

Exhibit B

CONTRACT NO. 09-006-XX

SAMPLE CONTRACT FOR PURCHASED SERVICES
BETWEEN
STATE OF WASHINGTON

AND

Vendor

This Contract is made and entered into by and between the state of Washington, Department of Retirement Systems, hereafter referred to as "Agency," and Vendor, hereafter referred to as "Contractor:"

Contractor Name	Vendor _____
Address	_____
City, State & Zip Code	_____
Phone	_____
E-mail Address	_____
Washington State UBI No.	_____
Federal ID No	_____

PURPOSE

The purpose of this contract is to perform the following:

SCOPE OF WORK

- A. Exhibit A, attached hereto and incorporated by reference, contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the Agency and the Contractor, and specific obligations of both parties.

- B. The Contractor will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as included in the Agency’s Request for Proposals No. 09-006, attached as Exhibit B, and the Contractor’s proposal dated, DATE, attached as Exhibit C.

PERIOD OF PERFORMANCE

The period of performance under this contract will be from, January 1, 2010 or date of Agency execution, whichever is later, through June 30, 2013, unless sooner terminated or extended as provided under Exhibit A, General Terms and Conditions.

COMPENSATION

Agency will pay an amount not to exceed DOLLARS and CENTS for the performance of all things necessary for or incidental to the performance of work as set forth Scope of Work. Contractor’s compensation for services rendered will be based on the schedule set forth in Section 8, Fee Proposal, and Exhibit C.

BILLING PROCEDURES AND PAYMENT

Agency will pay Contractor upon satisfactory completion and acceptance of contract services and deliverables. Contractor will submit to the Agency Contract Manager properly completed invoices not more often than monthly. The invoices will describe and document, to the Agency’s satisfaction, a description of the work performed and fees. The invoice will include reference to Contract No. 09-006-XX.

Payment will be considered timely if made by the Agency within thirty (30) calendar days after receipt of properly completed invoices. Payment will be sent to the address designated by the Contractor.

The Agency 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.

No payments in advance or in anticipation of services or supplies to be provided under this contract will be made by the Agency.

CONTRACT MANAGEMENT

The Contract Manager for each of the parties will be the contact person for all communications and billings regarding the performance of this contract.

Work Contract Manager for Contractor is:	Work Contract Manager for Agency is:
Contact: _____	Contact: _____
Contractor Name: _____	Agency Name: _____
Address: _____	Address: _____

City, State, Zip:		City, State, Zip:	
Phone:		Phone:	
Fax:		Fax:	
Email Address:		Email Address:	

INSURANCE

The Contractor will provide insurance coverage as set out in Section 2.20, “Insurance Coverage,” of Exhibit B. The intent of the required insurance is to protect the State and the Contractor should there be any claims, suits, actions, costs, damages, or expenses arising from any negligent or intentional act or omission of the Contractor or subcontractor, or agents of either, while performing under the terms of this contract.

The insurance required will be issued by an insurance company/ies authorized to do business within the state of Washington. The Contractor will name the Agency and the State as additional insured’s under its commercial general liability and business auto policies with respect to (i) specific amounts of insurance (not minimum amounts), and (ii) their vicarious liability arising out of Contractor’s performance of services under this Contract. Contractor will instruct the insurers to give Agency thirty (30) calendar days advance notice of any insurance cancellation.

Contractor will submit to Agency within fifteen (15) calendar days of the contract effective date a certificate of insurance that outlines the coverage and limits defined in the Insurance section. Contractor will submit renewal certificates as appropriate during the term of the contract.

ASSURANCES

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

ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency will be resolved by giving precedence in the following order:

1. Applicable Federal and state of Washington statutes and regulations;
2. Special Terms and Conditions as contained in this basic contract instrument;
3. Contract Exhibit 1 – General Terms and Conditions;
4. Contract Exhibit 2 – Request for Proposals, No. 09-006;
5. Contract Exhibit 3 – Contractor’s Proposal dated DATE; and
6. Any other provision, term, or material incorporated herein by reference or otherwise incorporated.

ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, will be deemed a part hereof.

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.

APPROVAL

This contract will be subject to the written approval of the Agency’s authorized representatives and will not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

This contract, consisting of X pages and X exhibits, is executed by the persons signing below, who warrant they have the authority to execute the contract.

