

REQUEST FOR PROPOSALS

Arts and Cultural Economy Audit and Strategic Plan

RESPONSES DUE NO LATER THAN 5pm EST, June 22, 2023

1.0 INTRODUCTION

Purpose: The purpose of this request for proposals ("RFP") is to select a service provider (or service providers) to perform the services ("Services") described in Schedule A.

Definitions In this RFP the following definitions shall apply:

- "State" means the State of Kentucky
- "LexArts" means LexArts
- "Website" means www.lexarts.org
- "Closing Time" has the meaning set out in Section 2.1
- "Contract" means a formal written contract between LexArts and the appointed consultant or consultants to undertake the Services
- "Evaluation Team" means the team appointed by LexArts and Culture Planning Team
- "Preferred Consultant" means the consultant(s) selected by the Evaluation Team to enter into negotiations for a Contract
- "Consultant" means an entity that submits a Proposal
- "Proposal" means a proposal submitted in response to this RFP
- "RFP" means this Request for Proposals
- "Services" has the meaning set out in Schedule A
- "Site" means the place or places where the Services are to be performed

1.1 Statement of Brief

In order to further recovery from the COVID-19 pandemic and invest in the wider creative economy, LexArts has been provided a one-off allocation of \$300,000 from Lexington-Fayette Urban Council Government to deliver a comprehensive, economic-focused creative arts masterplan. The opportunity for the city is to not only leverage its existing arts and culture economy, but significantly expand it to better support artists, retain talent and compete with both regional and national cities in this rapidly growing sector of the economy. This plan is aimed at advancing existing mapping and policy work completed by LexArts over the past few years, while significantly accelerating equitable and inclusive development of Lexington's wider creative economy, inclusive of all its artforms and disciplines.

To do so, this work aims to:

- Deliver a comprehensive strategic plan, separated into sectors and disciplines that both identifies specific actions to take to grow and support the sectors while also unifying the community in a wider investment thesis to support the creative economy.
- Produce an interactive, publicly available map of Lexington's creative economy, built on and supported by LexArts venue and events mapping.
- Perform a comprehensive economic impact study of the arts, culture and entertainment sectors.
- Conduct a robust regulatory and literature review and identify how all community acts (city council, economic development, tourism, equity, and community development) can contribute to and benefit from investing in the wider creative economy.
- Identify threats and opportunities to the sector.

This RFP solicits bids from qualified consultants to deliver this work.

1.2 About LexArts

Vision and Mission:

LexArts is a catalyst for creating a progressive and innovative community inspired by the arts.

LexArts is Lexington's official local arts agency and United Arts Fund creating opportunities for quality arts experiences in central Kentucky through leadership, funding, advocacy, programming, and communication.

LexArts' President & CEO and board members work closely with community leaders and local and state officials concerning public funding and cultural facilities. Through its annual Fund for the Arts, LexArts raises funds in support of local arts and distributes general operating and special project and programming grants to arts organizations in the area. LexArts also operates ArtsPlace, a former YWCA turned cultural edifice, which offers creative and administrative spaces for nonprofit arts organizations. ArtsPlace is also home to LexArts Gallery, one of Lexington's premier visual art galleries, dedicated to showcasing high quality works by Kentucky artists.

2.0 INSTRUCTIONS TO CONSULTANTS

2.1 Opening & Closing Time for Proposal Delivery

- Applicants should submit their Proposal electronically in a single pdf file which must be delivered by email to Ame Sweetall at asweetall@lexarts.org Please use subject line: **MASTER PLAN CONSULTANCY RFP RESPONSE**
- **Opening Date:** June 1, 2023
- **Closing Date:** June 22, 2023, 5PM EST
- **Bid Review and Interviews:** June 23 - 30, 2023
- **Contract Award Notice:** July 7, 2023
- **Contract Start Date:** July 21, 2023
- **Contract End Date:** August 31, 2024

Confirmation of receipt of email will be issued. Proposals that cannot be opened or viewed may be rejected. A Consultant bears all risk that the Proposal is received by the Closing Time. The maximum file size LexArts can receive is 10Mb if sending large email attachments.

