurance policies shall have a condition that they not be revoked by the insurer until 30 calendar days after notice of intended revocation thereof shall have been given to Purchaser by the insurer.

#### **Minimum Acceptable Limits**

The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, with a combined single limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
- e) Professional Liability Errors and Omissions, with a deductible not to exceed \$100,000, conditioned upon this Section, and coverage of not less than \$10 million claims;
- f) Crime Coverage with a deductible not to exceed \$100,000, conditioned upon this Section, and coverage of not less than \$1 million single limit per occurrence, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty; and,
- g) Cyber-security insurance, with coverage of not less than \$1 million per claim/\$2 million general aggregate, that includes but is not limited to coverage for first-party

- costs and third-party claims from: (i) failure to protect data, including unauthorized disclosure, use or access, (ii) security failure or privacy breach, (iii) failure to disclose such breaches as required by law, regulation or contract, (iv) notifications, h) public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber-incident, (v) interruptions of business operations, (vi) network security failure, (vii) cyber-extortion, (viii) cyber-terrorism, (ix) communications and media liability (e.g., , title, slogan, in the policyholder's covered material), (x) EFT, computer, and electronic transmissions fraud and theft, and (xi) other cyber-liability and cyber-crime expenses.

## **R. INDEPENDENT CAPACITY OF CONTRACTOR**

The parties intend that an independent Contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as, nor 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 employee under law. Conduct and control of the work will be solely with the Contractor.

## **S. INFORMATION TECHNOLOGY RESOURCES**

All WorkSource partners, customers and WIA service providers are required to conserve and protect state resources for the benefit of the public interest. This requirement is necessary to maintain public trust, conserve public resources and protect the integrity of state information resources and systems. Active compliance with this requirement will limit risk and liability for WorkSource partners and customers, as well as individual employees.

All WorkSource partners, customers and WIA service providers must conform to WIA Policy #3460 and ESD Policy and Procedure #2016, each of which is hereby incorporated by reference when using ESD-provided state-owned information technology resources.

## **T. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with the 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, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund.

The Agency may:

- a. Deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by Agency under this Contract; and
- b. 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 right to collect from the Contractor.

**U. LICENSING AND ACCREDITATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards, necessary for the performance of this Contract.

**V. LIMITATION OF SIGNATURE AUTHORITY**

Only the Commissioner or Commissioner'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 of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Commissioner or Commissioner's delegate.

**W. LOBBYING ACTIVITIES**

The Contractor has provided, in Exhibit C to this Agreement, its certification that it is in compliance with the requirements of 29 CFR Part 93, restricting lobbying activities. The Contractor shall also make available upon request required disclosure information if the Contractor participates in lobbying activities during the Contract period.

**X. MAINTENANCE OF EFFORT**

The Contractor shall ensure the following:

- a. That funds for training programs do not impair existing contracts for services, or result in the substitution of Federal funds for other funds in connection with work to be performed, including services normally provided by temporary, part-time or seasonal workers, or through subcontracting such services; and
- b. That funds for training programs result in an increase in employment and training opportunities over those which would otherwise be available.

**AA. NONDISCRIMINATION**

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity funded in whole or in part by this Contract on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity.

The Contractor shall comply with the nondiscrimination and equal opportunity laws described in Section 188 of WIA of 1998, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972; and the Americans with Disabilities Act of 1990.

The Contractor must not discriminate in any of the following areas:

- a. Deciding who will be admitted, or have access, to any WIA Title I - financially assisted program or activity;
- b. Providing opportunities in, or treating any person in regard to, such a program or activity; or
- c. Making employment decision in the administration of, or in connection with, such a program or activity.

The Contractor also ensures that it will comply with 29 CFR, Part 37; including the Methods of Administration (MOA) developed by the state of Washington Employment Security Department and any WIA policies and procedures issued.