Vendor

Department of Retirement Systems

SAMPLE ONLY – Do not sign!
Name _____ date _____
Title _____

Name _____ date _____
Title _____

SAMPLE CONTRACT EXHIBIT 1

To Contract 09-006-xx

GENERAL TERMS AND CONDITIONS

DEFINITIONS

As used throughout this agreement, the following terms will have the meaning set forth below:

“**Agency**” means the Department of Retirement Systems of the state of Washington, any division, section, office, unit, or other entity of the Department of Retirement Systems, or any of the officers or other officials lawfully representing the Department of Retirement Systems.

“**Agent**” means the Director of DRS, and/or the delegate authorized in writing to act on the Director’s behalf.

“**Business day**” excludes Saturdays, Sundays, and state holidays.

“**Contractor**” means that firm, provider, organization, individual, or other entity performing service(s) under this contract, and will include all employees of the Contractor.

“**Personal Information**” means 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. Personal Information includes “Protected Health Information” as set forth in 45 CFR Section 160.103164.50 as currently drafted and subsequently amended or revised and other information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state and federal statutes.

“**Subcontractor**” means one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms “Subcontractor” and “Subcontractors” means Subcontractor(s) in any tier.

ACCESS TO DATA

In compliance with RCW 39.29.080, the Contractor will provide access to data generated under this contract to Agency, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor’s reports, including computer models and methodology for those models.

Contractor agrees to make personal information covered under this agreement available to Agency for inspection or to amend the personal information. Contractor will, as directed by Agency, incorporate any amendments to the personal information into all copies of such personal information maintained by the Contractor or its Subcontractors.

ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract will be made by the Agency.

AMENDMENTS

This contract may be amended by mutual agreement of both parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, Public Law 101-336, Also Referred to as the "ADA" 28 CFR Part 35

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

ASSIGNMENT

Neither this contract, nor any claim arising under this contract, will be transferred or assigned by the Contractor without prior written consent of the Agency.

ATTORNEY'S FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

CHANGES TO CONTRACT

The Director of the Agency may, at any time, by written notification to Contractor, and without notice to any known guarantor or surety, make changes within the general scope of services to be performed under the contract. If any such changes cause an increase or decrease in the cost of, or the time required for performance of, this contract, an equitable adjustment may be made in the contract price, or period of performance, or both, and the contract will be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted within thirty (30) calendar days from the date of receipt by Contractor of the notice of the change; **provided**, the Director of the Agency may, if the Director decides that the facts justify each action, receive and act upon such claim asserted at any time prior to final payment under the contract. Failure to agree to any adjustment will be a dispute concerning a question of fact within the meaning of the "Dispute" section under this contract. However, nothing in this clause excuses Contractor from proceeding with the contract as changed.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The Contractor will not use or disclose any information concerning the Agency, the Agency's business affairs, relations with their clientele and employees, member or participant data, or

information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

All information and data released under the administration of this contract is subject to the safeguarding and inventory requirements under this section, and must be safeguarded against unauthorized release and negligent treatment or use. Agency will notify Contractor of any data provided that is considered confidential by the Agency and should be treated with additional safeguards as such under this section. If Agency and Contractor mutually agree that confidential information and data to be provided is necessary to the performance of the contract, Agency will transfer the confidential information and data to the Contractor. All data transferred by electronic means will be encrypted or password protected, or both.

Confidential information and data includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, dates of birth, individual pension-related information, driver's license numbers, personnel information, bank information, credit or debit card information, agency security data, or information identifiable to an individual that relates to any of these types of information, any individual identifiable financial information, or any information required to be kept confidential pursuant to RCW 42.56.590. In the event of a breach of security resulting in the unauthorized disclosure of the confidential information, Contractor agrees to comply with these provisions as applicable.

Contractor agrees to hold confidential information and data in strictest confidence and not to use confidential information and data for any purpose other than the performance of this contract, to release confidential information only with the written permission of the Agency and only to authorized subcontractors requiring such information for the purposes of carrying out this contract, and not to release, divulge, publish, transfer, sell, disclose or otherwise make this confidential information and data known to any other party without Agency's express written consent or as provided by law. Contractor will avoid loss of confidential information and data released under the administration of this contract. Contractor agrees to release such confidential information and data only to subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Agency.