2.3 Late Proposals

Proposals received after the Closing Time will not be accepted or considered. A Consultant bears all risk that LexArts receiving computer equipment functions properly so that the Proposal is received by the Closing Time.

2.4 Amendments to Proposals

Proposals may be revised by written amendment, delivered to the email address at any time before the Closing Time but not after. An amendment should be signed by an authorized signatory of the Consultant.

2.5 Inquiries

All inquiries related to this RFP should be directed in writing to the person named below: Ame Sweetall - Executive Director, asweetall@lexarts.org

Reference: **MASTER PLAN ARTS CONSULTANCY**

2.6 Addenda

If LexArts determines that an amendment is required to this RFP, it will issue a written addendum by posting it on www.lexarts.org. Upon posting, any addenda will form part of this RFP. It is the responsibility of Consultants to check the Website for addenda. The only way this

RFP may be added to, or amended in any way, is by a formal written addendum. No other communication, whether written or oral, from any person will affect or modify the terms of this RFP or may be relied upon by any Consultant. By delivery of a Proposal the Consultant is deemed to have received, accepted and understood the entire RFP, including any and all addenda.

2.7 Examination of Contract Documents and Site

Consultants will be deemed to have carefully examined the RFP, prior to preparing and submitting a Proposal with respect to any and all facts which may influence a Proposal.

2.8 Opening of Proposals

LexArts intends to open Proposals publicly via its website as well as email and social media announcements.

2.9 Status Inquiries

All inquiries related to the status of this RFP, including whether or not a Contract has been awarded, should be directed to Ame Sweetall.

2.10 Signature

The legal name of the person or firm submitting the Proposal should be inserted on a cover letter as Page 1 of the RFP submission along with the date, time submitted, individual's title, email and phone number. Included in the cover letter, signed by a person (electronic or facsimile) authorized to sign on behalf of the Consultant is the following:

- Complete company information, including tax status and confirmation of right to work in the State of Kentucky.
- If the Consultant is a corporation, then the full name of the corporation should be included, together with the names of authorized signatories. The Proposal should be executed by all of the authorized signatories or by one or more of them provided that a copy of the corporate resolution authorizing those persons to execute the Proposal on behalf of the corporation is submitted.
- If the Consultant is a partnership or joint venture then the name of the partnership or joint venture and the name of each partner or joint venturer should be included, and each partner or joint venturer should sign personally (or, if one or more person(s) have signing authority for the partnership or joint venture, the partnership or joint venture should provide evidence to the satisfaction of LexArts that the person(s) signing have signing authority for the partnership or joint venture).
- If a partner or joint venturer is a corporation then such corporation should sign as indicated in subsection as above; or if the Consultant is an individual, including a sole proprietorship, the name of the individual should be included.

3.0 GENERAL PROJECT INFORMATION

The COVID-19 crisis has been the biggest shock to the U.S. economy since the Great Depression, and the creative economy - cultural tourism, music, visual arts, theater, dance - has been one of the most impacted sectors. An estimated 2.7 million jobs were lost, accounting for a reduction in more than \$150 billion in sales, according to Brookings. This estimated loss accounts for over one-third of all arts and culture jobs and an estimated \$74 billion in average monthly earnings for creative occupations nationwide. This has impacted all communities across Kentucky, including Lexington. According to ArtsFund, this is an estimated loss of between 30-85% of total earned income for the sector, making it one of the most impacted of all. However, the sector has also shown significant resilience, with events and festivals returning and certain sectors enjoying landmark growth in certain areas. And in order to capitalize on these opportunities and accelerate recovery, Lexington needs to have the most robust strategy, data and evidence base to understand the make-up of its creative economy, its strengths and weaknesses and how best to support it moving forward. With the support of the City of Lexington through a direct allocation of \$300,000, LexArts is planning just that and seeking a consultant, or team of consultants to deliver a comprehensive, cost-effective **Creative Economy Audit and Strategic Plan**.