The Contractor shall promptly notify the State Equal Opportunity (EO) Officer at the Employment Security Department of any administrative enforcement actions or lawsuits filed against it alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, or political affiliation or belief; and against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity. The State EO Officer will notify the Director, Civil Rights Center (CRC), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

The Contractor shall post the attached "Equal Opportunity is the Law" notice prominently in reasonable numbers and places; shall disseminate the notice in internal memoranda, other written or electronic communications; shall include the notice in handbooks or manuals; make the notice available during orientations and to each participant. A signed copy of the notice will also be made a part of the participant's file. All medical information and/or information regarding a participant's disability must be kept confidential and maintained in a file that is separate from the participant's file.

The Contractor shall include the following Equal Opportunity tagline in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe WIA Title I financially assisted programs or activities:

“Insert name of Organization is an equal opportunity employer and provider of employment and training services. Auxiliary aids and services are available upon request to persons with disabilities.”

In the event that one of the parties hereto refuses to comply with the above provision, the TERMINATION, SUSPENSION AND REMEDIES clause (Section NN) may be utilized.

**BB. PATENT RIGHTS**

The Agency retains the entire right, title and interest to each invention developed for the sole use of the Agency during the performance of Contract services. The Agency shall receive prompt, written notice of each notice or claim of patent infringement received by the Contractor with respect to patents developed during its performance of Contract services for the sole use of the Agency.

**CC. PELL GRANTS**

If this Contract is WIA funded and involves participant training at institutions that are certified to participate in student financial aid, as appropriate the Contractor shall incorporate the use of Pell Grants to offset the costs of training, such as tuition, books, supplies, transportation, child care, miscellaneous expenses, and/or special costs for disabled participants.

**EE. RECORD RETENTION**

Contractor shall retain all books, records, documents and other material which reflect all direct and indirect costs of any nature expended in the performance of this Contract, including participant data for a period of three years after final payment under this Contract if WIA funded, or six years from termination of the Contract if non-WIA funded. Records shall be retained beyond the above referenced retention periods if litigation or audit is begun prior to the end of the period referenced above, or if a claim is instituted prior to the end of the period referenced above involving the Contract covered by the records. In these instances, the records will be retained until the litigation, claim or audit has been finally resolved.

Records regarding discrimination complaints under WIA and actions taken thereunder shall be maintained for a period of not less than three years from the date of resolution of the complaint.

**FF. SAFEGUARDING OF CLIENT INFORMATION**

The use or disclosure by any party of any information concerning a program recipient or client for any purpose not directly connected with the administration of the Agency's or the Contractor's responsibilities with respect to contracted services provided under this Contract is prohibited except by written consent of the recipient or client, his/her attorney or his/her legally authorized representative.

The Contractor shall use any private and confidential information provided under this Contract solely for the purpose for which the information was disclosed. The Contractor shall not disclose or misuse any private and confidential information under this Contract unless the disclosure is authorized by law. The misuse or unauthorized release of private and confidential information may subject contractor, its employees or agents to a civil penalty of \$5,000 and other applicable sanctions under state and federal law (50.13 RCW).

**GG. SALARY AND BONUS LIMITATIONS (NOT APPLICABLE TO VENDORS)**

In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading 'Employment and Training' that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to vendors providing goods and services as defined in OMB 2 CFR 200. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from sub-recipients of such funds, taking into account factors including the relative cost-of-living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer Federal programs involved including Employment and Training Administration programs. See Department of Labor Training and Employment Guidance Letter (TEGL) 5-06 for further clarification.

The incurrence of costs and receiving reimbursement for these costs under this award certifies that your organization has read the above special condition and is in compliance.

**HH. SEVERABILITY**

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.

**II. SINGLE AUDIT ACT REQUIREMENTS**

If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) 2 CFR 200, the Contractor shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance Numbers. The Contractor shall make the Contractor's records available for review or audit by officials of the federal awarding agency, the Comptroller General of the United States, the General Accounting Office, Employment Security Department, and the Washington State Auditor's Office. The Contractor shall incorporate OMB 2 CFR 200 audit requirements into all contracts between the Contractor and its Subcontractors who are sub-recipients. The Contractor shall comply with any future amendments to OMB 2 CFR 200 and any successor or replacement Circular or regulation.

