



# Department of Commerce

Innovation is in our nature.

## **Client Service Contract with**

<Contractor organization name here>

Through The

Low-Income Home Energy Assistance Program

## **For**

Administering the WA State 2013 Low-Income Home Energy Assistance Program (Oct 1, 2012 - Sept 30, 2013), per the specific and general terms & conditions of this contract, and the program policies & procedures established by Commerce.

**Start date:**      October 1, 2012



## Special Terms and Conditions

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**1. ACKNOWLEDGEMENT OF FEDERAL FUNDING**

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

“Prepared with funds made available under the Low-Income Home Energy Assistance Program, U.S. Department of Health and Human Services administered by the Washington State Department of Commerce”

**2. ADMINISTRATIVE COST ALLOCATION**

Administrative costs are allowed as set forth in the Specific Terms and Conditions.

Administrative services shared by other programs shall be assigned to this Contract based on an allocation plan that reflects allowable administrative costs that support services provided under each Contract administered by the Contractor. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

**3. ALLOCATION OF INDIRECT COSTS AND DETERMINATION OF INDIRECT COST RATES**

The Contractor shall use federal cost principles specified in OMB Circular A-87, Cost Principles Applicable to Grants, Contracts and other Agreements with state and local governments, or OMB Circular A-122, Cost Principles Applicable to Grants, Contracts, and Other Agreements with Nonprofit Organizations, as applicable.

The Contractor shall include this provision in all cost reimbursement subcontracts.

**4. ALLOWABLE COSTS**

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet. The Contractor shall use federal cost principles specified in OMB Circular A-87, Cost Principles Applicable to Grants, Contracts and other Agreements with state and local governments, or OMB Circular A-122, Cost Principles Applicable to Grants, Contracts, and Other Agreements with Nonprofit Organizations, as applicable. The Contractor shall include this provision in any subcontracts.

Allowable use of federal funds shall include:

- 1. Administrative costs:** Costs of a general nature incurred in the provision of energy assistance but not clearly identified with a particular program. These costs shall include, but not be limited to, planning, budgeting and accounting, establishment and direction of Contractor policies, goals and objectives, and client intake and eligibility determination.
- 2. Client services costs:** These costs shall include:
  - a)** Conservation education: Costs for activities which encourage and enable households to reduce their home energy needs and thus the need for energy assistance, including needs assessments related to energy-budget management, payment plans and related services, assistance with energy vendors to encourage responsible vendor and consumer behavior, and related client counseling. These costs are limited to staff salaries, wages and fringe benefits and printed materials.
  - b)** Other direct services: Costs which are not administrative in nature but are for activities directly related to benefit-determination assistance, outreach, information resource and referral, case management, and crisis service necessary to serve eligible households.
  - c)** Direct services: All payments made to, or on behalf of, eligible low-income households up to the maximum amount determined by COMMERCE.

The proportion expended on administrative, conservation education, and other direct services may not exceed the proportions identified in the original Contract, unless approved in writing in advance by

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COMMERCE. The proportion spent on direct services may be increased without approval by COMMERCE.

**5. ANTICIPATORY COSTS**

Allowable costs under this Contract shall include costs incurred by the Contractor from the beginning of the contract period for activities allowable under the terms of this Contract as if this Contract had been in effect during that period; provided that all costs shall not exceed the maximum amount of this Contract. No payment for allowable costs shall be made under this Contract until it has been signed by all parties.

**6. BUDGET**

The approved budget is included on Attachment A – Contractor Budget.

1. Spending Limit: The contractor may not spend more than zero percent of the original contract. This percentage may be increased by emailed memo from COMMERCE based on the availability of funding.

2. Line Item Transfers: The Contractor may transfer funds from administrative costs, conservation education costs, and other direct services categories to direct services without prior approval of COMMERCE.

The contractor shall submit to COMMERCE a description of the budget change including the amount(s) transferred, and adjustments in expenditures prior to submitting expenditure reports reflecting the revisions.

3. Quarterly Projection Revisions: Quarterly Expenditure Projections (Attachment A – Budget COMMERCE Contract Budget/Expenditures) shall be submitted on a revised LIHEAP (EAP) Application Face Sheet and must be approved by COMMERCE.

**7. CLIENT PRIVACY STANDARDS**

Personal information collected by the Contractor, used or acquired in connection with any state-funded program shall be used solely for the purpose of that program. Contractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons the personal information without express written consent of the client or as provided by law. The written consent must include what client information may be shared and to whom or which agencies/businesses. Contractors agree to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

Personal information includes but is not limited to information that would identify an individual's health, education, business, use or receipt of governmental services, names, addresses, age, telephone numbers, social security numbers, driver's license numbers and finances including financial profiles, credit card numbers or other identifying numbers.