The objectives of this work are to:

- Deliver a robust asset and infrastructure map of all arts and culture assets in Lexington and a clear framework outlining how they benefit travel and tourism.
- Equip LexArts and all its stakeholders with comprehensive and globally relevant data and evidence to understand the city's creative economy, including at least visual arts, music, dance, theater and performing arts across the for-profit and nonprofit sectors.
- Deliver a 3- to 5-year strategic plan for LexArts, inclusive of the sectors outlined in this RFP.
- Propose a set of implementable, global-leading policies to attract, retain and support talent, with a focus on women, minority owned and very small businesses, as well as wider workforce development.
- Fostering extensive community engagement to hear from a wide variety of stakeholders working in, related to, and affected by Lexington's cultural and creative economy will be essential for delivering on these objectives.

3.1 Scope of Work

1. Manage and coordinate an extensive community survey(s) for the city targeting artists, creatives, businesses and the wider public to help determine:
 - a. Overall public opinion toward and perception of the arts and culture ecosystem.
 - b. Makeup of the arts and cultural ecosystem - including visual arts, dance, music, theater & other arts.
 - c. Economic impact of the creative economy, including its relation to tourism

- d. Challenges and opportunities moving forward, as well as assessing the wider sector's susceptibility to external threats.
 - e. Impact of COVID-19 on incomes, recovery and resilience.
2. Conduct focus group roundtables and 1-to-1 interviews, plus a minimum. Focus groups must be inclusive of for-profit and nonprofit arts organizations, individual artists and other stakeholders
3. Deliver a comprehensive asset map of Lexington's arts and culture economy - including providing an online, publicly available interactive map. Deliver recommendations for how this data can be maintained or updated by LexArts past the life cycle of this contract.
4. Assess the city and county's arts and culture regulations and policies. Analysis should include at least policies specifically related to arts and culture, but also related economic development, workforce and labor, tourism, social services and education policy.
5. Deliver a detailed economic impact assessment for Lexington, including both for-profit and nonprofit arts and culture assets.
 - a. This must comprise direct, indirect and induced impact, including understanding the total economic impact of COVID-19 and identifying any wage gaps between genders, disadvantaged communities and minority groups.
6. Deliver a robust strategy and action plan to grow and support Lexington's arts, culture and cultural tourism economy, complete with:
 - a. A comprehensive assessment of all regulations related to culture presented in an appendix / guide with key actions to take forward.
 - b. Extensive stakeholder engagement, including survey, roundtable and interview findings.
 - c. A comprehensive economic impact assessment and industry profile that details the economic significance of the creative economy
 - d. A cultural inventory and music ecosystem map

3.2 Service Area

Analysis will include all sectors of the creative economy as defined by LexArts. This includes, but is not limited to, theater, dance, fine art, performing arts, music, visual arts, literary arts, culinary arts and film.

The consultant is responsible for:

- Online meeting capacity to conduct interviews and roundtables
- All travel and accommodation related to in-market visits, should they be required (this is not a formal requirement, but is highly encouraged)

3.3 Proposed Project Schedule of Deliverables

The following outlines the anticipated schedule and are estimates only. The timing and sequence of events may vary at the sole discretion of LexArts and the steering committee. The Consultant will be expected to deliver the first Draft Plan in April 2024 and may continue the delivery of services through to June 2024.

Contract Initiation	July 2023
Literature Review & Research Completion	December 2023
Stakeholder Engagement Completed	February 2024
Economic Impact and Mapping Completed	April 2024
First Draft Submitted	No later than June 2024
Final Draft Submitted	No later than August 2024

The consultant will be required to present findings periodically to an assembled steering committee coordinated by LexArts. The consultant will also be required to abide by the terms and conditions of the Award Notice, which will be managed by LexArts. This will be agreed upon when the contract is awarded, and may require periodic updates and reporting requirements. These will be set out before the work commences and must be agreed to.

3.4 Submission Requirements

A complete proposal must include:

- A cover letter inclusive of RFP requirements;
- A copy of relevant business insurance documentation;
- Narrative response to RFP including;
 - Statement of qualifications of Consultant and/or team members, including biographies, specific expertise related to the deliverables;
 - Proposed methodology, including interaction with community, mapping and economic impact;
- List of three references and /or letters of recommendation (name, phone, email, what was performed/produced for the client)

- 3-5 copies of, or links to, case studies/completed versions of similar studies or related work;
- Approach to Quality, Risk and Project Management & Equipment Resources;
- Project timeline and milestones;
- Comprehensive budget, including estimated cost of completion to achieve deliverables and copies inclusive of travel, and incidentals. These costs must be split by deliverables as outlined in this RFP.

Incomplete proposals will not be considered. Proposals for only portions of the requested scope of work will be considered. Please specify in your response if you are submitting for the entire scope or just portions.

3.5 LexArts Support Available for the Work

LexArts will provide:

- A designated main point of contact/contact person for the duration of the Services;
- An introductory meeting with LexArts Arts and Steering Committee regarding the engagement process;
- A stakeholder and contact list (in an excel spreadsheet);
- A list of documents and helpful information sources to be reviewed;
- A timely review of engagement outlines, deliverables and draft documents availability to discuss (by phone, email or Zoom/Teams) project ideas and needs, when needed;
 - The Strategy will include two rounds of internal revisions to the draft document and one final round of review and revisions to the final draft, if needed.
- Marketing and communications support for advertising of engagement events;
- In-person support for meetings and roundtable discussions (if required)

4.0 EVALUATION AND SELECTION

4.1 Evaluation Team

The evaluation of Proposals will be undertaken by an evaluation team (the "Evaluation Team") which consists of LexArts and members of the Steering Committee. The Evaluation Team may consult with others including third party consultants and references, as the Evaluation Team may in its discretion decide is required. The Evaluation Team will give a written recommendation for the selection of a Preferred Consultant or Preferred Consultants.

4.2 Evaluation Criteria

All proposals shall be evaluated by the Evaluation Team using the same criteria and scoring process. The following criteria shall be used by the Evaluation Team to evaluate proposals:

Criteria	Weight
<u>Subject-matter expertise</u> – The Consultant’s knowledge of national research, practice, and policy related to creative economies, based on submitted versions of similar studies or related work and/or described in the Consultant’s response.	30
<u>Knowledge of LexArts and culture landscape</u> – The Consultant’s existing awareness and connection to Lexington or Kentucky and/or a plan to develop understanding.	10
<u>Methodology</u> – The Consultant’s process and analytical approach to achieving project objectives and scope of work within the required timeline, as described in the Consultants response.	30
<u>Resources and Organizational Structure</u> – The Consultant’s biographies for key personnel on the project team and described project management experience and resources.	10
<u>Experience and reputation</u> – The Consultant’s references and/or letters of recommendation)	10
<u>Pricing</u> – The Consultant’s budget/financial proposal for the performance of the Services as described in the Consultant’s response.	10
Total	100%

Vendors are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a vendor's capabilities so the responding vendor should be detailed in their proposal responses.

4.3 Discrepancies in Consultant's Financial Proposal

If there are any obvious discrepancies, errors or omissions in a Proposal (Consultant's Financial Proposal), then LexArts shall be entitled to make obvious corrections, but only if, and to the extent, the corrections are apparent from the Proposal as submitted, and in particular:

- If there is a discrepancy between a unit price (of each deliverable) and the extended total, then the unit prices shall be deemed to be correct, and corresponding corrections will be made to the extended totals;
- If a unit price has been given but the corresponding extended total has been omitted, then the extended total will be calculated from the unit price and the estimated quantity;
- And if an extended total has been given but the corresponding unit price has been omitted, then the unit price will be calculated from the extended total and the estimated quantity.

4.4 Litigation

In addition to any other provision of this RFP, LexArts may, in its absolute discretion, reject a Proposal if the Consultant, or any officer or director of the Consultant submitting the Proposal, is or has been engaged directly or indirectly in a legal action against LexArts, its appointed officers, representatives or employees in relation to any matter, or if LexArts has initiated legal action against any officers or directors of the Consultant. In determining whether or not to reject a Proposal under this Section, LexArts will consider whether the litigation is likely to affect the Consultant's ability to work with LexArts, its consultants and representatives and whether LexArts's experience with the Consultant indicates that there is a risk LexArts will incur increased staff and legal costs in the administration of the Agreement if it is awarded to the Consultant.