If the Contractor expends \$750,000 or more in federal awards during the Contractor's fiscal year, the Contractor shall procure and pay for a single or program-specific audit for that year. Upon completion of each audit, the Contractor shall submit to the Contracting Officer named in this Contract the audit report and other appropriate documentation as required in OMB 2 CFR 200.

**JJ. SITE SECURITY**

While on Agency premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

**KK. SMALL, MINORITY, AND WOMEN-OWNED BUSINESS ENTERPRISES**

The Contractor shall provide to qualified small, minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Contract.

**LL. SUBCONTRACTING**

The Contractor shall not subcontract work or services contemplated under this Contract and/or use an outside consultant except as provided for in the Statement of Work without obtaining the prior written approval of the Agency for the authority to enter into subcontracts. Contractor acknowledges that such approval for any subcontract does not relieve the Contractor of its obligations to perform hereunder. The Agency retains the authority to review and approve or disapprove all subcontracts. At the Agency's request, the Contractor will forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.

For any proposed Subcontractor the Contractor shall:

- a. Be responsible for Subcontractor compliance with these General Terms and Conditions and the subcontract terms and conditions; and
- b. Ensure that the Subcontractor follows the Agency's reporting formats and procedures as specified by the Agency.

**MM. TAXES**

It is mutually agreed and understood that all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor staff be the sole liability of the Contractor.



**NN. TERMINATION, SUSPENSION AND REMEDIES****a. Termination or Suspension for Cause**

In the event the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency has the right to suspend or terminate this Contract. Before suspending or terminating this Contract, the Agency shall notify the Contractor in writing of the need to take corrective action within 30 calendar days or as otherwise mutually agreed. If corrective action is not taken the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between this Contract and the replacement or cover Contract for the services being provided herein and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time

The Agency reserves the right to suspend all or part of this Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate this Contract. A termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

The Agency reserves the right to immediately suspend all, or part of, this Contract, and to withhold further payments, or to prohibit the Contractor from incurring additional obligations of funds when it has reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of the Contractor under this Contract.

**b. Termination for Funding Reasons**

The Agency may unilaterally terminate this Contract in the event that funding from federal, state or other sources becomes no longer available to the Agency or is not allocated for the purpose of meeting the Agency's obligation hereunder. In the event funding is limited in any way, this Contract is subject to re-negotiation under any new funding limitations and conditions. Such action is effective upon receipt of written notification by the Contractor.

**c. Termination or Suspension for Convenience**

Except as otherwise provided in this Contract, the Agency may, by ten (10) days' written notice, beginning on the second day after mailing, suspend or terminate this Contract, in whole or in part. If this Contract is so suspended or 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 suspension or termination. If this Contract is suspended, the Schedule shall be delayed for a period of time equal to the period of such suspension. The Agency may, by ten (10) days' written notice, beginning on the second day after mailing, lift the suspension of the Contract, in whole or in part, at which time the Schedule and the parties' right and obligations shall resume to the extent that the suspension is lifted.

d. Termination for Withdrawal of Authority

In the event that Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, Purchaser may terminate this Contract by seven calendar days or other appropriate time period by written notice to Vendor. No penalty shall accrue to Purchaser in the event this Section shall be exercised. This Section shall not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party.