COMMERCE reserves the right to monitor, audit, or investigate the use of personal information collected by Commerce, used or acquired by the Contractors. Not properly maintaining clients' private information could result in termination of the contract or subcontract. Contractors agree to indemnify and hold harmless COMMERCE, the State and its officers, employees and authorized agents for any damages related to the Contractor's unauthorized use of personal information.

Contractors shall include this client privacy policy in all subcontracts. In addition, Contractors shall include in the subcontract a clause stating that Subcontractors agree to indemnify and hold harmless the Contractor, the State and its officers, employees and authorized agents for any damages related to the Subcontractor's unauthorized use of personal information. Contractors have the responsibility to monitor the use of personal information collected by Commerce by Subcontractors.

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**8. COMPENSATION AND PAYMENT**

Payment by COMMERCE is based upon administrative requirements of the funding source and the Contractor's ability to complete and submit timely and accurate reports as required by COMMERCE. Payment for energy assistance may be through advance payments or through reimbursement for reported expenditures in accordance with the following:

1. **Advance payments:** Advance payment is available, at COMMERCE'S discretion, only to Contractors who submit advance payment requests based on good faith projections of cash needs and the timely submission of complete and accurate expenditure and activity reports. Advance payment under this Contract is not a right and is completely within the discretion of COMMERCE. Advance payment requests must be submitted by the Contractor, approved by COMMERCE, and reconciled against actual expenditures in accordance with procedures established by COMMERCE.

COMMERCE may change a Contractor to reimbursement from advance payment for any reason, including use of advance payment for costs which are not allowable under this contract. A Contractor on the advance payment system that submits late reports may be transferred to the reimbursement system. A Contractor may make a written request to be placed on advance payment after the Contractor has submitted timely requests for reimbursements for two consecutive months. COMMERCE shall notify a Contractor being transferred to the reimbursement system in writing. The notification letter shall be placed in the Contract file.

2. **Reimbursement:** Unless authorized by COMMERCE to receive advance payment, payment for work performed shall be based on monthly progress reports. In order to obtain reimbursement, the Contractor shall submit, no more than monthly, a Request for Reimbursement, which identified the costs incurred for work performed since the previous Request for Reimbursement was submitted.

Payment by COMMERCE shall be considered timely if made by COMMERCE within 30 days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor. COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

**9. CONTRACT DELIVERABLES AND PERFORMANCE MEASURES**

The following reports, deliverables, and performance measures and their due dates shall include, but not be limited to:

|    |                  |  |
|----|------------------|--|
| 1. | Spending Targets | <p>Quarterly, the DEPARTMENT shall review the CONTRACTOR'S level of planned performance compared to the actual performance as reported on the Expenditure Report and Request for Reimbursement.</p> <ul style="list-style-type: none"><li>• If the CONTRACTOR has failed to achieve eighty-five percent (85%) of its projections as stated on the Contract Face Sheet by the end of the second quarter,</li><li>Or</li><li>• If the Contractor has failed to achieve ninety percent (90%) of its projections as stated on the Contract Face Sheet by the end of the third quarter,</li></ul> <p>The DEPARTMENT may reduce funds available based on actual performance. Any reduction shall be based on actual performance but may be negotiated between the CONTRACTOR and the DEPARTMENT.</p> |
| 2. | Conservation     | <p>The Contractor will provide conservation education for all program participants as defined in the LIHEAP policies and Procedures. A</p>   |

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|    |                      |  |
|----|----------------------|--|
|    | Education Plan       | participant education plan will be included in the COM LIHEAP Application. Contractors must document their efforts, and provide documentation at Commerce's request.   |
| 3. | Outreach Plan        | The Contractor will provide an outreach plan to target populations. This plan will be included in the COM LIHEAP Application. Contractors must document their efforts and provide documentation at Commerce's request. |
| 4. | A-19 Voucher         | Submit by the 15 <sup>th</sup> of the month following the expenditures, regardless of expenditure amount; submit monthly even if there are NO expenditures for the month.  |
| 5. | Advance Request Form | Must be received by Commerce by the 20 <sup>th</sup> of the month for which the advance is being requested.  |
| 6. | Close-out Report     | Must be received by Commerce 45 days after the contract end date.  |

**10. CONTRACT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

**11. CONTRACT PERIOD**

Subject to other Contract provisions, the period of performance under this Contract will be from October 1st through September 30th of the current program year, as stated on the Contract Face Sheet. Direct services, in the form of financial assistance to households, must be obligated by the Contractor no later than June 30th, unless extended in writing by COMMERCE.

Costs to be reimbursed by COMMERCE under this Contract are those costs incurred on or after the effective date of this Contract. COMMERCE will not reimburse costs for work performed after the Contract termination date.