4.5 Additional Information

The Evaluation Team may, at its discretion, request clarifications or additional information from a Consultant with respect to any Proposal, and the Evaluation Team may make such requests to only selected Consultants. The Evaluation Team may consider such clarifications or additional information in evaluating a Proposal.

4.6 Interviews

The Evaluation Team may, at its discretion, invite some or all of the Consultants to appear before the Evaluation Team to provide clarifications of their Proposals. In such an event, the Evaluation Team will be entitled to consider the answers received in evaluating Proposals.

4.7 Negotiation of Contract and Award

If LexArts selects a Preferred Consultant or Preferred Consultants, then it may: enter into a Contract with the Preferred Consultant(s); or enter into discussions with the Preferred Consultant(s) to attempt to finalize the terms of the Contract(s), including financial terms, and such discussions may include:

- Clarification of any outstanding issues arising from the Preferred Consultant's Proposal;
- Negotiation of amendments to the departures to the draft Contract, if any, proposed by the Preferred Consultant to their Proposal;
- And negotiation of amendments to the Preferred Consultant's price(s).

If the Preferred Consultant's financial Proposal exceeds LexArts's approved budget, or LexArts reasonably concludes the Preferred Consultant's financial proposal includes a price(s) that is unbalanced, or a knowledgeable third party would judge that the Preferred Consultant's price(s) materially exceed a fair market price(s) for services similar to the Services offered by the Preferred Consultant as described in the Preferred Consultant's Proposal; or if at any time LexArts reasonably forms the opinion that a mutually acceptable agreement is not likely to be reached within a reasonable time, give the Preferred Consultant(s) written notice to terminate discussions, in which event LexArts may then either open discussions with another Consultant or terminate this RFP and retain or obtain the Services in some other manner.

5.0 GENERAL CONDITIONS

5.1 Reservation of Rights

Notwithstanding any other provision in this RFP, this RFP is not a tender and does not commit LexArts in any way to select a Preferred Consultant, or to proceed to negotiations for a Contract, or to award any Contract, and LexArts reserves the right to at any time, and for any reason, reject all Proposals, and to terminate this RFP process without further explanation. LexArts is under no obligation to consider any Proposal, including the Proposal with the lowest price, or to select as the Preferred Consultant the Consultant that submits the Proposals with the lowest price.

5.2 Consultant's Expenses

Consultants are solely responsible for their own expenses in preparing, and submitting Proposals, and for any meetings, negotiations or discussions with LexArts or its representatives and consultants, relating to or arising from this RFP. LexArts and its representatives, agents, consultants and advisors will not be liable to any Consultant for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by the Consultant in preparing and submitting a Proposal, or participating in negotiations for a Contract, or other activity related to or arising out of this RFP.

5.3 No Contract

By submitting a Proposal and participating in the process as outlined in this RFP, Consultants expressly agree that no contract of any kind is formed under, or arises from this RFP, prior to the signing of a formal written Contract.

5.4 Conflict of Interest

A Consultant shall disclose in its Proposal any actual or potential conflicts of interest and existing business relationships it may have with LexArts, its appointed officials or employees. LexArts may rely on such disclosure.

5.5 Confidentiality

All submissions become the property of LexArts and will not be returned to the Consultant. All submissions will be held in confidence by LexArts unless otherwise required by law.

5.6 No Claims

Each Consultant, by submitting a Proposal, irrevocably:

- (a) agrees that it will not bring any claim, demand, action, cause of action, suit or proceeding, whether arising in contract, tort (including negligence) or otherwise (a "Claim") against LexArts or any of its employees, directors, officers, advisors or representatives, or any one of them, for any costs, damages or other compensation for any matter relating directly or indirectly to this RFP (including in the event that LexArts rejects or disqualifies or for any other reason fails to accept a Proposal, accepts a non-compliant Proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or any duties arising from this RFP; and;
- (b) waives any Claim against LexArts and its employees, directors, officers, advisors or representatives, or any one of them, for any compensation of whatsoever nature or kind, including for loss of anticipated profits, loss of opportunity, indirect, incidental or consequential damages or losses if no contract is entered into for the Services between the Consultant and LexArts for any reason whatsoever, including in the event that LexArts rejects or disqualifies or for any other reason fails to accept a Proposal, accepts a noncompliant Proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or any duties arising from this RFP.

6.0 TERMS AND CONDITIONS

6.1 Services

LexArts hereby retains the Consultant to provide the consulting and professional services as described generally in this RFP including anything and everything required to be done for the fulfillment and completion of this agreement (the "Services").

6.2 Amendment of Services

LexArts may from time to time, by written notice to the Consultant, make changes in the scope of the Services. The Fees will be increased or decreased by written agreement of LexArts and the Consultant.

6.3 Additional Services

The Consultant will, if requested in writing by LexArts, perform additional services as may be listed in the RFP. The terms of this agreement will apply to any additional services, and the fees for additional services, and the time for the Consultant's performance, will generally correspond to the fees and time of performance. The Consultant will not provide any additional services in excess of the scope of services requested in writing by LexArts.

6.4 Standard of Care

The Consultant will perform the Services with that degree of care, skill and diligence normally provided by a qualified and experienced practitioner performing services similar to the Services, and on the understanding that LexArts is relying on the Consultant's experience and expertise. The Consultant represents that it has the expertise, qualifications, resources and relevant experience to provide the Services.

6.5 Term

The Consultant will provide the Services for the period commencing on June 1, 2023 and terminating on June 30, 2024 (the "Term"). The parties may extend the Term by mutual agreement. If the Term is extended, the provisions of this agreement will remain in force except where amended in writing by the parties.

6.6 Time

The Consultant acknowledges that time is of the essence with respect to the provision of the Services and accordingly the Consultant will provide the Services within the performance or completion dates or time periods (the "Time Schedule") or as otherwise agreed to in writing by LexArts and the Consultant. If at any time the Consultant discovers that the Time Schedule cannot be met it will immediately advise LexArts in writing and provide a revised Time Schedule.

6.7 Personnel and Subcontractors

6.7.1 Qualified Personnel

The Consultant will provide only professional personnel who have the qualifications, experience and capabilities to perform the Services.

6.7.2 Listed Personnel and Subcontractors

The Consultant will perform the Services using the professional personnel and subcontractors as may be listed in this RFP, and the Consultant will not remove any such listed personnel or subcontractors from the Services without the prior written approval of LexArts.

6.7.3 Replacement of Personnel or Subcontractors

If LexArts reasonably objects to the performance, qualifications, experience or suitability of any of the Consultant's personnel or subcontractors at any point during the term of the service then the Consultant will, on written request from LexArts, replace such personnel or subcontractors.

6.7.4 Subcontractors and Assignment

The Consultant will not engage any personnel or subcontractors, or subcontract or assign its obligations under this agreement, in whole or in part, without the prior written approval of LexArts. As such, specific individual subcontractors do not have to be identified at the point of responding to this RFP so long as the overall role and cost are identified in the response.

6.7.5 Agreements with Subcontractors

The Consultant will preserve and protect the rights of LexArts with respect to any Services performed under subcontract and incorporate the terms and conditions of this agreement into all subcontracts as necessary to preserve the rights of LexArts under this agreement. The Consultant will be as fully responsible to LexArts for acts and omissions of subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Consultant.

6.8 Limited Authority

The Consultant is not and this agreement does not render the Consultant an agent or employee of LexArts, and without limiting the above, the Consultant does not have authority to enter into any contract or reach any agreement on behalf of LexArts, except for the limited purposes as may be expressly set out in this agreement, or as necessary in order to perform the Services. The Consultant will make such lack of authority clear to all persons with whom the Consultant deals in the course of providing the Services. Every vehicle used by the Consultant

in the course of performing the services shall identify the Consultant by name and email address.

6.9 Independent Contractor

The Consultant is an independent contractor. This agreement does not create the relationship of employer and employee, a partnership, or a joint venture. LexArts will not control or direct the details, means or process by which the Consultant performs the Services. The Consultant will determine the number of days and hours of work required to properly and completely perform the Services. The Consultant is primarily responsible for performance of the Services and may not delegate or assign any Services to any other person. The Consultant will be solely liable for the wages, fringe benefits, work schedules and work conditions of any partners, employees or subcontractors.

6.10 Fees

LexArts will pay to the Consultant the fees as set out in the agreed signed contract (the "Fees"). Payment by LexArts of the Fees and Disbursements will be full payment for the Services and the Consultant will not be entitled to receive any additional payment from LexArts.

6.11 Payment

Subject to any contrary provisions set out in this Agreement, contracted services will be paid in four installments, on or around July 15, 2023, December 15, 2023, April 15, 2024, August 15, 2024. Prior to payment the Consultant will submit an invoice (the "Invoice") to LexArts requesting payment of the portion of the Fees and Disbursements relating to the Services provided. Each invoice should be sent electronically to: asweetall@lexarts.org and include the following information:

- An invoice number;
- The Consultant's name, address and telephone number;
- LexArts reference number for the Services; P.O. # (to be advised)
- Date of the Invoice;
- Taxes (if any);
- Grand total of the Invoice;
- On request from LexArts, provide receipts and invoices for all Disbursements claimed.

If LexArts reasonably determines that any portion of an Invoice is not payable it will so advise the Consultant that:

- LexArts will pay the portion of an Invoice which LexArts determines is payable less any deductions for setoffs or holdbacks permitted by this Agreement including, without limitation, any amounts permitted to be held back on account of deficiencies, within 30 days of the receipt of the Invoice;
- All Invoices shall be stated in, and all payments made in, US dollars.

7.0 INSURANCE AND DAMAGES

7.1 Indemnity

The Consultant will indemnify and save harmless LexArts and all of its officials, officers, employees, servants, representatives and agents (collectively the "Indemnitees"), from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) for damage to or destruction or loss of property, including loss of use, and injury to or death of any person or persons which any of the Indemnitees incur, suffer or are put to arising out of or in connection with any failure, breach or non-performance by the Consultant of any obligation of this agreement, or any wrongful or negligent act or omission of the Consultant or any employee or agent of the Consultant.

7.2 Survival of Indemnity

The indemnity described in This Section will survive the termination or completion of this agreement and, notwithstanding such termination or completion, will continue in full force and effect for the benefit of the contract.

7.3 Consultant's Insurance Policies

The Consultant will, without limiting its obligations or liabilities and at its own expense, provide and maintain throughout this agreement the following insurances in forms and amounts acceptable to LexArts from insurers licensed to conduct business in the United States and in Kentucky:

- Commercial general liability insurance on an occurrence basis, in an amount not less than three million (\$3,000,000) dollars inclusive per occurrence against death, bodily injury and property damage arising directly or indirectly out of the work or operations of the Consultant, its employees and agents. The insurance will include cross liability and severability of interests such that the coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured.
- The insurance will include, but not be limited to: premises and operators liability, broad form products and completed operations, owners and Consultants protective liability, blanket contractual, employees as additional insureds, broad form property damage, non-owned automobile, contingent employers liability, broad form loss of use, personal injury, and incidental medical malpractice. LexArts will be added as additional insured.
- Professional errors and omissions insurance in an amount not less two million (\$2,000,000) dollars insuring all professionals providing the Services from liability resulting from errors or omissions in the performance of the Services, with a 12 month maintenance period.

7.4 Insurance Requirements

The Consultant will provide LexArts with evidence of the required insurance prior to the commencement of this agreement. Such evidence will be in the form of a completed certificate of insurance acceptable to LexArts. The Consultant will, on request from LexArts, provide certified copies of all of the Consultant's insurance policies providing coverage relating to the Services, including without limitation any professional liability insurance policies. All required insurance will be endorsed to provide LexArts with thirty (30) days advance written notice of cancellation or material change restricting coverage. To the extent LexArts has an insurable interest, the builder's risk policy will have LexArts as first loss payee. The Consultant will be responsible for deductible amounts under the insurance policies. All of the Consultant's insurance policies will be primary and not require the sharing of any loss by LexArts or any insurer of LexArts.