Contractor agrees to maintain physical, electronic, and managerial safeguards to prevent loss of or unauthorized access to confidential information and data. Unauthorized access means any access to the Agency's information and data which access has not been approved by the Agency. Contractor will maintain the security of all confidential information and data, as well as the security of all resources for the use and maintenance of all confidential information and data, including, but not limited to, paper files, desktop computers and their hardware, laptops and their hardware, software, floppy disks, compact discs, and personal digital assistants.

Should Contractor lose or misplace the Agency's information and data, or should there be any unauthorized access, use, damage, modification, release, disclosure, or negligent treatment of the confidential information, Contractor will notify the Agency's Contract Manager as soon as practical but no more than four (4) hours from notice of the loss or the unauthorized access to the data. The Agency will consider a force majeure with respect to the notification process.

Contractor will assist the Agency with all investigatory efforts concerning a loss of data, unauthorized access to data, or a breach of confidentiality. Failure to promptly notify or assist the Agency may be considered a breach of this provision.

Immediately upon expiration or termination of this Contract, Agency will notify Contractor of any items that should be destroyed, deleted, or returned to the Agency. Contractor will certify to Agency that Contractor has destroyed, deleted, or returned to Agency all requested confidential information and data. "Destroyed" means shredded or otherwise reduced so that the data therein cannot be identified. "Deleted" means moved to a secure file server and expunged from each computer or laptop hard drive.

Any breach of this provision may result in termination of the contract and the demand for return or destruction as indicated in the previous paragraph of all confidential information and data released to Contractor for the purposes of this contract. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor's unauthorized use or disclosure of confidential information and data. Contractor acknowledges Contractor's obligations pursuant to RCW 42.56.590.

CONFLICT OF INTEREST

Contractor warrants that it presently has no interest, and will not acquire any interest (direct or indirect), which would conflict in any significant manner or degree with the performance of service required under this contract. Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

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

COPYRIGHT PROVISIONS

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

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, results generated by

proprietary 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, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor will exert all reasonable effort to advise the Agency, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The Agency will receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The Agency will have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for securing business.

The Agency will have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISALLOWED COSTS

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

DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with Agent.

1. The request for a dispute hearing must:
 - a. Be in writing;
 - b. State the disputed issue(s);
 - c. State the relative positions of the parties;

- d. State the Contractor's name, address, and the contract number; and
 - e. Be mailed to the Agent and the other party's (respondent's) contract manager within three (3) business days after the parties agree that they cannot resolve the dispute.
2. The respondent will send a written answer to the requester's statement to both the agent and the requester within five (5) business days.
 3. The Agent will review the written statements and reply in writing to both parties within ten (10) business days. The Agent may extend this period if necessary by notifying the parties.
 4. The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract will be construed to limit the parties' choice of a mutually acceptable Alternative Dispute Resolution method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

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

EXTENSION

The Agency reserves the option to extend this contract for up to two additional one-year terms. In the event that the Agency elects to exercise its extension option, it will notify the Contractor of its decision to extend by giving written notice to the Contractor at least thirty (30) calendar days in advance of the current expiration date. Any extension of this contract will be in accordance with pricing, terms, and conditions as mutually agreed upon in writing by both parties.

GOVERNING LAW

This contract will be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder will be in the Superior Court for Thurston County.

INDEMNIFICATION

To the fullest extent permitted by law, Contractor will indemnify, defend, and hold harmless the state, agencies of state and all officials, agents and employees of state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract.

"Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees. "Claim" also means any costs incurred by the Agency as a result of monitoring, protecting, or responding to unauthorized access to

Agency's confidential information and data, and to any other costs incurred by Agency as a result of a breach of security of Agency's confidential information and data caused by actions by Contractor, where such claim results in injury to or destruction of tangible property including loss of use resulting therefrom, or injury, tampering, or destruction of financial records, financial history, and credit history. Contractor's obligations to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees. Contractor will assume complete responsibility for reasonable and necessary costs of customer notification, and be liable for all associated costs incurred by Agency in responding to or recovering from any unauthorized use or loss of any confidential information or data.