**12. DOCUMENTS ON FILE**

Documents consistent with federal and state regulations, as applicable, shall be kept on file in the office of the local program and available for review. Such documents shall include, but not be limited to:

- Personnel Policies;
- Job Description;
- Organizational Chart;
- Travel Policies;
- Fiscal Management;
- Articles of Incorporation/Tribal Charter;
- Bylaws;
- IRS Nonprofit Status Certification;



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- Latest agency audit;
- Insurance policies required by the Contractor;
- Indirect cost agreement, when applicable; and
- The Contractor shall include these requirements in all approved cost reimbursement subcontracts.

**13. FINANCIAL MANAGEMENT SYSTEMS**

Contractor financial systems shall contain the following:

1. Accurate, current and complete disclosure of the financial results of each Contract.
2. Records that identify the source and application of funds.
3. Control over and accountability for all funds, property, and other assets.
4. Comparison of actual outlays with budgeted amount for each Contract.
5. Procedures that minimize the time elapsing between the transfer of funds from COMMERCE and their disbursement by the Contractor.
6. Procedures for determining reasonableness, and allocating of costs.
7. Accounting records that are supported by source documentation.
8. Procedures for timely and appropriate resolution of audit findings and recommendations.

The Contractor shall include these requirements in any subcontracts.

**14. 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 loss, or 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 COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Contractor shall submit to COMMERCE 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 performance pursuant to this Contract involves 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.

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**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, employee, or agent who is authorized to act on behalf of the 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 reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE 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 COMMERCE'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, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

**15. NON-EXPENDABLE PERSONAL PROPERTY**

- 1. Non-expendable personal property shall be used by the Contractor in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal or state funds. When no longer needed for the original program or project, the nonexpendable personal property may be used in other activities currently or previously supported by a federal (if federal funds) or state (if state funds) agency.
- 2. The Contractor shall also make nonexpendable personal property available for use on other projects or programs currently or previously supported by a federal (if federal funds) or state (if state funds) agency, provided that such use will not interfere with the work on the projects or programs for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate (see Use Allowances, OMB Circulars A-87 covering local governments and A-122 covering nonprofit organizations).
- 3. To earn program income, the Contractor must not use nonexpendable personal property acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by federal or state statute.
- 4. When acquiring replacement nonexpendable personal property, the Contractor may use the nonexpendable personal property to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of COMMERCE if COMMERCE is the Secured Party on the title.

**Management Requirements:** Procedures for managing nonexpendable personal property (including replacements), whether acquired in whole or in part with funds under this Contract, until disposition takes place will, at a minimum, meet the following requirements:

- 1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of federal or state participation (under this Contract) in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

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2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every year.
3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
4. Adequate maintenance procedures must be developed to keep the property in good condition.
5. If the Contractor is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

**Disposition**

1. When original or replacement nonexpendable personal property acquired under this Contract is no longer needed for the original project or program or for other activities, the property may be disposed of or sold, and COMMERCE shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by COMMERCE 's share of the equipment.
2. The Contractor may retain \$100, or ten percent of the proceeds from the sale, whichever is greater.
3. In cases where a Contractor fails to take appropriate disposition actions, COMMERCE may direct the Contractor to take corrective action.

No funds shall be issued for the purchase of or improvement of land or real-property other than low-cost residential weatherization or other energy-related home repair unless approved in writing by COMMERCE.

**16. 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
- Special Terms and Conditions
- General Terms and Conditions
- Attachment B – Scope of Work

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**1. DEFINITIONS**

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

- a. "Authorized Representative" shall mean the Director and/or designee authorized in writing to act on the Director's behalf.
- b. "Client" shall mean an individual receiving services under this Contract.
- c. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- d. "Cognizant State Agency" shall mean the state agency from which the sub-recipient receives federal financial assistance. If funds are received from more than one state agency, the cognizant state agency shall be the agency that contributes the largest portion of federal financial assistance to the sub-recipient.
- e. "COMMERCE" shall mean the Department of Commerce.
- f. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- g. "State" shall mean the state of Washington.
- h. "Subcontractor" shall mean one not an employee of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
- i. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- j. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the Contract only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

**2. 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 COMMERCE.

**3. ALL WRITINGS CONTAINED HEREIN**

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

**4. 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.

**5. 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.

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**6. APPROVAL**

This Contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both parties.

**7. ASSIGNMENT**

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

**8. ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

**9. AUDIT**

**A. General Requirements**

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

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

COMMERCE reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

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

**B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations**

Contractors expending \$500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Contractor to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. When state funds are also to be paid under this Agreement a Schedule of State Financial Assistance must also be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number (if applicable)
- Grantor contract number
- Total award amount including amendments (total grant award)
- Current year expenditures

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If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by COMMERCE.