7.5 Consultant Responsibilities

The Consultant acknowledges that any requirements by LexArts as to the amount of coverage under any policy of insurance will not constitute a representation by LexArts that the amount required is adequate and the Consultant acknowledges and agrees that the Consultant is solely responsible for obtaining and maintaining policies of insurance in adequate amounts. The insurance policy coverage limits shall not be construed as relieving the Consultant from responsibility for any amounts which may exceed these limits, for which the Consultant may be legally liable.

7.6 Additional Insurance

The Consultant shall place and maintain, or cause any of its subcontractors to place and maintain, such other insurance or amendments to the foregoing policies as LexArts may reasonably direct.

7.7 Waiver of Subrogation

The Consultant hereby waives all rights of recourse against LexArts for loss or damage to the Consultant's property.

8.0 TERMINATION

8.1 By LexArts

LexArts may at any time and for any reason by written notice to the Consultant terminate this agreement before the completion of all the Services, such notice to be determined by LexArts at its sole discretion. Upon receipt of such notice, the Consultant will perform no further Services other than the work which is reasonably required to terminate the Services.

Despite any other provision of this agreement, if LexArts terminates this agreement before the completion of all the Services, LexArts will pay to the Consultant all amounts owing under this agreement for Services provided by the Consultant up to and including the date of termination, plus reasonable termination costs in the amount as determined by LexArts in its sole discretion. Upon payment of such amounts no other or additional payment will be owed by LexArts to the Consultant, and, for certainty, no amount will be owing on account of lost profits relating to the portion of the Services not performed or other profit opportunities.

8.2 Termination for Cause

LexArts may terminate this agreement for cause as follows:

- If the Consultant is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or if a receiver is appointed because of its insolvency, LexArts may, without prejudice to any other right or remedy LexArts may have, terminate this agreement by giving the Consultant or receiver or trustee in bankruptcy written notice; or
- If the Consultant is in breach of any term or condition of this agreement, and such breach is not remedied to the reasonable satisfaction of LexArts within 5 days after delivery of written notice from LexArts to the Consultant, then LexArts may, without prejudice to any other right or remedy LexArts may have, terminate this agreement by giving the Consultant further written notice.

If LexArts terminates this agreement as provided by this Section, then LexArts may:

- Enter into contracts, as it in its sole discretion sees fit, with other persons to complete the Services;
- Withhold payment of any amount owing to the Consultant under this agreement for the performance of the Services;
- Set-off the total cost of completing the Services incurred by LexArts against any amounts owing to the Consultant under this agreement, and at the completion of the Services pay to the Consultant any balance remaining; and if the total cost to complete the Services exceeds the amount owing to the Consultant, charge the Consultant the balance, which amount the Consultant will forthwith pay.

8.3 Curing Defaults

If the Consultant is in default of any of its obligations under this agreement, then LexArts may without terminating this agreement, upon 5 days written notice to the Consultant, remedy the default and set-off all costs and expenses of such remedy against any amounts owing to the Consultant. Nothing in this agreement will be interpreted or construed to mean that LexArts has any duty or obligation to remedy any default of the Consultant.

8.4 Applicable Laws and By-Laws

8.4.1 Applicable Laws

This agreement will be governed by and construed in accordance with the laws of the State of Kentucky. LexArts and the Consultant accept the jurisdiction of the courts of Kentucky and agree that any action under this agreement be brought in such courts.

8.4.2 Codes and By-Laws

The Consultant will provide the Services in full compliance with all applicable laws, building codes and regulations.

8.4.3 Interpretation of Codes

The Consultant will, as a qualified and experienced professional, interpret applicable codes, laws and regulations applicable to the performance of the Services. If an authority having jurisdiction imposes an interpretation which the Consultant could not reasonably have verified or foreseen prior to entering into this agreement, then LexArts will pay the additional costs, if any, of making alterations so as to conform to the required interpretation.

8.5 Confidentiality and Disclosure of Information

8.5.1 No Disclosure

Except as provided for by law or otherwise by this agreement, the Consultant will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Consultant as a result of the performance of the Services and this agreement, and will not, without the prior express written consent of LexArts, publish, release, disclose or permit to be disclosed any such information to any person or corporation, either before, during or after termination of this agreement, except as reasonably required to complete the Services.