Contractor expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the state will not be eliminated or reduced by any actual or alleged concurrent negligence of state or its agents, agencies, employees and officials.

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, officials, agents or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE

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

LICENSING, ACCREDITATION AND REGISTRATION

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

LIMITATION OF AUTHORITY

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

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

NONDISCRIMINATION

During the performance of this contract, the Contractor will comply with all federal and state nondiscrimination laws, regulations and policies.

PRIVACY

Confidential personal information and data including, but not limited to, "Protected Health Information," and/or information governed by RCW 42.56.590, collected, used, or acquired in connection with this contract will be protected against unauthorized use, disclosure, modification or loss. Contractor will ensure its directors, officers, employees, subcontractors or agents use confidential personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor's unauthorized use of personal information or the loss of Agency's confidential information and data.

Should any unauthorized use, disclosure, modification, or loss occur, Contractor will notify the Agency's Contract Manager as soon as practical but no more than four (4) hours from notice of unauthorized use, disclosure, modification, loss, or any other breach of privacy. The Agency will consider a force majeure with respect to the notification process. Contractor will assist the Agency with all investigatory efforts concerning a unauthorized use, loss, or any breach of privacy. Failure to promptly notify or assist the Agency may be considered a breach of this provision.

PUBLICITY

The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this contract wherein the Agency's name is mentioned or language used from which the

connection of the Agency's name may, in the Agency's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECORDS MAINTENANCE

The Contractor will maintain 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 that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

Contractor will retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, will be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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

REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor will complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION

The Contractor will provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the one hundred eighty (180) day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

SEVERABILITY

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

SITE SECURITY

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

SUBCONTRACTING

Neither the Contractor nor any Subcontractor will enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agency. In no event will the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

TAXES

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff will be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE

In the event the Agency determines the Contractor has failed to comply with the conditions of this contract in a timely manner, or the Contractor's performance falls below prevailing industry standards, the Agency has the right to suspend or terminate this contract.

Before suspending or terminating the contract, the Agency will notify the Contractor in writing of the need to take corrective action and allow an opportunity to cure. The timeframe for curing will be determined by the Agency by reasonably weighing several factors relevant to the default which will include, but not be limited to: how critical performance failure rectification is to the Agency operations; lead-time afforded to the Contractor to complete the performance or assignment in the first instance; repetition, if any, of the particular performance default; accumulation in number, if any, of other performance defaults which the Contractor has timely cured; and, attribution of the default to willful disregard or carelessness on the part of the Contractor. If corrective action is not taken within the timeframe established by the Agency, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor will be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

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

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the Agency or Contractor may, by one hundred eighty (180) days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency will be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES

Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause will apply in such property transfer. The Agency will pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent will determine the extent of the liability of the Agency. Failure to agree with such determination will be a dispute within the meaning of the "Disputes" clause of this contract.

The Agency may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the Agency against potential loss or liability. The rights and remedies of the Agency provided in this section will not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

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

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to

settle or pay any or all claims arising out of the termination of such orders and subcontracts;

4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification will be final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work as will not have been terminated by the Agent; and
7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

In addition, in the event the current contract is terminated or is not renewed, the Contractor will cooperate with the Agency in an orderly transfer of administrative responsibilities and records to the Agency or its representatives. Specifically, the Contractor will provide documents and computer files as described in this section and generally assist a new Contractor and the Agency in learning the content of such documents and files, or otherwise as will be mutually agreed upon between the Contractor and the Agency. The Contractor will have no written or telephone contact with participants except as authorized by the Agency.

TREATMENT OF ASSETS

1. Title to all property furnished by the Agency will remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, will pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, will pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.
2. Any property of the Agency furnished to the Contractor will, unless otherwise provided herein or approved by the Agency, be used only for the performance of this contract.
3. The Contractor will be responsible for any loss or damage to property of the Agency that results from the negligence of the Contractor or that results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
4. If any Agency property is lost, destroyed or damaged, the Contractor will immediately notify the Agency and will take all reasonable steps to protect the property from further damage.
5. The Contractor will surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.

6. All reference to the Contractor under this clause will also include Contractor's employees, agents or Subcontractors.

WAIVER

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