**C. Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Department of Commerce  
ATTN: Audit Review and Resolution Office  
1011 Plum Street SE  
PO Box 42525  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

**10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS**

**A. Contractor, defined as the primary participant and its principals, certifies by signing these GENERAL TERMS AND CONDITIONS that to the best of its knowledge and belief that they:**

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. 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;
3. 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
4. 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.

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

**C. 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 COMMERCE.**

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- D. 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:

**LOWER TIER COVERED TRANSACTIONS**

- a) 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.
  - b) 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.
- E. 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 COMMERCE for assistance in obtaining a copy of these regulations.

**11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

- A. "Confidential Information" as used in this section includes:
- 1. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
  - 2. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
  - 3. 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).
- B. 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 COMMERCE 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 COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE 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.

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**12. CONFORMANCE**

If any provision of this Contract 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.

**13. 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 COMMERCE. COMMERCE 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 COMMERCE 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 COMMERCE 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 COMMERCE.

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

**14. DISALLOWED COSTS**

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

**15. 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 COMMERCE, 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/Board Chairman and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.



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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.

**16. DUPLICATE PAYMENT**

The Contractor certifies that work to be performed under this Contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

**17. ETHICS/CONFLICTS OF INTEREST**

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

**18. GOVERNING LAW AND VENUE**

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.

**19. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, all other agencies of the 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 Contractor's 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 by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, COMMERCE, the state of Washington, its officers, employees and authorized agents.

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.

**20. 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 COMMERCE. The Contractor will not hold itself out as or claim to be an officer or employee of COMMERCE 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.

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**21. 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, COMMERCE may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by COMMERCE 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.

**22. LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

**United States Laws, Regulations and Circulars (Federal)**

**A. Audits**

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

**B. Labor and Safety Standards**

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

**C. Laws against Discrimination**

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90  
Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

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**D. Office of Management and Budget Circulars**

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122, (if the Contractor is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102, (if the Contractor is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

**E. Other**

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Contractors who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

**F. Privacy**

Privacy Act of 1974, 5 U.S.C. 552a.

**Washington State Laws and Regulations**

- A. Affirmative action, RCW 41.06.020 (11).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.
- I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

**23. 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.

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**24. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation 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.

**25. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

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

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 COMMERCE. 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.

**26. POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

**27. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Contract.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Contract.

The Contractor's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
  - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - c. Positive efforts shall be made to use small and minority-owned businesses.
  - d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - e. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.

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- f. Some form of price or cost analysis should be performed in connection with every procurement action.
  - g. Procurement records and files for purchases shall include all of the following:
    - 1) Contractor selection or rejection.
    - 2) The basis for the cost or price.
    - 3) Justification for lack of competitive bids if offers are not obtained.
  - h. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
4. Contractor and Subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

**28. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

**29. PUBLICITY**

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

**30. RECAPTURE**

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE 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 COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

**31. 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.

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**32. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

**33. 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 COMMERCE, 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.

**34. 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, COMMERCE may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

**35. 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.

**36. SUBCONTRACTING**

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

If COMMERCE 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, COMMERCE 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 COMMERCE 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 conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

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

**37. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

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**38. 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.

**39. TERMINATION FOR CAUSE / SUSPENSION**

In event COMMERCE determines that the Contractor failed to comply with any term or condition of this Contract, COMMERCE may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, COMMERCE 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, COMMERCE 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 COMMERCE to terminate the Contract upon written notice to the Contractor.

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

If the Contract is terminated for cause, 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).

**40. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract COMMERCE may, by ten (10) business 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, COMMERCE 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.

**41. TERMINATION PROCEDURES**

After receipt of a notice of termination, except as otherwise directed by COMMERCE, 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 COMMERCE all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE 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 COMMERCE; and
- D. Preserve and transfer any materials, Contract deliverables and/or COMMERCE property in the Contractor's possession as directed by COMMERCE.

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

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

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**42. 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 COMMERCE.



### **SCOPE OF WORK**

**The CONTRACTOR shall administer and deliver energy assistance in accordance with the Low-Income Home Energy Act of 1981, including the required components of the Energy Assistance Program listed in Washington LIHEAP Policies and Procedures.**

**The CONTRACTOR shall perform the services defined in the CONTRACTOR'S Application, and in accordance with the estimated expenditures on the Contract Face Sheet, DEPARTMENT policies and procedures, and applicable federal and state statutes and regulations.**

**The CONTRACTOR shall conduct outreach activities designed to ensure that eligible households, especially households with elderly persons, persons with disabilities, non-English speaking individuals, or households which do not have adequate access to the media, are informed of the assistance available under this Contract.**