**OO. TERMINATION PROCEDURE**

Upon termination of this Contract, the Agency, in addition to any other rights provided in this Contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the TREATMENT OF ASSETS clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency and the amount agreed upon by the Contractor and the Agency for (1) completed work and service(s) for which no separate price is stated; (2) partially completed work and services; (3) other property or services which are accepted by the Agency; and (4) the protection and preservation of property, unless the termination is for default, in which case the Agency shall determine the extent of liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the DISPUTES clause of this Contract. The Agency may withhold from any amounts due to the Contractor such sum as the Agency determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

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

- a. Stop work under this Contract on the date, and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of work under this Contract as is not terminated;
- c. Assign to the Agency, in the manner, at the times, and to the extent directed by 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.
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency to the extent the Agency may require, which approval or ratification shall be final for all purposes of this clause;
- e. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agency any property which, if the Contract had been completed, would have been required to be furnished to the Agency;
- f. Complete performance of such part of the work as shall not have been terminated by the Agency; and

- g. Take such action as may be necessary, or as the Agency may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

**PP. TREATMENT OF ASSETS**

- a. Title to all property furnished by the Agency shall remain in the Agency. Title to all property purchased by the Contractor the cost of which the Contractor has been 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. The title shall only pass to the Contractor if the Agency specifically agrees to grant title in this Contract for asset(s) purchased.
- b. Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein, or approved by the Program Manager in writing, be used only for the performance of this Contract.
- c. Property will be returned to the Agency in like condition to that in which it was furnished to the Contractor, normal wear and tear excepted. The Contractor shall be responsible for any loss or damage to property of the Agency in the possession of the Contractor which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain said property in accordance with sound management practices.
- d. If any Agency property is damaged or destroyed, the Contractor shall notify the Agency and shall take all reasonable steps to protect that property from further damage.
- e. The Contractor shall surrender to the Agency all property of the Agency upon completion, termination or cancellation of this Contract.
- f. All reference to the Contractor under this clause shall include any employees, agents or Subcontractors.

**QQ. USE OF NAME PROHIBITED**

The Contractor shall not in any way contract on behalf of or in the name of the Agency. Nor shall the Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of the Agency. However, Contractor may publicize (i) that Contractor has a contract with the State, and (ii) the Contract effective date, the Contract term, the Contract scope, and the Contract value without prior written consent from the State.

**RR. 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 signed by authorized representative of the Agency.

**SS. ENERGY POLICY AND CONSERVATION ACT**

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163, 89 Stat. 871).

**TT. CLEAN AIR ACT**

The Contractor shall comply with all applicable standards. Orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

**UU. DAVIS-BACON ACT**

The Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by Grantees and sub-grantees when required by Federal grant program legislation.

**VV. COPELAND ANTI-KICKBACK ACT**

The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair).

**WW. WAGES AND HOURS**

The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)



**STATE OF WASHINGTON  
EMPLOYMENT SECURITY DEPARTMENT  
PO Box 9046, • • Olympia, WA 98507-9046**

**EQUAL OPPORTUNITY IS THE LAW**

**29 CFR Part 37.30**

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas: Deciding who will be admitted, or have access, to any WIA Title I-financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

If you think that you have been subjected to discrimination under a WIA Title I-financially assisted program or activity, you may file a complaint within one hundred eighty (180) days from the date of the alleged violation with either: the recipient's Equal Opportunity Officer (or person whom the recipient has designated for this purpose); or the Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until ninety (90) days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within ninety (90) days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within thirty (30) days of the ninety- (90-) day deadline (in other words, within one hundred twenty (120) days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within thirty (30) days of the date on which you received the Notice of Final Action.

**Exhibit C**

**Certification Regarding Lobbying**

APPENDIX A TO TITLE 29, PART 93 - CERTIFICATION REGARDING LOBBYING  
*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned (i.e., the Contractor signatory) certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form– LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Contractor acknowledges that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, that submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., and that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

**Exhibit D**

**Certification Regarding Debarment and Suspension**

APPENDIX A TO TITLE 29, PART 98 - CERTIFICATION REGARDING DEBARMENT AND SUSPENSION - *Certification for Contracts, Grants, Loans, and Cooperative Agreements*

1. The undersigned (i.e., the Contractor signatory) certifies, to the best of his or her knowledge and belief, that it and its principals:
  - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - B. Have not within a three-year period preceding this proposal been convicted 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 (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(B) of this certification; and,
  - D. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
  
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation of this proposal (or plan).

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED