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Action/Information Item

California Student Aid Commission

Consideration of the Rescission of EDFUND RFP #07-112, for Public Relations Services to Develop a Multimedia Public Awareness Campaign that Describes the Indispensible Role of Guaranty Agencies, and Termination of Any Contract Related to RFP #07-112

Recommendation

1) Direct EDFUND to Rescind EDFUND RFP #07-112, for Public Awareness Campaign for Guarantors; and

2) Direct EDFUND to Terminate Any Contract Related to RFP #07-112

Discussion

EDFUND issued a Request for Proposal (RFP) on or about July 30, 2008, inviting proposals from four public relations firms to develop "a dynamic multimedia public awareness campaign that describes the indispensible role of guaranty agencies in the delivery of services" to students and their families. A copy of the RFP is included with this Tab.

RFP #07-112 states that the goal of the campaign is to "build public awareness and support within the target audience for the indispensible role of guaranty agencies in order to preserve and expand the role of guaranty agencies under federal law," and defines the target audience as Members of Congress and their staffs, college financial aid officers, and college students and their families.

Further, the underlying policy served by RFP #07-112 is disclosed in the following description:

> The challenge for EDFUND (and other 34 guaranty agencies) is to survive the current political environment where there is a movement within the democratic majority in Congress and supported by the presidential candidate Barack Obama to eliminate the FFEL Program and have all student loans flow through the [Direct Loan] Program….
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> * * *
>
> **Guaranty agencies need to describe our value <u>independent of</u> the role played by the banking community in the provision of student loan services in the FFEL Program.**

(EDFUND RFP #07-112; emphasis in the original.)

EDFUND did not have authority to issue RFP #07-112 because it reflects a public policy position that the Commission has not yet adopted.

The United States Department of Education has designated the Commission as the state student loan guarantee agency for California to administer the Federal Family Education Loan Program (FFEL Program). Federal law authorizes a state student loan guarantee agency to administer the FFEL Program through a nonprofit organization, but explicitly requires the guarantee agency to have and to exercise full authority over, and have accountability for, the nonprofit organization, including the setting of policies for the FFEL Program administration:

> In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(34 CFR §682.401(b)(16); emphasis added.)

To this end, California law requires the Commission to maintain its responsibility for financial aid program administration, policy leadership and information development and coordination, if it administers the FFEL Program through an auxiliary organization. (§ 69522(c)(1).)

The Commission created EDFUND in1997 as a nonprofit public benefit corporation to serve as an auxiliary organization through which the Commission carries out various FFEL Program operations. Thus, under federal law and state law, the Commission is responsible for establishing FFEL Program policies, not EDFUND. EDFUND does not have independent or unilateral authority to make policy decisions affecting the FFEL Program.

The Commission's Governance Policies currently authorize the Executive Director of the Commission and the EDFUND Board and President to represent the views of the Commission under certain circumstances. However, the Commission has specified limits on that authority. Executive Parameters Policy 6, External Communications, M and N are relevant here. Executive Parameters Policy 6, M provides:

> M. Taking Official Positions. The Executive Director, EDFUND Board, EDFUND President, and their respective staffs will not take a position contrary to a position adopted by the Commission, or represent interests contrary to those of the Commission, without making it explicit that such position or interests are not those of the Commission and without informing the Commission Chair of such communications in advance whenever possible, or if not, possible, within but no later than two working days thereafter.

Executive Parameters Policy 6, N provides:

> N. Public and Media. In representing their respective Commission programs to the media, the public, interest groups, and other similar external constituencies, the Executive Director and the EDFUND Board/President

and their designated staff will not take an official position on critical public policy matters upon which the Commission has not yet adopted a written policy or position. However, if in their judgment not to do so would limit the ability of CSAC to effectively fulfill its mission, then the Executive Director or EDFUND President may take such a position, provided that they inform the Commission Chair of such communications in advance whenever possible, or if not possible, within two working days thereafter. Also, in communicating with the public and the media, the Executive Director and EDFUND President will collaborate as described in A above.

RFP #07-112 violates Executive Parameters Policy 6, N because the Commission has not yet adopted a written policy or position on the Direct Loan Program or concerning the effects the possible expansion of the Direct Loan Program may have on the FFEL Program. Further, the Commission Chair was not informed of this RFP. Commission staff informed the Commission Chair after staff became aware of the RFP after a copy of the RFP was sent inadvertently to Commission staff.

RFP #07-112 also violates Executive Parameters Policy 6, M. The RFP presents a policy position and is written to imply that EDFUND is the state student loan guarantee agency. For example: "The challenge for EDFUND (and the other 34 guaranty agencies)…" (RFP #07-112, page 4 of 14); "Guaranty agencies need to describe our value…" (Ibid.); "Phase 2, if implemented, may be funded either by EDFUND or through a coalition of guaranty agencies…" (RFP #07-112, page 5 of 14). Thus, the RFP fails to disclose that the expressed position it takes with respect to the Direct Loan Program is not the Commission's.

EDFUND's issuing the RFP preempts the Commission's exercise of its public policy authority and its responsibility for information development and coordination, especially on a national issue that has existed since the Direct Loan Program was first created by Congress in the early 1990s.

The Commission should be extremely sensitive to this issue, because a previous Commission was also involved in a controversy in 1994 over the competitive effects of the Direct Loan Program on the FFEL Program. At that time, the Legislature participated in an oversight hearing of the Commission and had discussions with the United States Department of Education about actions by the then-Commission executive director on his management of the FFEL Program, including advocacy relating to the Direct Loan Program that the Legislature perceived to be contrary to the Legislature's actions.

Commission staff is not aware that the EDFUND informed the EDFUND Board of Directors about this politically sensitive RFP. Commission staff has asked for an accounting of all outstanding EDFUND RFPs, but EDFUND has not yet responded. Commission staff will also seek review of outstanding contracts to determine whether similar contracts exist.

Accordingly, the Commission should rescind RFP #07-112 and cancel any contract that may have resulted from the RFP. Should the Commission determine that consideration of a position on the Direct Loan Program and its effect on the FFEL Program is necessary, it can consider the issue and a plan to implement its policy decision, at a future Commission meeting.

A contract based on the RFP would commit State funds to be spent for a purpose that has not been approved by the Commission.

A contract based on this RFP would commit State funds to be spent without the Commission, the public agency in charge of those funds, having considered the need for the expenditure of those funds and without the Commission approving the expenditure to serve that need.

Accordingly, the Commission should rescind RFP #07-112 and cancel any contract that may have resulted from the RFP. Should the Commission determine that consideration of a position on the Direct Loan Program and its effect on the FFEL Program is necessary, it can consider the issue and a plan to implement its policy decision, at a future Commission meeting.

Responsible Person: Ed Emerson, Chief
Federal Policy & Programs Division

EDFUND®

REQUEST FOR PROPOSAL
for
Public Awareness Campaign for Guarantors

Attention: This document and all information in it, as well as any information gathered in subsequent meetings or conversations related to this solicitation, are confidential.

RFP NUMBER:	RFP # **(07-112)**
RFP ISSUANCE:	July 30, 2008
PROPOSAL DUE DATE:	COB on Friday August 8, 2008
QUESTIONS REGARDING THIS RFP DUE:	August 1, 2008
RESPONSES TO RFP QUESTIONS:	August 4, 2008

EdFund
10370 Peter A. McCuen Blvd.
Mather, CA 95655
P.O. Box 419045
Rancho Cordova, CA 95741-9045

July 30, 2008

Dear Vendor,

Subject: Request for Proposal: Public Awareness Campaign for Guarantors

EDFUND, a non-profit public benefit corporation, is the nation's second largest provider of student loan guarantee services under the Federal Family Education Loan Program. In our continuing efforts to provide premier services and products to students and schools, we are inviting contractors to submit proposals to assist us in the development of a dynamic multimedia public awareness campaign that describes the indispensible role that guaranty agencies serve for college students and colleges.. Our specific requirements are attached.

On receipt of this RFP, please reply by email to let us know whether you intend to submit a proposal.

Please submit an electronic copy of your proposal **and** deliver a paper copy to the attention of Mary Anne Kelly at the following address on or before end of day, August 8, 2008:

U.S. Mail:	P.O. Box 1060, Rancho Cordova, CA 95741-1060
Hand or express delivery:	10370 Peter A. McCuen Blvd., Mather, CA 95655
Email:	mkelly@edfund.org

Our objective is to award a contract in August 2008.

Please direct any questions regarding this RFP to Mary Anne Kelly:

Email:	mkelly@edfund.org
Phone:	916-526-8150 (office)
	916-718-9914 (cell)

Respectfully,

Mary Anne Kelly
AVP Communications

REQUIREMENTS

We would like to invite you as one of four public relations firms to submit a proposal to EdFund to:

(1) develop a dynamic multimedia public awareness campaign that describes the ***indispensible role of guaranty agencies*** in the delivery of services to:

(a) students and their families

(b) colleges; and

(2) provide strategic communications and marketing advice to EdFund.

Goal:

The goal of the campaign is to ***build public awareness and support within the target audience*** for the indispensible role of guaranty agencies in order to ***preserve and expand*** the role of guaranty agencies under federal law.

Target Audience:

The target audience of this campaign is:

(1) Members of Congress and their staffs;

(2) College Financial Aid Officers; and

(3) College Students and their Families.

First Things First – FFELP v. Direct Loans:

In order to understand the challenge, you first have to understand the federal student loan industry. There are two competing programs within federal loans – a private sector program and a public sector program.

The **Federal Family Education Loan (FFEL) Program** is the private sector program and is also the larger and oldest of the two programs, dating back to 1965. In simple terms, under the FFEL Program, private banks provide student loans to college students or their parents that are "guaranteed" by one of the 35 federally designated guaranty agencies. Under federal law, guaranty agencies are either (1) not-for-profit or (2) state run agencies that are designated by the United States Department of Education. Among the many services guaranty agencies provide (and which we would like to promote) are default prevention, credit counseling, entrance and exit counseling, early withdrawal counseling, as well as a general educational and training resources for students, parents, and colleges. The FFEL Program represents approximately 77 percent of all student loans made in the last reportable year.

The **Federal Direct Loan (DL) Program** is the public sector program that was created by President Clinton in 1993 to compete with the FFEL Program. The DL Program is operated by the United States Department of Education (largely through private sector contracts) using the resources of the federal treasury to fund the provision of student loans. Currently, there is no role for guaranty agencies in the DL program and many of the services that guaranty agencies provide for students, parents, and borrowers are not available in the DL Program. The DL Program represents approximately 23 percent of all student loans made in the last reportable year.

Colleges choose which program to participate in.

The Challenge:

The challenge for EdFund (and the other 34 guaranty agencies) is to survive the current political environment where there is a movement within the democratic majority in Congress and supported by presidential candidate Barack Obama to eliminate the FFEL Program and have all student loans flow through the DL Program. This environment was partially created by several highly public investigations conducted by New York Attorney General Cuomo and Congress in 2007 into questionable conduct by some in the banking community. Prior to this, the public versus private sector programs have always been more of a philosophical argument between the Democratic and Republican parties.

While the magnitude of absorbing approximately 60 billion dollars annually from the federal treasury by eliminating the FFEL Program would make such a proposal unlikely, we cannot be assured that it will not happen. **Guaranty agencies need to describe our value independent of the role played by the banking community in the provision of student loan services in the FFEL Program.**

The ideal solution is to have the guaranty agency role expanded to include the DL Program since many of the indispensible services we provide to students, parents, and colleges are not being provided in the DL Program. If we were successful, guaranty agencies would be able to continue to provide their services regardless of where the politics go on FFEL v. Direct Loan.

While EdFund's internal staff has government relations, communications, design and Web capability, we are looking for a firm to expand our expertise and reach by providing additional expertise in creating a grassroots campaign designed to influence behavior and attitudes. The agency selected must be able to provide strategic counsel, tactical execution and development of partnerships and relationships with third party endorsers. We are looking for an agency to be a true partner rather than just a vendor.

Attached, you will find a sampling of EdFund publications and information about the industry to provide you with an overview of EdFund and some of the services we provide so that you can have a better feel for EdFund and the guaranty industry.

The Proposal:

Your proposal should:

(1) Provide us with a concise summary of your capabilities to accomplish this assignment. This information should include an overview of your offices, a description of the service offerings that you plan to employ in supporting us and a discussion of how you would approach the staffing of our account.

(2) Demonstrate your experience with situations similar to ours and your knowledge of our industry - we would like you to discuss three or four relevant case studies. Please outline any understanding you have of the political and market dynamic under which the student loan industry is currently operating and how that would impact your recommendations for this campaign. We would like you to describe how you will make your agency's knowledge assets available to us, describing your approach to research and measurement.

(3) Identify at least three firms that we may contact with whom you have had engagements similar to that requested by EdFund. For each firm, please provide contact information.

(4) Provide us with any possible **conflicts of interest** you might have.

(5) Indicate your ability to complete Phase 1 of the Proposal (see below) by October 13, 2008. If you do not feel you can complete Phase 1 by the stated date, please provide what you consider a reasonable timeline.

(6) Phase 1 – The Phase 1 description must contain a detailed description and pricing for the following components:

- **Strategic counsel** to develop overall attitude change and awareness, as well as strategy to enhance name recognition of guarantee agencies and the benefits and services they provide;

- **Video production development** to produce a minimum of 240 seconds of videos that are tailored to various target audiences. The video production will include, but should not be limited to, general information and testimonials of success from students, parents, and employees regarding the value of guarantee agencies. These videos will be placed on a Web site as streaming video, but also need to be in a format that could be usable by other media sources. (An example of a video clip we liked, but by no means comprehensive of our goals, is a PSA by the Department of Education available at http://www.fsa4counselors.ed.gov/clcf/NT4CMPSA2007.html);

- **Issue Web site development and strategy** including drafting copy for the homepage and developing a site that includes information about the issue, an action center, audio/video capabilities, coalition building, press room (including development of releases and news articles for this section of the site) and contact information. The site will need to be developed in conjunction with EdFund's communications and technical teams. The site will be hosted and maintained by EdFund going forward. Potential exploration of catchy domain names should be included; and

- **Media training** for EdFund designated spokespersons (approximately 5-6 individuals) to prepare them for working with the media and emphasis on ensuring our key points resonate with the audiences.

Please note: Phase 1 will be an EdFund funded initiative with a budget of $50,000 to $100,000. The video production may be shared with other guaranty agencies for their use.

(7) Phase 2- The Phase 2 description is more open ended, where the firm should provide recommendations on a more extensive and comprehensive approach, building off of Phase 1 accomplishments. We request that key strategic and tactical items be identified and budgeted as individual line items, ultimately resulting in a full menu of options that can be selected from. After discussion with the awarded agency, EdFund can select the items believed to have the most immediate impact and fit our budget requirements.

Please note: Phase 2, if implemented, may be funded either by EdFund or through a coalition of guaranty agencies.

Based on your experience and understanding of the issue, we would like the agency to submit a proposal and budget for additional tactics that would support a comprehensive, nationwide strategy.

Please provide the above information in writing by **August 8, 2008**. Although we understand that you may not have sufficient time or information about our strategy to select a team to serve our account, we would like you to identify the person who will supervise our account and some of the professionals who most likely will be supporting us.

Please call **Mary Anne Kelly**, AVP Communication, at **916-718-9914** (cell phone) within 72 hours to let us know if you are interested in participating in this agency search. She will be prepared to discuss any potential conflicts and to answer questions concerning this request for proposal.

SCHEDULE OF ACTIVITIES (approximate)

July 30, 2008	Issue RFP
August 8, 2008	Proposals Due
August 11-19, 2008	Vendor Conference Calls and/or Site Visits
August 20, 2008	Contract Award

BACKGROUND INFORMATION

EdFund, a nonprofit public benefit corporation, is the nation's second largest provider of student loan guarantee services under the Federal Family Education Loan Program. EdFund offers students a wide range of financial aid and debt management information while supporting schools with advanced loan processing solutions and default prevention techniques. Operating as an auxiliary corporation of the California Student Aid Commission, EdFund processes more than $10.1 billion in student loans annually (including Consolidation loans) and manages a portfolio of outstanding loans valued at $27 billion. EdFund is headquartered in Rancho Cordova, California with regional offices located throughout the nation.

EdFund employs about 600 employees. Most of our employees work in the headquarters location in Rancho Cordova, CA (the primary site). Additional remote sites are located throughout the United States.

ADMINISTRATIVE MATTERS

1. **<u>Award of Contract</u>**

   EdFund makes no commitment to award any contract. EdFund is not obligated to award to the lowest bidder, but will consider all factors which provide the best value for products/services, including price, references submitted, etc.

2. **<u>Right to Reject Any or All Proposals</u>**

   Issuance of this Request for Proposal (RFP) in no way constitutes a contract or a commitment by EdFund to award any contract. EdFund reserves the right to reject any or all proposals, and/or request clarification or information submitted by any bidder. EdFund further reserves the right to reject any oral responses or portions thereof received in response to this document if EdFund determines it is in its best interest to do so. EdFund may reject any responses which are conditional, incomplete, or that contains any material deviations from the RFP requirements. Finally, EdFund reserves the right to modify its requirements based on responses to this RFP.

3. **Submission of Proposals**

Any provisions of the RFP which are defined as requirements shall be considered mandatory unless the resultant contract states otherwise. In the event that all bidders fail to meet one or more of the mandatory requirements, EdFund reserves the right to continue the evaluation of the proposals and to select the response which most closely meets the requirements specified in this RFP.

4. **Ownership of Replies**

All materials submitted in response to this RFP become the property of EdFund, and may at any time, subsequent to the notification of the intent to award contract, be reviewed and evaluated by any persons. These materials may be returned only at EdFund's option and at the bidder's expense. One copy of the proposal shall be retained for official EdFund files.

5. **Proprietary Data in Proposal**

A proposal may include proprietary data that the Bidder does not want disclosed to the public or used by EdFund for any purpose other than proposal evaluation. However, unless proprietary data is identified, EdFund cannot assume responsibility for the use of such data. Therefore, proprietary data should be identified specifically as such on every page where the same may be contained, in which event, EdFund will use it solely for the purpose of evaluating the proposal. In such case, reasonable care will be exercised so that the data so identified will not be disclosed or used without the Bidder's permission, except to the extent provided in any resulting contract or to the extent required by law. This restriction does not limit EdFund's right to use or disclose any data contained in the proposal, if it is obtained from another source or from the Bidder on another previous or separate occasion. In any event, EdFund denies and will not accept legal liability for the accidental disclosure of such data, even if identified.

6. **Contact for Information**

Verbal communication with EdFund employees concerning this RFP is not binding on EDFUND and shall not excuse the bidder as set forth in the RFP. Inquiries regarding this RFP may be made between July 25, 2008 and July 28, 2008, or faxed to:

Mary Anne Kelly
EdFund
P.O. Box 419045
Rancho Cordova, CA 95741-9045
E-mail: mkelly@edfund.org
Fax: 916-526-7306

7. **Modification or Withdrawal of Proposals**

Any proposal may be withdrawn or modified by written request of the bidder. The written request must be received by EdFund at the above address before the date set for receipt of proposals. However, in order to be considered, the modified proposal must also be received by the time and date set for the receipt of proposals.

8. **Questions Regarding the RFP**

Bidders requiring clarification of the intent of content of this RFP, or on procedural matters regarding the competitive bid process, may request clarification by submitting questions to the Contract Manager by fax or e-mail, clearly marked "Questions Relating to RFP No. (RFP #07-112)".

To ensure a response, questions must be received by the scheduled date given, July 27, 2008. Copies of all questions received and responses to such questions will be mailed to each potential bidder. EdFund will not entertain questions on the evaluation and selection process, at anytime.

9. Contract Requirements

Awarding of a contract will require execution of a contract with EdFund. Terms of the contract will include, but are not limited to, the terms below. These are standard terms that will be included as part of the contract and are not subject to modification or deletion except as necessary to carry out the purpose of the contract.

1. TERM

   The term of this Agreement shall be from August 20, 2008 through August 31, 2009.

2. PAYMENT

   The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof. Contractor will not be reimbursed for any travel or per diem.

   Contractor must submit an invoice with full documentation including the agreement number and Contractor's federal employer identification number to EdFund's Accounts Payable Office for payment. Invoices must be submitted in arrears, reflecting the charges for services rendered and must be approved by the Contract Manager. Invoices should be mailed to:

   EdFund Accounts Payable
   PO Box 419039
   Rancho Cordova, CA 95741-9039

3. CONTRACT MANAGER

   Mary Anne Kelly is designated as EdFund's Contract Manager. EdFund may change the Contract Manager at any time and may, if necessary, notify Contractor in writing of the new Contract Manager's name. Each deliverable provided under this Agreement shall be subject to approval by the Contract Manager.

4. INDEMNITY

   Contractor agrees to and does hereby indemnify, save and hold EdFund, its parents, subsidiaries, affiliates and its respective officers, agents and employees harmless of and from any and all liability, demand, claim, loss, damage, recovery, settlement, cost or expense, including without limitation claims based in tort or for personal injury (including interest, penalties, legal costs, reasonable attorney's fees, accounting fees, and expert witness fees) arising out of or connected with any breach or alleged breach of this Agreement or any claim, demand, or action by a third party which is inconsistent with any of the warranties, representations or covenants made by Contractor in this Agreement. Contractor agrees to reimburse EdFund, on demand, for any payment made or incurred by EdFund at any time with respect to any liability or claim to which the foregoing indemnity applies.

5. AUDITS

Contractor may be audited and/or monitored for satisfactory performance of this Agreement on a periodic basis by EdFund, and/or an external auditing firm, and/or any State or Federal agency with a relevant interest.

Contractor shall maintain, for a minimum of three (3) years after the completion of this Agreement, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this Agreement and all books, records and supporting documents related to this Agreement shall be available for review and audit. Contractor agrees to cooperate fully with any audit conducted by EdFund and to provide full access to relevant materials. Failure to maintain the books, records and supporting documents required by this section shall establish a presumption in favor of EdFund for the recovery of any funds paid by EdFund under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

6. TIME OF THE ESSENCE

Time is of the essence in respect to all provisions of this Agreement in which a definite time for performance is specified.

7. TERMINATION

a. Bankruptcy - In the event proceedings in bankruptcy are commenced against Contractor, Contractor is adjudged bankrupt or a receiver is appointed and qualifies, then EdFund may terminate this Agreement and all further rights and obligations hereunder, by giving five (5) days notice in writing. It is recognized by the parties that equipment purchased by Contractor or EdFund for this Agreement shall have lien rights held in the name of EdFund which shall retain lien rights until Contractor either returns said equipment to EdFund or purchases it.

b. EdFund's Option - EdFund may at its sole and absolute discretion terminate this Agreement at any time upon giving thirty (30) days advance notice in writing to Contractor. In such event, Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder. In such event, EdFund shall pay Contractor for all satisfactory services rendered and expenses incurred prior to termination which, with reasonable efforts by Contractor, could not have been avoided, but not in excess of the maximum payable under this Agreement. In such event, Contractor agrees to relinquish possession of equipment purchased for this project to EdFund or Contractor may, with approval of EdFund, purchase said equipment.

c. Secretary's Option - This Agreement is terminable by the U. S. Secretary of Education upon 30 days notice to Contractor if the Secretary determines that this Agreement includes an impermissible transfer of the reserve fund or assets or is otherwise inconsistent with the terms and purposes of section 422 of the Higher Education Act.

d. Gratuities - EdFund may, by written notice to Contractor, terminate the rights of Contractor to proceed under this Agreement if it is found, after notice and hearing by the President of EdFund or his/her authorized representative, that gratuities were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of EdFund with a view toward securing this Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of this Agreement.

In the event this Agreement is terminated as provided in this subparagraph, EdFund shall be entitled to (1) pursue the same remedies against Contractor as it could pursue in the event of the breach of this Agreement by Contractor, and (2) exemplary damages in an amount which shall be not less than three (3) nor more than ten (10) times the cost incurred by Contractor in providing any such gratuities to any such officer or employee, as a penalty in addition to any other damages to which it may be entitled by law.

The rights and remedies of EdFund provided in this subparagraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

e. Failure to Perform Covenant - EdFund may terminate this Agreement and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination EdFund may proceed with the work in any manner deemed proper by EdFund. The cost to EdFund shall be deducted from any sum due Contractor under this Agreement, and the balance, if any, shall be paid Contractor upon demand.

8. WORKER'S COMPENSATION INSURANCE

Contractor hereby warrants that it carries Worker's Compensation Insurance, if required by law, for all of its employees who will be engaged in the performance of this Agreement and agrees to furnish to EdFund satisfactory evidence thereof at any time EdFund may request.

9. INDEPENDENT CONTRACTOR

The relationship of EdFund and Contractor established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the day-to-day activities of the other, or (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking. Neither party nor its agents or employees is the representative of the other party for any purpose except as expressly set forth in this Agreement, and has no power or authority as agent, employee or in any other capacity to represent, act for, bind, or otherwise create or assume an obligation on behalf of the other for any purpose whatsoever. All financial obligations associated with Contractor's business are the sole responsibility of Contractor.

10. WORK-MADE-FOR-HIRE

For valuable consideration, Contractor hereby grants to EdFund the right to copyright in any and all videos and/or other materials created under this Agreement, including without limitation, any and all literary, dramatic, musical, artistic content therein, any audio and visual performances or contents therein, any plots, themes, characters or designs (whether live action or animated), any outtakes therefrom ("Outtakes") and all still photography delivered in connection with the videos and/or other materials (collectively referred to herein as the "PR Materials") in EdFund's name as the owner and author thereof and to secure any and all renewals of such copyright. The PR Materials shall be considered a "work made for hire" for EdFund. The PR Materials shall, from inception of its creation, be entirely the property of EdFund in perpetuity throughout the universe, under copyright and otherwise, free of claim whatsoever by Contractor or any person deriving any right or interest from Contractor, and EdFund shall have the right to copyright the PR Materials in EdFund's name or in the name of EdFund's designee and to secure any and all renewals, of such copyright and extension thereof. EdFund and its subsidiaries, affiliates and licensees shall have the sole, exclusive and unlimited right throughout the universe in perpetuity, to exploit the PR Materials for promotional, commercial and any other purposes in any and all media by any methods, now or hereafter known. If, for any reason, it is determined that the PR Materials hereunder do not qualify as a "work made for hire", then any such PR Materials, together with all rights in and to them shall be deemed transferred to EdFund by this Agreement. Contractor hereby grants to EdFund a power of attorney to execute on Contractor's behalf any documents necessary to effectuate the purposes, terms and provisions contained herein; provided that EdFund shall first endeavor to have Contractor execute any such documents and, if Contractor fail to execute and return said documents to EdFund within ten (10) days following Contractor's receipt of same, EdFund shall then have the full right and power to execute such documents on Contractor's behalf.

Without limiting the generality of the foregoing, EdFund shall have the right to edit the PR Materials, to make excerpts therefrom, and to exercise all of the rights set forth herein with respect to such excerpts.

EdFund shall have the right to convey the rights set forth in the preceding paragraphs in whole or in part to third parties whether by license or assignment.

11. CONFIDENTIALITY

All financial, statistical, personal, technical, customer information, and other data or information relating to EdFund's operation which is considered confidential as defined by law or is designated as confidential by EdFund, and made available to Contractor in order to carry out this Agreement, shall be protected by Contractor from unauthorized use, disclosure or destruction through the observance of all Federal and California state information security, and confidentiality laws and procedural requirements.

12. BREACH OF CONFIDENTIALITY OR SECURITY

Contractor shall promptly notify EdFund of any instance of suspected breach of confidentiality or security, including but not limited to, loss or theft of documents; unplanned opening or destruction of crates, boxes, or filing cabinets; unauthorized access to or use of confidential information; and unauthorized disclosure, alteration, destruction or other compromise of that confidential information. The initial report shall be made by telephone call to EdFund's Security Office, at 916-526-7539 within 24 hours from the time Contractor becomes aware of the suspected breach, followed by a full written report to the Security Office no later than five (5) business days from the date Contractor becomes aware of the suspected breach. In the event of a suspected security breach resulting from Contractor's performance of the Agreement that triggers notification requirements under California Civil Code Section 1798.29 or any other statute, regulation or requirement, Contractor agrees to indemnify EdFund for all costs and expenses related to such notification, notwithstanding any other provision of this Agreement.

13. DISPOSITION OF CONFIDENTIAL INFORMATION UPON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement, Contractor shall either return or destroy, in EDFUND's sole discretion and in accordance with any instructions by EdFund, all Customer Information and Confidential Information in the possession or control of Contractor or its agents and subcontractors. However, if Contractor determines that neither return nor destruction of Customer Information and Confidential Information is feasible and notifies EdFund in writing of that determination, Contractor may retain Customer Information and Confidential Information provided that Contractor (a) continues to comply with the provisions of this Agreement for as long as it retains Customer Information and Confidential Information, and (b) further limits uses and disclosures of Customer Information and Confidential Information to those purposes that make its return or destruction infeasible.

14. SAFEGUARDS AND INFORMATION SECURITY

Throughout the term of this Agreement, Contractor shall implement and maintain appropriate safeguards, as that term is used in the Federal Trade Commission's Safeguards Rule (the "Safeguards Rule") at 16 C.F.R. § 314.4(d), for all customer information, as defined at Section 314.2(b) of the Safeguards Rule, as well as all Confidential Information, received by Contractor from or on behalf of EdFund, or is created by Contractor, or is made accessible to Contractor by EdFund. Contractor shall use and disclose Customer Information and other Confidential Information provided to Contractor by EdFund or by any borrower only as necessary to perform the services as set forth in this contract. Contractor agrees not to disclose such information provided to Contractor with any third party other than as expressly permitted in this Agreement or as specifically required by Title IV of the Higher Education Act of 1965.

15. PROPERTY RIGHTS

Contractor assigns all rights, title and interest, including any intellectual property rights, to any data, materials or works developed or produced as a result of this Agreement to EdFund and agrees not to disclose these items to any third parties without the prior written consent of the Contract Manager.

16. GENERAL PROVISIONS

a. FORCE MAJEURE. Except for defaults of subcontractors, neither party shall lose any rights hereunder or be liable to the other party for damages or losses on account of failure of performance by the defaulting party if the failure is the result of an Act of God (e.g., fire, flood, inclement weather, epidemic, or earthquake); war or act of terrorism, including chemical or biological warfare; labor dispute, lockout, strike, embargo; governmental acts, orders, or restrictions; failure of suppliers or third persons; or any other reason where failure to perform is beyond the reasonable control of the defaulting party, is not caused by the negligence, intentional conduct or misconduct of the defaulting party, and the defaulting party has exercised all reasonable efforts to avoid or remedy such force majeure. The defaulting party must provide written notice of the force majeure event to the remaining parties within two (2) business days of such event.

b. WAIVER. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of EdFund to enforce at any time any of the provisions of this Agreement, or to require at any time performance by Contractor of any of the provisions, therefore, shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Agreement or any part thereof or the right of EdFund to thereafter enforce each and every such provision.

c. CAPTIONS. The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the clauses to which they appertain.

d. INTEGRATION / PAROL EVIDENCE. This Agreement and all other agreements and other documents referred to in this Agreement constitute the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representations or warranty outside those expressly set forth in this Agreement or the documents and agreements referred to in this Agreement. In the event that a provision is found to be invalid or unenforceable the remainder of the Agreement shall remain in full force and effect.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

e. NOTICE.

(1) All notices, requests, demands, or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

(i) *Personal delivery.* When personally delivered to the recipient, notice is effective on delivery.

(ii) *First-class mail*. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.

(iii) *Certified Mail.* When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

(iv) *Overnight delivery.* When delivered by overnight delivery, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

(v) *Facsimile.* When sent by fax to the fax number of the recipient known to the party giving notice, notice is effective on receipt, provided that a duplicate copy of the notice is promptly given by first class mail or overnight delivery. Any notice given by fax shall be deemed received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

Addresses for purpose of giving notice are as follows:

EdFund
Legal Division
P.O. Box 419045
Rancho Cordova, CA 95741-9045

Contractor
Address
City, State, Zip Code

(2) Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

(3) Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

f. ASSIGNMENTS AND SUBCONTRACTS. This Agreement is not assignable by Contractor either in whole or in part.

Contractor shall submit any proposed subcontracts, not originally identified in Contractor's proposal (if submitted), or any substitution of subcontractors, to EdFund for its approval prior to entering into it. Upon the termination of any subcontractor, EdFund shall be notified immediately. All subcontracts entered in to pursuant to this Agreement shall be subject to examination and audit by EdFund auditors, or other auditors authorized by EdFund for a period of three (3) years after final payment under this Agreement.

Each subcontract to which EdFund has consented shall contain a provision that further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of EdFund.

g. DISPUTE RESOLUTION. Any controversy or claim arising from or relating to this Agreement or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and the judgment rendered by the arbitrator(s) shall be binding on the parties hereto and may be entered in any court having jurisdiction thereof. The forum for any arbitration under this Agreement shall be in Sacramento County, California.

h. LAW GOVERNING. This Agreement shall be governed by the laws of the State of California both as to interpretation and performance.

i. ATTORNEYS' FEES. In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorney fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

j. SURVIVING COMPLETION / TERMINATION. This subsection and the following Sections shall survive the termination of this Agreement: Section 5, Audits and Section 11, Confidentiality.